

ASSEMBLY, No. 292

STATE OF NEW JERSEY

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SYNOPSIS

Provides limited civil liability immunity to farmers hosting agritourism activities.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 2/24/2020)

1 **AN ACT** limiting liability arising from agritourism activities,
2 supplementing Title 2A of the New Jersey Statutes, and
3 repealing P.L.1997, c.378.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. As used in this act:

9 “Agritourism activity” means an interactive or passive activity,
10 carried out with or without payment to an agritourism host on a
11 farm, related to agriculture, food production, historic tradition, or
12 nature watching, and which is conducted by an agritourism host for
13 the education, entertainment, or recreation of participants.
14 “Agritourism activity” shall include, but shall not be limited to, a
15 farming activity, the viewing of an historic, cultural, or natural
16 attraction, a pick-your-own activity, nature watching, and an
17 activity involving an animal exhibition at an agricultural fair.
18 “Agritourism activity” shall not include a roadside farm stand or
19 operation exclusively devoted to the sale of merchandise or food at
20 retail.

21 “Agritourism host” means a person who provides the facilities
22 and equipment necessary to participate in an agritourism activity.

23 “Farm” means any land, and related structures and equipment,
24 used for the production for sale of agricultural, horticultural,
25 viticultural, forestry, dairy, livestock, poultry, bee, or other related
26 products, and which qualifies for farmland assessment pursuant to
27 the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-
28 23.1 et seq.).

29 “Inherent risk” means any danger or condition that is an integral
30 part of, or arises from, an agritourism activity, including, but not
31 limited to, the propensity of a wild or domestic animal to behave in
32 ways that may result in injury or death to persons on or near the
33 wild or domestic animal; a hazard such as a surface or subsurface
34 condition; a natural condition of land, vegetation, or waters; the
35 ordinary dangers of structures or equipment used in farming; and
36 the potential of a participant to act in a negligent way that may
37 contribute to injury or death to the participant or others, such as
38 failing to follow safety procedures or failing to act with reasonable
39 caution while engaging in an agritourism activity.

40 “Participant” means any person who is invited onto the farm for
41 the purpose of participating in an agritourism activity.

42
43 2. a. Notwithstanding the provisions of any other law to the
44 contrary, and except as provided in subsection b. of this section, an
45 agritourism host shall not have a legal duty to protect a participant
46 from the inherent risks of an agritourism activity, and shall not be
47 liable for injury to or death of a participant resulting from the
48 inherent risks of an agritourism activity, provided the agritourism

1 host gives proper warning as required pursuant to section 3 of this
2 act.

3 b. Nothing in subsection a. of this section shall limit the
4 liability of an agritourism host who:

5 (1) commits an act or omission of gross negligence concerning
6 the safety of a participant that proximately causes injury or death to
7 the participant;

8 (2) has actual knowledge of a dangerous condition on the land,
9 facilities, or equipment used in the activity, or the dangerous
10 propensity of a particular animal used in the activity, that
11 proximately causes injury or death to the participant and does not
12 make that danger known to the participant;

13 (3) intentionally injures a participant; or

14 (4) commits any other act, error, or omission that constitutes
15 willful or wanton misconduct, gross negligence, or criminal conduct
16 that proximately causes injury or death to the participant.

17 c. Any limitation on liability afforded by this section to an
18 agritourism host shall be in addition to any other limitations on
19 liability otherwise provided by law, including, but not limited to,
20 the limitations on liability for sport and recreational activities in
21 P.L.1968, c.73 (C.2A:42A-2 et seq.), for the operation of motor
22 vehicles and horseback riding in P.L.1985, c.431 (C.2A:42A-6 et
23 seq.), and for equine animal activity in P.L.1997, c.287 (C.5:15-1
24 et seq.).

25

26 3. a. An agritourism host shall post and maintain a sign in a
27 clearly visible location at or near the main entrance to each
28 agritourism activity and in black letters at least one inch in height
29 containing the warning notice specified in subsection c. of this
30 section.

