WEST VIRGINIA CODE CHAPTER 19 ARTICLE 36

WV Legislature

§19-36-1. Legislative purposes; authority.

Every year, in rapidly increasing numbers, residents and nonresidents of the State of West Virginia are enjoying the recreational value of the state's many agritourism venues. The tourist trade is of vital importance to the State of West Virginia and the services offered by agritourism significantly contribute to the revenue enterprise and economic development of the state. The Legislature recognizes that there are inherent risks in the recreational activities provided by agritourism which should be understood by each participant. It is essentially impossible for agritourism to eliminate these risks. It is the purpose of this article to define those areas of responsibility and affirmative acts for which agritourism is liable for loss, damage, or injury.

The Commissioner of Agriculture is hereby authorized to, and shall devise means of, advancing agritourism in the state, and in the performance of such duty, he or she shall have the authority to call upon any department, division, or officer of the state or county to cooperate with him or her in promoting agritourism in the state.

The Commissioner of Agriculture, in consultation with the Secretary of Commerce, shall promulgate rules in accordance with chapter 29A of this code for the promotion, marketing, and regulation of agritourism business.

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§19-36-2. Definitions.

Unless the context of usage clearly requires otherwise:

“Agritourism” activity means any lawful 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.

“Agritourism business” means any person, fiduciary, firm, association, partnership, limited liability company, corporation, unit of government, or any other group or entity which is engaged in the business of providing one or more agritourism activities, whether or not for compensation.

“Agritourism professional” means owners, operators, employees, and volunteers working for or under the direction of the operators of an agritourism business.

“Farm” or “ranch” means an area of land used for the production, cultivation, growing, harvesting, or processing of agricultural products.

“Inherent risks of agritourism activity” are those dangers or conditions that are part of an agritourism activity including certain hazards, natural conditions of land and terrain, vegetation, and waters, the behavior of wild or domestic animals, and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. Inherent risks of agritourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.

“Participant” as used in this article means any person, other than the agritourism professional, who engages in an agritourism activity.

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§19-36-3. Duties of agritourism businesses and participants.

(a) An agritourism business, or agritourism business employee or volunteer acting under the direction of the agritourism business operator, is not liable for injury or death of a participant, or loss or damage to a participant's property, as the result of the inherent risks of agritourism activities if such agritourism business has posted the notice in substantially the form as is provided in §19-36-4(b) of this code.

(b) The provisions of §19-36-3(a) of this code shall not prevent or in any way limit the liability of an agritourism business that does any of the following:

(1) Commits an act or omission that constitutes gross negligence or willful or wanton disregard for the health and safety of the participant which proximately causes injury, death, loss, or damage to the participant; or

(2) Commits an intentional act or omission which proximately causes injury, death, loss, or damage to the participant.

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

(d) Participants have a duty to act as a reasonably prudent person when engaging in recreational activities offered by agritourism businesses in this state.

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§19-36-4. Liability of agritourism businesses.

(a) To qualify for the limitation on liability afforded by §19-36-3 of this code, an agritourism business shall post and maintain signs that contain the notice specified in §19-36-4(b) of this code. 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 notice must be clearly legible, with each letter to be a minimum of one 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 legible print the notice specified in §19-36-4(b) of this code.

(b) The signs and contracts described in §19-36-4(a) of this code must contain the following notice:

NOTICE

Under West Virginia law, there may be limited liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism business if the 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 landscape, terrain, 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.

(c) Failure to comply with the requirements concerning notices provided in this section will prevent an agritourism business from invoking the privileges of immunity provided by this article.

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§19-36-5. Maintenance of property status for certain purposes; exceptions.

(a) Notwithstanding any provision of this code to the contrary, the occurrence of agritourism does not change the nature or use of property that otherwise qualifies as agricultural for building code, zoning, or property tax classification purposes.

(b) An agritourism business may use certain of its facilities for occasional events without complying with building and fire codes applicable to structures used for such purposes on a full-time basis if such facilities are deemed structurally sound and otherwise safe for the intended use.

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§19-36-6. West Virginia Agritourism Commission created; composition; appointment; terms in office; compensation and expenses; powers and duties.

(a) There is hereby created the Agritourism Commission which shall consist of the Commissioner of Agriculture or designee, who shall serve as chair, and 10 members, who shall be residents and citizens of the state. The citizen members shall have experience in agritourism and represent the sectors of: (1) Economic development; (2) tourism; (3) agriculture extension service; (4) farm distilleries; (5) vineyards; (6) wineries; (7) small farms; (8) the Farm Bureau; (9) Equestrianism; and (10) Farm-to-Table.

(b) The citizen members shall be appointed by the Governor, by and with the advice and consent of the Senate, no later than July 1, 2025. No more than five members may belong to the same political party. The commission members shall serve a term concurrent with that of the Governor's term in office. Commission members may be reappointed to additional terms.

(c) The commission members shall review and investigate means of preserving our farmland and growing our agricultural tourism and agricultural economic development.

(d) Commission members shall not be compensated for their services or reimbursed for expenses.

(e) The commission:

(1) May meet with similar commissions or bodies of any of the several states whose purpose in their respective states is to preserve farmland, grow agricultural tourism, and agricultural economic development;

(2) Shall recommend appropriate legislation to the Legislature, including establishing regulatory and legislative relief to foster the development and growth of agritourism and successful farms; and

(3) Shall prepare an annual report to the Legislature and Governor, by the first day of the regular legislative session, concerning commission activities, recommendations, and other necessary information.

WV Legislature