Chapter 99E.

Special Liability Provisions.

Article 1.

Equine and Farm Animal Activity Liability.

Part 1. Equine Activity Liability.

§ 99E-1. Definitions.

As used in this Part, the term:

(1) "Engage in an equine activity" means participate in an equine activity, assist a participant in an equine activity, or assist an equine activity sponsor or equine professional. The term "engage in an equine activity" does not include being a spectator at an equine activity, except in cases in which the spectator places himself in an unauthorized area and in immediate proximity to the equine activity.

(2) "Equine" means a horse, pony, mule, donkey, or hinny.

(3) "Equine activity" means any activity involving an equine. Actions to preserve, maintain, or regulate the use of land for equestrian recreation shall not be considered an equine activity.

(4) "Equine activity sponsor" means an individual, group, club, partnership, or corporation, whether the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for an equine activity. The term includes operators and promoters of equine facilities. A landowner who allows equine recreation on the landowner's property shall not be considered an equine activity sponsor.

(5) "Equine professional" means a person engaged for compensation in any one or more of the following:

a. Instructing a participant.

b. Renting an equine to a participant for the purpose of riding, driving, or being a passenger upon the equine.

c. Renting equipment or tack to a participant.

d. Examining or administering medical treatment to an equine.

e. Hooftrimming or placing or replacing horseshoes on an equine.

(5a) "Equine recreation" means use of a landowner's property for an equine activity (i) where the landowner is neither the equine activity sponsor nor the equine professional and (ii) when the landowner permits use of the property without charge. For purposes of this subdivision, "charge" has the meaning set forth in G.S. 38A-2 and G.S. 38A-3.

(6) "Inherent risks of equine activities" means those dangers or conditions that are an integral part of engaging in an equine activity, including any of the following:

a. The possibility of an equine behaving in ways that may result in injury, harm, or death to persons on or around them.

b. The unpredictability of an equine's reaction to such things as sounds, sudden movement, unfamiliar objects, persons, or other animals.

Inherent risks of equine activities does not include a collision or accident involving a motor vehicle.

(7) "Participant" means any person, whether amateur or professional, who engages in an equine activity, whether or not a fee is paid to participate in the equine activity. (1997-376, s. 1; 2013-265, s. 3.2.)

§ 99E-2. Liability.

(a) Except as provided in subsection (b) of this section, an equine activity sponsor, an equine professional, or any other person engaged in an equine activity, including a corporation or partnership, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities and, except as provided in subsection (b) of this section, no participant or participant's representative shall maintain an action against or recover from an equine activity sponsor, an equine professional, or any other person engaged in an equine activity for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of equine activities. In any action for damages against an equine activity sponsor or an equine professional for an equine activity, the equine activity sponsor or equine professional must plead the affirmative defense of assumption of the risk of the equine activity by the participant.

(b) Nothing in subsection (a) of this section shall prevent or limit the liability of an equine activity sponsor, an equine professional, or any other person engaged in an equine activity if the equine activity sponsor, equine professional, or person engaged in an equine activity does any one or more of the following:

(1) Provides the equipment or tack, and knew or should have known that the equipment or tack was faulty, and such faulty equipment or tack proximately caused the injury, damage, or death.

(2) Provides the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity or to safely manage the particular equine.

(3) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission proximately caused the injury, damage, or death.

(4) Repealed by Session Laws 2013-265, s. 3.2, effective August 1, 2013, and applicable to claims arising on or after that date.

(c) Nothing in subsection (a) of this section shall prevent or limit the liability of an equine activity sponsor, an equine professional, or any other person engaged in an equine activity under liability provisions as set forth in the products liability laws.

(d) Nothing in this section shall be construed to conflict with or render ineffectual a liability release, indemnification, assumption, or acknowledgment of risk agreement between a participant and an equine activity sponsor or an equine professional. (1997-376, s. 1; 2013-265, s. 3.2.)

§ 99E-3. Warning required.

(a) Every equine professional and every equine activity sponsor shall post and maintain signs which contain the warning notice specified in subsection (b) of this section. The signs required by this section shall be placed in a clearly visible location on or near stables, corrals, or arenas where the equine professional or the equine activity sponsor conducts equine activities. The warning notice specified in subsection (b) of this section shall be designed by the Department of Agriculture and Consumer Services and shall consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an equine professional

or by an equine activity sponsor for the providing of professional services, instruction, or the rental of equipment or tack or an equine to a participant, whether or not the contract involves equine activities on or off the location or site of the equine professional's or the equine activity sponsor's business, shall contain in clearly readable print the warning notice specified in subsection (b) of this section.

