

HB0031S03 compared with HB0031S02

~~{deleted text}~~ shows text that was in HB0031S02 but was deleted in HB0031S03.

inserted text shows text that was not in HB0031S02 but was inserted into HB0031S03.

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~~{Senator Scott D. Sandall}~~Representative Carl R. Albrecht proposes the following substitute bill:

AGRITOURISM AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl R. Albrecht

Senate Sponsor: Scott D. Sandall

LONG TITLE

General Description:

This bill addresses agritourism activities.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ expands agricultural nuisance liability protections in relation to an agritourism activity;
- ▶ provides that an agricultural protection area may include an agritourism activity;
- ▶ requires the Department of Agriculture and Food to maintain an agritourism registry and describes requirements relating to the registry;
- ▶ includes additional risks inherent to participating in an agritourism activity;

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- ▶ requires an agritourism operator to post signage regarding the inherent risks of participating in an agritourism activity;
- ▶ expands civil liability protections for an operator of an agritourism activity; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

4-44-102, as enacted by Laws of Utah 2019, Chapter 81

17-41-301, as last amended by Laws of Utah 2019, Chapter 227

26B-7-401, as renumbered and amended by Laws of Utah 2023, Chapter 308

78B-4-512, as last amended by Laws of Utah 2015, Chapter 63

ENACTS:

4-2-1001, Utah Code Annotated 1953

4-2-1002, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **4-2-1001** is enacted to read:

Part 10. Agritourism Registry

4-2-1001. Definitions.

As used in this part:

(1) "Agricultural enterprise" means the same as that term is defined in Section 78B-4-512.

(2) "Agritourism activity" means the same as that term is defined in Section 78B-4-512.

(3) "Registry" means the voluntary agritourism registry described in Section 4-2-1002.

Section 2. Section **4-2-1002** is enacted to read:

4-2-1002. Agritourism registry.

(1) The department shall maintain a voluntary agritourism registry.

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(2) The purpose of the registry is to provide public notice of locations where individuals may participate in an agritourism activity.

(3) The owner of an agricultural enterprise that provides an agritourism activity in Utah may voluntarily place the agritourism activity on the registry by providing the following information to the department:

(a) the name and location of the agricultural enterprise;

(b) a description of the agritourism activity; and

(c) details relating to participation in the agritourism activity, including cost, hours of operation, and other relevant information.

(4) The owner of an agricultural enterprise with an agritourism activity on the registry shall notify the department of any changes to the information described in Subsection (3).

(5) The department:

(a) shall post the information on the registry to the department's website in a location where the public may conveniently access the information;

(b) may publicize the availability of the registry to the public; and

(c) may not charge a fee to be listed on, or to use, the registry.

(6) A registration under this section is in effect for five years, unless the owner requests removal at an earlier time.

Section 3. Section **4-44-102** is amended to read:

4-44-102. Definitions.

As used in this chapter:

(1) (a) "Agricultural operation" means [~~an activity engaged in the production for commercial purposes~~] the commercial production of crops, orchards, livestock, poultry, aquaculture, livestock products, or poultry products [~~and the facilities, equipment, and property used to facilitate the activity~~].

(b) "Agricultural operation" includes:

(i) the real property where the commercial production described in Subsection (1)(a) occurs;

(ii) a facility, a property, or equipment used to facilitate the commercial production described in Subsection (1)(a);

(iii) an agritourism activity, as defined in Section 78B-4-512; or

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(iv) an agricultural protection area established under Title 17, Chapter 41, Agriculture, Industrial, or Critical Infrastructure Materials Protection Areas.

(2) "Fundamental change to the operation" does not include:

- (a) a change in ownership or size;
- (b) an interruption of farming for a period of no more than three years;
- (c) participation in a government-sponsored agricultural program;
- (d) employment of new technology; or
- (e) a change in the type of agricultural product produced.

(3) "Nuisance" means anything that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

Section 4. Section **17-41-301** is amended to read:

17-41-301. Proposal for creation of a protection area.

(1) (a) A proposal to create an agriculture protection area, an industrial protection area, or critical infrastructure materials protection area may be filed with:

(i) the legislative body of the county in which the area is located, if the area is within the unincorporated part of a county; or

(ii) the legislative body of the city or town in which the area is located, if the area is within a city or town.

(b) A proposal to create a critical infrastructure protection area can only be initiated by the legislative body of the municipality or county. Creation of a critical infrastructure materials protection area is a legislative act.

(c) (i) To be accepted for processing by the applicable legislative body, a proposal under Subsection (1)(a) shall be signed by a majority in number of all owners of real property and the owners of a majority of the land area in agricultural production, industrial use, or critical infrastructure materials operations within the proposed relevant protection area.

(ii) For purposes of Subsection (1)(c)(i), the owners of real property shall be determined by the records of the county recorder.

