

By: Senator(s) Wilemon

To: Agriculture; Finance

SENATE BILL NO. 2090

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 which
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 which 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 pursuant to
51 Section 4 of this act.

52 (f) "Registered agritourism location" means a specific
53 parcel of land which is registered with the commissioner pursuant
54 to Section 4 of this act, and where a registered agritourism
55 operator 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 pursuant to 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 of Agriculture and Commerce. The registration shall
63 contain all of the following:

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

66 (b) Information describing the location where the
67 person conducts or intends to conduct such 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. Such 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 pursuant to this section shall be for a
78 period of 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 which contains the warning notice specified in subsection
84 (3). This section shall be deemed satisfied if such signage is
85 placed in a clearly visible location at or near the registered
86 agritourism location. The warning notice specified in subsection
87 (3) shall appear on the sign in black letters, with each letter to
88 be a minimum of one (1) inch in height.

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

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

96 WARNING

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

108 (4) Upon request, the registered agritourism operator shall
109 provide to any participant a written description of the registered
110 agritourism activity, as set forth in the registration pursuant to
111 Section 4 of this act, for which this act limits the registered
112 agritourism operator's liability at the registered agritourism
113 location.

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

121 **SECTION 7.** Nothing in this act shall prevent or limit the
122 liability of a registered agritourism operator if:

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

125 (b) The registered agritourism operator has actual
126 knowledge of a dangerous condition in the land, facilities or
127 equipment used in the registered agritourism activity or the
128 dangerous propensity of a particular animal used in such activity
129 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 the effective date of this act. No tax
143 credit claimed pursuant to this subsection shall exceed Two
144 Thousand Dollars (\$2,000.00). If the amount of such tax credit
145 exceeds the taxpayer's income tax liability for such taxable year,
146 the amount thereof which exceeds such tax liability may be carried
147 over for deduction from the taxpayer's income tax liability in the
148 next succeeding taxable year or years until the total amount of
149 tax credit has been deducted from tax liability, except that no
150 such tax credit shall be carried forward for deduction after the
151 third taxable year succeeding the taxable year in which the tax
152 credit is claimed.

153 (2) For the first five (5) taxable years commencing after a
154 taxpayer opens such taxpayer's business, after the effective date
155 of this act, there shall be allowed as a credit against the income
156 tax liability of a taxpayer an amount equal to twenty percent
157 (20%) of the cost of liability insurance paid by a registered
158 agritourism operator who starts an agritourism activity after the
159 effective date of this act. No tax credit claimed pursuant to
160 this subsection shall exceed Two Thousand Dollars (\$2,000.00). If
161 the amount of such tax credit exceeds the taxpayer's income tax
162 liability for such taxable year, the amount thereof which exceeds

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

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

173 (4) On or before the 15th day of the regular legislative
174 session in 2006, the Commissioner of Agriculture and Commerce
175 shall submit to the Legislature a report on the implementation and
176 use of the tax credit provided by this section.

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

179 **SECTION 10.** This act shall take effect and be in force from
180 and after July 1, 2006.