

By the Committee on Agriculture; and Senator Hays

575-02199-13

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1 A bill to be entitled
2 An act relating to agritourism; amending s. 570.96,
3 F.S.; providing legislative intent; restricting a
4 local government's ability to regulate agritourism
5 activity on agricultural land; amending s. 570.961,
6 F.S.; revising the definition of the term "agritourism
7 activity" and adding a definition of the term
8 "inherent risks of agritourism activity"; creating s.
9 570.963, F.S.; limiting the liability of an
10 agritourism professional, his or her employer or
11 employee, or the owner of the underlying land on which
12 the agritourism activity occurs if certain conditions
13 are met; creating s. 570.964, F.S.; requiring that
14 signs and contracts notify participants of certain
15 inherent risks and the assumption of that risk;
16 preventing an agritourism professional, his or her
17 employer, and any employee, and the owner of the
18 underlying land from invoking the privileges of
19 immunity if certain conditions are not met; providing
20 criteria for the notice; providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 570.96, Florida Statutes, is amended to
25 read:

26 570.96 Agritourism.—

27 (1) It is the intent of the Legislature to eliminate
28 duplication of regulatory authority over agritourism as
29 expressed in this section. Except as otherwise provided for in

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30 this section, and notwithstanding any other provision of law, a
31 local government may not adopt an ordinance, regulation, rule,
32 or policy that prohibits, restricts, regulates, or otherwise
33 limits an agritourism activity on land classified as
34 agricultural land under s. 193.461. This subsection does not
35 limit the powers and duties of a local government to address an
36 emergency as provided in chapter 252.

37 (2) The Department of Agriculture and Consumer Services may
38 provide marketing advice, technical expertise, promotional
39 support, and product development related to agritourism to
40 assist the following in their agritourism initiatives:
41 Enterprise Florida, Inc.; convention and visitor bureaus;
42 tourist development councils; economic development
43 organizations; and local governments. In carrying out this
44 responsibility, the department shall focus its agritourism
45 efforts on rural and urban communities.

46 Section 2. Section 570.961, Florida Statutes, is amended to
47 read:

48 570.961 Definitions.—As used in ss. 570.96-570.964 ~~570.96-~~
49 ~~570.962~~, the term:

50 (1) "Agritourism activity" means any activity consistent
51 with a bona fide ~~carried out on a~~ farm or ranch or in a working
52 forest that allows members of the general public, for
53 recreational, entertainment, or educational purposes, to view or
54 enjoy agricultural-related ~~rural~~ activities, including, but not
55 limited to, farming, ranching, historical, cultural, or harvest-
56 your-own, ~~or nature-based~~ activities and attractions. An
57 activity is an agritourism activity whether or not the
58 participant paid to participate in the activity.

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59 (2) "Agritourism professional" means any person who is
60 engaged in the business of providing one or more agritourism
61 activities, whether or not for compensation.

62 (3) "Farm" means the land, buildings, support facilities,
63 machinery, and other appurtenances used in the production of
64 farm or aquaculture products, including land used to display
65 plants, animals, farm products, or farm equipment to the public.

66 (4) "Farm operation" has the same meaning as defined in s.
67 823.14.

68 (5) "Inherent risks of agritourism activity" means those
69 dangers or conditions that are an integral part of an
70 agritourism activity including certain hazards, such as surface
71 and subsurface conditions, natural conditions of land,
72 vegetation, and waters; the behavior of wild or domestic
73 animals; and the ordinary dangers of structures or equipment
74 ordinarily used in farming and ranching operations. The term
75 also includes the potential of a participant to act in a
76 negligent manner that may contribute to the injury of the
77 participant or others, including failing to follow the
78 instructions given by the agritourism professional or failing to
79 exercise reasonable caution while engaging in the agritourism
80 activity.

81 Section 3. Section 570.963, Florida Statutes, is created to
82 read:

83 570.963 Liability.-

84 (1) Except as provided in subsection (2), an agritourism
85 professional, his or her employer or employee, or the owner of
86 the underlying land on which the agritourism occurs are not
87 liable for injury or death of, or damage or loss to, a

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88 participant resulting from the inherent risks of agritourism
89 activities if the notice of risk required under s. 570.964 is
90 posted as required. Except as provided in subsection (2), a
91 participant, or a participant's representative, may not maintain
92 an action against or recover from an agritourism professional,
93 his or her employer or employee, and the owner of the underlying
94 land on which the agritourism occurs for the injury or death of,
95 or damage or loss to, an agritourism participant resulting
96 exclusively from any of the inherent risks of agritourism
97 activities. In any action for damages against an agritourism
98 professional, his or her employer or employee, and the owner of
99 the underlying land on which the agritourism occurs for
100 agritourism activity, the agritourism professional, his or her
101 employer or employee, and the owner of the underlying land on
102 which the agritourism occurs must plead the affirmative defense
103 of assumption of the risk of agritourism activity by the
104 participant.

105 (2) In the event of the injury or death of, or damage or
106 loss to, an agritourism participant, subsection (1) does not
107 prevent or limit the liability of an agritourism professional or
108 his or her employer or employee or the owner of the underlying
109 land on which the agritourism occurs if he or she:

110 (a) Commits an act that constitutes negligence or willful
111 or wanton disregard for the safety of the participant, and that
112 act or omission proximately causes injury, damage, or death to
113 the participant;

114 (b) Has actual knowledge or reasonably should have known of
115 a dangerous condition on the land or in the facilities or
116 equipment used in the activity does not make the danger known to

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117 the participant, and the danger proximately causes injury,
118 damage, or death to the participant; or

119 (c) Intentionally injures the participant.

120 (3) The limitation on legal liability afforded by this
121 section to an agritourism professional or his or her employer or
122 employee or the owner of the underlying land on which the
123 agritourism occurs is in addition to any limitations of legal
124 liability otherwise provided by law.

125 Section 4. Section 570.964, Florida Statutes, is created to
126 read:

127 570.964 Posting and notification.—

128 (1) (a) Each agritourism professional shall post and
129 maintain signs that contain the notice of inherent risk
130 specified in subsection (2). A sign shall be placed in a clearly
131 visible location at the entrance to the agritourism location and
132 at the site of the agritourism activity. The notice of inherent
133 risk must consist of a sign in black letters, with each letter a
134 minimum of 1 inch in height, with sufficient color contrast to
135 be clearly visible.

136 (b) Each written contract entered into by an agritourism
137 professional for the providing of professional services,
138 instruction, or the rental of equipment to a participant,
139 regardless of whether the contract involves agritourism
140 activities on or off the location or at the site of the
141 agritourism activity, must contain in clearly readable print the
142 notice of inherent risk specified in subsection (2).

143 (2) The sign and contract required under subsection (1)
144 must contain the following notice of inherent risk:

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WARNING

Under Florida law, an agritourism professional is not liable for injury or death of, or damage or loss to, a participant in an agritourism activity conducted at this agritourism location if such injury, death, damage, or loss 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 to act in a negligent manner that may contribute to your injury, death, damage, or loss. You are assuming the risk of participating in this agritourism activity.

(3) Failure to comply with the requirements of this subsection prevents an agritourism professional, his or her employer or employee, or the owner of the underlying land on which the agritourism occurs from invoking the privileges of immunity provided by this section.

Section 5. This act shall take effect July 1, 2013.