

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."

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

2 **"27-1-753. Limitation on liability in sport or recreational opportunity.** (1) (a) A person who
3 participates in any sport or recreational opportunity assumes the inherent risks in that sport or recreational
4 opportunity, whether those risks are known or unknown, and is legally responsible for all injury or death to the
5 person and for all damage to the person's property that result from the inherent risks in that sport or recreational
6 opportunity.

7 (b) ~~Injuries~~ INHERENT RISKS OF AGRITOURISM INCLUDE BUT ARE NOT LIMITED TO INJURIES caused by
8 natural conditions of the land, by machinery or products typically used in agriculture, or by animals or insects
9 are an inherent risk of agritourism, unless the owner or operator of an agritourism enterprise knows or
10 reasonably should know of a particularized danger related to an animal.

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

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

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

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

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

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

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

