

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 446

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[Originating in the Committee on Agriculture and
Rural Development; Reported on February 8, 2018]

1 A BILL to amend the Code of West Virginia, 1931, by adding thereto a new article, designated
2 §19-36-1, §19-36-2, §19-36-3, §19-36-4, §19-36-5, and §19-36-6, all relating to
3 agritourism generally; creating the Agritourism Responsibility Act; making findings;
4 establishing authority and duties of the Commissioner of Agriculture related to agritourism;
5 defining terms; establishing duties of agritourism businesses and participants in
6 agritourism activities; limiting liability of agritourism businesses, employees, and
7 volunteers associated therewith; requiring notice of certain rights, limitations on liability,
8 and responsibilities of participants in agritourism activities; immunizing agritourism
9 business and agritourism professionals from certain acts of simple negligence and
10 exceptions thereto; authorizing Commissioner of Agriculture, in consultation with the
11 Secretary of Commerce, to promulgate and propose rules; clarifying that operation of
12 agritourism business does not change status of the facilities and property used for building
13 code and tax purposes; and exempting structures of agritourism business occasionally
14 used for events from building code requirements for entities engaged in such activities on
15 a full-time basis.

Be it enacted by the Legislature of West Virginia:

ARTICLE 36. AGRITOURISM RESPONSIBILITY ACT.

§19-36-1. Legislative purposes; authority.

1 Every year, in rapidly increasing numbers, residents and nonresidents of the State of West
2 Virginia are enjoying the recreational value of the state's many agritourism venues. The tourist
3 trade is of vital importance to the State of West Virginia and the services offered by agritourism
4 significantly contribute to the revenue enterprise and economic development of the state. The
5 Legislature recognizes that there are inherent risks in the recreational activities provided by
6 agritourism which should be understood by each participant. It is essentially impossible for
7 agritourism to eliminate these risks. It is the purpose of this article to define those areas of
8 responsibility and affirmative acts for which agritourism is liable for loss, damage, or injury.

9 The Commissioner of Agriculture is hereby authorized to, and shall devise means of,
10 advancing agritourism in the state, and in the performance of such duty, he or she shall have the
11 authority to call upon any department, division, or officer of the state or county to cooperate with
12 him or her in promoting agritourism in the state.

13 The Commissioner of Agriculture, in consultation with the Secretary of Commerce, shall
14 promulgate rules in accordance with chapter 29A of this code for the promotion, marketing, and
15 regulation of agritourism.

§19-36-2. Definitions.

1 Unless the context of usage clearly requires otherwise:

2 “Agritourism” means any activity at an agricultural, aquacultural, horticultural, or forestry
3 on-farm operation open to the public for the purpose of enjoyment, history, education, or
4 participation in agritourism activities including, but not limited to, venue space, pick-your-own
5 farms, farm markets, wineries, distilleries, tours, education barns, historical reenactments, farm
6 schools, living history farms, heirloom plants and animals, agricultural processing demonstrations,
7 collections of old farm machinery, agricultural festivals, theme playgrounds for children, fishing,
8 farm vacations, pumpkin patches, mazes, farm tours, food sales, hayrides, crop art activities, and
9 activities involving animal or farm product exhibitions at agricultural fairs and trail riding/equine
10 programs.

11 “Agritourism business” means any person, fiduciary, firm, association, partnership, limited
12 liability company, corporation, unit of government, or any other group or entity which is engaged
13 in the business of providing one or more agritourism activities, whether or not for compensation.

14 “Agritourism professional” means owners, operators, employees, and volunteers working
15 for or under the direction of the operators of an agritourism business.

16 “Inherent risks of agritourism activity” are those dangers or conditions that are part of an
17 agritourism activity including certain hazards, surface and subsurface conditions, natural
18 conditions of land, vegetation, and waters, the behavior of wild or domestic animals, and ordinary

19 dangers of structures or equipment ordinarily used in farming and ranching operations. Inherent
20 risks of agritourism activity also include the potential of a participant to act in a negligent manner
21 that may contribute to injury to the participant or others, including failing to follow instructions
22 given by the agritourism professional or failing to exercise reasonable caution while engaging in
23 the agritourism activity.

24 “Participant” as used in this article means any person, other than the agritourism
25 professional, who engages in an agritourism activity.

§19-36-3. Duties of agritourism businesses.

