

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NOS. 1298 & 1180

96TH GENERAL ASSEMBLY

5290L.02P

D. ADAM CRUMBLISS, Chief Clerk

---

## AN ACT

To repeal section 537.067, RSMo, and to enact in lieu thereof six new sections relating to tort actions for damages.

---

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 537.067, RSMo, is repealed and six new sections enacted in lieu thereof, to be known as sections 537.067, 537.850, 537.853, 537.856, 537.859 and 537.862, to read as follows:

537.067. 1. In all tort actions for damages[, if a defendant is found to bear fifty-one percent or more of fault, then such defendant shall be jointly and severally liable for the amount of the judgment rendered against the defendants. If a defendant is found to bear less than fifty-one percent of fault, then the defendant shall only be responsible for the percentage of the judgment for which the defendant is determined to be responsible by the trier of fact; except that, a party is responsible for the fault of another defendant or for payment of the proportionate share of another defendant if any of the following applies:

(1) The other defendant was acting as an employee of the party;

(2) The party's liability for the fault of another person arises out of a duty created by the federal Employers' Liability Act, 45 U.S.C. Section 51.

2. The defendants shall only be severally liable for the percentage of punitive damages for which fault is attributed to such defendant by the trier of fact.] **the liability of each defendant for compensatory or punitive damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of damages allocated to that defendant in direct proportion to that defendant's percentage of fault. A separate several judgment shall be rendered against that defendant for that amount.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17           **2. To determine the amount of judgment to be entered against each defendant, the**  
18 **court shall multiply the total amount of damages recoverable by the plaintiff with regard**  
19 **to each defendant by the percentage of each defendant's fault. That amount shall be the**  
20 **maximum recoverable against that defendant.**

21           **3. In assessing percentages of fault the trier of fact shall consider the fault of all**  
22 **persons or entities who contributed to the alleged injury or damages, regardless of whether**  
23 **the person or entity was, or could have been, named as a party to the suit.**

24           **4. Negligence or fault of a nonparty may be considered if the plaintiff entered into**  
25 **a settlement agreement with the nonparty or if the defending party gives notice before trial,**  
26 **in accordance with requirements established by court rule, that a nonparty was wholly or**  
27 **partially at fault. Assessments of percentages of fault of nonparties shall be used only in**  
28 **the determination of the percentage of fault of named parties. Where fault is assessed**  
29 **against nonparties under this section, findings of fact shall not subject any nonparty to**  
30 **liability in any action or be introduced as evidence of liability in any action.**

31           [3.] **5. In all tort actions, no party may disclose to the trier of fact the impact of this**  
32 **section.**

**537.850. 1. Sections 537.850 to 537.862 shall be known and may be cited as the**  
2 **"Agritourism Promotion Act".**

3           **2. As used in sections 537.850 to 537.862, the following terms shall mean:**

4           **(1) "Agritourism activity", any activity which allows members of the general public**  
5 **for recreational, entertainment, or educational purposes to view or enjoy rural activities,**  
6 **including but not limited to farming activities, ranching activities, or historic, cultural, or**  
7 **natural attractions. An activity may be an agritourism activity whether or not the**  
8 **participant pays to participate in the activity. An activity is not an agritourism activity if**  
9 **the participant is paid to participate in the activity;**

10          **(2) "Department", the state department of agriculture;**

11          **(3) "Director", the director of the department of agriculture;**

12          **(4) "Inherent risks of a registered agritourism activity", those dangers or**  
13 **conditions which are an integral part of such agritourism activity, including but not limited**  
14 **to certain hazards such as surface and subsurface conditions; natural conditions of land,**  
15 **vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers**  
16 **of structures or equipment ordinarily used in farming or ranching operations. Inherent**  
17 **risks of a registered agritourism activity also includes the potential of a participant to act**  
18 **in a negligent manner that may contribute to injury to the participant or others, such as**  
19 **failing to follow instructions given by the registered agritourism operator or failing to**  
20 **exercise reasonable caution while engaging in the registered agritourism activity;**

21 (5) "Participant", any person who engages in a registered agritourism activity;

22 (6) "Registered agritourism activity", any agritourism activity that is registered  
23 with the director of the department of agriculture under section 537.853, and any rules  
24 promulgated thereunder;

25 (7) "Registered agritourism location", a specific parcel of land which is registered  
26 with the director of the department of agriculture under section 537.853, and any rules  
27 promulgated thereunder, and where a registered agritourism operator engages in  
28 registered agritourism activities;

29 (8) "Registered agritourism operator", any person who is engaged in the business  
30 of providing one or more agritourism activities and is registered with the director of the  
31 department of agriculture under section 537.853, and any rules promulgated thereunder.

537.853. 1. Any person who is engaged in the business of providing one or more  
2 agritourism activities may register with the director of the department of agriculture. The  
3 registration shall contain all of the following:

4 (1) Information describing the agritourism activity which the person conducts or  
5 intends to conduct;

6 (2) Information describing the location where the person conducts or intends to  
7 conduct such agritourism activity.

