

EXPLANATION OF EFFECT OF **2005 LIMIT LIABILITY LAW ON AGRITOURISM FARMERS IN NORTH CAROLINA**

In the text of the law is a paragraph (the law is copied below and the paragraph is in bold) which the owner needs to post at the entrance to the farm and at site of any activity(ies).

Posting other warning signs and following safe practices to prevent accidents is good business, but that is not a requirement of the new law.

It is not accurate to believe that the law protects the farmer from lawsuits resulting from visitors' negligence. Contributory negligence was already a defense to a lawsuit. The law is intended to discourage lawsuits against agritourism operators by making participants aware of the inherent risks of agritourism activities. By posting the signs, farmers are not insulating themselves from liability. By taking steps to make the farm and its environs and activities safe and fun, the farmer lessens the possibilities of lawsuits.

Here is the found within the law for the sign(s):

'WARNING

Under North Carolina law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such 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 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.'

Here is the text of the law with the warning text in bold:

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005
SESSION LAW 2005-236
HOUSE BILL 329**

AN ACT to limit liability arising from certain agritourism activities.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 99E of the General Statutes is amended by adding a new Article to read:

"Article 4.

"Agritourism Activity Liability.

"§ 99E 30. Definitions.

As used in this Article, the following terms mean:

(1) Agritourism activity. – Any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes,

to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest your own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

(2) Agritourism professional. – Any person who is engaged in the business of providing one or more agritourism activities, whether or not for compensation.

(3) Inherent risks of agritourism activity. – Those dangers or conditions that are an integral part of an agritourism activity including certain hazards, including 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 and ranching operations. 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.

(4) Participant. – Any person, other than the agritourism professional, who engages in an agritourism activity.

(5) Person. – An individual, fiduciary, firm, association, partnership, limited liability company, corporation, unit of government, or any other group acting as a unit.

"§ 99E 31. Liability.

(a) Except as provided in subsection (b) 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, so long as the warning contained in G.S. 99E-32 is posted as required and, except as provided in subsection (b) 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 must plead the affirmative defense of assumption of the risk of agritourism activity by the participant.

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

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

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

(d) 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.

"§ 99E 32. Warning required.

(a) Every agritourism professional must post and maintain signs that contain the warning notice specified in subsection (b) of 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 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 (b) of this section.

(b) The signs and contracts described in subsection (a) of this section must contain the following notice of warning:

'WARNING

Under North Carolina law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such 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 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.'

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

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