(b) The signs and contracts described in subsection (a) of this section shall contain the following warning notice:

"WARNING

Under North Carolina law, an equine activity sponsor or equine professional is not liable for an injury to or the death of a participant in equine activities resulting exclusively from the inherent risks of equine activities. Chapter 99E of the North Carolina General Statutes."

(c) Failure to comply with the requirements concerning warning signs and notices provided in this Part shall prevent an equine activity sponsor or equine professional from invoking the privileges of immunity provided by this Part. (1997-376, s. 1; 2013-265, s. 3.2.)

§ 99E-4. Exception.

The liability of a landowner for injury or death associated with participation in equine recreation shall be subject to the limitation set forth in G.S. 38A-4 and shall not be subject to this Part. (2013-265, s. 3.3.)

§ 99E-5. Reserved for future codification purposes.

Part 2. Farm Animal Activity Liability.

§ 99E-6. Definitions.

As used in this Part, the term:

(1) "Engage in a farm animal activity" means participate in a farm animal activity, assist a participant in a farm animal activity, or assist a farm animal activity sponsor or farm animal activity professional. The term "engage in a farm animal activity" does not include being a spectator at a farm animal activity, except in cases in which the spectator voluntarily places himself or herself in an unauthorized area and in immediate proximity to the farm animal activity.

(2) "Equine" means a horse, pony, mule, donkey, or hinny.

(3) "Equine activity" means a farm animal activity involving only equines.

(4) "Farm animal" means one or more of the following domesticated animals: cattle, oxen, bison, sheep, swine, goats, horses, ponies, mules, donkeys, hinnies, llamas, alpacas, lagomorphs, ratites, and poultry.

(5) "Farm animal activity" means an activity in which participants engage with one or more farm animals, including, but not limited to, all of the following:

a. Shows, fairs, exhibits, competitions, performances, or parades that involve farm animals.

b. Training or teaching activities, or both, involving farm animals.

c. Boarding farm animals, including normal daily care.

d. Rides, trips, shows, clinics, hunts, parades, games, exhibitions, or other activities of any kind that are sponsored by a farm animal activity sponsor.

e. Testing, riding, inspecting, or evaluating a farm animal belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the farm animal or is permitting a prospective purchaser of the farm animal to ride, inspect, or evaluate the farm animal.
f. Placing or repairing horseshoes, trimming the hooves on a farm animal, or otherwise providing farrier services.
g. Examining or administering medical treatment to a farm animal by a veterinarian.

(6) "Farm animal activity sponsor" means an individual, group, club, partnership, corporation, educational organization, or other legally constituted entity, whether the sponsor is operating for profit or nonprofit, which sponsors, organizes, allows, or provides the facilities for a farm animal activity, including, but not limited to, pony clubs; 4-H clubs; Future Farmers of America organizations; hunt clubs; riding clubs; polo clubs; school-and college-sponsored classes, programs, and activities; therapeutic riding programs; and operators, instructors, and promoters of farm animal facilities, including, but not limited to, stables, clubhouses, ponyride strings, fairs, exhibitions, and arenas at which the activity is held.

(7) "Farm animal facility" means any area used for any farm animal activity, including, but not limited to, farms, ranches, riding arenas, training stables or barns, pastures, riding trails, show rings, polo fields, petting zoos, and other areas or facilities used or provided by farm animal activity sponsors or where participants engage in farm animal activities.

(8) "Farm animal professional" means a person engaged for compensation in any of the following:
a. Instructing a participant.
b. Renting a farm animal to a participant for the purpose of riding, driving, or being a passenger upon the farm animal.
c. Providing daily care of farm animals boarded at a farm animal facility.
d. Renting equipment or tack to a participant.
e. Training a farm animal.
f. Examining or administering medical treatment to a farm animal.
g. Providing farrier services to a farm animal.
h. Hooftrimming or placing or replacing horseshoes on a farm animal.

(9) "Inherent risks of farm animal activities" means those dangers or conditions that are an integral part of engaging in a farm animal activity, including any of the following:
a. The possibility of a farm animal behaving in ways that may result in injury, harm, or death to persons on or around them.
b. The unpredictability of a farm animal's reaction to such things as sounds, sudden movement, unfamiliar objects, persons, or other animals.
c. The risk of contracting an illness due to coming into physical contact with animals, animal feed, animal waste, or surfaces that have been in contact with animal waste.