31 b. Every written contract entered into between an agritourism
32 host and a participant for goods or services related to an agritourism
33 activity shall contain in clearly visible print the warning notice
34 specified in subsection c. of this section.

35 c. The warning notice required pursuant to subsections a. and
36 b. of this section shall read: "WARNING: Under New Jersey law,
37 an agritourism host is not liable for the injury or death of a
38 participant in an agritourism activity resulting from the inherent risk
39 of the agritourism activity. Inherent risks include without limitation
40 the risk of animals, weather, land conditions, and the potential for
41 you as a participant to act in a negligent way that may contribute to
42 your own injury or death. You are assuming the risk of
43 participating in this agritourism activity."

44 d. Failure to comply with the requirements of this section shall
45 result in the agritourism host being unable to invoke the limitation
46 on liability provided in section 2 of this act.

1 4. The provisions of this act shall be liberally construed to
2 serve as an inducement to the owners, lessees, and occupants of
3 farms, who might otherwise be reluctant to do so for fear of
4 liability, to host agritourism activities.

5
6 5. P.L.1997, c.378 (C.2A:42A-9 et seq.) is repealed.

7
8 6. This act shall take effect on the 90th day after the date of
9 enactment, and shall apply only to agritourism activities that occur
10 on or after the effective date of this act.

11
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13 STATEMENT

14
15 This bill would provide limited civil liability immunity to
16 farmers hosting agritourism activities.

17 An agritourism activity is an interactive or passive activity,
18 carried out without or without payment to an agritourism host on a
19 farm, related to agriculture, food production, historic tradition, or
20 nature watching, and which is conducted by an agritourism host for
21 the education, entertainment, or recreation of participants.
22 Agritourism activities include farming activities, the viewing of
23 cultural, historic, or natural attractions, pick-your-own activities,
24 nature watching, and activities involving an animal exhibition at an
25 agricultural fair. It would not include roadside farm stands or
26 operations exclusively devoted to the sale of merchandise or food at
27 retail. Under the bill, an agritourism host would not have a legal
28 duty to protect a participant from the inherent risks of an
29 agritourism activity, and would not be liable for injury to or death
30 of a participant resulting from the inherent risks of an agritourism
31 activity, provided the host gives proper warning as required in
32 section 3 of the bill.

33 Proper warning, as specified in the bill, is the posting of a
34 warning notice on certain signs and contracts. That warning notice
35 would read: "WARNING: Under New Jersey law, an agritourism
36 host is not liable for the injury or death of a participant in an
37 agritourism activity resulting from the inherent risk of the
38 agritourism activity. Inherent risks include without limitation the
39 risk of animals, weather, land conditions, and the potential for you
40 as a participant to act in a negligent way that may contribute to your
41 own injury or death. You are assuming the risk of participating in
42 this agritourism activity." Failure to follow the warning
43 requirements would result in the agritourism host's loss of limited
44 liability protections.

45 The limitation on liability also would not extend to any
46 agritourism host who: (1) commits an act or omission of gross
47 negligence concerning the safety of a participant that proximately
48 causes injury or death to the participant; (2) has actual knowledge

1 of a dangerous condition on the land, facilities, or equipment used
2 in the activity or the dangerous propensity of a particular animal
3 used in the activity that proximately causes injury or death to the
4 participant and does not make that danger known to the participant;
5 (3) intentionally injures a participant; or (4) commits any other act,
6 error, or omission that constitutes willful or wanton misconduct,
7 gross negligence, or criminal conduct that proximately causes injury
8 or death to the participant. The limitation on liability provided by
9 the bill would be in addition to any other limitation on liability
10 provided by law, including, but not limited to, the limitations on
11 liability for outdoor sports and recreational activities and equine
12 animal activities.

13 Finally, the bill would repeal P.L.1997, c.378 (C.2A:42A-9 et
14 seq.) concerning farmer immunity for “pick-your-own” operations.
15 The protections in that law would be included in this bill, and are
16 expanded to include agritourism activities generally. This bill is
17 modeled substantially on legislation from Arkansas.