COMMITTEE REPORT

May 12, 2010

**S. 104**

Introduced by Senators Verdin and Campsen

S. Printed 5/12/10--H.

Read the first time March 26, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 104) to amend Title 46 of the 1976 Code, relating to agriculture, by adding Chapter 53, to limit the liability that an agritourism professional may incur due to an injury, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Title 46 of the 1976 Code is amended by adding:

“Chapter 53

Agritourism Activity Liability

Section 46‑53‑10. As used in this chapter:

(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 participate in rural activities.

(2) ‘Agritourism professional’ means any person who is engaged in the business of providing one or more agritourism activities, whether or not for compensation.

(3) ‘Inherent risks of an agritourism activity’ means those dangers or conditions that are inherent to an agritourism activity, including hazards related to surface and subsurface conditions, natural conditions of land, vegetation, and water at the agritourism location, the behavior of wild or domestic animals, except dogs, and ordinary dangers associated with structures or equipment commonly used in farming and ranching operations. Inherent risks of an agritourism activity also includes a participant that acts in a negligent manner that causes or contributes to an injury to or the death of the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in an agritourism activity. Inherent risk does not include any wilful, wanton, or reckless act or omission by the agritourism professional or any defect to land, structures, or equipment commonly used in farming and ranching operations that the agritourism professional knew or should have known existed.

(4) ‘Participant’ means any person, other than the agritourism professional, who engages in an agritourism activity.

(5) ‘Person’ means an individual, fiduciary, firm, association, partnership, limited liability company, corporation, unit of government, or any other group acting as a unit.

(6) ‘Rural activity’ means wildlife management, farming and ranching, and associated historic, scientific research, cultural, harvest‑your‑own, and natural activities and attractions.

Section 46‑53‑20. An agritourism professional is not liable for an injury to or the death of a participant resulting from an inherent risk of an agritourism activity, and no participant or participant’s representative may make a claim against, maintain an action against, or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting from an inherent risk of an agritourism activity unless the agritourism professional:

(1) intentionally injured or caused the death of the participant or committed an act or omission that constitutes willful, wanton, or reckless disregard for the safety of the participant and that act or omission caused the injury or death; or

(2) owns, leases, rents, or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries or death because of a dangerous latent condition which was known or should have been known to the agritourism professional.

Section 46‑53‑30. In an action for damages against an agritourism professional for an injury to or death of a participant, the agritourism professional may plead assumption of the risk of an agritourism activity as an affirmative defense.

Section 46‑53‑40. Any limitation on legal liability afforded by this chapter to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law.

Section 46‑53‑50. (A) Every agritourism professional must post and maintain at least one sign that contains a warning notice. The sign must be clearly visible and placed at the entrance of the agritourism activity or another conspicuous location on or near where agritourism activities are conducted. Each letter on the sign must be a minimum of one inch in height.

(B) Every written contract entered into with a participant by an agritourism professional for professional services, instruction, or rental of equipment related to an agritourism activity, must have a printed warning notice in or affixed to the contract. The warning notice must be clearly legible, and the words must be in boldface, twelve‑point type.

(C) The warning notices required in this section must contain the following statement:

‘WARNING !

Under South Carolina law, an agritourism professional is not liable for an injury to or the death of a participant in an agritourism activity resulting from an inherent risk associated with the agritourism activity. (Chapter 31, Title 46, Code of Laws of South Carolina, 1976).’