Inherent risks of farm animal activities does not include a collision or accident involving a motor vehicle.

(10) "Participant" means any person, whether amateur or professional, who engages in a farm animal activity, whether or not a fee is paid to participate in the farm animal activity. (2013-265, s. 3.3.)

§ 99E-7. Liability.

(a) Except as provided in subsection (b) of this section, a farm animal activity sponsor, a farm animal professional, or any other person engaged in a farm animal activity, including a corporation or partnership, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of farm animal activities, and, except as provided in subsection (b) of this section, no participant or participant's representative shall maintain an action against or recover from a farm animal sponsor, a farm animal professional, or any other person engaged in a farm animal activity for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of farm animal activities. In any action for damages against a farm animal activity sponsor or a farm animal professional for a farm animal activity, the farm animal activity sponsor or farm animal professional must plead the affirmative defense of assumption of the risk of the farm animal activity by the participant.

(b) Nothing in subsection (a) of this section shall prevent or limit the liability of a farm animal activity sponsor, a farm animal professional, or any other person engaged in a farm animal activity if the farm animal activity sponsor, professional, or person engaged in a farm animal activity does any one or more of the following:

(1) Provides the equipment or tack and knew or should have known that the equipment or tack was faulty, and such faulty equipment or tack proximately caused the injury, damage, or death.

(2) Provides the farm animal and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the farm animal activity or to safely manage the particular farm animal.

(3) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission proximately caused the injury, damage, or death.

(c) Nothing in subsection (a) of this section shall prevent or limit the liability of a farm animal activity sponsor, a farm animal professional, or any other person engaged in a farm animal activity under liability provisions as set forth in the products liability laws. (2013-265, s. 3.3.)

§ 99E-8. Warning required.

(a) Every farm animal activity sponsor and every farm animal professional shall post and maintain signs which contain the warning notices specified in subsection (b) or (c) of this section. The signs required by this section shall be placed in a clearly visible location on or near stables, corrals, arenas, or other farm animal facilities where the farm animal professional or the farm animal activity sponsor conducts animal activities. The warning notices specified in subsections (b) and (c) of this section shall be designed by the Department of Agriculture and Consumer Services and shall consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by a farm animal professional or by a farm animal activity sponsor for the providing of professional services, instruction, or the rental of equipment or tack or a farm animal to a participant, whether or not the contract involves farm animal activities

on or off the location or site of the farm animal professional's or farm animal activity sponsor's business, shall contain in clearly readable print the warning notice specified in subsection (b) or (c) of this section.

(b) The signs and contracts described in subsection (a) of this section shall contain the following warning notice:

"WARNING

Under North Carolina law, a farm animal activity sponsor or farm animal professional is not liable for an injury to or the death of a participant in farm animal activities resulting exclusively from the inherent risks of farm animal activities. Chapter 99E of the North Carolina General Statutes."

(c) If a farm animal activity sponsor or farm animal professional sponsors or engages in farm animal activities only involving equines, the signs and contracts described in subsection (a) of this section may contain the following warning notice:

"WARNING

Under North Carolina law, an equine activity sponsor or equine professional is not liable for an injury to or the death of a participant in equine activities resulting exclusively from the inherent risks of equine activities. Chapter 99E of the North Carolina General Statutes."

(d) Failure to comply with the requirements concerning warning signs and notices provided in this Part shall prevent a farm animal activity sponsor or farm animal professional from invoking the privileges of immunity provided by this Part. (2013-265, s. 3.3.)

§ 99E-9. Reserved for future codification purposes.

Article 2.

Roller Skating Rink Safety and Liability.

§ 99E-10. Definitions.

As used in this Article:

(1) "Operator" means a person or entity who owns, manages, controls, or directs, or who has operational responsibility for a roller skating rink.

(2) "Roller skater" means an individual wearing roller skates while in a roller skating rink for the purpose of recreational or competitive roller skating. "Roller skater" includes any individual in the roller skating rink who is an invitee, whether or not this individual pays consideration.

(3) "Roller skating rink" means a building, facility, or premises that provide an area specifically designed to be used by the public for recreational or competitive roller skating.

(4) "Spectator" means an individual who is present in a roller skating rink only for the purpose of observing recreational or competitive roller skating. (1997-376, s. 2.)

§ 99E-11. Duties of an operator.

