

**LANDOWNER LIABILITY PROTECTIONS:
Texas Recreational Use Statute, Agritourism Act,
and Farm Animal Liability Act**

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LANDOWNER LIABILITY PROTECTIONS:

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I. INTRODUCTION

Texas landowners are frequently concerned about potential liability they might incur if someone is injured on their land. This concern is certainly valid. These lawsuits, known as premises liability suits, are common in Texas courts. In order to protect landowners and to encourage private property to be opened for public use and recreation, the Texas Legislature has passed three important statutes offering limited liability to landowners in certain situations. This article will discuss the Texas Recreational Use Statute, the Texas Agritourism Act, and the Texas Farm Animal Liability Act.

II. RECREATIONAL USE STATUTE

Understanding the vast majority of Texas land is privately owned and hoping to encourage landowners to allow recreation on their land, the 1965 Texas Legislature passed the Recreational Use Statute, codified at Tex. Civ. Practice and Remedies Code Chapter 75. *See University of Texas at Arlington v. Williams*, 459 S.W.3d 48, 54 (Tex. 2015). Although portions of the Recreational Use Statute apply to non-agricultural land, to government entities, and to certain utilities and electric companies, the scope of this article will focus only on the portions applicable to agricultural land.

A. Statutory Definitions

The statute includes three definitions related to provisions regarding agricultural land.

1. Agricultural land

Under this statute, there are three types of land that are considered agricultural land. *See* Texas Civ. Practice & Remedies Code 75.001.

First, land suitable for “use in production of plants and fruits grown for human or animal consumption, or plants grown for the production of fibers, floriculture, viticulture, horticulture, or planting seed” is included. *Id.* at 75.001(1)(B).

Second, land suitable for “forestry and the growing of trees for the purpose of rendering those trees into lumber, fiber, or other items used for industrial, commercial, or personal consumption” is deemed to fall within the definition. *See id.* at 75.001(1)(B).

Finally, land suitable for domestic or native farm or ranch animals to be kept for use or profit is covered. *See id.* at 75.001(1)(C).

This seemingly broad definition covers not only land where production agriculture is taking place but also any place that is found “suitable for” the specified activities listed.

2. Premises

The definition states that premises include land, roads, water, watercourses, private ways and buildings, structures, machinery, and equipment attached to or located on the land, road, water, watercourse, or private way. *See* Texas Civ. Practice & Remedies Code 75.001(2). This definition becomes important in cases when people are injured on or near the premises where they intend to undertake in a recreational activity. For example, courts have relied on this definition to apply the Recreational Use Statute where persons have been injured walking to a swimming area (*Karl*, 2015 WL 1869463); walking through a clubhouse after playing a round of golf (*City of Plano v. Homoky*, 294 S.W.3d 809, 816 (Tex. Ct. App. – Dallas 2009); and walking from the park to a parking lot (*Dubois v. Harris Cnty.*, 866 S.W.2d 787, 789 (Tex. Ct. App. Houston [1st Dist.] 1993).

3. Recreation

Initially, when the statute was passed in 1965, it applied only to hunting, fishing, and camping. *See University of Texas at Arlington*, 459 S.W.3d 48, 52 (Tex. 2015). The definition was broadened in 1981 to include “activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, and water sports.” *See id.* The Legislature explained that this amendment was necessary because many other recreational activities had gained popularity in the nearly two decades since the statute was originally passed. *See id.* at 53. In 1997, the list was amended again to include bird watching, biking, disc golf, dog walking, and “any other activity associated with enjoying nature or the outdoors.” *See id.* Lastly, in 1999, radio controlled flying was added. *See id.*

The current definition includes activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving (including ATVs and off road vehicles), nature study (including bird watching), cave exploration, water skiing and other water sports, biking, disc golf, walking dogs, radio controlled flying, and any other activity associated with nature or the outdoors. *See* Texas Civ. Practice & Remedies Code 75.001(3). This is an extremely broad definition and a non-exhaustive list of activities that fall within the scope of the statute. *See Karl v. Brazos River*

Authority, 2015 WL 1869463, __ S.W.3d __ (Tex. Ct. App. – Eastland 2015).

B. Requirements for Limited Liability

Essentially, when the statutory requirements are met, a landowner, lessee, occupier, or other person in control of the premises is liable to a plaintiff only if the plaintiff can show gross negligence, intentional conduct, malicious intent, or bad faith. *See* Tex. Civ. Practice and Remedies Code 75.002(d). The applicability of the limited liability can essentially be analyzed in a series of four questions.