(2) The proposal shall identify:

- (a) the boundaries of the land proposed to become part of the relevant protection area;
- (b) any limits on the types of agriculture production, industrial use, or critical

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infrastructure materials operations to be allowed within the relevant protection area; and

(c) for each parcel of land:

(i) the names of the owners of record of the land proposed to be included within the relevant protection area;

(ii) the tax parcel number or account number identifying each parcel; and

(iii) the number of acres of each parcel.

(3) An agriculture protection area, industrial protection area, or critical infrastructure materials protection area may include within its boundaries land used for a roadway, dwelling site, park, or other nonagricultural use, in the case of an industrial protection area, nonindustrial use, or in the case of a critical infrastructure materials protection area, use unrelated to critical infrastructure materials operations, if that land constitutes a minority of the total acreage within the ~~[the]~~ relevant protection area.

(4) An agricultural protection area may include within the boundaries of the agricultural protection area an agritourism activity, as defined in Section 78B-4-512.

~~[(4)]~~ (5) A county or municipal legislative body may establish:

(a) the manner and form for submission of proposals; and

(b) reasonable fees for accepting and processing the proposal.

~~[(5)]~~ (6) A county and municipal legislative body shall establish the minimum number of continuous acres that shall be included in an agriculture protection area, industrial protection area, or critical infrastructure materials protection area.

Section 5. Section **26B-7-401** is amended to read:

26B-7-401. Definitions.

As used in this part:

~~[(1) "Agricultural tourism activity" means the same as that term is defined in Section 78B-4-512.]~~

~~[(2)]~~ (1) "Agritourism" means the same as that term is defined in Section 78B-4-512.

(2) "Agritourism activity" means the same as that term is defined in Section 78B-4-512.

(3) "Agritourism food establishment" means a non-commercial kitchen facility where food is handled, stored, or prepared to be offered for sale on a farm in connection with an ~~[agricultural tourism]~~ agritourism activity.

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(4) "Agritourism food establishment permit" means a permit issued by a local health department to the operator for the purpose of operating an agritourism food establishment.

(5) "Back country food service establishment" means a federal or state licensed back country guiding or outfitting business that:

(a) provides food services; and

(b) meets department recognized federal or state food service safety regulations for food handlers.

(6) "Certified food safety manager" means a manager of a food service establishment who:

(a) passes successfully a department-approved examination;

(b) successfully completes, every three years, renewal requirements established by department rule consistent with original certification requirements; and

(c) submits to the appropriate local health department the documentation required by Section 26B-7-412.

(7) "Farm" means a working farm, ranch, or other commercial agricultural, aquacultural, horticultural, or forestry operation.

(8) "Food" means:

(a) a raw, cooked, or processed edible substance, ice, nonalcoholic beverage, or ingredient used or intended for use or for sale, in whole or in part, for human consumption; or

(b) chewing gum.

(9) "Food service establishment" means any place or area within a business or organization where potentially hazardous foods, as defined by the department under Section 26B-7-410, are prepared and intended for individual portion service and consumption by the general public, whether the consumption is on or off the premises, and whether or not a fee is charged for the food.

(10) (a) "Microenterprise home kitchen" means a non-commercial kitchen facility located in a private home and operated by a resident of the home where ready-to-eat food is handled, stored, prepared, or offered for sale.

(b) "Microenterprise home kitchen" does not include:

(i) a catering operation;

(ii) a cottage food operation;

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- (iii) a food truck;
- (iv) an agritourism food establishment;
- (v) a bed and breakfast; or
- (vi) a residence-based group care facility.

(11) "Microenterprise home kitchen permit" means a permit issued by a local health department to the operator for the purpose of operating a microenterprise home kitchen.

(12) "Ready-to-eat" means:

- (a) raw animal food that is cooked;
- (b) raw fruits and vegetables that are washed;
- (c) fruits and vegetables that are cooked for hot holding;

(d) a time or temperature control food that is cooked to the temperature and time required for the specific food in accordance with rules made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

(e) a bakery item for which further cooking is not required for food safety.

(13) "Time or temperature control food" means food that requires time or temperature controls for safety to limit pathogenic microorganism growth or toxin formation.

Section 6. Section **78B-4-512** is amended to read:

78B-4-512. Definitions -- Participation in an agritourism activity -- Limitations on civil liability.

(1) As used in this section:

~~[(a) "Agricultural tourism activity" means an educational or recreational activity that:]~~

~~[(i) takes place on a farm or ranch or other commercial agricultural, aquacultural, horticultural, or forestry operation; and]~~

~~[(ii) allows an individual to tour, explore, observe, learn about, participate in, or be entertained by an aspect of agricultural operations:]~~

~~[(b) "Agritourism" means the travel or visit by the general public to a working farm, ranch, or other commercial agricultural, aquacultural, horticultural, or forestry operation for the enjoyment of, education about, or participation in the activities of the farm, ranch, or other commercial agricultural, aquacultural, horticultural, or forestry operation:]~~

(a) "Agricultural enterprise" means a farm, ranch, or other agricultural, aquacultural, horticultural, or forestry operation.

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(b) "Agritourism" means the combination of agricultural production with tourism to attract participants from the general public to an agricultural enterprise for the entertainment, recreation, or education of the participants.

(c) "Agritourism activity" means an activity at an agricultural enterprise that a participant engages in or observes for recreation, education, or entertainment.

~~[(c)]~~ (d) "Inherent risk of an agritourism activity" means a danger, hazard, or condition [which is an integral] that is part of an [agricultural tourism] agritourism activity [and that cannot be eliminated by the exercise of reasonable care], including:

(i) ~~[natural]~~ surface and subsurface conditions of land, vegetation, ~~[and]~~ or water on the property;

(ii) unpredictable behavior of domesticated or farm animals on the property; ~~[or]~~

(iii) reasonable dangers of structures or equipment ordinarily used where agricultural or horticultural crops are grown or farm animals or farmed fish are raised[-];

(iv) behavior of insects or wildlife not owned or kept by the operator of the property;

(v) exposure to pathogens from animals, animal feed, animal waste, or other sources;

or

(vi) negligent behavior by an individual other than the operator.

~~[(d)]~~ (e) "Operator" means:

(i) a person who ~~[operates, provides, or demonstrates an agricultural tourism activity;~~ owns or manages an agricultural enterprise where a participant engages in or observes an agritourism activity;

(ii) a person who provides an agritourism activity at an agricultural enterprise; or

~~[(ii)]~~ (iii) an employee of a person described in Subsection ~~[(1)(d)(i)]~~ (1)(e)(i) or (ii).

~~[(e)]~~ (f) (i) "Participant" means an individual, other than [a provider or operator, who observes or participates in an agricultural tourism] an operator, who engages in or observes an agritourism activity, regardless of whether the individual [paid to observe or participate in an agricultural tourism] pays to engage in or observe the agritourism activity.

(ii) "Participant" does not mean an individual who is paid to participate in an ~~[agricultural tourism]~~ agritourism activity.

~~[(f)]~~ (g) "Property" means the real property where an [agricultural tourism] agritourism activity takes place [and the buildings, structures, and improvements on that real property].

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~~[(2) A participant in an agricultural tourism activity may not make any claim against, or recover damages from, any operator for injury primarily resulting from:]~~

~~[(a) an inherent risk of agritourism; or]~~

~~[(b) the participant's failure to:]~~

~~[(i) follow instructions given by the operator; or]~~

~~[(ii) exercise reasonable caution while engaged in an agricultural tourism activity:]~~

(2) (a) Except as provided in Subsection (3), an operator may not be liable for an injury, illness, death, or damage to personal property of a participant that results from an inherent risk of an agritourism activity if the operator posts the signage described in Subsection (5).

(b) An operator is not required to eliminate an inherent risk of an agritourism activity at the operator's agritourism activity.

(3) Nothing in Subsection (2):

(a) limits the liability of an operator if the operator:

(i) acts or omits an act in gross negligence or willful or wanton disregard for the safety of a participant that proximately causes injury, illness, death, or damage to personal property of a participant;

(ii) has actual knowledge or reasonably should have known of a dangerous condition on the land, facilities, or equipment used in the agritourism activity that proximately causes injury, illness, death, or damage to personal property of a participant;

(iii) has actual knowledge or reasonably should have known of the dangerous propensity of an animal used in an agritourism activity and does not make the danger known to the participant, and the danger proximately causes injury, illness, death, or damage to personal property of a participant; or

(iv) intentionally injures the participant;

(b) prevents or limits the liability of an operator under a product liability law; or

(c) negates assumption of risk as an affirmative defense.

(4) A limitation on legal liability afforded to an operator under Subsection (2) is in addition to any limitation of legal liability otherwise provided by law.

~~[(3)]~~ (5) An operator shall post and maintain, in a clearly visible location at each entrance to the property where an ~~[agricultural tourism]~~ agritourism activity takes place or at

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the location of each [~~agricultural tourism~~] agritourism activity, a sign [~~describing~~] that:

~~[(a) the inherent risks of the activity, and]~~

~~[(b) the limitations on liability of the operators.]~~

(a) is printed in black letters, that are a minimum of one inch in height, on a white background; and

(b) states, "WARNING: Under Utah law, an operator of an agritourism activity or the property where the activity takes place is not liable for the injury, illness, death, or damage to personal property of a participant that primarily results from the inherent risks of the activity or a participant's failure to follow instructions or exercise reasonable caution. You are assuming the risk of participating in or observing an agritourism activity."

~~[(4) In any action for damages for personal injury, death, or property damage in which an owner or operator of an agritourism activity is named as a defendant, the court shall undergo a comparative negligence analysis and consider whether:]~~

~~[(a) the injured person deliberately disregarded conspicuously posted signs, verbal instructions, or other warnings regarding safety measures during the activity; or]~~

~~[(b) any equipment, animals, or appliance used by the injured person during the activity were used in a manner or for a purpose other than that for which a reasonable person should have known they were intended.]~~

Section 7. **Effective date.**

This bill takes effect on May 1, 2024.