

By: Representative Turner

To: Tourism; Ways and Means

HOUSE BILL NO. 1234

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

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

14 **SECTION 1.** This act may be cited as the "Mississippi
15 Agriculture Recreation Promotion Act."

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

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

24 (a) "Agriculture recreation activity" means any fee
25 based or nonfee based agriculture activity that allows members of
26 the general public, for recreational, entertainment or educational
27 purposes, to purchase farm products, to view or enjoy rural
28 activities, including, but not limited to, farming activities,
29 ranching activities, hunting, fishing, wildlife tourism,
30 ecotourism, agritourism, agritainment activities, agricultural
31 fairs, festivals or historic, cultural or natural attractions.

32 An activity may be an agriculture recreation activity whether or
33 not the participant pays to participate in the activity.

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

48 (c) "Participant" means any person who engages in a
49 registered agriculture recreation activity.

50 (d) "Registered agriculture registration activity"
51 means any agriculture recreation activity registered with the
52 Mississippi Department of Agriculture and Commerce under Section 4
53 of this act.

54 (e) "Registered agriculture recreation location" means
55 a specific parcel of land that is registered with the Mississippi
56 Department of Agriculture and Commerce under Section 4 of this
57 act, and where a registered agriculture recreation operator
58 engages in registered agriculture recreation activities.

59 (f) "Registered agriculture recreation operator" means
60 any person who is engaged in the business of providing one or more
61 agriculture recreation activities and is registered with the
62 Department of Agriculture and Commerce under Section 4 of this
63 act.

64 (g) "Department of Agriculture" means the Mississippi
65 Department of Agriculture and Commerce.

66 **SECTION 4.** (1) Any person who is engaged in the business of
67 providing one or more agriculture recreation activities may
68 register with the Department of Agriculture. The registration
69 shall contain all of the following:

70 (a) Information describing the agriculture recreation
71 activity which the person conducts or intends to conduct.

72 (b) Information describing the location where the
73 person conducts or intends to conduct the agriculture recreation
74 activity.

75 (2) The Department of Agriculture shall maintain a list of
76 all registered agriculture recreation operators, the registered
77 agriculture recreation activities conducted by each operator and
78 the registered agriculture recreation farm location where the
79 operator conducts such activities. The list shall be made
80 available to the public. The Department of Agriculture, in
81 conjunction with other agriculture recreation and rural economic
82 efforts of the Department of Agriculture, shall promote and
83 publicize registered agriculture recreation operators, activities
84 and locations to advance the purpose of this act by promoting and
85 encouraging rural economic development.

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

88 (4) No fee shall be charged to persons registering under
89 this section.

90 **SECTION 5.** (1) At every registered agriculture recreation
91 location, the registered agriculture recreation operator shall
92 post and maintain signage that contains the warning notice
93 specified in subsection (3) of this section. This section shall
94 be deemed satisfied if such signage is placed in a clearly visible
95 location at or near the registered agriculture recreation
96 location. The warning notice specified in subsection (3) of this

97 section shall appear on the sign in black letters, with each
98 letter to be a minimum of one (1) inch in height.

99 (2) Every written contract entered into by a registered
100 agriculture recreation operator shall contain in clearly readable
101 print the warning notice and language specified in subsection (3)
102 of this section.

103 (3) The signs described in subsection (1) of this section
104 and the contracts described in subsection (2) shall contain the
105 following warning notice:

106 "WARNING

107 Under Mississippi law, there is no liability for an injury or
108 death of a participant in a registered agriculture recreation
109 activity conducted at this registered agriculture recreation
110 location if an injury or death results from the inherent risks of
111 the agriculture recreation activity. Inherent risks of
112 agriculture recreation activities include, but shall not be
113 limited to, the potential of you as a participant to act in a
114 negligent manner that may contribute to your injury or death and
115 the potential of another participant to act in a negligent manner
116 that may contribute to your injury or death. You are assuming the
117 risk of participating in this registered agriculture recreation
118 activity."