1. Is the defendant an owner, occupier, or lessee of the property?

The statutory protection available applies to landowners, lessees, and occupiers of land. This allows a broad protection to each of these classes of people. For example, in *Stephen F. Austin State Univ. v. Flynn*, 228 S.W.3d 653, 658 (Tex. 2007), the court found that although the university had dedicated an easement to the public, because that did not remove ownership of the underlying fee estate, the university was entitled to protections of the statute as an owner of the property.

2. Was the property at issue “agricultural land?”

Here, the court simply determines if the property at issue meets the “agricultural land” definition listed in Section 75.001(1). Please note that portions of this statute apply to land other than agricultural land, but that discussion is beyond the scope of this article.

3. Did the plaintiff engage in or enter for a recreational purpose?

Several court cases have considered whether an injured party “entered the premises for recreation” and, therefore, the act would apply.

First, courts have made clear it is not the parties’ intent or the normal use of the property that controls, but instead, the relevant inquiry is what activity the injured party was engaged in at the time of the injury. *See City of Bellmead v. Torres*, 89 S.W.3d 611, 614 (Tex. 2002). In that case, the plaintiff went to a softball complex to play a competitive game, but was injured while sitting on a swing. The Supreme Court determined that the relevant question was not whether competitive softball qualified as “recreation,” but whether sitting on a swing met the definition. *See id.*

Second, courts have found the following activities to meet the definition of “recreation:” sitting on a swing (*Torres*, 89 S.W.3d at 615); playing outdoor sand volleyball (*Univ. of Tex. Health Sci. Center at Houston v. Garcia*, 346 S.W.3d 220, 225 (Tex. Ct. App. – Houston [14th Dist.] 2011); walking on Marina from shower to a boat (*City of Corpus Christi v. Ferguson*, 2014 WL 4595146 (Tex. Ct. App. – Corpus Christi

2014) (not designated for publication); playing an information soccer game after a picnic at a park (*Garcia v. City of Richardson*, 2002 WL 1752219 (Tex. Ct. App. – Dallas 2002); playing on playground equipment (*Kopplin v. City of Garland*, 869 S.W.2d 433, 441 (Tex. Ct. App. – Dallas 1993); visiting a zoo (*City of Dallas v. Patrick*, 247 S.W.3d 452 (Tex. Ct. App. – Dallas 2011); and bicycling to work (*City of San Antonio v. Peralta*, 476 S.W.3d 653, 658 (Tex. Ct. App. – San Antonio 2015)).

On the other hand, the following activities have failed to meet the definition of “recreation:” spectating at a competitive sporting event (*Williams*, 459 S.W.3d at 55); outdoor weddings (*Sullivan v. City of Ft. Worth*, 2011 WL 1902018 (Tex. Ct. App. – Ft. Worth 2011) (not designated for publication)); and walking through an outdoor area to reach a parking lot (*Vidrine v. Center for Performing Arts at Woodlands*, 2013 WL 5302654 (Tex. Ct. App. – Beaumont 2103) (not designated for publication)).

4. Are one of the three monetary requirements satisfied?

The Recreational Use Statute applies as long as landowners meet one of the three monetary requirements listed in Texas Civil Practice and Remedies Code 75.003(c).

a. *No fee is charged.*

This first option is the simplest. For landowners allowing persons to enter their agricultural land for recreational purposes free of charge, the Recreational Use Statute protections apply. *See id.* 75.003(c)(1).

b. *Taxes are sufficiently greater than fees charged.*

The second option applies where a landowner charges a fee to enter the property, but where the “total charges collected in the previous calendar year for all recreational use of the entire premises of the owner, lessee, or occupant are not more than 20 times the total amount of ad valorem taxes imposed on the premises for the previous calendar year.” *Id.* 75.003(c)(2). Said more simply, a landowner should first calculate all income received from recreational users for the past calendar year. Next, the landowner should calculate the total ad valorem taxes he or she paid for their entire premises the past calendar year. Importantly, courts have made clear that this includes *all* property owned by the landowners, not just that where recreation occurs. *See Howard v. East Texas Baptist University*, 122 S.W.3d 407 (Tex. Ct. App. – Texarkana 2003) (“encompasses the property opened to the public for recreational use and any other real property owned by the party seeking limited liability under the statute; that is, the owner’s *entire* premises.”). So long as the total income calculated is

not 20 times higher than the total taxes paid, the landowner is covered by the statute.

c. Adequate insurance is maintained.

