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# Bill 186

**An Act to limit the liability in respect of agritourism**

**Mr. M. Rae**

**Private Member's Bill**

1st Reading      April 15, 2024

2nd Reading

3rd Reading

Royal Assent



#### EXPLANATORY NOTE

The Bill enacts the *Growing Agritourism Act, 2024*. The Act applies in respect of agritourism activities that are carried out as part of a farming business that has an annual gross income of \$7,000 or more. Agritourism activities are defined as agriculture related educational, entertainment, historical, cultural, limited accommodations or recreational activities, including you-pick operations or farm markets, conducted on a farm that allows or invites members of the general public to observe, participate in or enjoy that activity.

The Act provides that if an agritourism provider includes warning language set out in the Act in signs at or near the main entrance to each agritourism activity or in every contract entered into with each participant in respect of agritourism activities, no cause of action arises against an agritourism provider for any harm a participant sustains during an agritourism activity if that harm is a result of a risk inherent in an agritourism activity. The Act also provides that agritourism providers are not required to eliminate risks inherent in an agritourism activity.

## An Act to limit the liability in respect of agritourism

### Preamble

Agritourism is a form of nature-based or culinary tourism that allows visitors to learn about, explore and taste Ontario's bountiful agriculture products. Agritourism is an industry ripe for growth and economic opportunity, offering Ontario farmers diversified incomes.

This Act will provide some consistency across Ontario's agritourism providers and ensure visitors and participants are aware of the inherent risks associated with agritourism activities.

Therefore His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

### Definitions

1 In this Act,

"agricultural operation" has the same meaning as in the *Farming and Food Production Protection Act, 1998*; ("exploitation agricole")

"agritourism activity" means an agriculture related educational, entertainment, historical, cultural, limited accommodations or recreational activity, including you-pick operations or farm markets, conducted on a farm that allows or invites members of the general public to observe, participate in or enjoy that activity; ("activité agrotouristique")

"agritourism provider" means a person who owns, operates, provides or sponsors an agritourism activity, whether or not for a fee, or an employee of such a person who engages in or provides agritourism activities; ("fournisseur agrotouristique")

"farming business" has the same meaning as in the *Farm Registration and Farm Organizations Funding Act, 1993*; ("entreprise agricole")

"participant" means an individual, other than an agritourism provider, who observes or participates in an agritourism activity; ("participant")

"risk inherent in an agritourism activity" means a danger or condition that is an integral part of an agritourism activity, including,

- (a) the surface and subsurface conditions of land,
- (b) the behaviour or actions of wild animals not kept by or under the control of an agritourism provider,
- (c) the behaviour or actions of domestic animals other than a dog in respect of which an order has been made under subsection 4 (3) of the *Dog Owners' Liability Act* before the day the agritourism activity is engaged in,
- (d) the ordinary dangers associated with structures or equipment ordinarily used in farming operations,
- (e) the possibility of contracting illness resulting from physical contact with animals, animal feed, animal waste or surfaces contaminated by animal waste, and
- (f) the possibility that a participant may act in a negligent manner, including by failing to follow instructions given by the agritourism provider or by failing to exercise reasonable caution while engaging in the agritourism activity that may contribute to injury to that participant or another participant. ("risque inhérent à une activité agrotouristique")

### Application

2 (1) This Act applies in respect of agritourism activities that are carried out as part of a farming business that had, subject to subsection (2), an annual gross income of \$7,000 or more in the year before the agritourism activities are carried out.

### Same

(2) Income from agritourism activities shall not be included for the purpose of determining gross annual income for the purpose of subsection (1).

**Limitation on liability**

**3** (1) No cause of action arises against an agritourism provider for any harm a participant sustains during an agritourism activity if the participant is harmed as a result of a risk inherent in an agritourism activity and nothing in this section requires an agritourism provider to eliminate risks inherent in an agritourism activity.

**Same**

- (2) Subsection (1) does not apply unless the agritourism provider,
- (a) posts a sign bearing the wording set out in section 4 in black letters not less than three centimetres in height on a white background in a clearly visible location at or near the main entrance to each agritourism activity; or
  - (b) includes the wording set out in section 4 in a written contract entered into between the agritourism provider and the participant in respect of the agritourism activity.

**Exceptions**

- (3) Subsection (1) does not relieve the agritourism provider of liability in the following circumstances:
1. The agritourism provider commits an act of gross negligence or omission concerning the safety of a participant that proximately causes death or injury to the participant.
  2. The agritourism provider has actual knowledge of any of the following and does not make that danger known to the participant before the participant engages in an agritourism activity:
    - i. A dangerous condition with respect to the land, facilities or equipment used in the agritourism activity, which proximately causes death or injury to the participant.
    - ii. The dangerous propensity of an animal used in the agritourism activity, which proximately causes death or injury to the participant.
  3. The agritourism provider intentionally injures a participant or intentionally damages a participant's property.
  4. The agritourism provider commits any other act, error or omission that constitutes wilful misconduct or criminal conduct that proximately causes death or injury to the participant.

**Warning language**

**4** The wording referred to in subsection 3 (2) is the following:

1. **WARNING:** under Ontario law, an agritourism provider is not liable for the death or injury or illness of a participant in an agritourism activity conducted at this agritourism location if that injury or death or illness results from the inherent risks of that agritourism activity. Inherent risks of agritourism activities include, but are not limited to, the risk of injury inherent to land, equipment and animals as well as the potential for you as a participant to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity.

**Commencement**

**5** This Act comes into force on the day it receives Royal Assent.

**Short title**

**6** The short title of this Act is the *Growing Agritourism Act, 2024*.