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Chapter No. 418

12/SS26/R647CS

JN / TBEC

SENATE BILL NO. 2439

Originated in Senate *Liz Welch* Secretary

SENATE BILL NO. 2439

AN ACT TO PROVIDE LIMITED LIABILITY TO PERSONS ENGAGED IN AGRITOURISM ACTIVITIES; TO DEFINE CERTAIN TERMS; TO REQUIRE WARNING SIGNS AT AGRITOURISM FARMS; TO PROMOTE AGRITOURISM IN MISSISSIPPI; TO PROVIDE FOR THE REPEAL OF THIS ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. As used in this act, the following terms shall have the meanings ascribed, unless the context requires otherwise:

(a) "Agritourism" means the travel or visit by the general public to, or the practice of inviting or allowing the general public to travel to or visit a working farm, ranch, or other commercial agricultural, aquacultural, horticultural, or forestry operation for the purpose of enjoyment, education, or participation in the activities of the farm, ranch, or other agricultural, aquacultural, horticultural, or forestry operation.

(b) "Agritourism activity" means any activity which allows members of the general public, for recreational, entertainment or educational purposes, to view or enjoy rural activities, including, but not limited to, farming activities, ranching activities or historic or cultural or natural attractions.

(c) "Agritourism professional" means any person, partnership, corporation, or the employees or authorized agents, who offer or conduct one or more agritourism activities, whether or not for compensation.

(d) "Inherent risks of agritourism activity" means those dangers or conditions that are an integral part of an agritourism activity, including, but not limited to, certain

hazards involving surface and subsurface conditions, natural conditions of land, vegetation and waters, the behavior of wild or domestic animals, and ordinary dangers of structures or equipment ordinarily used in farming, ranching, or other commercial agricultural, aquacultural, horticultural or forestry operation. Inherent risks of agritourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.

(e) "Participant" means any person, other than the agritourism professional, who engages in an agritourism activity.

SECTION 2. (1) Except as provided in subsection (2) of this section, an agritourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism activities if the warning contained in Section 3 of this act is posted as required and, except as provided in subsection (2) of this section, no participant or participant's representative can maintain an action against or recover from an agritourism professional for injury, loss, damage or death of the participant resulting exclusively from any of the inherent risks of agritourism activities. In any action for damages against an agritourism professional for agritourism activity, the agritourism professional may plead the provisions of this section as an affirmative defense.

(2) Nothing in subsection (1) of this section prevents or limits the liability of an agritourism professional if the agritourism professional does any one or more of the following:

(a) Commits or omits an act if the act or omission constitutes willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage or death to the participant.

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

(c) Intentionally injures the participant.

(3) Nothing in subsection (1) of this section:

(a) Prevents or limits the liability of an agritourism professional under products liability laws.

(b) Shall be construed so as to negate that assumption of risk is an affirmative defense.

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

SECTION 3. (1) Every agritourism professional must post and maintain signs that contain the warning notice specified in this section. The sign must be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice must consist of a sign in black letters, with each letter to be a minimum of one (1) inch in height. Every written contract entered into by an agritourism professional for the providing of professional services, instruction or the rental of equipment to a participant, whether or not the contract involves agritourism activities on or off the location or at the site of the agritourism activity, must contain in clearly readable print the warning notice specified in subsection (2) of this section.

(2) The signs and contracts must contain the following notice of warning:

"WARNING

Under Mississippi law, there is no liability for an injury to or death of a participant in an agritourism

activity conducted at this agritourism location if the injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment and animals, as well as the potential for you or another participant to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity."

(3) Failure to comply with the requirements concerning warning signs and notices provided in this section will prevent an agritourism professional from invoking the privileges of immunity provided by this act.

SECTION 4. (1) An agritourism professional must register with the Mississippi Department of Agriculture and Commerce on an annual basis. The registration shall contain information describing the agritourism activity that the agritourism professional conducts or intends to conduct and the location where the person conducts or intends to conduct such agritourism activity. Additionally, the agritourism professional must pay an annual fee in the amount of Fifty Dollars (\$50.00) to the Department at the time of registration. There is established in the State Treasury a special fund for the Mississippi Department of Agriculture and Commerce for the monies collected under this section. Unexpended monies remaining in the fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited into the fund.

(2) The Department shall maintain a list of all registered agritourism professionals, the registered agritourism activities conducted by each professional, and the registered agritourism location where the professional conducts such activities. Such list shall be made available to the public. The Department, in

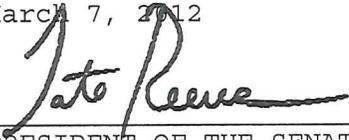
conjunction with other agritourism and rural economic efforts, shall promote and publicize registered agritourism professionals, activities and locations to advance agritourism in the state. The Department assumes no legal liability by registering agritourism professionals, but merely serves to promote agritourism in the state.

(3) The Department shall adopt guidelines to carry out the intent of this law.

SECTION 5. This act shall stand repealed on July 1, 2014.

SECTION 6. This act shall take effect and be in force from and after its passage.

PASSED BY THE SENATE
March 7, 2012



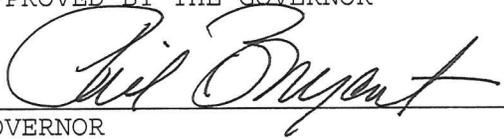
PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
April 4, 2012



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

5:25 pm