The final option provides that if a landowner carries liability insurance coverage of equal or greater to that described in Texas Civil Practice and Remedies Code 75.004(a), he or she is covered under the statute, regardless of compensation received by recreational users. The required coverage level is \$500,000 for each person, \$1 million for each occurrence of bodily injury, and \$100,000 for each occurrence of property damage. *See* Tex. Civ. Practice and Remedies Code 75.004(a).

Agricultural landowners who elect to meet this option are afforded an additional benefit. The statute provides a limit on the damage amount that may be awarded in cases where an agricultural landowner, lessee, or occupant carried this level of insurance. *See id.* “The total liability of an owner, lessee, or occupant for a single occurrence is limited to \$1 million, and the liability also is subject to the limits for each single occurrence of bodily injury or death and each single occurrence for injury to or destruction of property states in this subsection. *Id.*”

C. Exceptions

When the statutory requirements are met and the Recreational Use Statute applies, the only exceptions that exist are where a defendant is grossly negligent, acts willfully or wantonly, acts with malicious intent, or acts in bad faith. *See* Tex. Civ. Practice and Remedies Code 75.002 (a-d).

Courts have explained that a landowner has no duty to warn or protect recreational users from obvious defects and conditions on the land. “The owner may assume that the recreational user needs no warning to appreciate the dangers of natural conditions, such as a sheer cliff, a rushing river, or even a concealed rattlesnake.” *State v. Shumake*, 199 S.W.3d 279, 288. Conversely, a landowner can be liable for gross negligence if the landowner creates a condition the recreational user would not reasonably expect to encounter on the property in the course of the permitted use. *See id.*; *e.g. City of Waco v. Kirwan*, 298 S.W.3d 618, 626 (Tex. 2009) (a landowner under the recreational use statute does not generally owe a duty to warn or protect against dangers of natural conditions on the land and, therefore, failing to do so will not ordinarily meet the standard of gross negligence.)

Courts interpreting the gross negligence exception have explained that gross negligence includes two elements. First, the act or omission, when viewed objectively, must involve an extreme degree of risk, considering the probability and severity of potential harm to others. *See Howard*, 122 S.W.3d at 412. Second, the actor must have actual, subjective

awareness of the risk involved, but proceed in conscious indifference to the rights, safety, and welfare of others. *See id.* Put another way, “the plaintiff must show that the defendant knew about the peril, but his acts or omissions demonstrate that he did not care.” *Louisiana-Pac. Corp. v. Andrade*, 19 S.W.3d 245, 246-47 (Tex. 1999).

In 2015, the Texas Supreme Court held that allegations, if taken as truthful, in *Peralta*, 476 S.W.3d at 660-61, constituted a claim of gross negligence. The plaintiff was injured when he rode his bike into an uncovered sewer hole. *See id.* at 655. He alleged that the defendant knew the cover plate was missing, knew that a missing plate created a grave risk of harm, and was consciously indifferent to his safety by failing to replace the plate or post warnings. *See id.* at 659.

D. Summary and Key Points

Landowners who intend to open their property to allow recreational activities should carefully consider whether the protections of the Recreational Use Statute will apply. This statute, unlike the Agritourism Act or Farm Animal Liability Act, requires no signage or signed documents. Instead, owners, lessees, and occupiers of agricultural land need only ensure they meet one of the three monetary requirements listed in the statute.

III. AGRITOURISM ACT

In 2015, the Texas Legislature passed, and Governor Perry signed, Senate Bill 610, known as the Texas Agritourism Act, codified as Texas Civil Practice and Remedies Code Chapter 75A. This Act offers important protections of which Texas landowners and attorneys should be aware.

Essentially, this statute provides that an “agritourism entity” is not liable to any person for injuries or damages to an “agritourism participant” injured on “agricultural land” if either the required signage is posted or a written agreement containing the required language is signed prior to the activity.

A. Statutory Definitions

The statute offers definitions of the following terms:

1. Agricultural land

Agricultural land is defined as land suitable for “use in production of plants and fruits grown for human or animal consumption, or plants grown for the production of fibers, floriculture, viticulture, horticulture, or planting seed” or “domestic or native farm or ranch animals kept for use or profit.” *See* Texas Civ. Practice & Remedies Code 75A.001(1). This seemingly broad definition includes all land suitable for

growing crops and raising livestock, not just that land upon which these activities are being conducted.

