

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 446

SENATORS RUCKER, SYPOLT, UNGER, TRUMP, AND

BOSO, original sponsors

[Passed March 10, 2018; in effect 90 days from passage]

1 AN ACT to amend the Code of West Virginia, 1931, by adding thereto a new article, designated
2 §19-36-1, §19-36-2, §19-36-3, §19-36-4, and §19-36-5, all relating to agritourism
3 generally; creating the Agritourism Responsibility Act; making findings; establishing
4 authority and duties of the Commissioner of Agriculture related to agritourism business;
5 authorizing Commissioner of Agriculture, in consultation with the Secretary of Commerce,
6 to promulgate and propose rules; defining terms; establishing duties of agritourism
7 businesses and participants in agritourism activities; immunizing agritourism business,
8 employees, and volunteers associated therewith from certain acts of simple negligence
9 and creating exceptions thereto; requiring notice of certain rights, limitations on liability,
10 and responsibilities of participants in agritourism activities; clarifying that operation of
11 agritourism business does not change status of the facilities and property used for building
12 code and tax purposes; and exempting structures of agritourism business occasionally
13 used for events from building code requirements for entities engaged in such activities on
14 a full-time basis.

Be it enacted by the Legislature of West Virginia:

ARTICLE 36. AGRITOURISM RESPONSIBILITY ACT.

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

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

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

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

§19-36-2. Definitions.

1 Unless the context of usage clearly requires otherwise:

2 “Agritourism” activity means any lawful activity carried out on a farm or ranch that allows
3 members of the general public for recreational, entertainment, or educational purposes to view or
4 enjoy rural activities.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) To qualify for the limitation on liability afforded by §19-36-3 of this code, an agritourism
2 business shall post and maintain signs that contain the notice specified in §19-36-4(b) of this
3 code. The sign must be placed in a clearly visible location at the entrance to the agritourism
4 location and at the site of the agritourism activity. The notice must be clearly legible, with each
5 letter to be a minimum of one inch in height. Every written contract entered into by an agritourism
6 professional for the providing of professional services, instruction, or the rental of equipment to a

7 participant, whether or not the contract involves agritourism activities on or off the location or at
8 the site of the agritourism activity, must contain in clearly legible print the notice specified in §19-
9 36-4(b) of this code.

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

12 **NOTICE**

13 Under West Virginia law, there may be limited liability for an injury to or death of a participant
14 in an agritourism activity conducted at this agritourism business if the injury or death results from
15 the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among
16 others, risks of injury inherent to landscape, terrain, equipment, and animals, as well as the
17 potential for you to act in a negligent manner that may contribute to your injury or death. You are
18 assuming the risk of participating in this agritourism activity.

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

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

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2018.

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Governor