

## H.89: An Act Relating to Limiting Liability for Agritourism

### Overview

- Today, the traditional farming economy can be unstable. To offset the instability in the farming economy, the Agency of Agriculture encourages farmers to diversify their products and services.
- One way that farmers are diversifying is by providing agritourism activities or events.
- Farmers are concerned, however, about liability they may face if they open their farms to the public.
- Liability insurance is available for agritourism activities, but it is often too expensive for many farmers.
- H.89 addresses these issues by providing that an agritourism host shall not be liable for injury to or death of a participant in the agritourism activity resulting from the inherent risks of the activity.
  - It will lessen the potential liability of farmers hosting agritourism activities;
  - It may reduce the price of liability insurance for agritourism activities; and
  - It still provides a person who is injured by an agritourism activity a remedy when the injury is caused by something other than the ordinary risks of harm from the activity.
- H.89 provides agritourism activities with a similar limitation on liability as is provided for equine activities.
- H.89 will allow Vermont to join over 30 other states with similar liability limitations for agritourism.

### Section by Section Summary

#### Sec. 1. 12 V.S.A. chapter 212.

- Section 1 adds a new chapter to Title 12 for the limitation on liability for agritourism activities.
- **12 V.S.A. § 5871**, provides definitions for the chapter. The key definitions are “agritourism activity” and “inherent risk”:
  - **[Amendment 1.1, as voted out by the House Committee on Agriculture and Forestry, would remove § 5871(1), defining “agricultural fair,” and renumber the remaining subdivisions.]**
  - **§ 5871(2)(A) “Agritourism activity,”** which means an interactive or passive activity that is carried out for recreational, entertainment, or educational purposes on a farm or at an animal exhibition at an agricultural fair, including farming, food production, historical, cultural, pick-your-own, and nature-based activities.  
**[Amendment 1.1, as voted out by the Committee, would replace the language in § 5871(2)(A) “or at an animal exhibition at an agricultural fair, including” with “and includes”.]**  
(B) “Agritourism activity” does not include lodging at a farm or shopping at a roadside farm stand or operation exclusively devoted to the sale of merchandise or food at retail.
  - **§ 5871(6) “Inherent risk,”** which means any danger or condition that is an integral part of, or arises from, an agritourism activity, including:
    - (A) the propensity of a wild animal or domestic animal to behave in ways that may result in injury or death to persons on or near the wild animal or domestic animal;
    - (B) a hazard such as a surface or subsurface condition;
    - (C) a natural condition of land, vegetation, or waters;
    - (D) the ordinary dangers of structures or equipment used in farming; and
    - (E) the potential of a participant to act in a negligent way that may contribute to injury or death to the participant or others, such as failing to follow safety procedures or failing to act with reasonable caution while engaging in an agritourism activity.

- **12 V.S.A. § 5872**, establishes the limitation on liability for agritourism hosts
  - **§ 5872(a)**: an agritourism host shall not have a legal duty to protect a participant from the inherent risks of an agritourism activity and shall not be liable for injury to or death of a participant, or damage to the property of a participant, resulting from the inherent risks of an agritourism activity, provided that the agritourism host posts the warning required under 12 V.S.A. § 5873.
  - **§ 5872(b)**: provides the exceptions to the limitation on liability for an agritourism activity. Specifically, the limitation on liability does not apply to:
    - An agritourism host who commits a negligent act or omission concerning the safety of a participant that proximately causes injury or death to the participant;
    - An agritourism host who has actual knowledge of:
      - a dangerous condition on the land, facilities, or equipment used in the activity, or
      - the dangerous propensity of an animal used in the activity, which proximately causes injury or death to the participant, and does not make that danger known to the participant;
    - An agritourism host who intentionally injures a participant or intentionally damages a participant’s property;
    - An agritourism host who commits any other act, error, or omission that constitutes willful or wanton misconduct or criminal conduct that proximately causes injury or death to the participant; or
    - An agritourism host who fails to post the warning required under 12 V.S.A. § 5873.
  - **§ 5872(c)**: provides that the limitation on liability for an agritourism activity shall not prevent or limit the liability of an agritourism host under product liability law.
  - **§ 5872(d)**: any limitation on liability afforded to an agritourism host is in addition to any other limitations on liability otherwise provided by law—such as the limitation on liability for equine activities.
- **12 V.S.A. § 5873**, sets out the warning notice an agritourism host must post and include in written contracts in order to qualify for the limitation on liability.
  - **§ 5873(a)**: To qualify for the limitation on liability under 12 V.S.A. § 5872, an agritourism host shall:
    - (1) post and maintain a sign in a clearly visible location at or near the main entrance to each agritourism activity and in black letters at least one inch in height containing the required warning notice; and
    - (2) include the required warning in clearly visible print in every written contract entered into between an agritourism host and a participant for goods or services related to an agritourism activity.
  - **§ 5873(b)**: Provides the required warning. The warning must state:
 

“WARNING: Under Vermont law, an agritourism host is not liable for the injury or death of a participant in an agritourism activity resulting from the inherent risk of the agritourism activity. Inherent risks include the risk of animals, weather, land conditions, and the potential for you as a participant to act in a negligent way that may contribute to your own injury or death. You are assuming the risk of participating in this agritourism activity.”

**Sec. 2. Effective Date**

- The act takes effect on July 1, 2021.