

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 113

BY AGRICULTURAL AFFAIRS COMMITTEE

AN ACT

RELATING TO ACTIONS IN PARTICULAR CASES; AMENDING TITLE 6, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 30, TITLE 6, IDAHO CODE, TO PROVIDE A SHORT TITLE REGARDING THE IDAHO AGRITOURISM PROMOTION ACT, TO PROVIDE A PURPOSE, TO DEFINE TERMS, TO LIMIT LIABILITY, TO PROHIBIT CERTAIN ACTION, TO REQUIRE CERTAIN PLEADING, TO PROVIDE EXCEPTIONS TO THE PREVENTION OR LIMITATION OF LIABILITY, TO PROVIDE THAT LIMITATION ON LEGAL LIABILITY IS IN ADDITION TO ANY OTHER LIMITATIONS ON LEGAL LIABILITY OTHERWISE SPECIFIED BY LAW, TO PROVIDE WARNING NOTICE REQUIREMENTS, TO SPECIFY THE FORM OF WARNING NOTICES, TO PROVIDE THAT FAILURE TO COMPLY WITH WARNING NOTICE REQUIREMENTS WILL PREVENT THE INVOCATION OF CERTAIN PRIVILEGES OF IMMUNITY AND TO PROVIDE THAT THE USE OF A FARM OR RANCH FOR AGRITOURISM ACTIVITIES SHALL NOT AFFECT THE ASSESSMENT OF THE PROPERTY AS LAND ACTIVELY DEVOTED TO AGRICULTURE AS PROVIDED BY SPECIFIED LAW.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 6, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 30, Title 6, Idaho Code, and to read as follows:

CHAPTER 30

IDAHO AGRITOURISM PROMOTION ACT

6-3001. SHORT TITLE. This act shall be known as the "Idaho Agritourism Promotion Act."

6-3002. PURPOSE. The legislature finds that agriculture plays a substantial role in the economy, culture and history of Idaho. As an increasing number of Idahoans are removed from day-to-day agricultural experiences, agritourism provides a valuable opportunity for the general public to interact with, experience and understand agriculture. Inherent risks exist on farms and ranches, the elimination of which would diminish the agritourism experience. Uncertainty of potential liability associated with inherent risks has a negative impact on the establishment and success of agritourism operations.

6-3003. DEFINITIONS. As used in this chapter, the term:

(1) "Agritourism activity" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment or educational purposes, to view or enjoy rural activities including, but not limited to, farming, ranching, historic, cultural, on-site educational programs, recreational farming programs that may include on-site hospitality services, guided and self-guided tours, bed and breakfast accommodations, petting zoos, farm festivals, corn mazes, harvest-your-own

1 operations, hayrides, barn parties, horseback riding, fee fishing and camp-
 2 ing. An activity is an agritourism activity whether or not the participant
 3 paid to participate in the activity.

4 (2) "Agritourism professional" means any person who is engaged in the
 5 business of providing one (1) or more agritourism activities, whether or not
 6 for compensation.

7 (3) "Inherent risks of agritourism activity" means those dangers or
 8 conditions that are an integral part of an agritourism activity includ-
 9 ing certain hazards, including surface and subsurface conditions, natural
 10 conditions of land, vegetation, waters, the behavior of wild or domestic
 11 animals and ordinary dangers of structures or equipment ordinarily used in
 12 farming and ranching operations. Inherent risks of agritourism activity
 13 also include the potential of a participant to act in a negligent manner that
 14 may contribute to injury to the participant or others, including failing
 15 to follow instructions given by the agritourism professional or failing to
 16 exercise reasonable caution while engaging in the agritourism activity.

17 (4) "Participant" means any person, other than the agritourism profes-
 18 sional, who engages in an agritourism activity.

19 (5) "Person" means an individual, fiduciary, firm, association, part-
 20 nership, limited liability company, corporation, unit of government or any
 21 other group acting as a unit.

22 6-3004. LIABILITY. (1) Except as provided in subsection (2) of this
 23 section, an agritourism professional is not liable for injury to or death of
 24 a participant resulting from the inherent risks of agritourism activities,
 25 so long as the warning contained in section 6-3005, Idaho Code, is posted as
 26 required and, except as provided in subsection (2) of this section, no par-
 27 ticipant or participant's representative can maintain an action against or
 28 recover from an agritourism professional for injury, loss, damage or death
 29 of the participant resulting from any of the inherent risks of agritourism
 30 activities. In any action for damages against an agritourism professional
 31 for agritourism activities, the agritourism professional must plead the af-
 32 firmative defense of assumption of the risk of agritourism activity by the
 33 participant.

34 (2) Nothing in subsection (1) of this section prevents or limits the li-
 35 ability of an agritourism professional if the agritourism professional does
 36 any one (1) or more of the following:

37 (a) Commits an act or omission that constitutes negligence or willful
 38 or wanton disregard for the safety of the participant, and that act or
 39 omission proximately causes injury, damage or death to the participant;

40 (b) Has actual knowledge or reasonably should have known of a danger-
 41 ous condition on the land, facilities or equipment used in the activity
 42 or the dangerous propensity of a particular animal used in such activ-
 43 ity and does not make the danger known to the participant, and the danger
 44 proximately causes injury, damage or death to the participant.

45 (3) Any limitation on legal liability afforded by this section to an
 46 agritourism professional is in addition to any other limitations of legal
 47 liability otherwise provided by law.

6-3005. WARNING REQUIRED. (1) Every agritourism professional must post and maintain signs that contain the warning notice specified in subsection (2) of this section. The sign must be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice must consist of a sign in black letters, with each letter to be a minimum of one (1) inch in height. Every written contract entered into by an agritourism professional for the providing of professional services, instruction or the rental of equipment to a participant, whether or not the contract involves agritourism activities on or off the location or at the site of the agritourism activity, must contain in clearly readable print the warning notice specified in subsection (2) of this section.

(2) The signs and contracts described in subsection (1) of this section must contain the following notice of warning:

WARNING

Under Idaho law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity.

(3) Failure to comply with the requirements concerning warning signs and notices provided in this section shall prevent an agritourism professional from invoking the privileges of immunity provided by the provisions of this chapter.

6-3006. TAXATION STATUS. The use of a farm or ranch to conduct an agri-tourism activity shall not affect the assessment of the property as land ac-tively devoted to agriculture as provided in section 63-604, Idaho Code.