

ESSB 5808 - H COMM AMD
By Committee on Judiciary

ADOPTED 04/07/2017

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that agriculture
4 plays a substantial role in the economy, culture, and history of
5 Washington state. As an increasing number of Washington's citizens
6 are removed from day-to-day agricultural experiences, agritourism
7 provides a valuable opportunity for the public to interact with,
8 experience, and understand agriculture. In addition, agritourism
9 opportunities provide valuable options for farmers and ranchers and
10 rural residents to maintain their operations and continue a
11 traditional economic development opportunity in rural areas. Inherent
12 risks exist on farms and ranches, some of which cannot be reasonably
13 eliminated. Uncertainty of potential liability associated with
14 inherent risks has a negative impact on the establishment and success
15 of agritourism operations.

16 NEW SECTION. **Sec. 2.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires
18 otherwise.

19 (1) "Agritourism activity" means any activity carried out on a
20 farm or ranch whose primary business activity is agriculture or
21 ranching and that allows members of the general public, for
22 recreational, entertainment, or educational purposes, to view or
23 enjoy rural activities including, but not limited to: Farming;
24 ranching; historic, cultural, and on-site educational programs;
25 recreational farming programs that may include on-site hospitality
26 services; guided and self-guided tours; petting zoos; farm festivals;
27 corn mazes; harvest-your-own operations; hayrides; barn parties;
28 horseback riding; fishing; and camping.

29 (2) "Agritourism professional" means any person in the business
30 of providing one or more agritourism activities, whether or not for
31 compensation.

1 (3) "Inherent risks of agritourism activity" means those dangers
2 or conditions that are an integral part of an agritourism activity
3 including certain hazards, such as surface and subsurface conditions,
4 natural conditions of land, vegetation, waters, the behavior of wild
5 or domestic animals, and ordinary dangers of structures or equipment
6 ordinarily used in farming and ranching operations. Inherent risks of
7 agritourism activity also include the potential of a participant to
8 act in a negligent manner that may contribute to injury to the
9 participant or others, including failing to follow instructions given
10 by the agritourism professional or failing to exercise reasonable
11 caution while engaging in the agritourism activity, unless the
12 participant acting in a negligent manner is a minor or is under the
13 influence of alcohol or drugs.

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

16 (5) "Person" means an individual, fiduciary, firm, association,
17 partnership, limited liability company, corporation, unit of
18 government, or any other group acting as a unit.

19 NEW SECTION. **Sec. 3.** (1)(a) Except as provided in subsection
20 (2) of this section, an agritourism professional is not liable for
21 injury, loss, damage, or death of a participant resulting exclusively
22 from any of the inherent risks of agritourism activities.

23 (b) Except as provided in subsection (2) of this section, no
24 participant or participant's representative may pursue an action or
25 recover from an agritourism professional for injury, loss, damage, or
26 death of the participant resulting exclusively from any of the
27 inherent risks of agritourism activities.

28 (c) In any action for damages against an agritourism professional
29 for agritourism activity, the agritourism professional must plead the
30 affirmative defense of assumption of the risk of agritourism activity
31 by the participant.

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

35 (a) Commits an act or omission that is grossly negligent or
36 constitutes willful or wanton disregard for the safety of the
37 participant and that act or omission proximately causes injury,
38 damage, or death to the participant.

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

7 (c) Permits minor participants to use facilities or engage in
8 agritourism activities that are not reasonably appropriate for their
9 age. This provision shall not be interpreted to relieve a parent or
10 guardian of a minor participant of the duty to reasonably supervise
11 the minor's participation in agritourism activities, including
12 assessing whether the minor's participation in an agritourism
13 activity is reasonably appropriate for his or her age.

14 (d) Knowingly permits participants to use facilities or engage in
15 agritourism activities while under the influence of alcohol or drugs.

16 (e) Fails to warn participants as required by section 4 of this
17 act.

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

21 NEW SECTION. **Sec. 4.** (1) Every agritourism professional must
22 post and maintain signs that contain the warning notice specified in
23 subsection (2) of this section. The sign must be placed in a clearly
24 visible location at the entrance to the agritourism location and at
25 the site of the agritourism activity. The warning notice must consist
26 of a sign in black letters, with each letter to be a minimum of one
27 inch in height. Every written contract entered into by an agritourism
28 professional for the providing of professional services, instruction,
29 or the rental of equipment to a participant, whether or not the
30 contract involves agritourism activities on or off the location or at
31 the site of the agritourism activity, must contain in clearly
32 readable print the warning notice specified in subsection (2) of this
33 section.

34 (2) The sign and contracts described in subsection (1) of this
35 section must contain the following notice of warning:

36 "WARNING

37 Under Washington state law, there is limited liability for an
38 injury to or death of a participant in an agritourism
39 activity conducted at this agritourism location if such an

1 injury or death results exclusively from the inherent risks
2 of the agritourism activity. Inherent risks of agritourism
3 activities include, among others, risks of injury inherent to
4 land, equipment, and animals, as well as the potential for
5 you to act in a negligent manner that may contribute to your
6 injury or death. We are required to ensure that in any
7 activity involving minor children, only age-appropriate
8 access to activities, equipment, and animals is permitted.
9 You are assuming the risk of participating in this
10 agritourism activity."

11 (3) Failure to comply with the requirements concerning warning
12 signs and notices provided in this section prohibits an agritourism
13 professional from invoking the privilege of immunity provided by this
14 section and sections 1 through 3 of this act and may be introduced as
15 evidence in any claim for damages.

16 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act are each
17 added to chapter 4.24 RCW."

18 Correct the title.

EFFECT: (1) Replaces the phrase "agricultural producers" with the
phrase "farmers and ranchers" in the intent and legislative findings
section.

(2) Removes "bed and breakfast accommodations" from the
definition of "agritourism activity."

(3) Modifies one of the exceptions to the immunity provided to
agritourism professionals by adding a sentence stating that the
exception does not relieve a parent or guardian of a minor
participant of the duty to reasonably supervise the minor's
participation in agritourism activities.

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