

Amendment - 1st Reading-white - Requested by: Bruce Gillespie - (S) Agriculture, Livestock and Irrigation

- 2023

68th Legislature 2023

Drafter: Joe Carroll, 406-444-3804

SB0447.001.001

1 SENATE BILL NO. 447

2 INTRODUCED BY B. GILLESPIE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AGRITOURISM LAWS; REVISING THE DEFINITION
5 OF AGRITOURISM; REVISING LAWS REGARDING INHERENT RISK AND ASSUMPTION OF THE RISK;
6 AND AMENDING SECTIONS 27-1-752 AND 27-1-753, MCA."

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8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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10 **Section 1.** Section 27-1-752, MCA, is amended to read:

11 **"27-1-752. Definitions.** As used in 27-1-751 through 27-1-754, the following definitions apply:

12 (1) "Agritourism" means a form of commercial enterprise that links agricultural production or
13 agricultural processing with tourism in order to attract visitors to a farm, ranch, or other agricultural business for
14 purposes of entertaining or educating the visitors or allowing the visitors to purchase or harvest agricultural
15 products for personal consumption, regardless of whether the participant is a customer, gratuitous licensee, or
16 an invitee.

17 (2) "Inherent risks" means those dangers or conditions that are characteristic of, intrinsic to, or an
18 integral part of any sport or recreational activity and that cannot be prevented by the use of reasonable care.

19 (3) "Provider" means a person, corporation, partnership, or other business entity, including a
20 governmental entity as defined in 2-9-111, that promotes, offers, or conducts a sport or recreational opportunity
21 for profit or otherwise.

22 (4) "Sport or recreational opportunity" means any sporting activity, whether undertaken with or
23 without permission, including but not limited to baseball, softball, football, soccer, basketball, bicycling, hiking,
24 swimming, boating, hockey, dude ranching, nordic or alpine skiing, snow boarding, snow sliding, mountain
25 climbing, river floating, whitewater rafting, canoeing, kayaking, target shooting, hunting, fishing, backcountry
26 trips, horseback riding and other equine activity, snowmobiling, off-highway vehicle use, agritourism, an on-farm
27 educational opportunity, and any similar recreational activity."

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Section 2. Section 27-1-753, MCA, is amended to read:

"27-1-753. Limitation on liability in sport or recreational opportunity. (1) (a) A person who participates in any sport or recreational opportunity assumes the inherent risks in that sport or recreational opportunity, whether those risks are known or unknown, and is legally responsible for all injury or death to the person and for all damage to the person's property that result from the inherent risks in that sport or recreational opportunity.

(b) ~~Injuries-Inherent risks of agritourism include but are not limited to injuries~~ caused by natural conditions of the land, by machinery or products typically used in agriculture, or by animals or insects ~~are an inherent risk of agritourism~~, unless the owner or operator of an agritourism enterprise knows or reasonably should know of a particularized danger related to an animal.

(2) A provider is not required to eliminate, alter, or control the inherent risks within the particular sport or recreational opportunity that is provided.

(3) (a) Sections 27-1-751 through 27-1-754 do not preclude an action based on the negligence of the provider if the injury, death, or damage is not the result of an inherent risk of the sport or recreational opportunity.

(b) This section does not prohibit a written waiver or release entered into prior to engaging in a sport or recreational opportunity for damages or injuries resulting from conduct that constitutes ordinary negligence or for risks that are inherent in the sport or recreational opportunity.

(c) Any waiver or release for a sport or recreational opportunity must:

- (i) state known inherent risks of the sport or recreational opportunity; and
- (ii) contain the following statement in bold typeface: By signing this document you may be waiving your legal right to a jury trial to hold the provider legally responsible for any injuries or damages resulting from risks inherent in the sport or recreational opportunity or for any injuries or damages you may suffer due to the provider's ordinary negligence that are the result of the provider's failure to exercise reasonable care.

(d) Any waiver or release for a sport or recreational opportunity may still be challenged on any legal grounds.

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1 (e) Any waiver or release for a sport or recreational opportunity executed in compliance with this
2 section is not prohibited by or subject to the provisions of 28-2-702.

3 (4) Sections 27-1-751 through 27-1-754 do not apply to a cause of action based on the design,
4 manufacture, provision, or maintenance of sports or recreational equipment or products or safety equipment
5 used incidental to or required by the sport or recreational activity.

6 ~~(5) In any action for damages to a participant in an agritourism enterprise against the owner or~~
7 ~~operator of the agritourism enterprise, the respondent may raise assumption of the risk as an affirmative~~
8 ~~defense."~~

9 - END -