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# AGRICULTURE Pick-Your-Own-Agricultural Products: Provide Limited Liability for Owners and Operators of Farms Specializing in Pick-Your Own Agricultural Products Under Certain Circumstances; Provide for Legislative Findings; Provide for Definitions; Provide for Warnings and Notices; Provide for an Effective Date

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## AGRICULTURE

*Pick-Your-Own-Agricultural Products: Provide Limited Liability for Owners and Operators of Farms Specializing in Pick-Your-Own Agricultural Products Under Certain Circumstances; Provide for Legislative Findings; Provide for Definitions; Provide for Warnings and Notices; Provide for an Effective Date*

CODE SECTIONS: O.C.G.A. § 2-14-150 to -153 (new)  
BILL NUMBER: HB 89  
ACT NUMBER: 388  
GEORGIA LAWS: 2001 Ga. Laws 1249  
SUMMARY: The Act limits the liability of farmers who allow the public to enter their land in order to pick produce directly from the fields. Farmers will no longer be liable for injuries resulting from inherent risks. However, farmers will continue to be liable for undisclosed latent conditions, willful or wanton disregard for safety and intentional injuries. While the Act requires that farmers provide notice to consumers of the limited liability through signs or in written contracts, failure to notify does not disqualify the farmer from claiming limited liability.

EFFECTIVE DATE: April 28, 2001<sup>1</sup>

### *History*

As farmland disappears from the Georgia countryside and is replaced with subdivisions and malls, it becomes increasingly difficult for family farms to stay in business.<sup>2</sup> The Georgia Farm Bureau (GFB), in an attempt to revitalize opportunities for the family farm, suggested legislation which would promote an alternative agricultural enterprise.<sup>3</sup> Small farms may increase revenue by allowing consumers to enter the farm and pick produce directly from the fields.<sup>4</sup> Almost any type of crop could be suitable for this venture, including berries, apples, and even Christmas trees.<sup>5</sup>

Farmers, however, had grown increasingly reluctant to allow consumers onto their property due to liability concerns.<sup>6</sup> Farmers were in essence being held to a standard similar to that imposed on store owners who must make their premises safe—a tall order for a farm which, by definition, must remain in a somewhat natural state.<sup>7</sup> There was also a sense in the agricultural community that many of the suits being brought were frivolous.<sup>8</sup> People are more anxious to sue today, and over more trivial issues than in the past.<sup>9</sup> As a result of this litigiousness, many farmers who would have otherwise been able to

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1. See 2001 Ga. Laws 1249, §§ 2-3, at 1251. The Act took effect upon approval by the Governor. *See id.*, § 2, at 1251.

2. See Electronic Mail Interview with Jay McCants, Legislative Specialist for Georgia Farm Bureau (Apr. 17, 2001) [hereinafter McCants Interview].

3. See *id.* The GFB encourages county farm bureaus to recommend policy changes such as those included in HB 89. If approved at the annual convention, the GFB then lobbies the state legislature for the changes. *See id.*

4. *See id.*

5. See Audio Recording of House Proceedings, Jan. 30, 2001 (final reading), at <http://www.ganet.org/services/leg/audio/2001archive.html> [hereinafter House Audio].

6. See Telephone Interview with Rep. Robert Ray, House District No. 128 (Mar. 28, 2001) [hereinafter Ray Interview].

7. See House Audio, *supra* note 5 (remarks by Rep. Richard Royal).

8. See McCants Interview, *supra* note 2.

9. See Ray Interview, *supra* note 6. Representative Ray says that as a farmer and a landowner who lets hunters lease areas of his property, he is well aware that the fear of litigation runs high in the agricultural community. *See id.* He has noticed a decrease in the number of farmers offering pick-your-own options, and feels this downturn is a direct result of their fear of litigation. *See id.*

“supplement their income from traditional agricultural crops” were choosing to avoid that route, mainly out of fear of litigation.<sup>10</sup>

With the passage of this bill, farmers need no longer fear lawsuits from consumers who are injured by obvious hazards like stepping into a hole and turning an ankle.<sup>11</sup> The bill does not, however, relieve farmers of all liability.<sup>12</sup> They must continue to warn customers of any hidden dangers of which the farmer knows or should know, and they will also be liable for intentionally harming a customer.<sup>13</sup> The bill makes consumers responsible for their own safety in typical backyard scenarios, such as watching out for snakes, or being careful not to bend down and scrape a knee on rocks.<sup>14</sup>

## *HB 89*

### *Introduction*

Representatives Richard Royal, Robert Ray, Penny Houston, Newt Hudson and Gerald Greene of the 164th, 128th, 166th, 156th, and 158th House Districts, respectively, sponsored HB 89.<sup>15</sup> The bill was introduced in the House on January 1, 2001.<sup>16</sup> The House assigned the bill to its Agricultural Committee, which favorably reported the bill as introduced.<sup>17</sup> The House made a floor substitute including a floor amendment to the bill, which then passed unanimously on January 30, 2001.<sup>18</sup> On January 31, 2001, the Senate assigned the bill to its Agricultural Committee, which favorably reported the bill, without changes, on March 6, 2001.<sup>19</sup> The Senate discussed and unanimously