An important omission exists when this definition of “agricultural land” is compared to the definition of the same term under the Texas Recreational Use Statute. The two definitions are identical, except for one important clause. Omitted from the definition included in the Agritourism Act is forestry land. Under the Recreational Use statute, the “agricultural land” definition includes “forestry and the growing of trees for the purpose of rendering those trees into lumber, fiber, or other items used for industrial commercial, or personal consumption.” *See* Texas Civ. Practice & Remedies Code 75.001(1). The omission of this portion of the definition certainly appears intentional, or an important oversight by the Legislature. When one considers that the drafters of the Agritourism Act expressly referred back to definitions in the Recreational Use Statute when defining “premises” and “recreation,” it appears curious that they did not do so with regard to agricultural land, unless they intended the Agritourism Act not to apply to forestry land. *Compare* Tex. Civ. Practice & Remedies Code 75A.001(6) and (7) with 75A.001(1).

2. Agritourism activity

Any activity occurring on agricultural land for the purpose of recreational or educational purposes meets the definition of an “agritourism activity.” *See* Texas Civ. Practice & Remedies Code 75A.001(2). Compensation paid is irrelevant to whether an activity meets this definition. *See id.* Again, this appears to be a broad-reaching definition, including more than might typically be thought of as “agritourism” such as corn mazes and pumpkin patches.

3. Agritourism entity

Agritourism entities are defined as any person “in the business of providing an agritourism activity.” *See* Texas Civ. Practice & Remedies Code 75A.001(3). While in the Legislature, the bill was amended to expressly state an agritourism entity includes “a person who displays exotic animals to the public on agricultural land.” *See id.* Again, compensation is irrelevant in determining whether a business qualifies under this definition. *See id.*

4. Agritourism participant

An agritourism participant is anyone who engages in an agritourism activity. *See* Texas Civ. Practice & Remedies Code 75A.001(4). Importantly, this definition expressly excludes employees of the agritourism entity. *See id.* If an employee is injured, the Agritourism Act’s protections do not apply. Whether the Farm Animal Liability Act is applicable to employees has been often litigated, *see* Section IV(C),

supra, so by including this limitation in the definition of agritourism participant, the Legislature likely intended to avoid that controversy.

5. Agritourism participant injury

An “agritourism participant injury” is simply defined as an injury sustained by an agritourism participant, including bodily injury, emotional distress, death, property damage, or any other loss resulting from participation in an agritourism activity. *See* Texas Civ. Practice & Remedies Code 75A.001(5).

6. Premises

The definition of “premises” refers back to the definition of this term in the Recreational Use Statute. *See* Texas Civ. Practice & Remedies Code 75A.001(6). Specifically, premises includes land, roads, water, watercourses, private ways, buildings, structures, machinery, and equipment attached to or located on the land, road, water, watercourse, or private way. *See* Texas Civ. Practice & Remedies Code 75.001(2).

7. Recreation

Again, the Legislature simply referred to the way “recreation” is defined in the Recreational Use Statute as being applicable to the Texas Agritourism Act as well. *See* Texas Civ. Practice & Remedies Code 75A.001(7). The broad definition includes activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving (including ATVS and off road vehicles), nature study (including bird watching), cave exploration, water skiing, other water sports, biking, disc golf, walking dogs, radio controlled flying, and any other activity associated with nature or the outdoors. *See* Texas Civ. Practice & Remedies Code 75.001(3). Again, this is an extremely broad definition. For discussion of cases interpreting this provision in the context of the Recreational Use Statute, refer to Part II(B)(3) above.

B. Requirements for Limited Liability

As noted above, if an agritourism participant suffers an agritourism injury on agricultural land, an agritourism entity is not liable to any person for damages if one of the following two options are met: (1) required signage is posted; or (2) a release including required language is obtained. *See* Texas Civ. Practice & Remedies Code 75A.002.

1. Required Signage

The first option in order to qualify for limited liability is for a landowner to post warning signs. *See* Texas Civ. Practice & Remedies Code 75A.002(1). Under the statute, the signs must be clearly visible on or near any premises where an agritourism activity occurs.

See Texas Civ. Practice & Remedies Code 75A.003.

