

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

PREAMENDED

This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading

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
Agriculture, Natural Resources, & Energy

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/bills summaries>.)

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.

HOUSE
3rd Reading Unamended
March 12, 2014

HOUSE
Amended 2nd Reading
March 10, 2014

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

21 (b) "Agricultural recreation OR 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 OR 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 OR
5 AGRITOURISM activity" includes, but is not limited to planting, cultivation,
6 irrigation, or harvesting of crops; acceptable practices of animal
7 husbandry; rodeo and livestock activities; and maintenance of farm or
8 ranch equipment. "AGRICULTURAL RECREATION OR AGRITOURISM
9 ACTIVITY" DOES NOT INCLUDE ANY ACTIVITY RELATED TO OR ASSOCIATED
10 WITH MEDICAL MARIJUANA AS DEFINED IN SECTION 12-43.3-104, C.R.S.,
11 OR RETAIL MARIJUANA AS DEFINED IN SECTION 12-43.4-103, C.R.S.

12 (c) "Equipment" means a device used to engage in an agricultural
13 recreation OR 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 OR
18 AGRITOURISM activities is offered to a participant, regardless of whether
19 it is situated in 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 OR 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;

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 OR AGRITOURISM activity, whether or not a fee is paid to
17 participate in the activity.

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

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

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

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

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

22 (III) Intentionally injured 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:

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

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

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

17 **WARNING.**

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

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

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

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