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10. See McCants Interview, *supra* note 2. “Without this added protection, many farmers had previously been unwilling to allow such access for fear of lawsuits.” *Id.*

11. See Ray Interview, *supra* note 6.

12. See House Audio, *supra* note 5 (remarks by Rep. Richard Royal).

13. See *id.*

14. See Ray Interview, *supra* note 6.

15. See HB 89, as introduced, 2001 Ga. Gen. Assem.

16. See State of Georgia Final Composite Status Sheet, HB 89, Mar. 21, 2001.

17. See *id.*

18. See Georgia House of Representatives Voting Record, HB 89 (Jan. 30, 2001); State of Georgia Final Composite Status Sheet, HB 89, Mar. 21, 2001.

19. See State of Georgia Final Composite Status Sheet, HB 89, Mar. 21, 2001.

passed the bill without changes on March 13, 2001.<sup>20</sup> Governor Barnes signed HB 89 into law on April 28, 2001.<sup>21</sup>

### *House Committee and House Floor Passage*

After introduction, the House assigned the bill to its Agriculture Committee, which favorably reported the bill as introduced.<sup>22</sup> The bill underwent a few minor changes in the legislature, resulting in even stronger protection for farmers than the GFB had originally requested. The floor substitute simply expanded the definition of agricultural products found in Code section 2-14-151 to include Christmas trees.<sup>23</sup>

The floor amendment from Representative Larry Walker of the 141st District significantly changed the terms of liability.<sup>24</sup> While both versions specified the type of warnings required to be on the property and in contracts to properly notify customers of the limited liability, the prior version said failure to comply with signage requirements “shall prevent” the farmer from claiming immunity.<sup>25</sup> Representative Walker’s amendment changed the language to assert that failure to comply with signage requirements “shall not” prevent the farmer from claiming limited liability.<sup>26</sup> Even though the change was significant, there was little opposition to the change, and the House adopted the amendment.<sup>27</sup>

Representative Tom Shanahan, a primary proponent on the House floor, rejected a request to amend HB 89 to extend the immunity to all small businesses, reasoning that by its nature, a farm setting differs from a “retail or commercial enterprise” in the level of care and

20. See Georgia Senate Voting Record, HB 89 (Mar. 13, 2001).

21. See 2001 Ga. Laws 1249, § 3, at 1251.

22. See State of Georgia Final Composite Status Sheet, HB 89, Mar. 21, 2001.

23. Compare HB 89, as introduced, 2001 Ga. Gen. Assem., with HB 89 (HFS), 2001 Ga. Gen. Assem.

24. Compare HB 89 (HFS), 2001 Ga. Gen. Assem., with HB 89 (HFSFA), 2001 Ga. Gen. Assem. See House Audio, *supra* note 5 (Walker Amendment).

25. Compare HB 89, as introduced, 2001 Ga. Gen. Assem., with HB 89 (HFS), 2001 Ga. Gen. Assem. See House Audio, *supra* note 5 (remarks by Rep. Larry Walker).

26. Compare HB 89, as introduced, 2001 Ga. Gen. Assem., with HB 89 (HFSFA), 2001 Ga. Gen. Assem. See House Audio, *supra* note 5 (remarks by Rep. Larry Walker). The amendment also deleted other language indicating that those farmers wishing to take advantage of HB 89 liability shelters must comply with required warning signage. Compare HB 89, as introduced, 2001 Ga. Gen. Assem., with HB 89 (HFSFA), 2001 Ga. Gen. Assem.

27. Compare HB 89, as introduced, 2001 Ga. Gen. Assem., with HB 89 (HFSFA), 2001 Ga. Gen. Assem. See House Audio, *supra* note 5 (vote on proposed Walker amendment).

maintenance expected.<sup>28</sup> The House passed HB 89, as substituted and with a floor amendment, on January 30, 2001.<sup>29</sup>

### *The Act*

The Act creates new Code sections 2-14-150 to -153, relating to the sale of agricultural and forestry products.<sup>30</sup> The Act creates new Code section 2-14-150, which recognizes the need to promote agriculture and protect farmers as well as the need to retain agricultural benefits for Georgia citizens.<sup>31</sup> New Code section 2-14-151 defines the agricultural products and relevant participants.<sup>32</sup> New Code section 2-14-152 exempts farmers from liability for injuries or death caused by inherent risks.<sup>33</sup> Finally, new Code section 2-14-153 outlines that notice requirements include signage on the property and warnings in any customer contracts, but that failure to notify will not strip the farmer of any immunity.<sup>34</sup>

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28. See House Audio, *supra* note 5 (remarks by Rep. Tracy Stallings).  
29. See Georgia House of Representatives Voting Record, HB 89 (Jan. 30, 2001); State of Georgia Final Composite Status Sheet, HB 89, Mar. 21, 2001.  
30. See O.C.G.A. § 2-14-150 (Supp. 2001).  
31. See *id.*  
32. See *id.* § 2-14-151.  
33. See *id.* § 2-14-152.  
34. See *id.* § 2-14-153.