

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0705.01 Jerry Barry x4341

HOUSE BILL 14-1280

HOUSE SPONSORSHIP

Dore, Rankin, Buck, Everett, Fischer, Gerou, Holbert, Landgraf, Lawrence, Navarro, Nordberg, Priola, Scott, Sonnenberg, Swalm, Vigil, Wilson, Wright

SENATE SPONSORSHIP

Schwartz,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING LIMITS ON LIABILITY FOR AGRITOURISM.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Current law limits the civil liability of persons involved in "agricultural recreation activities". The bill changes the terminology to "agritourism" and specifies that a participant in agritourism assumes the risks inherent in such activity. In order to claim the limited liability, a person involved in agritourism must notify the participant of the risks inherent in the activity and of the limited liability. The bill authorizes the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

notice to be in the form of a signed statement by the participant or a sign posted on the property.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 13-21-121 as
3 follows:

4 **13-21-121. Agritourism activities - legislative declaration -**
5 **inherent risks - limitation of civil liability - duty to post warning**
6 **notice.** (1) The general assembly recognizes that persons who participate
7 in ~~certain agricultural recreation~~ AGRITOURISM activities may incur
8 injuries as a result of the inherent risks involved with these activities. The
9 general assembly also finds that the state and its citizens derive numerous
10 economic and personal benefits from these activities. It is, therefore, the
11 intent of the general assembly to encourage these activities by limiting the
12 civil liability of certain persons involved in providing the opportunity to
13 participate in these activities.

14 (2) As used in this section, unless the context otherwise requires:

15 (a) "Activity instructor or equipment provider" means an
16 individual, facility person, group, club, association, partnership, or
17 corporation, whether or not engaged for compensation, that instructs a
18 participant or that rents, sells, or otherwise provides equipment to a
19 participant for the purpose of engaging in an ~~agricultural recreation~~
20 AGRITOURISM activity.

21 (b) ~~"Agricultural recreation"~~ "AGRITOURISM activity" means an
22 activity related to the normal course of agriculture, as defined in section
23 35-1-102 (1), C.R.S., which activity is engaged in by participants for
24 entertainment, pleasure, or other recreational purposes, or for educational
25 purposes, regardless of whether a fee is charged to the participants.

1 ~~"Agricultural recreation"~~ "AGRITOURISM activity" also means hunting,
2 shooting, swimming, diving, tubing, and riding or operating a motorized
3 recreational vehicle that occurs on or in proximity to the property of an
4 agricultural operation or an adjacent roadway. ~~"Agricultural recreation~~
5 AGRITOURISM activity" includes, but is not limited to, planting,
6 cultivation, irrigation, or harvesting of crops; acceptable practices of
7 animal husbandry; rodeo and livestock activities; and maintenance of
8 farm or ranch equipment. "AGRITOURISM ACTIVITY" DOES NOT INCLUDE
9 ANY ACTIVITY RELATED TO OR ASSOCIATED WITH MEDICAL MARIJUANA AS
10 DEFINED IN SECTION 12-43.3-104, C.R.S., OR RETAIL MARIJUANA AS
11 DEFINED IN SECTION 12-43.4-103, C.R.S.

12 (c) "Equipment" means a device used to engage in an ~~agricultural~~
13 ~~recreation~~ AGRITOURISM activity.

14 (d) "Facility" means a privately owned and operated farm, ranch,
15 or a public property that is leased or rented and under the control of the
16 person defined in paragraph (e) of this subsection (2) on which the
17 opportunity to engage in one or more ~~agricultural recreation~~ AGRITOURISM
18 activities is offered to a participant, regardless of whether it is situated in
19 an incorporated area or unincorporated area.

20 (e) "Facility person" means a person who owns, leases, operates,
21 manages, IS AN INDEPENDENT CONTRACTOR TO, or is employed at or who
22 volunteers at a facility. For purposes of this paragraph (e) only, "person"
23 includes any individual, corporation, partnership, association,
24 cooperative, or commercial entity.

25 (f) "Inherent risks of ~~agricultural recreation~~ AGRITOURISM
26 activities" means those dangers or conditions that are an integral part of
27 such activities, including but not limited to:

1 (I) The varied degrees of the skill and experience of the
2 participants;

3 (II) The nature of the activity, including but not limited to the
4 equipment used and the location where the activity is conducted;

5 (III) Certain hazards, such as ground conditions, surface grade,
6 weather conditions, and animal behavior;

7 (IV) Collisions with other persons or objects;

8 (V) The types and the complexity of equipment used by the
9 participants;

10 (VI) Malfunctions with equipment used by the participants; OR

11 (VII) The potential of a participant to act in a negligent manner
12 that may contribute to injury incurred by the participant or others, such as
13 imprudent showmanship, failing to maintain control over his or her
14 equipment, or not acting within his or her ability.

15 (g) "Participant" means a person who engages in an ~~agricultural~~
16 ~~recreation~~ AGRITOURISM activity, whether or not a fee is paid to
17 participate in the activity, OTHER THAN AN ACTIVITY INSTRUCTOR OR
18 EQUIPMENT PROVIDER OR A FACILITY PERSON.