119 (4) Upon request, the registered agriculture recreation farm
120 operator shall provide to any participant a written description of
121 the registered agriculture recreation activity, as set forth in
122 the registration under Section 4 of this act, for which this act
123 limits the registered agriculture recreation operator's liability
124 at the registered agriculture recreation location.

125 **SECTION 6.** Except as provided in Section 7 of this act, any
126 participant is assuming the inherent risks of a registered
127 agriculture recreation activity when the participant engages in
128 such agriculture recreation activity. In any action for damages
129 arising from the operation of a registered agriculture recreation

130 activity, the registered agriculture recreation farm operator
131 shall plead an affirmative defense of assumption of risk by the
132 participant.

133 **SECTION 7.** Nothing in this act shall prevent or limit the
134 liability of a registered agriculture recreation operator if:

135 (a) The registered agriculture recreation operator
136 injures the participant by willful or wanton conduct; or

137 (b) The registered agriculture recreation operator has
138 actual knowledge of a dangerous condition in the land, facilities
139 or equipment used in the registered agriculture recreation
140 activity or the dangerous propensity of a particular animal used
141 in the activity and does not make such dangerous condition known
142 to the participant and such dangerous condition causes the
143 participant to sustain injuries.

144 **SECTION 8.** Any limitation on legal liability afforded to a
145 registered agriculture recreation operator by this act shall be in
146 addition to any other limitation of legal liability otherwise
147 provided by law.

148 **SECTION 9.** (1) For taxable years commencing on and after
149 December 31, 2005, December 31, 2006, December 31, 2007, December
150 31, 2008, and December 31, 2009, there shall be allowed as a
151 credit against the income tax liability of a taxpayer an amount
152 equal to twenty percent (20%) of the cost of liability insurance
153 paid by a registered agriculture recreation operator who operates
154 an agriculture recreation activity on July 1, 2006. No tax credit
155 claimed under this subsection shall exceed Two Thousand Dollars
156 (\$2,000.00). If the amount of the tax credit exceeds the
157 taxpayer's income tax liability for the taxable year, the amount
158 thereof that exceeds such tax liability may be carried over for
159 deduction from the taxpayer's income tax liability in the next
160 succeeding taxable year or years until the total amount of tax
161 credit has been deducted from tax liability, except that no such
162 tax credit shall be carried forward for deduction after the third

163 taxable year succeeding the taxable year in which the tax credit
164 is claimed.

165 (2) For the first five (5) taxable years beginning after a
166 taxpayer opens such taxpayer's business, after July 1, 2006, there
167 shall be allowed as a credit against the income tax liability of a
168 taxpayer an amount equal to twenty percent (20%) of the cost of
169 liability insurance paid by a registered agriculture recreation
170 operator who starts an agriculture recreation activity after July
171 1, 2006. No tax credit claimed pursuant to this subsection shall
172 exceed Two Thousand Dollars (\$2,000.00). If the amount of the tax
173 credit exceeds the taxpayer's income tax liability for the taxable
174 year, the amount thereof that exceeds such tax liability may be
175 carried over for deduction from the taxpayer's income tax
176 liability in the next succeeding taxable year or years until the
177 total amount of tax credit has been deducted from tax liability,
178 except that no such tax credit shall be carried forward for
179 deduction after the third taxable year succeeding the taxable year
180 in which the tax credit is claimed.

181 (3) The State Tax Commission shall adopt rules and
182 regulations establishing criteria for determining those costs that
183 qualify as costs of liability insurance for agriculture recreation
184 activities of a registered agritourism operator.

185 (4) As used in this section, terms have the meanings
186 provided by Section 3 of this act.

187 **SECTION 10.** The Mississippi Department of Agriculture and
188 Commerce and the Mississippi Cooperative Extension Service shall
189 work jointly to develop programs related to agriculture recreation
190 farming activities in the state.

191 **SECTION 11.** Section 9 of this act shall take effect and be
192 in force from and after January 1, 2007, and the remainder of this
193 act shall take effect and be in force from and after July 1, 2007.