The sign must contain the following language:

“WARNING: UNDER TEXAS LAW (CHAPTER 75A, CIVIL PRACTICE AND REMEDIES CODE), AN AGRITOURISM ENTITY IS NOT LIABLE FOR ANY INJURY TO OR DEATH OF AN AGRITOURISM PARTICIPANT RESULTING FROM AN AGRITOURISM ACTIVITY.” Texas Civ. Practice & Remedies Code 75A.003.

One obvious benefit of electing to utilize the required signage is that once the signs are posted in the proper place, the landowner’s work is done. He or she is not required to obtain signatures on releases before persons enter the property for a recreational or educational activity. Further, if a person brings an unexpected guest with him or her, the sign will likely be sufficient warning to that person of limited liability, regardless of the lack of a signed waiver or agreement.

2. Required release language

The alternative option is for the agritourism entity to obtain a signed, written agreement from participants. See Texas Civ. Practice & Remedies Code 75A.004. The agreement must be (1) signed before participation in an agritourism activity; (2) signed by the participant or the participant’s guardian if he or she is a minor; (3) separate from any other agreement between the participant and entity except a different warning, consent, or assumption of risk, (4) printed in at least 10-point bold type; and (5) contain the following language:

“AGREEMENT AND WARNING: I UNDERSTAND AND ACKNOWLEDGE THAT AN AGRITOURISM ENTITY IS NOT LIABLE FOR ANY INJURY TO OR DEATH OF AN AGRITOURISM PARTICIPANT RESULTING FROM AGRITOURISM ACTIVITIES. I UNDERSTAND THAT I HAVE ACCEPTED ALL RISK OF INJURY, DEATH, PROPERTY DAMAGE, AND OTHER LOSS THAT MAY RESULT FROM AGRITOURISM ACTIVITIES.” Texas Civ. Practice & Remedies Code 75A.004.

Although this option will require more paperwork on the part of the agritourism entity, it may provide an important protection in the event that minor children are injured on the property. The Texas Supreme Court has not ruled on whether a liability release signed by a parent on behalf of a minor child is enforceable. At least

one Texas appellate court has held that they are not. See *Munoz v. II Jaz Inc.*, 863 S.W.2d 207 (Tex. App. Houston 1993). The rationale behind this decision is that Texas law seeks to be especially protective of children and that parents should not be able to waive a child’s personal injury claims. Given this unsettled legal question, the fact that the Agritourism Act expressly states that a guardian may release liability on behalf of a minor if the written release option is used may prove to be important if seeking to enforce a release against an injured minor.

C. Exceptions

The limitation on liability offered by this statute is not, however, unlimited. Numerous exceptions apply that will likely result in many case-by-case determinations as to whether the Agritourism Act will apply. These exceptions are as follows:

1. The protections do not apply if the injury was proximately caused by the entity’s “negligence evidencing a disregard for the safety of the agritourism participant.” Texas Civ. Practice & Remedies Code 75A.002(b)(1)(A).
2. The protections do not apply if the injury is proximately caused by a dangerous condition of which the entity had actual knowledge or reasonably should have known on the land, facilities, or equipment used in the activity. See Texas Civ. Practice & Remedies Code 75A.002(b)(1)(B)(i).
3. No limited liability exists if the injury is proximately caused by the dangerous propensity of a particular animal used in the activity not disclosed to the participant of which the entity has actual knowledge or reasonably should have known. See Texas Civ. Practice & Remedies Code 75A.002(b)(1)(B)(ii).
4. Protections do not apply if the injury is proximately caused by the entity’s failure to adequately train an employee actively involved in an agritourism activity. See Texas Civ. Practice & Remedies Code 75A.002(b)(1)(C).
5. No limited liability exists for injuries intentionally caused by the agritourism entity. See Texas Civ. Practice & Remedies Code 75A.002(b)(2).

D. Summary and Key Points

Landowners are often looking for ways to limit their potential liability to persons injured on their property. The Texas Agritourism Act offers free limited liability if its requirements are followed. The broad

definition of “agritourism activity” and “agricultural land” appear to indicate these protections will extend well beyond those activities typically thought of as constituting agritourism, and may extend to persons who enter into a hunting lease agreement and are injured while hunting on private land.

Importantly, the Agritourism Act expressly states that it is in addition to all other limitations of liability. This means that other limited liability statutes such as the Recreational Use Statute and Farm Animal Liability Act, *see* Sections III and IV, *supra*, could also apply to protect a landowner. Further, valid liability releases may still be enforceable as well.

In order to ensure protection in as many circumstances as possible, it is advisable that landowners comply with both the posted sign and written release. There are potential advantages to both options, all of which can be taken advantage of if both are utilized.

