

By: Hilderbran

H.B. No. 3385

A BILL TO BE ENTITLED

AN ACT

relating to limited liability for an agritourism entity involved in an agritourism activity.

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

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 75A to read as follows:

CHAPTER 75A. LIMITED LIABILITY FOR AGRITOURISM ACTIVITIES

Sec. 75A.001. DEFINITIONS. In this chapter:

(1) "Agricultural land" means land that is located in this state and that is suitable for:

(A) use in production of plants and fruits grown for human or animal consumption, or plants grown for the production of fibers, floriculture, viticulture, horticulture, or planting seed; or

(B) domestic or native farm or ranch animals kept for use or profit.

(2) "Agritourism activity" means an activity on agricultural land for recreational or educational purposes of a participant. An activity is an agritourism activity without regard to whether the participant compensated the agritourism entity to participate in the activity.

(3) "Agritourism entity" means a person engaged in the business of providing an agritourism activity, without regard to compensation.

1           (4) "Agritourism participant" means a person, other  
2 than an employee of an agritourism entity, who engages in an  
3 agritourism activity.

4           (5) "Agritourism participant injury" means an injury  
5 sustained by an agritourism participant, including bodily injury,  
6 emotional distress, death, property damage, or any other loss  
7 arising from the person's participation in an agritourism activity.

8           (6) "Premises" has the meaning assigned by Section  
9 75.001.

10           (7) "Recreation" has the meaning assigned by Section  
11 75.001.

12           Sec. 75A.002. LIMITED LIABILITY. (a) Except as provided by  
13 Subsection (b), an agritourism entity is not liable to any person  
14 for an agritourism participant injury or damages arising out of the  
15 agritourism participant injury if:

16           (1) the warning required by Section 75A.003 is posted  
17 as required; or

18           (2) the agritourism entity has a signed release from  
19 the agritourism participant indicating that the agritourism  
20 participant has received written notice of the warning required by  
21 Section 75A.003.

22           (b) This section does not limit liability for an injury:

23           (1) proximately caused by the agritourism entity's  
24 negligence evidencing a disregard for the safety of the agritourism  
25 participant;

26           (2) proximately caused by the agritourism entity, who  
27 had actual knowledge or reasonably should have known of:

1           (A) a dangerous condition on the land,  
2 facilities, or equipment used in the activity; or

3           (B) the dangerous propensity, that is not  
4 disclosed to the agritourism participant, of a particular animal  
5 used in the activity;

6           (3) proximately caused by a failure to train or  
7 improper training of an employee of the agritourism entity actively  
8 involved in an agritourism activity; or

9           (4) intentionally caused by the agritourism entity.

10          (c) A limitation on liability by this section to an  
11 agritourism entity is in addition to other limitations of  
12 liability.

13          Sec. 75A.003. WARNING REQUIRED. Unless a written agreement  
14 and warning statement described by Section 75A.004 is given to and  
15 signed by the agritourism participant, an agritourism entity shall  
16 post and maintain a sign in a clearly visible location on or near  
17 any premises on which an agritourism activity is conducted. The  
18 sign must contain the following language:

19                               WARNING

20                               UNDER TEXAS LAW (CHAPTER 75A, CIVIL  
21 PRACTICE AND REMEDIES CODE), AN AGRITOURISM  
22 ENTITY IS NOT LIABLE FOR ANY INJURY OR DEATH  
23 OF AN AGRITOURISM PARTICIPANT RESULTING  
24 FROM AN AGRITOURISM ACTIVITY.

25          Sec. 75A.004. AGREEMENT EFFECTIVE AND ENFORCEABLE. A  
26 written agreement and warning statement is considered effective and  
27 enforceable if it is:

1           (1) signed before the agritourism participant  
2 participates in any agritourism activity;

3           (2) signed by the agritourism participant;

4           (3) in a document separate from any other agreement  
5 between the agritourism participant and the agritourism entity  
6 other than a different warning, consent, or assumption of risk  
7 statement;

8           (4) printed in not less than 10-point bold type; and

9           (5) contains the following language:

10                           AGREEMENT AND WARNING

11                   I UNDERSTAND AND ACKNOWLEDGE THAT AN  
12 AGRITOURISM ENTITY IS NOT LIABLE FOR ANY  
13 INJURY TO OR DEATH OF AN AGRITOURISM  
14 PARTICIPANT RESULTING FROM AGRITOURISM  
15 ACTIVITIES. I UNDERSTAND THAT I HAVE  
16 ACCEPTED ALL RISK OF INJURY, DEATH,  
17 PROPERTY DAMAGE, AND OTHER LOSS THAT MAY  
18 RESULT FROM AGRITOURISM ACTIVITIES.

19           SECTION 2. The change in law made by this Act applies only  
20 to a cause of action that accrues on or after the effective date of  
21 this Act. A cause of action that accrues before the effective date  
22 of this Act is governed by the law in effect immediately before the  
23 effective date of this Act, and that law is continued in effect for  
24 that purpose.

25           SECTION 3. This Act takes effect immediately if it receives  
26 a vote of two-thirds of all the members elected to each house, as  
27 provided by Section 39, Article III, Texas Constitution. If this

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1 Act does not receive the vote necessary for immediate effect, this

2 Act takes effect September 1, 2013.