8 2. The department shall maintain a list of all registered agritourism operators, the  
9 registered agritourism activities conducted by each operator, and the registered  
10 agritourism location where the operator conducts such activities. Such list shall be made  
11 available to the public. The department shall promote and publicize registered agritourism  
12 operators, activities, and locations to advance the purpose of sections 537.850 to 537.862  
13 by promoting and encouraging tourism.

14 3. Registration under this section shall be for a period of two years.

15 4. A registration fee not to exceed one hundred dollars may be imposed on an  
16 applicant to cover the actual administrative costs associated with such registration under  
17 this section.

537.856. 1. At every registered agritourism location, the registered agritourism  
2 operator shall post and maintain signage which contains the warning notice specified in  
3 subsection 3 of this section. The requirements of this section shall be deemed satisfied if  
4 such signage is placed in a clearly visible location at or near the registered agritourism  
5 location. The warning notice shall appear on the sign in black letters, with each letter to  
6 be at least one inch in height.

7           **2. Every written contract entered into by a registered agritourism operator for the**  
8 **providing of a registered agritourism activity shall contain in clearly readable print the**  
9 **warning notice and language specified in subsection 3 of this section.**

10           **3. The required signage under this section shall contain the following warning**  
11 **notice:**

12           **"WARNING: Under Missouri law, there is no liability for an injury or death of a**  
13 **participant in a registered agritourism activity conducted at this registered agritourism**  
14 **location if such injury or death results from the inherent risks of such agritourism activity.**  
15 **Inherent risks of agritourism activities include, but are not limited to, the potential of you**  
16 **as a participant to act in a negligent manner that may contribute to your injury or death**  
17 **and the potential of another participant to act in a negligent manner that may contribute**  
18 **to your injury or death. You are assuming the risk of participating in this registered**  
19 **agritourism activity."**

20           **4. Upon request, the registered agritourism operator shall provide to any**  
21 **participant a written description of the registered agritourism activity, as set forth in the**  
22 **registration under section 537.853 for which sections 537.850 to 537.862 limits the**  
23 **registered agritourism operator's liability at the registered agritourism location.**

**537.859. 1. Any participant is assuming the inherent risks of a registered**  
2 **agritourism activity when such participant engages in such agritourism activity. Except**  
3 **as provided in subsection 2 of this section, a registered agritourism operator is not liable**  
4 **for injury to or death of a participant resulting from the inherent risks of agritourism**  
5 **activities so long as the warning contained in section 537.856 is posted as required and,**  
6 **except as provided in subsection 2 of this section, no participant or participant's**  
7 **representative shall maintain an action against or recover from a registered agritourism**  
8 **operator for injury, loss, damage, or death of the participant resulting exclusively from any**  
9 **of the inherent risks of agritourism activities.**

10           **2. Nothing in sections 537.850 to 537.862 shall prevent or limit the liability of a**  
11 **registered agritourism operator if the registered agritourism operator:**

12           **(1) Injures the participant by willful or wanton conduct;**

13           **(2) Has actual knowledge or should have known of a dangerous condition in the**  
14 **facilities or equipment used in the registered agritourism activity and does not make such**  
15 **dangerous condition known to a participant and such dangerous condition causes the**  
16 **participant to sustain injuries; or**

17           **(3) Fails to use that degree of care that an ordinarily careful and prudent person**  
18 **would use under the same or similar circumstances.**

19           **3. In any action for damages for personal injury, death, or property damage arising**  
20 **from the operation of a registered tourism activity in which an owner or operator is named**  
21 **as a defendant, it shall be an affirmative defense to that liability that:**

22           **(1) The injured person assumed the risk;**

23           **(2) The injured person deliberately disregarded conspicuously posted signs, verbal**  
24 **instructions, or other warnings regarding safety measures during the activity; or**

25           **(3) Any equipment, animals, or appliance used by the injured person during the**  
26 **activity were used in a manner or for a purpose other than that for which a reasonable**  
27 **person should have known they were intended.**

**537.862. 1. There is hereby created in the state treasury the "Agritourism Fee**  
2 **Fund", which shall consist of any moneys appropriated to the fund and registration fees**  
3 **collected under section 537.853. The state treasurer shall be custodian of the fund. In**  
4 **accordance with sections 30.170 and 30.180, the state treasurer may approve**  
5 **disbursements. Upon appropriation, money in the fund shall be used solely for the**  
6 **administration of sections 537.850 to 537.862.**

7           **2. Notwithstanding the provisions of section 33.080 to the contrary, any moneys**  
8 **remaining in the fund at the end of the biennium shall not revert to the credit of the**  
9 **general revenue fund.**

10           **3. The state treasurer shall invest moneys in the fund in the same manner as other**  
11 **funds are invested. Any interest and moneys earned on such investments shall be credited**  
12 **to the fund.**

✓