The operator, to the extent practicable, shall:

(1) Post the duties of roller skaters and spectators and the duties, obligations, and liabilities of the operator as prescribed in this Article in conspicuous places in at least three locations in the roller skating rink.

(2) Maintain the stability and legibility of all signs, symbols, and posted notices required under subdivision (1) of this section.
(3) Comply with all roller skating rink safety standards published by the Roller Skating Rink Operators Association, including, but not limited to, the proper maintenance of roller skating equipment and roller skating surfaces.
(4) When the rink is open for sessions, have at least one floor guard on duty for approximately every 200 skaters.
(5) Maintain the skating surface in reasonably safe condition and clean and inspect the skating surface before each session.
(6) Maintain in good condition the railings, kickboards, and walls surrounding the skating surface.
(7) In rinks with step-up or step-down skating surfaces, ensure that the covering on the riser is securely fastened.
(8) Install fire extinguishers and inspect fire extinguishers at recommended intervals.
(9) Provide reasonable security in parking areas during operational hours.
(10) Inspect emergency lighting units periodically to ensure the lights are in proper order.
(11) Keep exit lights and lights in service areas on when skating surface lights are turned off during special numbers.
(12) Check rental skates on a regular basis to ensure the skates are in good mechanical condition.
(13) Prohibit the sale or use of alcoholic beverages on the premises.
(14) Comply with all applicable State and local safety codes.
(15) Not engage willfully or negligently in any conduct that may proximately cause injury, damage, or death to a roller skater or spectator. (1997-376, s. 2.)

§ 99E-12. Duties of a roller skater.

Each roller skater shall, to the extent commensurate with the person's age:

(1) Maintain reasonable control of his or her speed and course at all times.
(2) Heed all posted signs and warnings.
(3) Maintain a proper lookout to avoid other roller skaters and objects.
(4) Accept the responsibility for knowing the range of his or her ability to negotiate the intended direction of travel while on roller skates and to skate within the limits of that ability.
(5) Refrain from acting in a manner that may cause or contribute to the injury of himself, herself, or any other person. (1997-376, s. 2.)

§ 99E-13. Assumption of risk.

Roller skaters and spectators are deemed to have knowledge of and to assume the inherent risks of roller skating, insofar as those risks are obvious and necessary. The obvious and necessary inherent risks include, but are not limited to, injury, damage, or death that:

(1) Results from incidental contact with other roller skaters or spectators,
(2) Results from falls caused by loss of balance, or
(3) Involves objects or artificial structures properly within the intended path of travel of the roller skater,

and that is not otherwise attributable to a rink operator's breach of the operator's duties as set forth in G.S. 99E-11. (1997-376, s. 2.)

§ 99E-14. Defense to suit.

Assumption of risk pursuant to G.S. 99E-13 is a complete defense to a suit against an operator by a roller skater or a spectator for injuries resulting from any obvious and necessary inherent risks, unless the operator has violated the operator's duties under G.S. 99E-11. (1997-376, s. 2.)

§§ 99E-15 through 99E-20. Reserved for future codification purposes.

Article 3.

Hazardous Recreation Parks Safety and Liability.

§ 99E-21. Purpose.

The purpose of this Article is to encourage governmental owners or lessees of property to make land available to a governmental entity for skateboarding, inline skating, or freestyle bicycling. It is recognized that governmental owners or lessees of property have failed to make property available for such activities because of the exposure to liability from lawsuits and the prohibitive cost of insurance, if insurance can be obtained for such activities. It is also recognized that risks and dangers are inherent in these activities, which risks and dangers should be assumed by those participating in the activities. (2003-334, s. 1.)

§ 99E-22. Definitions.

The following definitions apply in this Article:

(1) Governmental entity. –
   a. The State, any county or municipality, or any department, agency, or other instrumentality thereof.
   b. Any school board, special district, authority, or other entity exercising governmental authority.

(2) Hazardous recreational activity. – Skateboarding, inline skating, or freestyle bicycling.

(3) Inherent risk. – Those dangers or conditions that are characteristic of, intrinsic to, or an integral part of skateboarding, inline skating, and freestyle bicycling. (2003-334, s. 1.)

§ 99E-23. Duties of operators of skateboard parks.

(a) No operator of a skateboard park shall permit any person to ride a skateboard therein, unless that person is wearing a helmet, elbow pads, and kneepads.

