

HCS HB 1298 -- TORT ACTIONS AND AGRITOURISM PROMOTION (Parkinson)

COMMITTEE OF ORIGIN: Committee on General Laws

This substitute changes the laws regarding a defendant's liability in a tort action and establishes the Agritourism Promotion Act.

TORT ACTIONS FOR DAMAGES

The substitute changes the determination of a defendant's liability in a tort action for damages by specifying that the liability of each defendant for compensatory or punitive damages must be several and cannot be joint. Each defendant must be only liable for the amount of damages allocated to that defendant in direct proportion to his or her percentage of fault. A separate several judgment must be rendered against that defendant for that amount.

The court must multiply the total amount of damages recoverable by the plaintiff with regard to each defendant by the percentage of each defendant's fault to determine the maximum recoverable amount of judgment to be entered against each defendant. The court or jury must also consider the fault of all persons or entities who contributed to the alleged injury or damages, regardless of whether the person or entity was, or could have been, named as a party to the suit. Negligence or fault of a nonparty may be considered if the plaintiff entered into a settlement agreement with the nonparty or if the defending party gives notice before trial, in accordance with required court rules, that a nonparty was wholly or partially at fault.

AGRITOURISM PROTECTION ACT

The Agritourism Promotion Act is established which allows for the registration of any person who is engaged in a business which provides agritourism activities in Missouri. The substitute:

(1) Defines "agritourism activity" as any activity which allows the general public for recreational, entertainment, or educational purposes to view or enjoy rural activities including, but not limited to, farming and ranching activities or historic, cultural, or natural attractions;

(2) Defines "inherent risks of a registered agritourism activity" as dangers or conditions which are an integral part of an agritourism activity including the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others;

(3) Allows any person who is engaged in a business providing an agritourism activity to register with the Director of the Department of Agriculture. The registration must contain a description of the agritourism activity he or she conducts or intends to conduct and the location where the activity will be conducted;

(4) Specifies that the registration is for a period of two years and a fee of up to \$100 may be imposed on an applicant to cover the actual administrative costs associated with registration;

(5) Requires the department to maintain and make available to the public a list of all registered agritourism operators, the registered agritourism activities conducted by each operator, and the registered agritourism location;

(6) Requires the department to promote and publicize registered agritourism operators, activities, and locations by promoting and encouraging tourism;

(7) Requires every registered agritourism operator to post and maintain signage at the agritourism location which contains a specified warning notice that there is no liability for certain injuries or the death of a participant in a registered agritourism activity;

(8) Specifies that any participant is assuming certain inherent risks when participating in an agritourism activity;

(9) Specifies that a registered agritourism operator is not liable for an injury to or the death of a participant resulting from the inherent risks of agritourism activities if the warning is posted as required unless the injury to the participant was by the operator's willful or wanton conduct, the operator had actual knowledge or should have known of a dangerous condition and does not make such dangerous condition known to a participant and such dangerous condition injures the participant, or the operator fails to use that degree of care that an ordinarily careful and prudent person would use under the same or similar circumstances;

(10) Specifies that the operator has an affirmative defense to liability if the injured person assumed the risk or deliberately disregarded conspicuously posted signs, verbal instructions, or other warnings regarding safety measures during the activity, or if any equipment, animals, or appliances 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; and

(11) Creates the Agritourism Fee Fund consisting of registration

fees and moneys appropriated to the fund to be used solely for the administration of the provisions of the substitute.

FISCAL NOTE: No impact on state funds in FY 2013, FY 2014, and FY 2015.