

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 329  
Committee Substitute Favorable 5/16/05  
Third Edition Engrossed 5/23/05

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 FOR THOSE WHO PARTICIPATE IN  
3 AGRITOURISM 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 term:

- 11 (1) 'Agritourism activity' means any activity carried out on a farm or ranch  
12 that allows members of the general public, for recreational,  
13 entertainment, or educational purposes, to view or enjoy rural  
14 activities, including, by way of illustration and not limitation, farming,  
15 ranching, historic, cultural, harvest-your-own activities, or natural  
16 activities and attractions. An activity is an agritourism activity whether  
17 or not the participant paid to participate in the activity.
- 18 (2) 'Agritourism professional' means any person who is engaged in the  
19 business of providing one or more agritourism activities.
- 20 (3) 'Inherent risks of agritourism activity' means those dangers or  
21 conditions that are an integral part of an agritourism activity including  
22 certain hazards such as 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 includes the potential of a participant to act in  
27 a negligent manner that may contribute to injury to the participant or  
28 others, such as failing to follow instructions given by the agritourism

1                    professional or failing to exercise reasonable caution while engaging in  
2                    the agritourism activity.

3                    (4) 'Participant' means anyone who engages in an agritourism activity.

4                    (5) 'Person' means an individual, a fiduciary, a firm, an association, a  
5                    partnership, a limited liability company, a corporation, a unit of  
6                    government, or any other group acting as a unit.

7 **"§ 99E-31. Liability.**

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

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

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

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

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

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

37                    (e) Every agritourism professional must post and maintain signs that contain the  
38                    warning notice specified in subdivision (1) of this subsection. The sign must be placed  
39                    in a clearly visible location at the entrance to the agritourism location and at the site of  
40                    the agritourism activity. The warning notice must consist of a sign in black letters, with  
41                    each letter to be a minimum of one inch in height. Every written contract entered into by  
42                    an agritourism professional for the providing of professional services, instruction, or the  
43                    rental of equipment to a participant, whether or not the contract involves agritourism

1 activities on or off the location or at the site of the agritourism activity, must contain in  
2 clearly readable print the warning notice specified in subdivision (1) of this subsection.

3 (1) The signs and contracts described in subsection (e) of this section must  
4 contain the following notice of warning:

5 **'WARNING**

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

15 (2) Failure to comply with the requirements concerning warning signs and  
16 notices provided in this subsection will prevent an agritourism  
17 professional from invoking the privileges of immunity provided by  
18 G.S. 99E-31."

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