(E) Failure to comply with the requirements in this section concerning warning signs and notices prevents an agritourism professional from pleading assumption of the risk of an agritourism activity as provided in Section 46‑31‑30 and invoking the privileges of immunity provided in Section 46‑31‑20.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect September 1, 2010, and shall only apply to causes of action arising after that date. /

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND TITLE 46 OF THE 1976 CODE, RELATING TO AGRICULTURE, BY ADDING CHAPTER 53, TO LIMIT THE LIABILITY THAT AN AGRITOURISM PROFESSIONAL MAY INCUR DUE TO AN INJURY OR DEATH SUFFERED BY A PARTICIPANT IN AN AGRITOURISM ACTIVITY, TO PROVIDE THAT AN AGRITOURISM PROFESSIONAL MUST POST A WARNING NOTICE AT THE AGRITOURISM FACILITY, TO PROVIDE THAT WARNING NOTICES MUST BE INCLUDED IN CONTRACTS THE AGRITOURISM PROFESSIONAL ENTERS INTO WITH PARTICIPANTS, AND TO PROVIDE THAT THE AGRITOURISM PROFESSIONAL’S LIABILITY IS NOT LIMITED IF THE PROPER WARNING NOTICES ARE NOT PROVIDED TO PARTICIPANTS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 46 of the 1976 Code is amended by adding:

“Chapter 53

Agritourism Activity Liability

Section 46‑53‑10. As used in this chapter:

(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 participate in rural activities.

(2) ‘Agritourism professional’ means any person who is engaged in the business of providing one or more agritourism activities, whether or not for compensation.

(3) ‘Inherent risks of an agritourism activity’ means those dangers or conditions that are inherent to an agritourism activity, including hazards related to surface and subsurface conditions, natural conditions of land, vegetation, and water at the agritourism location, the behavior of wild or domestic animals, and ordinary dangers associated with structures or equipment commonly used in farming and ranching operations. Inherent risks of an agritourism activity also includes a participant that acts in a negligent manner that causes or contributes to an injury to or the death of the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in an agritourism activity.

(4) ‘Participant’ means any person, other than the agritourism professional, who engages in an agritourism activity.

(5) ‘Person’ means an individual, fiduciary, firm, association, partnership, limited liability company, corporation, unit of government, or any other group acting as a unit.

(6) ‘Rural activity’ means wildlife management, farming and ranching, and associated historic, scientific research, cultural, harvest‑your‑own, and natural activities and attractions.

Section 46‑53‑20. An agritourism professional is not liable for an injury to or the death of a participant resulting from an inherent risk of an agritourism activity, and no participant or participant’s representative may make a claim against, maintain an action against, or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting from an inherent risk of an agritourism activity unless the agritourism professional:

(1) intentionally injured or caused the death of the participant or committed an act or omission that constitutes willful, wanton, or reckless disregard for the safety of the participant and that act or omission caused the injury or death; or

(2) owns, leases, rents, or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries or death because of a dangerous latent condition which was known or should have been known to the agritourism professional and for which warning signs have not been posted as required by this chapter.

Section 46‑53‑30. In an action for damages against an agritourism professional for an injury to or death of a participant, the agritourism professional may plead assumption of the risk of an agritourism activity as an affirmative defense.

Section 46‑53‑40. Any limitation on legal liability afforded by this chapter to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law.

Section 46‑53‑50. (A) Every agritourism professional must post and maintain at least one sign that contains a warning notice. The sign must be clearly visible and placed at the entrance of the agritourism activity or another conspicuous location on or near where agritourism activities are conducted. Each letter on the sign must be a minimum of one inch in height.

(B) Every written contract entered into with a participant by an agritourism professional for professional services, instruction, or rental of equipment related to an agritourism activity, must have a printed warning notice in or affixed to the contract. The warning notice must be clearly legible, and the words must be in boldface, twelve‑point type.

(C) The warning notices required in this section must contain the following statement:

‘WARNING !

Under South Carolina law, an agritourism professional is not liable for an injury to or the death of a participant in an agritourism activity resulting from an inherent risk associated with the agritourism activity. (Chapter 31, Title 46, Code of Laws of South Carolina, 1976).’

(E) Failure to comply with the requirements in this section concerning warning signs and notices prevents an agritourism professional from pleading assumption of the risk of an agritourism activity as provided in Section 46‑31‑30 and invoking the privileges of immunity provided in Section 46‑31‑20.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect September 1, 2009, and shall only apply to causes of action arising after that date.

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