(b) For any facility owned or operated by a governmental entity that is designed and maintained for the purpose of recreational skateboard use, and that is not supervised on a regular basis, the requirements under subsection (a) of this section are satisfied when all of the following occur:

(1) The governmental entity adopted an ordinance requiring any person riding a skateboard at the facility to wear a helmet, elbow pads, and kneepads.

(2) Signs are posted at the facility affording reasonable notice that any person riding a skateboard in the facility must wear a helmet, elbow pads, and kneepads

and that any person failing to do so will be subject to citation under the ordinance under subdivision (1) of this subsection. (2003-334, s. 1.)

§ 99E-24. Duties of persons engaged in hazardous recreational activities.

(a) Any person who participates in or assists in hazardous recreational activities assumes the known and unknown inherent risks in these activities, irrespective of age, and is legally responsible for all damages, injury, or death to himself or herself or other persons or property that result from these activities. Any person who observes hazardous recreational activities assumes the known and unknown inherent risks in these activities, irrespective of age, and is legally responsible for all damages, injury, or death to himself or herself that result from these activities. No public entity that sponsors, allows, or permits skateboarding, inline skating, or freestyle bicycling on its property is required to eliminate, alter, or control the inherent risks in these activities.

(b) While engaged in hazardous recreational activities, irrespective of where such activities occur, a participant is responsible for doing all of the following:

(1) Acting within the limits of his or her ability and the purpose and design of the equipment used.

(2) Maintaining control of his or her person and the equipment used.

(3) Refraining from acting in any manner that may cause or contribute to death or injury of himself or herself or other persons.

(c) Failure to comply with the requirement of subsection (b) of this section constitutes negligence. (2003-334, s. 1.)

§ 99E-25. Liability of governmental entities.

(a) This section does not grant authority or permission for a person to engage in hazardous recreational activities on property owned or controlled by a governmental entity unless such governmental entity has specifically designated such area for these activities.

(b) No governmental entity or public employee who has complied with G.S. 99E-23 shall be liable to any person who voluntarily participates in hazardous recreation activities for any damage or injury to property or persons that arises out of a person's participation in the activity and that takes place in an area designated for the activity.

(c) This section does not limit liability that would otherwise exist for any of the following:

(1) The failure of the governmental entity or public employee to guard against or warn of a dangerous condition of which a participant does not have and cannot reasonably be expected to have had notice.

(2) An act of gross negligence by the governmental entity or public employee that is the proximate cause of the injury.

(d) Nothing in this section creates a duty of care or basis of liability for death, personal injury, or damage to personal property. Nothing in this section shall be deemed to be a waiver of sovereign immunity under any circumstances.

(e) Nothing in this section limits the liability of an independent concessionaire or any person or organization other than a governmental entity or public employee, whether or not the person or organization has a contractual relationship with a governmental entity to use the public property, for injuries or damages suffered in any case as a result of the operation of equipment for hazardous recreational activities on public property by the concessionaire, person, or organization.

(f) The fact that a governmental entity carries insurance that covers any activity subject to this Article does not constitute a waiver of the liability limits under this section, regardless of the existence or limits of the coverage. (2003-334, s. 1.)

§ 99E-26. Reserved for future codification purposes.

§ 99E-27. Reserved for future codification purposes.

§ 99E-28. Reserved for future codification purposes.

§ 99E-29. Reserved for future codification purposes.

Article 4.

Agritourism Activity Liability.

§ 99E-30. Definitions.

As used in this Article, the following terms mean:

(1) Agritourism activity. – Any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, hunting, fishing, equestrian activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity. "Agritourism activity" includes an activity involving any animal exhibition at an agricultural fair licensed by the Commissioner of Agriculture pursuant to G.S. 106-520.3.

(2) Agritourism professional. – Any person who is engaged in the business of providing one or more agritourism activities, whether or not for compensation.

(3) Inherent risks of agritourism activity. – Those dangers or conditions that are an integral part of an agritourism activity including certain hazards, including surface and subsurface conditions, natural conditions of land, vegetation, and waters, the behavior of wild or domestic animals, and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. Inherent risks of agritourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.

(4) Participant. – Any person, other than the agritourism professional, who engages in an agritourism activity.

(5) Person. – An individual, fiduciary, firm, association, partnership, limited liability company, corporation, unit of government, or any other group acting as a unit. (2005-236, s. 1; 2007-171, s. 1; 2020-18, s. 5(a).)

§ 99E-31. Liability.

