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HOUSE BILL 329
Committee Substitute Favorable 5/16/05
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Short Title: Limit Liability for Agritourism Activities.

(Public)

Sponsors:

Referred to:

February 22, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO LIMIT LIABILITY ARISING FROM CERTAIN AGRITOURISM
3 ACTIVITIES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 99E of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 4.

8 "Agritourism Activity Liability.

9 "**§ 99E-30. Definitions.**

10 As used in this Article, the following terms mean:

- 11 (1) Agritourism activity. – Any activity carried out on a farm or ranch that
12 allows members of the general public, for recreational, entertainment,
13 or educational purposes, to view or enjoy rural activities, including
14 farming, ranching, historic, cultural, harvest-your-own activities, or
15 natural activities and attractions. An activity is an agritourism activity
16 whether or not the participant paid to participate in the activity.
17 (2) Agritourism professional. – Any person who is engaged in the
18 business of providing one or more agritourism activities, whether or
19 not for compensation.
20 (3) Inherent risks of agritourism activity. – Those dangers or conditions
21 that are an integral part of an agritourism activity including certain
22 hazards, including surface and subsurface conditions, natural
23 conditions of land, vegetation, and waters, the behavior of wild or
24 domestic animals, and ordinary dangers of structures or equipment
25 ordinarily used in farming and ranching operations. Inherent risks of
26 agritourism activity also include the potential of a participant to act in
27 a negligent manner that may contribute to injury to the participant or

1 others, including failing to follow instructions given by the agritourism
2 professional or failing to exercise reasonable caution while engaging in
3 the agritourism activity.

4 (4) Participant. – Any person, other than the agritourism professional, who
5 engages in an agritourism activity.

6 (5) Person. – An individual, fiduciary, firm, association, partnership,
7 limited liability company, corporation, unit of government, or any
8 other group acting as a unit.

9 **"§ 99E-31. Liability.**

10 (a) Except as provided in subsection (b) of this section, an agritourism
11 professional is not liable for injury to or death of a participant resulting from the
12 inherent risks of agritourism activities, so long as the warning contained in G.S. 99E-32
13 is posted as required and, except as provided in subsection (b) of this section, no
14 participant or participant's representative can maintain an action against or recover from
15 an agritourism professional for injury, loss, damage, or death of the participant resulting
16 exclusively from any of the inherent risks of agritourism activities. In any action for
17 damages against an agritourism professional for agritourism activity, the agritourism
18 professional must plead the affirmative defense of assumption of the risk of agritourism
19 activity by the participant.

20 (b) Nothing in subsection (a) of this section prevents or limits the liability of an
21 agritourism professional if the agritourism professional does any one or more of the
22 following:

23 (1) Commits an act or omission that constitutes negligence or willful or
24 wanton disregard for the safety of the participant, and that act or
25 omission proximately causes injury, damage, or death to the
26 participant.

27 (2) Has actual knowledge or reasonably should have known of a
28 dangerous condition on the land, facilities, or equipment used in the
29 activity or the dangerous propensity of a particular animal used in such
30 activity and does not make the danger known to the participant, and
31 the danger proximately causes injury, damage, or death to the
32 participant.

33 (c) Nothing in subsection (a) of this section prevents or limits the liability of an
34 agritourism professional under liability provisions as set forth in Chapter 99B of the
35 General Statutes.

36 (d) Any limitation on legal liability afforded by this section to an agritourism
37 professional is in addition to any other limitations of legal liability otherwise provided
38 by law.

39 **"§ 99E-32. Warning required.**

40 (a) Every agritourism professional must post and maintain signs that contain the
41 warning notice specified in subsection (b) of this section. The sign must be placed in a
42 clearly visible location at the entrance to the agritourism location and at the site of the
43 agritourism activity. The warning notice must consist of a sign in black letters, with
44 each letter to be a minimum of one inch in height. Every written contract entered into by

1 an agritourism professional for the providing of professional services, instruction, or the
2 rental of equipment to a participant, whether or not the contract involves agritourism
3 activities on or off the location or at the site of the agritourism activity, must contain in
4 clearly readable print the warning notice specified in subsection (b) of this section.

5 (b) The signs and contracts described in subsection (a) of this section must
6 contain the following notice of warning:

7 **'WARNING**

8 Under North Carolina law, there is no liability for an injury to or death of a
9 participant in an agritourism activity conducted at this agritourism location if such
10 injury or death results from the inherent risks of the agritourism activity. Inherent risks
11 of agritourism activities include, among others, risks of injury inherent to land,
12 equipment, and animals, as well as the potential for you to act in a negligent manner that
13 may contribute to your injury or death. You are assuming the risk of participating in this
14 agritourism activity.'

15 (c) Failure to comply with the requirements concerning warning signs and
16 notices provided in this subsection will prevent an agritourism professional from
17 invoking the privileges of immunity provided by this Article."

18 **SECTION 2.** This act becomes effective January 1, 2006, and applies to
19 agritourism activities, as defined in G.S. 99E-30 as enacted in Section 1 of this act, that
20 occur on or after that date.