IV. FARM ANIMAL LIABILITY ACT

Initially passed in 1995 as the “Texas Equine Activity Limitation of Liability Act,” Texas is one of forty-six states to have passed this type of legislation. All but California, Maryland, Nevada, and New York have limited liability statutes for equine activities, although they greatly differ in detail. *See* Julie Fershtman, *Equine Activity Liability Acts* (September 24, 2015), available at <https://www.irmi.com/docs/default-source/afis-handouts/equine-activity-liability-acts.pdf?sfvrsn=12>.

The purpose of these types of statutes is to encourage participation in equine activities, to ensure the public is aware of inherent risks of equine activities, and to provide limited liability to equine facility operators. *See* Terrance J. Centner, *The New Equine Liability Statutes*, 62 Tenn. L. Rev. 997, 1008 (Summer 1995)

In 2011, the Texas Legislature amended the statute to apply to not only equine animals, but to all farm animals. *See* Texas Senate Bill 479, 82nd Leg. Session, 2011. The amendment became effective June 17, 2011 and applies to all causes of action accruing thereafter. *See id.* This expanded statute is important for all farm and equine animal owners as well as anyone sponsoring a livestock or horse show or event, as it may offer limited liability if a person is injured during a farm animal activity.

A. Statutory Definitions

The statutory definitions can be divided into three categories: animals, activities, and persons.

1. Animals

- a. *Equine animal*: An equine animal means horses, ponies, mules, donkeys or hinnys.

Tex. Civ. Practice and Remedies Code 87.001(2).

- b. *Farm animal*: A farm animal means equines, bovines, sheep, goats, pigs, hogs, ratites (including ostriches, rheas and emus), and chickens and other fowl. *See* Tex. Civ. Practice and Remedies Code 87.001(2-a).
- c. *Livestock animal*: A livestock animal means an animal raised for human consumption or a farm animal. Tex. Civ. Practice and Remedies Code 87.001(6).

2. Activities

- a. *Farm animal activity*: This term means farm animal shows, fairs, competitions, performances, rodeos, events, or parades involving a farm animal; training or teaching activities involving farm animals; boarding farm animals; riding, inspecting, evaluating, handling, loading, or unloading farm animals belonging to another; permitting a prospective buyer to ride, inspect, evaluate, handle, load, or unload a farm animal; or informal activities such as riding trips or hunts; shoeing horses; and veterinarians examining or administering medical treatments. *See* Tex. Civ. Practice and Remedies Code 87.001(3).
- b. *Engages in a farm animal activity*: This term means riding, training, driving, loading, unloading, assisting in the medical treatment of, being a passenger on, or assisting a participant or sponsor with a farm animal. Expressly excluded are spectators at a farm animal activity unless the spectator is in an unauthorized area and in immediate proximity to the farm animal activity. *See* Tex. Civ. Practice and Remedies Code 87.001(1).
- c. *Livestock show*: A non-profit event with at least two species or breeds of livestock gathered together for exhibition or competition is deemed a livestock show under the Farm Animal Liability Act. *See* Tex. Civ. Practice and Remedies Code 87.001(7).

3. Persons

- a. *Farm animal professional*: This term means persons engaged in compensation for the instruction of a participant or rent to a participant of the animal for the purpose of riding, driving, or being a passenger on the animal; renting equipment or tack to a participant; examining or administering medical treatment to a farm animal as a

- veterinarian, and providing veterinarian and farrier services. *See* Tex. Civ. Practice and Remedies Code 87.001(5).
- b. *Livestock producer*: This term includes anyone who owns, breeds, raises, or feeds livestock animals. Tex. Civ. Practice and Remedies Code 87.001(6-a).
 - c. *Farm animal activity sponsor*: The statute defines this as a person or group who sponsors, organizes or provides facilities for a farm animal activity, including facilities for a pony club, 4-H club, hunt club, riding club, therapeutic riding program, or high school or college class, without regard to compensation; or an operator, instructor, or promoter for facilities, including stables, clubhouses, pony rides, fairs, or arenas at which a farm animal activity is held. Tex. Civ. Practice and Remedies Code 87.001(4).
 - d. *Livestock show sponsor*: Similar to the definition above, this term means a group or association that organizes or sanctions a livestock show including political subdivisions and certain nonprofit organizations. *See* Tex. Civ. Practice and Remedies Code 87.001(8).
 - e. *Participant*: This definition is broken into two parts. The first applies to farm animal activities and means a person who engages in the activity without regard to the person's amateur or professional status and without regard to whether the person pays for the activity. The second portion applies to livestock shows and means a person who competes in a livestock show by showing an animal on a competitive basis or a person who assists that exhibitor. Tex. Civ. Practice and Remedies Code 87.001(9).

