

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **Senate Bill 446**

BY SENATORS RUCKER, SYPOLT, UNGER, TRUMP, AND

BOSO

[Introduced February 1, 2018; Referred  
to the Committee on Agriculture and Rural  
Development]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §19-36-1, §19-36-2, §19-36-3, §19-36-4, and §19-36-5, all relating to  
 3 agritourism; stating legislative purpose; defining terms; establishing duties of agritourism  
 4 business; establishing duties of participants of agritourism; establishing liability for  
 5 agritourism; mandating agritourism business post a warning on signs and contracts; and  
 6 disallowing agritourism business from invoking immunity when warning language not  
 7 used.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 36. AGROTOURISM.**

**§19-36-1. Legislative purposes.**

1 Every year, in rapidly increasing numbers, the inhabitants of the State of West Virginia  
 2 and nonresidents are enjoying the recreational value of West Virginia's many agrotourism venues.  
 3 The tourist trade is of vital importance to the State of West Virginia and the services offered by  
 4 agrotourism significantly contribute to the economy of the State of West Virginia. The Legislature  
 5 recognizes that there are inherent risks in the recreational activities provided by agrotourism  
 6 which should be understood by each participant. It is essentially impossible for agrotourism to  
 7 eliminate these risks. It is the purpose of this article to define those areas of responsibility and  
 8 affirmative acts for which agrotourism are liable for loss, damage or injury.

**§19-36-2. Definitions.**

1 Unless the context of usage clearly requires otherwise:  
 2 (1) Agrotourism - any activity at an agricultural, aquacultural, horticultural, or forestry  
 3 operation for the purpose of enjoyment, history, education or participation in agrotourism activities  
 4 including, but not limited to, pick-your-own farms, farmer markets, wineries, distilleries, tours,  
 5 education barns, on-farm historical reenactments, farm schools, living history farms, on-farm  
 6 heirloom plants and animals, agricultural processing demonstrations, on-farm collections of old  
 7 farm machinery, agricultural festivals, on-farm theme playgrounds for children, on-farm fee

8 fishing, farm vacations, on-farm pumpkin patches, on-farm mazes, farm tours, on-farm food sales,  
9 hayrides, and crop art activities, and an activity involving an animal or farm product exhibition at  
10 an agricultural fair and trail riding/equine programs.

11 (2) Agrotourism business - Any individual, fiduciary, firm, association, partnership, limited  
12 liability company, corporation, unit of government, or any other group acting as a unit who is  
13 engaged in the business of providing one or more agrotourism activities, whether or not for  
14 compensation.

15 (3) Inherent risks of agrotourism activity - Those dangers or conditions that are an integral  
16 part of an agrotourism activity including certain hazards, including surface and subsurface  
17 conditions, natural conditions of land, vegetation, and waters, the behavior of wild or domestic  
18 animals, and ordinary dangers of structures or equipment ordinarily used in farming and ranching  
19 operations. Inherent risks of agrotourism activity also include the potential of a participant to act  
20 in a negligent manner that may contribute to injury to the participant or others, including failing to  
21 follow instructions given by the agrotourism professional or failing to exercise reasonable caution  
22 while engaging in the agrotourism activity.

23 (4) Participant - Any person, other than the agrotourism professional, who engages in an  
24 agrotourism activity.

**§19-36-3. Duties of agrotourism.**

1 (a) All agrotourism businesses offering professional services in this state shall provide  
2 facilities, equipment and services as advertised or as agreed to by the agrotourism outfitter,  
3 agrotourism guide and the participant. All services, facilities and equipment provided by  
4 agrotourism outfitters and agrotourism guides in this state shall conform to safety and other  
5 requirements set forth in §19-2-1 et seq. of this code and in the rules promulgated by the  
6 agrotourism advisory board created by §19-2-23a of this code.

7 (b) In addition to the duties set forth in subsection (a) of this section, all agrotourism guides  
8 providing services for whitewater activities in this state shall, while providing such services,

9 conform to the standard of care expected of members of their profession.

**§19-36-4. Duties of participants.**

1 (a) Participants have a duty to act as would a reasonably prudent person when engaging  
2 in recreational activities offered by agrotourism businesses in this state.

3 (b) No participant may:

4 (1) Board upon or embark upon any agrotourism activity when intoxicated or under the  
5 influence of nonintoxicating beer, intoxicating beverages or controlled substances; or

6 (2) Fail to advise the agrotourism business of any known health problems or medical  
7 disability and any prescribed medication that may be used in the treatment of such health  
8 problems during the course of the agrotourism activity; or

9 (3) Engage in harmful conduct or willfully or negligently engage in any type of conduct  
10 which contributes to or causes injury to any person or personal property; or

11 (4) Perform any act which interferes with the safe running and operation of the activity,  
12 including failure to use safety equipment provided by the agrotourism business or failure to follow  
13 the instructions in regard to the safety measures and conduct requested of the participants; or

14 (5) Fail to inform or notify the agrotourism business of any incident or accident involving  
15 personal injury or illness experienced during the course of any agrotourism activity. If such injury  
16 or illness occurs, the participant shall leave personal identification, including name and address,  
17 with the agrotourism business' agent or employee.

**§19-36-5. Liability of agrotourism businesses.**

1 (a) It is recognized that some recreational activities conducted by agrotourism business  
2 guides are hazardous to participants regardless of all feasible safety measures which can be  
3 taken.

4 (1) No agrotourism business agent or employee acting in the course of his or her  
5 employment is liable to a participant for damages or injuries to such participant unless such  
6 damage or injury was directly caused by failure of the agrotourism business to comply with duties

7 placed on him or her by the provisions of this article.

8 (2) The limitations on liability created by this article apply only to agrotourism business  
9 agent or employee are acting within the course of his or her employment.

10 (3) Every agrotourism business must post and maintain signs that contain the warning  
11 notice specified in subsection (b) of this section. The sign must be placed in a clearly visible  
12 location at the entrance to the agrotourism location and at the site of the agrotourism activity. The  
13 warning notice must consist of a sign in black letters, with each letter to be a minimum of one inch  
14 in height. Every written contract entered into by an agrotourism professional for the providing of  
15 professional services, instruction, or the rental of equipment to a participant, whether or not the  
16 contract involves agrotourism activities on or off the location or at the site of the agrotourism  
17 activity, must contain in clearly readable print the warning notice specified in subsection (b) of this  
18 section.

19 (b) The signs and contracts described in subsection (a) of this section must contain the  
20 following notice of warning:

21 'WARNING

22 Under West Virginia law, there is no liability for an injury to or death of a participant in an  
23 agrotourism activity conducted at this agrotourism business if the injury or death results from the  
24 inherent risks of the agrotourism activity. Inherent risks of agrotourism activities include, among  
25 others, risks of injury inherent to landscape, terrain, equipment, and animals, as well as the  
26 potential for you to act in a negligent manner that may contribute to your injury or death. You are  
27 assuming the risk of participating in this agrotourism activity.

28 (c) Failure to comply with the requirements concerning warning signs and notices provided  
29 in this subsection will prevent an agrotourism business from invoking the privileges of immunity  
30 provided by this article.

NOTE: The purpose of this bill relates to agrotourism; states legislative purpose; defines terms; establishes duties of agrotourism business, establishes duties of participants of agrotourism; establishes liability for agrotourism; mandates agrotourism business post a

warning on signs and contracts; and disallows agrotourism business from invoking immunity when warning language not used.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.