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H.89

Introduced by Representatives Yantachka of Charlotte, Batchelor of Derby,
Bluemle of Burlington, Brady of Williston, Brumsted of
Shelburne, Campbell of St. Johnsbury, Christie of Hartford,
Coffey of Guilford, Dolan of Waitsfield, Goslant of Northfield,
Graham of Williamstown, Gregoire of Fairfield, Hango of
Berkshire, Higley of Lowell, Hooper of Burlington, James of
Manchester, Killacky of South Burlington, Lefebvre of Newark,
Lefebvre of Orange, Leffler of Enosburgh, Martel of Waterford,
McCullough of Williston, Morgan, L. of Milton, Morgan, M. of
Milton, Mrowicki of Putney, Norris of Shoreham, Ode of
Burlington, Palasik of Milton, Patt of Worcester, Pearl of
Danville, Savage of Swanton, Scheuermann of Stowe, Shaw of
Pittsford, Sims of Craftsbury, Smith of Derby, Smith of New
Haven, Stebbins of Burlington, Strong of Albany, Surprenant of
Barnard, Townsend of South Burlington, Troiano of Stannard,
Walz of Barre City, White of Bethel, and Wood of Waterbury

Referred to Committee on

Date:

Subject: Agritourism; court procedure; immunity from liability

1 Statement of purpose of bill as introduced: This bill proposes to make
2 providers of agritourism activities immune from civil liability if a participant is
3 injured as a result of risks inherent in the activity and the provider has posted a
4 warning about those risks.

5 An act relating to limiting liability for agritourism

6 It is hereby enacted by the General Assembly of the State of Vermont:

7 Sec. 1. 12 V.S.A. chapter 212 is added to read:

8 CHAPTER 212. LIMITATION ON LIABILITY FOR
9 AGRITOURISM ACTIVITY

10 § 5871. DEFINITIONS

11 As used in this chapter:

12 (1) “Agricultural fair” means an agricultural fair that is registered with
13 the Agency of Agriculture, Food and Markets.

14 (2)(A) “Agritourism activity” means an interactive or passive activity
15 that is carried out for recreational, entertainment, or educational purposes on a
16 farm or at an animal exhibition at an agricultural fair, including farming, food
17 production, historical, cultural, pick-your-own, and nature-based activities.

18 (B) “Agritourism activity” does not include lodging at a farm or
19 shopping at a roadside farm stand or operation exclusively devoted to the sale
20 of merchandise or food at retail.

1 (3) “Agritourism host” means a person who provides the facilities and
2 equipment necessary to participate in an agritourism activity.

3 (4) “Farm” means a parcel or parcels of land owned, leased, or managed
4 by a person and devoted primarily to farming that meets the threshold criteria
5 established by the Required Agricultural Practices.

6 (5) “Farming” has the same meaning as in 10 V.S.A. § 6001(22).

7 (6) “Inherent risk” means any danger or condition that is an integral part
8 of, or arises from, an agritourism activity, including:

9 (A) the propensity of a wild animal or domestic animal to behave in
10 ways that may result in injury or death to persons on or near the wild animal or
11 domestic animal;

12 (B) a hazard such as a surface or subsurface condition;

13 (C) a natural condition of land, vegetation, or waters;

14 (D) the ordinary dangers of structures or equipment used in farming;

15 and

16 (E) the potential of a participant to act in a negligent way that may
17 contribute to injury or death to the participant or others, such as failing to
18 follow safety procedures or failing to act with reasonable caution while
19 engaging in an agritourism activity.

1 (7)(A) “Participant” means any individual who is invited to observe or
2 participate in an agritourism activity, regardless of whether the individual paid
3 to observe or participate in the agritourism activity.

4 (B) “Participant” does not mean an individual who is paid to
5 participate in an agritourism activity.

6 § 5872. LIMITATION ON DUTY TO PROTECT

7 (a) Except as provided in subsection (b) of this section, an agritourism host
8 shall not have a legal duty to protect a participant from the inherent risks of an
9 agritourism activity and shall not be liable for injury to or death of a participant
10 or damage to the property of a participant resulting from the inherent risks of
11 an agritourism activity, provided that the agritourism host posts the warning
12 required under section 5873 of this title.

13 (b) Nothing in subsection (a) of this section shall limit the liability of an
14 agritourism host who:

15 (1) commits a negligent act or omission concerning the safety of a
16 participant that proximately causes injury or death to the participant;

17 (2) has actual knowledge of:

18 (A) a dangerous condition on the land, facilities, or equipment used
19 in the activity, or

1 (B) the dangerous propensity of an animal used in the activity, which
2 proximately causes injury or death to the participant, and does not make that
3 danger known to the participant;

4 (3) intentionally injures a participant or intentionally damages a
5 participant's property;

6 (4) commits any other act, error, or omission that constitutes willful or
7 wanton misconduct or criminal conduct that proximately causes injury or death
8 to the participant; or

9 (5) fails to post the warning required under section 5873 of this title.

10 (c) Nothing in subsection (a) of this section shall prevent or limit the
11 liability of an agritourism host under product liability law.

12 (d) Any limitation on liability afforded by this section to an agritourism
13 host is in addition to any other limitations on liability otherwise provided by
14 law.

15 § 5873. WARNING NOTICE; POSTING; CONTRACTS

16 (a) To qualify for the limitation on liability under section 5872 of this title:

17 (1) an agritourism host shall post and maintain a sign in a clearly visible
18 location at or near the main entrance to each agritourism activity and in black
19 letters at least one inch in height containing the warning notice specified in
20 subsection (b) of this section; and

1 (2) every written contract entered into between an agritourism host and a
2 participant for goods or services related to an agritourism activity shall contain
3 in clearly visible print the warning notice specified in subsection (b) of this
4 section.

5 (b) The warning notice required under subsection (a) of this section shall
6 read: “WARNING: Under Vermont law, an agritourism host is not liable for
7 the injury or death of a participant in an agritourism activity resulting from the
8 inherent risk of the agritourism activity. Inherent risks include the risk of
9 animals, weather, land conditions, and the potential for you as a participant to
10 act in a negligent way that may contribute to your own injury or death. You
11 are assuming the risk of participating in this agritourism activity.”

12 Sec. 2. EFFECTIVE DATE

13 This act shall take effect on July 1, 2021.