B. Requirements for Limited Liability

In its most basic terms, the Farm Animal Liability Act provides that defendants are not liable for property damage, injury, or death of a participant in a farm animal activity or livestock show if the injury results from risks inherent to these activities. Further, there are required signage and contractual language that must be utilized by farm animal and livestock show professionals.

1. Situations where liability is limited.

Under this statute, "any persons," including those categories identified in the statute, are not liable for property damage, personal injury or death, of a participant in a farm animal activity or livestock show if that damage results from "the dangers or conditions that are an inherent risk" of a farm animal activity or

livestock show. The statute expressly identifies examples of these inherent risks. First, damages caused by a propensity of a farm or livestock animal to behave in ways that may result in personal injury or death to a person around it is included on the list. Next, injuries caused by the unpredictability of an animal's reaction to sound, sudden movement, or unfamiliar location, person, or other animal is listed as an example. Also included are damages caused by land conditions and hazards when the activity involves an equine animal, collisions between the animal and another animal or object, and the potential of a participant to act negligently that could contribute to injury of another participant. *See* Tex. Civ. Practice and Remedies Code 87.003.

The Texas Supreme Court has taken an expansive view with regard to the inherent conditions for which limited liability is available. In *Loftin v. Lee*, 341 S.W.3d 352 (Tex. 2011), the court explained that the statute reflects an "expansive view" of inherent risk. The examples listed in the statute cover a broad range of situations and are not exclusive. "The Act simply cannot be fairly read to limit inherent risks to those which are unavoidably associated with equine behavior. Construed so narrowly, the Act would accomplish nothing." *Id.* *See also Little v. Needham*, 236 S.W.3d 328 (Tex. Ct. App. – Houston 1st Dist. 2007) (court found risk to be inherent where plaintiff injured when horse collided with a tree); *See Gamble v. Peyton*, 182 S.W. 1 (Tex. Ct. App. – Beaumont 2005) (fire ants biting a horse and causing it to buck was an inherent risk of an equine activity).

2. Required warning language for farm animal professionals

As previously mentioned, the statute requires farm animal professionals and livestock show sponsors to post certain signage and include specific language in any written contracts into which they enter.

For farm animal professionals, the statute requires a sign be posted and maintained in a clearly visible location if the person manages or controls a stable, corral, or arena where the professional conducts a farm animal activity. *See* Tex. Civ. Practice and Remedies Code 87.001(5)(a-c). The same language must be clearly readable in every written contract that the farm animal professional enters into with a participant for professional services, instruction, or rental of equipment, tack, or a farm animal. *See id.*

The required language is as follows:

WARNING
UNDER TEXAS LAW (CHAPTER 87,
CIVIL PRACTICE AND REMEDIES
CODE), A FARM ANIMAL
PROFESSIONAL IS NOT LIABLE FOR AN

INJURY TO OR THE DEATH OF A PARTICIPANT IN FARM ANIMAL ACTIVITIES RESULTING FROM THE INHERENT RISKS OF FARM ANIMAL ACTIVITIES.

3. Required warning language for livestock show sponsors

The statute also requires a livestock show sponsor to post and maintain signage if that person manages or controls a stable, barn, or arena at which a livestock show is conducted. Again, the sign must be posted in a clearly visible location near the stable, barn or arena. *See* Tex. Civ. Practice and Remedies Code 87.001(5)(d-f). The same language must be included in every written contract that the sponsor enters into with a livestock show participant. This warning must be clearly readable. *See id.*

The required language is as follows:

WARNING

UNDER TEXAS LAW (CHAPTER 87, CIVIL PRACTICE AND REMEDIES CODE), A LIVESTOCK SHOW SPONSOR IS NOT LIABLE FOR AN INJURY TO OR THE DEATH OF A PARTICIPANT IN A LIVESTOCK SHOW RESULTING FROM THE INHERENT RISKS OF LIVESTOCK SHOW ACTIVITIES.