19 (3) Except as provided in subsections (4) and (5) of this section,
20 an activity instructor or equipment provider or facility person ~~shall not be~~
21 IS NOT civilly liable for ~~an~~ ANY PROPERTY DAMAGE OR DAMAGES FOR
22 injury to or the death of a participant resulting from the inherent risks of
23 ~~agricultural recreation~~ AGRITOURISM activities performed or conducted on
24 or in a facility. A PARTICIPANT EXPRESSLY ASSUMES THE RISK AND LEGAL
25 RESPONSIBILITY FOR ANY PROPERTY DAMAGE OR DAMAGES ARISING FROM
26 PERSONAL INJURY OR DEATH THAT RESULTS FROM THE INHERENT RISK OF
27 AGRITOURISM ACTIVITIES. A PARTICIPANT HAS THE SOLE RESPONSIBILITY

1 FOR KNOWING THE RANGE OF THAT PERSON'S ABILITY TO PARTICIPATE IN
2 AN AGRITOURISM ACTIVITY. IT IS THE DUTY OF A PARTICIPANT TO ACT
3 WITHIN THE LIMITS OF THE PARTICIPANT'S OWN ABILITY, TO HEED ALL
4 WARNINGS, AND TO REFRAIN FROM ACTING IN A MANNER THAT MAY CAUSE
5 OR CONTRIBUTE TO THE INJURY OF ANY PERSON OR DAMAGE TO ANY
6 PROPERTY. A participant or a participant's representative may not make
7 any claim against, maintain an action against, or recover from an activity
8 instructor or equipment provider or facility person for injury, loss,
9 damage, or death of the participant resulting from any of the inherent
10 risks of agricultural recreation activities performed or conducted on or in
11 a facility.

12 (4) (a) Nothing in subsection (3) of this section shall prevent or
13 limit the liability of an activity instructor or equipment provider or facility
14 person if the activity instructor or equipment provider or facility person:

15 (I) ~~Rented, sold, or otherwise provided equipment to a participant,~~
16 ~~and knew that the equipment was faulty, and such equipment was faulty~~
17 ~~to the extent that it caused the injury;~~

18 (II) ~~Committed~~ COMMITS an act or omission that ~~constituted~~
19 CONSTITUTES gross negligence or ~~willful or wanton~~ RECKLESS disregard
20 for the safety of the participant, and the act or omission was the cause of
21 the injury; or

22 (III) Intentionally ~~injured~~ INJURES the participant.

23 (b) Nothing in subsection (3) of this section shall prevent or limit
24 the liability of an activity instructor or equipment provider or facility
25 person under liability provisions set forth in the product liability laws.

26 (c) A participant is not precluded under this section from suing
27 and recovering from another participant for injury to person or property

1 resulting from the other participant's act or omission. Notwithstanding
2 any provision of law to the contrary, the risk of injury from another
3 participant shall not be considered an inherent risk or a risk assumed by
4 a participant in an action by the participant against another participant.

5 (5) (a) ~~The operator of a facility shall exercise reasonable care to~~
6 ~~protect against dangers of which he or she actually knew or shall give~~
7 ~~warning of any dangers that are ordinarily present on the property.~~ IN A
8 CIVIL ACTION AGAINST AN ACTIVITY INSTRUCTOR OR EQUIPMENT
9 PROVIDER OR FACILITY PERSON, A DEFENSE OR IMMUNITY DESCRIBED IN
10 SUBSECTION (3) OF THIS SECTION MAY BE ASSERTED ONLY IF THE
11 PARTICIPANT INJURED IN THE COURSE OF AN AGRITOURISM ACTIVITY HAD
12 BEEN NOTIFIED OF THE INHERENT RISKS OF THE AGRITOURISM ACTIVITY
13 AND THE LIMITATIONS OF LIABILITY. FOR PURPOSES OF THIS SUBSECTION
14 (5), NOTICE OF THE INHERENT RISKS OF AGRITOURISM ACTIVITIES MAY BE
15 SATISFIED EITHER BY A STATEMENT SIGNED BY THE PARTICIPANT OR A
16 SIGN OR SIGNS PROMINENTLY DISPLAYED AT THE PLACE OR PLACES WHERE
17 THE AGRITOURISM ACTIVITIES TAKE PLACE. THE STATEMENT OR SIGN
18 MUST CONTAIN THE FOLLOWING INFORMATION:

19 **WARNING**

20 UNDER COLORADO LAW, THERE IS NO LIABILITY
21 FOR INJURY TO A PARTICIPANT IN AN
22 AGRITOURISM ACTIVITY CONDUCTED AT THIS
23 AGRITOURISM LOCATION IF THE INJURY
24 RESULTS FROM THE INHERENT RISKS OF THE
25 AGRITOURISM ACTIVITY. INHERENT RISKS OF
26 AGRITOURISM ACTIVITIES INCLUDE, AMONG
27 OTHERS, RISKS OF INJURY INHERENT TO LAND,

1 EQUIPMENT, AND ANIMALS, AS WELL AS THE
2 POTENTIAL FOR INJURY IF YOU ACT IN A
3 NEGLIGENT MANNER. YOU ARE ASSUMING THE
4 RISK OF PARTICIPATING IN THIS AGRITOURISM
5 ACTIVITY.

6 (b) THE MESSAGE ON THE SIGN MUST BE IN BLACK LETTERS AT
7 LEAST ONE INCH IN HEIGHT, AND THE SIGN OR SIGNS MUST BE PLACED IN
8 A CLEARLY VISIBLE LOCATION ON OR NEAR THE PLACES WHERE THE
9 ACTIVITY INSTRUCTOR OR EQUIPMENT PROVIDER CONDUCTS AGRITOURISM
10 ACTIVITIES.

11 **SECTION 2. Effective date - applicability.** This act takes effect
12 July 1, 2014, and applies to causes of action arising on or after said date.

13 **SECTION 3. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.