1 (a) Except as provided in §19-36-3(b) of this code, an agritourism business employee or
2 volunteer acting under the direction of the agritourism business operator is not liable for injury to
3 or death of a participant resulting from the inherent risks of agritourism activities, so long as the
4 notice contained in §19-36-5 of this code is posted as required and, except as provided in §19-
5 36-3(b) of this code, no participant or participant's representative is authorized to maintain an
6 action against or recover from an agritourism business for injury, loss, damage, or death of the
7 participant resulting exclusively from any of the inherent risks of agritourism activities: *Provided,*
8 That no agritourism business or agritourism professional shall be liable for injuries or damages
9 caused by the actions of nonagents or nonemployees.

10 (b) Nothing in §19-36-3(a) of this code shall prevent or limit the liability of an agritourism
11 business if the agritourism business does any one or more of the following:

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

15 (2) Has actual knowledge or reasonably should have known of a dangerous condition on
16 the land or in the facilities or equipment used in the activity, or the dangerous propensity of a
17 particular animal used in such activity and does not make the danger known to the participant,
18 and the danger proximately causes injury, damage, or death to the participant; or

- 19 (3) Intentionally injures the participant.
- 20 (c) Any limitation on legal liability afforded by this section to an agritourism business is in
21 addition to any other limitations of legal liability otherwise provided by law.

§19-36-4. Duties of participants.

1 (a) Participants have a duty to act as a reasonably prudent person when engaging in
2 recreational activities offered by agritourism businesses in this state.

3 (b) No participant may:

4 (1) Engage in conduct harmful to self or others or willfully or negligently engage in any
5 type of conduct which contributes to or causes injury to any person or personal property; or

6 (2) Perform any act which interferes with the safe operation of the activity, including failure
7 to use safety equipment provided by the agritourism business, or failure to follow the instructions
8 in regard to the safety measures and conduct requested of the participants; or

9 (3) Fail to inform or notify the agritourism business of any incident or accident involving
10 personal injury or illness experienced during the course of any agritourism activity. If such injury
11 or illness occurs, the participant shall leave personal identification, including name and address,
12 with the agritourism business' agent or employee.

§19-36-5. Liability of agritourism businesses.

1 (a) Every agritourism business must post and maintain signs that contain the notice
2 specified in §19-36-5(b) of this code. The sign must be placed in a clearly visible location at the
3 entrance to the agritourism location and at the site of the agritourism activity. The notice must be
4 clearly legible, with each letter to be a minimum of one inch in height. Every written contract
5 entered into by an agritourism professional for the providing of professional services, instruction,
6 or the rental of equipment to a participant, whether or not the contract involves agritourism
7 activities on or off the location or at the site of the agritourism activity, must contain in clearly
8 legible print the notice specified in §19-36-5(b) of this code.

9 (b) The signs and contracts described in §19-36-5(a) of this code must contain the following

10 notice:

11 **NOTICE**

12 Under West Virginia law, there is no liability for an injury to or death of a participant in an
13 agritourism activity conducted at this agritourism business if the injury or death results from the
14 inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among
15 others, risks of injury inherent to landscape, terrain, equipment, and animals, as well as the
16 potential for you to act in a negligent manner that may contribute to your injury or death. You are
17 assuming the risk of participating in this agritourism activity.

18 (c) Failure to comply with the requirements concerning notices provided in this subsection
19 will prevent an agritourism business from invoking the privileges of immunity provided by this
20 article.

§19-36-6. Maintenance of property status for certain purposes; exceptions.

1 (a) Notwithstanding any provision of this code to the contrary, the occurrence of agritourism
2 does not change the nature or use of property that otherwise qualifies as agricultural for building
3 code and property tax classification purposes.

4 (b) An agritourism business may use certain of its facilities for occasional events without
5 complying with building codes applicable to structures used for such purposes on a full-time basis
6 as long as such facilities are deemed structurally sound and otherwise safe for the intended use.

NOTE: The purpose of this bill is to authorize the Commissioner of Agriculture to advance agritourism in the state. The Commissioner of Agriculture is authorized to promulgate rules in consultation with the Department of Commerce. The duties and liabilities of agritourism businesses and the duties of participants are established. Limitations on liability for agritourism businesses and responsibilities of participants are set forth. The bill clarifies that operation of an agritourism business does not change the status of facilities and property used for building code and tax purposes, and structures of agritourism businesses occasionally used for events are exempted from certain building code requirements.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.