C. Exceptions

Like the Agritourism Act, the Farm Animal Liability Statute includes a list of exceptions. These include situations where:

1. Injury or death was caused by faulty equipment or tack that was provided by the defendant and knew or should have known it was faulty. *See* Tex. Civ. Practice and Remedies Code 87.001(4)(1).
2. The defendant provided the farm animal to the participant and the defendant failed to make a reasonable effort to determine the ability of the participant to safely engage in the activity. *See* Tex. Civ. Practice and Remedies Code 87.001(4)(2). The Supreme Court clarified that the Act does not require “a formal, searching injury.” *See Loftin v. Lee*, 341 S.W.3d 352 (Tex. 2011) In that case, the fact that the defendant knew the plaintiff raised horses for years, had no trouble mounting the horse, and seemed to be getting along fine on the ride was sufficient inquiry to defeat the application of this exception. *See id.*
3. The injury was caused by a latent condition of the land and the defendant knew of such

condition but failed to warn the participant. *See* Tex. Civ. Practice and Remedies Code 87.001(4)(3). *See Gamble v. Peyton*, 182 S.W. 1 (Tex. Ct. App. – Beaumont 2005) (fire ants on the property were not proof of a dangerous latent condition on the land and, even if they were, the defendant’s statement that he was having a lot of trouble with ants was sufficient warning to the rider).

4. The defendant committed an act or omission with willful or wanton disregard for the safety of the participant, which caused the injury. *See* Tex. Civ. Practice and Remedies Code 87.001(4). Courts have taken a limited view of this exception, requiring conscious disregard for the participant’s safety in order for the exception to apply. *See Little v. Needham*, 236 S.W.3d 328 (Tex. Ct. App. – Houston 1st Dist. 2007) (plaintiff claimed wanton and willful disregard where defendants had never owned a stable before and did not conduct a safety inspection; court found this not to be wanton or willful conduct, which required a conscious indifference to the welfare of an injured person).
5. The defendant acted intentionally in causing the injury. *See* Tex. Civ. Practice and Remedies Code 87.001(4)(5).
6. The defendant allowed or invited a non-competitor to participate in an activity connected with livestock and the injury resulted from this participation. *See* Tex. Civ. Practice and Remedies Code 87.001(4)(6).

Oftentimes, these exceptions may lead to factual questions sufficient to prevent a defendant from being awarded summary judgment. For example, in *Johnson v. Smith*, 88 S.W.3d 729, 732 (Tex. Ct. App. – Corpus Christi 2002), the court found factual questions existed as to whether the horse owner reasonably determined the ability of the plaintiff to safely engage in the activity at issue or whether the horse owner acted willfully in failing to warn the independent contractor. The facts leading to this decision were the stallion that injured the plaintiff was kept separately, the other employees were afraid of the horse, and the stallion was extremely and increasingly aggressive. Evidence showed that he lunged at people who got near him and were not handled much because of this. Thus, this question was referred back for a jury trial. *See also Hilz v. Riedel*, 2012 WL 2135648 (Tex. Ct. App. – Ft. Worth June 14, 2012) (not designated for publication) (factual issue existed with regard to the defendant’s effort into determining the ability of the participant to safely engage in the activity).

One additional issue has frequently made its way to the courts. Does the Farm Animal Liability Act apply if

the injured party is an employee or independent contractor of the farm animal or livestock professional? The First Circuit Court of Appeals in Houston found that the limited liability does not apply when the injured party is an employee. *See Dodge v. Durdin*, 187 S.W.3d 523, 530 (Tex. Ct. App. Houston [1st Dist.] 2002). The *Dodge* court offered broad language that the Farm Animal Liability Act applies to consumers, not employees. *See id.*

Both the Corpus Christi and Fourteenth District Court of Appeals have held that the statute does apply when the injured party is an independent contractor. *See Johnson v. Smith*, 88 S.W.3d 729, 732 (Tex. Ct. App. – Corpus Christi 2002) (independent contractor was injured while handling stallions during breeding); *Young v. McKim*, 373 S.W.3d 776 (Tex. Ct. App. – Houston [14th Dist.] 2012) (independent contractor was kicked by horse).

To date, the Texas Supreme Court has not addressed this issue.

D. Summary and Key Points

In very basic summary, the Farm Animal Liability Act provides that defendants will not be liable for property damage, injury, or death to participants in farm animal activities or livestock shows resulting from the inherent dangers associated with farm animal activities or livestock shows. Any person who is involved in a farm animal activity or livestock show should ensure that the proper signage is posted and contractual language is included where necessary so that the limited liability protections are available if a lawsuit arises.

