

CHAPTER 100

(HB 440)

AN ACT relating to agritourism.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS 247.800 TO 247.810 IS CREATED TO READ AS FOLLOWS:

As used in KRS 247.800 to 247.810:

- (1) *"Agritourism" means the act of visiting:*
- (a) *A farm or ranch; or*
- (b) *Any agricultural, horticultural, or agribusiness operation;*
- for the purpose of enjoyment, education, or active involvement in the activities of the farm, ranch, or operation;*
- (2) *"Agritourism activity" means any activity carried out on:*
- (a) *A farm or ranch; or*
- (b) *Any agricultural, horticultural, or agribusiness operation;*
- that allows or invites participants to view or participate in activities for recreational, entertainment, or educational purposes. The activities can include farming, ranching, historic or cultural agricultural activities, harvest-your-own operations, patronizing farmers' markets, or natural resource-based activities. An activity is an agritourism activity whether or not a participant pays to view or participate in the activity;*
- (3) *"Agritourism professional" means any person, including employees or authorized agents acting on behalf of the agritourism professional, who is engaged in the business of providing one (1) or more agritourism activities;*
- (4) *"Participant" means any person, other than the agritourism professional, who engages in an agritourism activity.*

➔SECTION 2. A NEW SECTION OF KRS 247.800 TO 247.810 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsection (2) of this section:*
- (a) *An agritourism professional is not liable for injury to or death of a participant resulting exclusively from the inherent risks of agritourism activities, so long as:*
1. *The warning contained in Section 3 of this Act is posted as required; or*
 2. *The agritourism professional has a signed release from the participant indicating that the participant has received written notice of the warning contained in Section 3 of this Act; and*
- (b) *No participant or participant's representative can maintain an action against or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities. In any action for damages against an agritourism professional for agritourism activities, the agritourism professional shall plead the affirmative defense of assumption of the risk of agritourism activities by the participant.*
- (2) *Nothing in subsection (1) of this section prevents or limits the liability of an agritourism professional if the agritourism professional:*
- (a) *Commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, loss, damage, or death to the participant; or*
- (b) *Has actual knowledge or reasonably should have known of:*
1. *A dangerous condition on the land, facilities, or equipment used in the activity; or*
 2. *The dangerous propensity of a particular animal used in the activity;*

and does not make the danger known to the participant, and the danger proximately causes injury, loss, damage, or death to the participant.

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

➔SECTION 3. A NEW SECTION OF KRS 247.800 TO 247.810 IS CREATED TO READ AS FOLLOWS:

- (1) *Every agritourism professional shall post and maintain signs that contain the warning notice specified in subsection (2) of this section. The signs shall 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 shall 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, shall 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 shall contain the following notice of warning:*

"WARNING

Under Kentucky law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if the injury or death results exclusively from the inherent risks of the agritourism activity and in the absence of negligence. 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 Section 2 of this Act.*

➔Section 4. KRS 247.800 is amended to read as follows:

The Department of Agriculture, in conjunction with the Tourism, Arts and Heritage Cabinet, shall create an interagency Office of Agritourism to be housed in the Division of Agritourism within the Office for Agricultural Marketing and Product Promotion in the Department of Agriculture. ~~[As used in KRS 247.800 to 247.810, agritourism means the act of visiting a working farm or any agricultural, horticultural, or agribusiness operation for the purpose of enjoyment, education, or active involvement in the activities of the farm or operation.]~~ It shall be the purpose of the Office of Agritourism to:

- (1) Promote agritourism in Kentucky to potential visitors, both national and international; and
- (2) Assist in sustaining the viability and growth of the agritourism industry in Kentucky.

➔Section 5. KRS 247.808 is amended to read as follows:

- (1) Members of the Agritourism Advisory Council shall be appointed for four (4) year terms. Sitting members shall be eligible for reappointment.
- (2) The Agritourism Advisory Council shall elect a chair and vice chair from its membership.
- (3) The Agritourism Advisory Council shall meet annually or at the request of the chair. *A quorum of the council shall consist of fourteen (14) members, and a majority of members present at any duly-called meeting may act upon any matter before it for consideration* ~~[The council may take action only at meetings in which a quorum is present. A majority of the members present shall constitute a quorum].~~
- (4) In the event of a vacancy, the appropriate appointing entity may appoint a replacement member who shall hold office during the remainder of the term so vacated.
- (5) Members of the Agritourism Advisory Council shall serve without compensation.

Signed by Governor April 11, 2012.