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SENATE BILL 464

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY
Antonio Maestas

AN ACT

RELATING TO TOURISM; ENACTING THE AGRITOURISM PROMOTION ACT;
LIMITING THE LIABILITY OF AN AGRITOURISM OPERATOR.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Agritourism Promotion Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Agritourism Promotion Act:

A. "agritourism" means activities that allow
members of the public, for recreational, entertainment or
educational purposes, to view or enjoy rural activities,
including farming activities, ranching activities or historic,
cultural or natural attractions for recreational, entertainment
or educational purposes;

B. "agritourism location" means a specific parcel

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1 of land where an agritourism operator engages in agritourism;

2 C. "agritourism operator" means a person who is
3 engaged in the business of providing one or more agritourism
4 activities;

5 D. "inherent risks of agritourism" means dangers or
6 conditions that are an integral part of agritourism, including
7 certain hazards, such as surface and subsurface conditions;
8 natural conditions of land, vegetation and waters; the behavior
9 of wild or domestic animals; and ordinary dangers of structures
10 or equipment ordinarily used in farming or ranching operations.
11 "Inherent risks of agritourism" includes a participant's
12 negligence; and

13 E. "participant" means a person who engages in
14 agritourism.

15 SECTION 3. [NEW MATERIAL] LIMITED LIABILITY FOR
16 AGRITOURISM OPERATORS.--

17 A. Except as provided in Subsection B of this
18 section, an agritourism operator is not liable for injury to or
19 death of a participant resulting from the inherent risks of
20 agritourism as long as the warning contained in Section 4 of
21 the Agritourism Promotion Act is distributed and signed as
22 required. Except as provided in Subsection B of this section,
23 a participant or participant's representative may not maintain
24 an action against or recover from an agritourism operator for
25 the loss, damage or death of the participant resulting

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1 exclusively from the inherent risks of agritourism.

2 B. Subsection A of this section does not limit the
3 liability of an agritourism operator if the agritourism
4 operator:

5 (1) commits an act or omission that
6 constitutes willful, wanton or reckless disregard for the
7 safety of the participant and that act or omission proximately
8 causes injury, damage or death to the participant;

9 (2) has actual knowledge or reasonably should
10 have known of a dangerous condition on the land or in the
11 facilities or equipment used in the course of agritourism and
12 the danger proximately causes injury, damage or death to the
13 participant; or

14 (3) intentionally injures the participant.

15 C. An agritourism operator shall obtain a
16 certificate of insurance coverage in the amount of at least one
17 million dollars (\$1,000,000) that covers liability by the
18 agritourism operator for agritourism. An agritourism operator
19 that fails to maintain the insurance requirements of this
20 section shall not receive the protections afforded by the
21 Agritourism Promotion Act.

22 D. The limitation on liability provided to an
23 agritourism operator by the Agritourism Promotion Act is in
24 addition to any other limitation of liability otherwise
25 provided by law. Nothing in the Agritourism Promotion Act

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1 shall be construed to limit, restrict or impede a person and an
2 agritourism operator to existing coverage provided pursuant to
3 state law.

4 E. In any action for damages arising from the
5 operation of agritourism, the agritourism operator may plead an
6 affirmative defense of assumption of risk by the participant.

7 SECTION 4. [NEW MATERIAL] WARNING REQUIREMENT.--

8 A. An agritourism operator conducting agritourism,
9 whether the activities occur on or off the site of an
10 agritourism location, shall require each participant, or the
11 parent or the guardian of a participant who is not of capacity,
12 to sign a warning statement. The warning statement shall
13 contain, at a minimum, the following statement:

14 "WARNING AND ACKNOWLEDGMENT

15 I understand and acknowledge that under New Mexico law,
16 there is no liability for injury to or death sustained by a
17 participant in the course of agritourism provided by an
18 agritourism operator if the injury or death results from the
19 inherent risks of agritourism. Injuries caused by the inherent
20 risks of agritourism may include, among others, death, bodily
21 injury, emotional injury or property damage. I assume all risk
22 of participating in agritourism."

23 B. Failure to provide the warning statement
24 required by this section to a participant shall prevent an
25 agritourism operator from invoking the immunity provided by the

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Agritourism Promotion Act with regard to that participant.