

1 SENATE BILL 428

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 John M. Sapien

5  
6  
7  
8  
9  
10 AN ACT

11 RELATING TO CIVIL LIABILITY; PROVIDING FOR LIMITED LIABILITY IN  
12 AGRITOURISM ACTIVITIES.

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. SHORT TITLE.--This act may be cited as the  
16 "Agritourism Limited Liability Act".

17 SECTION 2. DEFINITIONS.--As used in the Agritourism  
18 Limited Liability Act:

19 A. "agricultural products" means any livestock,  
20 poultry or aquacultural, horticultural, floricultural,  
21 viticultural, silvicultural or other farm crops;

22 B. "agritourism activity" means any activity  
23 carried out on a farm or ranch that allows members of the  
24 general public, for recreational, entertainment or educational  
25 purposes, to view or enjoy rural activities, including farming,

.183799.1

underscored material = new  
[bracketed material] = delete

underscored material = new  
~~[bracketed material] = delete~~

1 winemaking, ranching, historical, cultural, harvest-your-own  
2 activities or natural activities and attractions. An activity  
3 is an "agritourism activity" regardless of whether the  
4 participant paid to participate in the activity;

5 C. "agritourism professional" means any person who  
6 is engaged in the business of providing one or more agritourism  
7 activities, whether or not for compensation;

8 D. "farm or ranch" means one or more areas of land  
9 used for the production, cultivation, growing, harvesting or  
10 processing of agricultural products;

11 E. "inherent risks of agritourism activity" means  
12 those dangers or conditions that are an integral part of an  
13 agritourism activity, including:

14 (1) surface and subsurface conditions;  
15 (2) natural conditions of land, vegetation and  
16 waters;

17 (3) behavior of wild or domestic animals;  
18 (4) ordinary dangers of structures or  
19 equipment ordinarily used in farming and ranching operations;  
20 and

21 (5) the potential of a participant to act in a  
22 negligent manner that may contribute to injury to the  
23 participant or others, including failing to follow instructions  
24 given by an agritourism professional or failing to exercise  
25 reasonable caution while engaging in an agritourism activity;

.183799.1

underscoring material = new  
~~[bracketed material] = delete~~

1 and

2 F. "participant" means any person, other than an  
3 agritourism professional, who engages in an agritourism  
4 activity.

5 SECTION 3. LIABILITY LIMITED--LIABILITY ACTIONS  
6 PROHIBITED.--

7 A. Except as provided in Subsection B of this  
8 section:

9 (1) an agritourism professional is not liable  
10 for injury to or the death of a participant resulting from the  
11 inherent risks of agritourism activities so long as the warning  
12 notice specified in Subsection C of Section 4 of the  
13 Agritourism Limited Liability Act is posted as required; and

14 (2) no participant or participant's  
15 representative is authorized to maintain an action against or  
16 recover from an agritourism professional for injury, loss,  
17 damage or death of the participant resulting exclusively from  
18 any of the inherent risks of agritourism activities, provided  
19 that in any action for damages against an agritourism  
20 professional for agritourism activity, the agritourism  
21 professional shall plead the affirmative defense of assumption  
22 of the inherent risks of agritourism activity by the  
23 participant.

24 B. Nothing in Subsection A of this section shall  
25 prevent or limit the liability of an agritourism professional

.183799.1

underscoring material = new  
~~[bracketed material] = delete~~

1 if the agritourism professional:

2 (1) commits an act or omission that  
3 constitutes negligence or willful or wanton disregard for the  
4 safety of the participant, and that act or omission proximately  
5 causes injury, damage or death to the participant;

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

14 (3) intentionally injures the participant.

15 C. Any limitation on legal liability provided by  
16 this section to an agritourism professional is in addition to  
17 any other limitations of legal liability otherwise provided by  
18 law.

19 **SECTION 4. REQUIRED WARNINGS AND NOTICES.--**

20 A. The limitation of liability provided in Section  
21 3 of the Agritourism Limited Liability Act is applicable to  
22 agritourism activities only if signs that contain the warning  
23 notice specified in Subsection C of this section shall be  
24 posted at a farm or ranch where the agritourism activities are  
25 to take place. Such signs shall be placed in a clearly visible

.183799.1

underscoring material = new  
~~[bracketed material] = delete~~

1 location at the entrance to a farm or ranch where the  
2 agritourism activity is to take place and at the site of the  
3 agritourism activity. The warning notice shall consist of a  
4 sign in black letters, with each letter to be a minimum of one  
5 inch in height.

6 B. Every written contract entered into by an  
7 agritourism professional for the providing of professional  
8 services, instruction or the rental of equipment to a  
9 participant, whether or not the contract involves agritourism  
10 activities on or off the farm or ranch or at the site of the  
11 agritourism activity, shall contain in clearly readable print  
12 the warning notice specified in Subsection C of this section.

13 C. The signs and contract provision described in  
14 Subsections A and B of this section shall contain the following  
15 notice of warning:

16 "WARNING: Pursuant to New Mexico law, there is no  
17 liability for an injury to or the death of a  
18 participant in an agritourism activity conducted at  
19 this farm or ranch if such injury or death results  
20 from the inherent risks of the agritourism activity.  
21 Inherent risks of agritourism activities include  
22 risks of injury inherent to land, equipment and  
23 animals, as well as the potential for you to act in  
24 a negligent manner that may contribute to your  
25 injury or death. You are assuming the risk of

1 participating in this agritourism activity.".

2 D. Failure to comply with the requirements  
3 concerning warning signs and notices set forth in this section  
4 shall prevent an agritourism professional from invoking the  
5 privileges of immunity provided by the Agritourism Limited  
6 Liability Act.

7 SECTION 5. SEVERABILITY.--If any part or application of  
8 the Agritourism Limited Liability Act is held invalid, the  
9 remainder or its application to other situations or persons  
10 shall not be affected.

11 - 6 -  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

underscoring material = new  
~~[bracketed material] = delete~~