

NOTE: The governor signed this measure on 6/6/2014.

An Act

HOUSE BILL 14-1280

BY REPRESENTATIVE(S) Dore, Rankin, Buck, Everett, Fischer, Gerou, Holbert, Landgraf, Lawrence, Navarro, Nordberg, Priola, Scott, Sonnenberg, Swalm, Vigil, Wilson, Wright, Fields, Ginal, Hamner, Mitsch Bush, Moreno, Murray, Rosenthal, Saine, Williams, Young, Becker, Conti, Coram, Hullinghorst, Humphrey, Ryden;
also SENATOR(S) Schwartz, Aguilar, Brophy, Crowder, Grantham, Guzman, Heath, Herpin, Hodge, Newell, Rivera, Roberts, Todd.

CONCERNING LIMITS ON LIABILITY FOR AGRITOURISM.

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

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

13-21-121. Agricultural recreation or agritourism activities - legislative declaration - inherent risks - limitation of civil liability - duty to post warning notice - definitions. (1) The general assembly recognizes that persons who participate in certain agricultural recreation OR AGRITOURISM activities may incur injuries as a result of the inherent risks involved with these activities. The general assembly also finds that the state and its citizens derive numerous economic and personal benefits from these activities. It is, therefore, the intent of the general assembly to encourage

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

these activities by limiting the civil liability of certain persons involved in providing the opportunity to participate in these activities.

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

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

(b) "Agricultural recreation OR AGRITOURISM activity" means an activity related to the normal course of agriculture, as defined in section 35-1-102 (1), C.R.S., which activity is engaged in by participants for entertainment, pleasure, or other recreational purposes, or for educational purposes, regardless of whether a fee is charged to the participants. "Agricultural recreation OR AGRITOURISM activity" also means hunting, shooting, swimming, diving, tubing, and riding or operating a motorized recreational vehicle that occurs on or in proximity to the property of an agricultural operation or an adjacent roadway. "Agricultural recreation OR AGRITOURISM activity" includes, but is not limited to planting, cultivation, irrigation, or harvesting of crops; acceptable practices of animal husbandry; rodeo and livestock activities; and maintenance of farm or ranch equipment. "AGRICULTURAL RECREATION OR AGRITOURISM ACTIVITY" DOES NOT INCLUDE ANY ACTIVITY RELATED TO OR ASSOCIATED WITH MEDICAL MARIJUANA AS DEFINED IN SECTION 12-43.3-104, C.R.S., OR RETAIL MARIJUANA AS DEFINED IN SECTION 12-43.4-103, C.R.S.

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

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

(e) "Facility person" means a person who owns, leases, operates, manages, IS AN INDEPENDENT CONTRACTOR TO, or is employed at or who

volunteers at a facility. For purposes of this paragraph (e) only, "person" includes any individual, corporation, partnership, association, cooperative, or commercial entity.

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

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

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

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

(IV) Collisions with other persons or objects;

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

(VI) Malfunctions with equipment used by the participants;

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

(g) "Participant" means a person who engages in an agricultural recreation OR AGRITOURISM activity, whether or not a fee is paid to participate in the activity.

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

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

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

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

(II) Committed an act or omission that constituted gross negligence or willful or wanton disregard for the safety of the participant, and the act or omission was the cause of the injury; or

(III) Intentionally injured the participant.

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

(c) A participant is not precluded under this section from suing and recovering from another participant for injury to person or property resulting from the other participant's act or omission. Notwithstanding any provision of law to the contrary, the risk of injury from another participant shall not be considered an inherent risk or a risk assumed by a participant in an action by the participant against another participant.

(5) (a) The operator of a facility shall:

(I) Exercise reasonable care to protect against dangers of which he or she actually knew; or ~~shall~~

(II) Give warning of any dangers that are ordinarily present on the property.

(b) (I) THE OPERATOR OF A FACILITY MAY PROVIDE NOTICE OF THE INHERENT RISKS OF AGRICULTURAL RECREATION OR AGRITOURISM ACTIVITIES EITHER BY A STATEMENT SIGNED BY THE PARTICIPANT OR A SIGN OR SIGNS PROMINENTLY DISPLAYED AT THE PLACE OR PLACES WHERE THE AGRICULTURAL RECREATION OR AGRITOURISM ACTIVITIES TAKE PLACE. THE STATEMENT OR SIGN MUST SET FORTH THE FOLLOWING WARNING NOTICE:

WARNING.

UNDER COLORADO LAW, THERE IS NO LIABILITY FOR THE DEATH OF OR INJURY TO A PARTICIPANT IN AN AGRICULTURAL RECREATION OR AGRITOURISM ACTIVITY RESULTING FROM THE INHERENT RISKS OF THE AGRICULTURAL RECREATION OR AGRITOURISM ACTIVITY, PURSUANT TO SECTION 13-21-121, COLORADO REVISED STATUTES.

(II) THE TEXT ON THE SIGN MUST BE IN BLACK LETTERS AT LEAST ONE INCH IN HEIGHT.

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

SECTION 3. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Morgan Carroll
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO