

By: Representatives Holland, Turner

To: Agriculture; Tourism

HOUSE BILL NO. 683

1 AN ACT TO CREATE THE "MISSISSIPPI AGRITOURISM PROMOTION ACT";
 2 TO DEFINE CERTAIN TERMS; TO ESTABLISH A VOLUNTARY REGISTRATION
 3 PROCESS OF AGRITOURISM OPERATIONS WITH THE COMMISSIONER OF
 4 AGRICULTURE AND COMMERCE; TO REQUIRE REGISTERED AGRITOURISM
 5 OPERATORS TO POST AND MAINTAIN SIGNAGE CONTAINING CERTAIN WARNING
 6 NOTICE PROVISIONS; TO PROVIDE THAT ANY PARTICIPANT IS ASSUMING THE
 7 INHERENT RISKS OF A REGISTERED AGRITOURISM ACTIVITY WHEN THE
 8 PARTICIPANT ENGAGES IN SUCH AGRITOURISM ACTIVITY; TO ESTABLISH A
 9 TAX CREDIT TO OFFSET THE EXPENSE OF AGRITOURISM LIABILITY
 10 INSURANCE PAID BY A REGISTERED AGRITOURISM OPERATOR; AND FOR
 11 RELATED PURPOSES.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

13 **SECTION 1.** This act may be cited as the "Mississippi
 14 Agritourism Promotion Act".

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

22 **SECTION 3.** As used in this act:

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

32 (b) "Commissioner" means the Mississippi Commissioner
33 of Agriculture and Commerce.

34 (c) "Inherent risks of a registered agritourism
35 activity" means those dangers or conditions that are an integral
36 part of such agritourism activity including, but not limited to,
37 certain hazards such as surface and subsurface conditions; natural
38 conditions of land, vegetation, and waters; the behavior of wild
39 or domestic animals; and ordinary dangers of structures or
40 equipment ordinarily used in farming or ranching operations.

41 "Inherent risks of a registered agritourism activity" also
42 includes the potential of a participant to act in a negligent
43 manner that may contribute to injury to the participant or others,
44 such as failing to follow instructions given by the registered
45 agritourism operator or failing to exercise reasonable caution
46 while engaging in the registered agritourism activity.

47 (d) "Participant" means any person who engages in a
48 registered agritourism activity.

49 (e) "Registered agritourism activity" means any
50 agritourism activity registered with the commissioner under
51 Section 4 of this act.

52 (f) "Registered agritourism location" means a specific
53 parcel of land that is registered with the commissioner under
54 Section 4 of this act, and where a registered agritourism operator
55 engages in registered agritourism activities.

56 (g) "Registered agritourism operator" means any person
57 who is engaged in the business of providing one or more
58 agritourism activities and is registered with the commissioner
59 under Section 4 of this act.

60 **SECTION 4.** (1) Any person who is engaged in the business of
61 providing one or more agritourism activities may register with the
62 commissioner. The registration shall contain all of the
63 following:

64 (a) Information describing the agritourism activity
65 that the person conducts or intends to conduct.

66 (b) Information describing the location where the
67 person conducts or intends to conduct the agritourism activity.

68 (2) The commissioner shall maintain a list of all registered
69 agritourism operators, the registered agritourism activities
70 conducted by each operator and the registered agritourism location
71 where the operator conducts such activities. The list shall be
72 made available to the public. The commissioner, in conjunction
73 with other agritourism and rural economic efforts of the
74 commissioner, shall promote and publicize registered agritourism
75 operators, activities and locations to advance the purpose of this
76 act by promoting and encouraging tourism.

77 (3) Registration under this section shall be for a period of
78 five (5) years.

79 (4) No fee shall be charged to persons registering under
80 this section.

81 **SECTION 5.** (1) At every registered agritourism location,
82 the registered agritourism operator shall post and maintain
83 signage that contains the warning notice specified in subsection
84 (3) of this section. This section shall be deemed satisfied if
85 such signage is placed in a clearly visible location at or near
86 the registered agritourism location. The warning notice specified
87 in subsection (3) of this section shall appear on the sign in
88 black letters, with each letter to be a minimum of one (1) inch in
89 height.

90 (2) Every written contract entered into by a registered
91 agritourism operator for the providing of a registered agritourism
92 activity shall contain in clearly readable print the warning
93 notice and language specified in subsection (3) of this section.

94 (3) The signs described in subsection (1) of this section
95 and the contracts described in subsection (2) of this section
96 shall contain the following warning notice:

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"WARNING

Under Mississippi 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 an injury or death results from the inherent risks of the 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."

(4) 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 under Section 4 of this act, for which this act limits the registered agritourism operator's liability at the registered agritourism location.

SECTION 6. Except as provided in Section 7 of this act, any participant is assuming the inherent risks of a registered agritourism activity when the participant engages in such agritourism activity. In any action for damages arising from the operation of a registered agritourism activity, the registered agritourism operator shall plead an affirmative defense of assumption of risk by the participant.

SECTION 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 the activity and does not make such dangerous condition known to the

130 participant and such dangerous condition causes the participant to
131 sustain injuries.

132 **SECTION 8.** Any limitation on legal liability afforded to a
133 registered agritourism operator by this act shall be in addition
134 to any other limitation of legal liability otherwise provided by
135 law.

136 **SECTION 9.** (1) For taxable years commencing on and after
137 December 31, 2005, December 31, 2006, December 31, 2007, December
138 31, 2008, and December 31, 2009, there shall be allowed as a
139 credit against the income tax liability of a taxpayer an amount
140 equal to twenty percent (20%) of the cost of liability insurance
141 paid by a registered agritourism operator who operates an
142 agritourism activity on July 1, 2006. No tax credit claimed under
143 this subsection shall exceed Two Thousand Dollars (\$2,000.00). If
144 the amount of the tax credit exceeds the taxpayer's income tax
145 liability for the taxable year, the amount thereof that exceeds
146 such tax liability may be carried over for deduction from the
147 taxpayer's income tax liability in the next succeeding taxable
148 year or years until the total amount of tax credit has been
149 deducted from tax liability, except that no such tax credit shall
150 be carried forward for deduction after the third taxable year
151 succeeding the taxable year in which the tax credit is claimed.

152 (2) For the first five (5) taxable years beginning after a
153 taxpayer opens such taxpayer's business, after July 1, 2006, there
154 shall be allowed as a credit against the income tax liability of a
155 taxpayer an amount equal to twenty percent (20%) of the cost of
156 liability insurance paid by a registered agritourism operator who
157 starts an agritourism activity after July 1, 2006. No tax credit
158 claimed under this subsection shall exceed Two Thousand Dollars
159 (\$2,000.00). If the amount of the tax credit exceeds the
160 taxpayer's income tax liability for the taxable year, the amount
161 thereof that exceeds such tax liability may be carried over for
162 deduction from the taxpayer's income tax liability in the next

163 succeeding taxable year or years until the total amount of tax
164 credit has been deducted from tax liability, except that no such
165 tax credit shall be carried forward for deduction after the third
166 taxable year succeeding the taxable year in which the tax credit
167 is claimed.

168 (3) The Commissioner of Agriculture and Commerce shall adopt
169 rules and regulations establishing criteria for determining those
170 costs that qualify as costs of liability insurance for agritourism
171 activities of a registered agritourism operator.

172 (4) On or before January 17 of the regular legislative
173 session in 2007, the Commissioner of Agriculture and Commerce
174 shall submit to the Legislature a report on the implementation and
175 use of the tax credit provided by this section.

176 (5) As used in this section, terms have the meanings
177 provided by Section 3 of this act.

178 **SECTION 10.** Section 9 of this act shall take effect and be
179 in force from and after January 1, 2006, and the remainder of this
180 act shall take effect and be in force from and after July 1, 2006.