

## CHAPTER 97

SENATE BILL No. 334\*

AN ACT concerning agritourism activities; providing for promotion thereof; relating to participants' assumption of the inherent risks thereof; providing for certain income tax credits.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. This act may be cited as the agritourism promotion act.

Sec. 2. The purpose of this act is to promote rural tourism and rural economic development by encouraging owners or operators of farms, ranches, and rural attractions, including historic, cultural, and natural attractions, to invite members of the public to view, observe and participate in such operations and attractions for recreational or entertainment purposes. This act shall be liberally construed to effectuate that purpose.

Sec. 3. As used in sections 1 through 8, and amendments thereto:

(a) "Agritourism activity" means any activity which allows members of the general public, for recreational, entertainment or educational purposes, to view or enjoy rural activities, including, but not limited to, farming activities, ranching activities or historic, cultural or natural attractions. An activity may be an agritourism activity whether or not the participant pays to participate in the activity. An activity is not an agritourism activity if the participant is paid to participate in the activity.

(b) "Inherent risks of a registered agritourism activity" means those dangers or conditions which are an integral part of such agritourism activity including, but not limited to, certain hazards such as surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of structures or equipment ordinarily used in farming or ranching operations. "Inherent risks of a registered agritourism activity" also includes the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to follow instructions given by the registered agritourism operator or failing to exercise reasonable caution while engaging in the registered agritourism activity.

(c) "Participant" means any person who engages in a registered agritourism activity.

(d) "Registered agritourism activity" means any agritourism activity registered with the secretary pursuant to section 4, and amendments thereto.

(e) "Registered agritourism location" means a specific parcel of land which is registered with the secretary pursuant to section 4, and amendments thereto, and where a registered agritourism operator engages in registered agritourism activities.

(f) "Registered agritourism operator" means any person who is engaged in the business of providing one or more agritourism activities and is registered with the secretary pursuant to section 4, and amendments thereto.

Sec. 4. (a) Any person who is engaged in the business of providing one or more agritourism activities may register with the secretary of commerce. The registration shall contain all of the following:

(1) Information describing the agritourism activity which the person conducts or intends to conduct.

(2) Information describing the location where the person conducts or intends to conduct such agritourism activity.

(b) The secretary shall maintain a list of all registered agritourism operators, the registered agritourism activities conducted by each operator and the registered agritourism location where the operator conducts such activities. Such list shall be made available to the public. The secretary, in conjunction with other agritourism and rural economic efforts of the secretary, shall promote and publicize registered agritourism operators, activities and locations to advance the purpose of this act by promoting and encouraging tourism.

(c) Registration pursuant to this section shall be for a period of five years.

(d) No fee shall be charged to persons registering under this section.

Sec. 5. (a) At every registered agritourism location, the registered agritourism operator shall post and maintain signage which contains the warning notice specified in subsection (c). This section shall be deemed satisfied if such signage is placed in a clearly visible location at or near

the registered agritourism location. The warning notice specified in subsection (c) shall appear on the sign in black letters, with each letter to be a minimum of one inch in height.

(b) Every written contract entered into by a registered agritourism operator for the providing of a registered agritourism activity shall contain in clearly readable print the warning notice and language specified in subsection (c).

(c) The signs described in subsection (a) and the contracts described in subsection (b) shall contain the following warning notice:

#### WARNING

Under Kansas law, there is no liability for an injury or death of a participant in a registered agritourism activity conducted at this registered agritourism location if such injury or death results from the inherent risks of such agritourism activity. Inherent risks of agritourism activities include, but shall not be limited to, the potential of you as a participant to act in a negligent manner that may contribute to your injury or death and the potential of another participant to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this registered agritourism activity.

(d) Upon request, the registered agritourism operator shall provide to any participant a written description of the registered agritourism activity, as set forth in the registration pursuant to section 4, and amendments thereto, for which this act limits the registered agritourism operator's liability at the registered agritourism location.

Sec. 6. Except as provided in section 7, and amendments thereto, any participant is assuming the inherent risks of a registered agritourism activity when such participant engages in such agritourism activity. In any action for damages arising from the operation of a registered agritourism activity, the registered agritourism operator, pursuant to K.S.A. 60-208, and amendments thereto, shall plead an affirmative defense of assumption of risk by the participant.

Sec. 7. Nothing in this act shall prevent or limit the liability of a registered agritourism operator if:

(a) The registered agritourism operator injures the participant by willful or wanton conduct; or

(b) the registered agritourism operator has actual knowledge of a dangerous condition in the land, facilities or equipment used in the registered agritourism activity or the dangerous propensity of a particular animal used in such activity and does not make such dangerous condition known to the participant and such dangerous condition causes the participant to sustain injuries.

Sec. 8. Any limitation on legal liability afforded to a registered agritourism operator by this act shall be in addition to any other limitation of legal liability otherwise provided by law. Nothing in this act, nor failure by any person to comply with the provisions of this act, shall be construed to limit, restrict or impede the application of K.S.A. 58-3202, et seq., and amendments thereto, to any person, and a registered agritourism operator entitled to coverage under K.S.A. 58-3202, et seq., and amendments thereto, shall be entitled to the full limits of liability afforded under K.S.A. 58-3202, et seq., and amendments thereto.

Sec. 9. (a) For taxable years commencing on and after December 31, 2003, December 31, 2004, December 31, 2005, December 31, 2006, and December 31, 2007, there shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act, an amount equal to 20% of the cost of liability insurance paid by a registered agritourism operator who operates an agritourism activity on the effective date of this act. No tax credit claimed pursuant to this subsection shall exceed \$2,000. If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the amount thereof which exceeds such tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of tax credit has been deducted from tax liability, except that no such tax credit shall be carried forward for deduction after the third taxable year succeeding the taxable year in which the tax credit is claimed.

(b) For the first five taxable years commencing after a taxpayer opens such taxpayer's business, after the effective date of this act, there shall be

allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act, an amount equal to 20% of the cost of liability insurance paid by a registered agritourism operator who starts an agritourism activity after the effective date of this act. No tax credit claimed pursuant to this subsection shall exceed \$2,000. If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the amount thereof which exceeds such tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of tax credit has been deducted from tax liability, except that no such tax credit shall be carried forward for deduction after the third taxable year succeeding the taxable year in which the tax credit is claimed.

(c) The secretary of commerce shall adopt rules and regulations establishing criteria for determining those costs which qualify as costs of liability insurance for agritourism activities of a registered agritourism operator.

(d) On or before the 15th day of the regular legislative session in 2006, the secretary of commerce shall submit to the senate standing committee on commerce and the house standing committee on tourism and parks a report on the implementation and use of the tax credit provided by this section.

(e) As used in this section, terms have the meanings provided by section 3, and amendments thereto.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 16, 2004.

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