(a) Except as provided in subsection (b) of this section, an agritourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism

activities, so long as the warning contained in G.S. 99E-32 is posted as required and, except as provided in subsection (b) of this section, no participant or participant's representative can maintain an action against or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities. In any action for damages against an agritourism professional for agritourism activity, the agritourism professional must plead the affirmative defense of assumption of the risk of agritourism activity by the participant.

(b) Nothing in subsection (a) of this section prevents or limits the liability of an agritourism professional if the agritourism professional does any one or more of the following:

(1) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant.

(2) Has actual knowledge or reasonably should have known of an existing dangerous condition on the land, facilities, or equipment used in the activity or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant.

(c) Nothing in subsection (a) of this section prevents or limits the liability of an agritourism professional under liability provisions as set forth in Chapter 99B of the General Statutes.

(d) Any limitation on legal liability afforded by this section to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law. (2005-236, s. 1; 2013-265, s. 4.)

§ 99E-32. Warning required.

(a) Every agritourism professional must post and maintain signs that contain the warning notice specified in subsection (b) of this section. The sign must be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice must consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an agritourism professional for the providing of professional services, instruction, or the rental of equipment to a participant, whether or not the contract involves agritourism activities on or off the location or at the site of the agritourism activity, must contain in clearly readable print the warning notice specified in subsection (b) of this section.

(b) The signs and contracts described in subsection (a) of this section must contain the following notice of warning:

"**WARNING**

Under North Carolina law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you 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."

(c) Failure to comply with the requirements concerning warning signs and notices provided in this subsection will prevent an agritourism professional from invoking the privileges of immunity provided by this Article. (2005-236, s. 1.)

§ 99E-33: Reserved for future codification purposes.

§ 99E-34: Reserved for future codification purposes.

§ 99E-35: Reserved for future codification purposes.

§ 99E-36: Reserved for future codification purposes.

§ 99E-37: Reserved for future codification purposes.

§ 99E-38: Reserved for future codification purposes.

§ 99E-39: Reserved for future codification purposes.

Article 5.

Commonsense Consumption Act.

§ 99E-40. Title.

This act shall be known and may be cited as the "Commonsense Consumption Act." (2013-309, s. 1.)

§ 99E-41. Definitions.

The following definitions apply in this Article:

(1) Claim. – Any claim by or on behalf of a natural person, as well as any derivative or other claim arising from a common set of facts or circumstances and asserted by or on behalf of any other person.

(2) Knowing and willful conduct. – Conduct which meets all of the following criteria:

a. The conduct was committed with any of the following:

1. The intent to deceive or injure consumers.
2. Actual knowledge that such conduct was injurious to consumers.
3. Reason to know there is a reasonable probability of injury to consumers.

b. The conduct constituting the violation was not required by regulations, orders, rules, or other pronouncement of, or any statute administered by, a federal, State, or local government agency.

(3) Other person. – Any individual, corporation, company, association, firm, partnership, society, joint-stock company, or any other entity, including any governmental entity or private attorney general. (2013-309, s. 1.)

§ 99E-42. Claims arising from weight gain, obesity, associated health conditions, or long-term consumption of food – Limitation on liability.

Except as set forth in G.S. 99E-43, a packer, distributor, manufacturer, carrier, holder, seller, marketer, or advertiser of a food, as defined in section 201(f) of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(f), or an association of one or more such entities, shall not be liable in any civil action for any claim arising out of weight gain, obesity, a health condition associated

with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food. For purposes of this section, a health condition arising from a single instance of consumption shall not be considered to result from long-term consumption of food. (2013-309, s. 1.)

§ 99E-43. Claims arising from weight gain, obesity, associated health conditions, or long-term consumption of food – Exceptions to limit on liability.

G.S. 99E-42 shall not preclude liability in a civil action in which the claim of weight gain, obesity, health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food meets either of the following:

(1) The claim includes as an element of the cause of action a material violation of an adulteration or misbranding requirement prescribed by statute or rule of this State or the United States of America and the claimed injury was proximately caused by such violation.

(2) The claim is based on knowing and willful conduct applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food, in violation of any other State or federal law and the claimed injury was proximately caused by such violation. (2013-309, s. 1.)

§ 99E-44. Construction of Article.

(a) Nothing in this Article shall be construed to create any new claim, right of action, or civil liability not previously existing under State law.

(b) Nothing in this Article shall be construed to interfere with any agency's exclusive or primary jurisdiction to find or declare violations of a food adulteration or misbranding statute or rule. (2013-309, s. 1.)

§ 99E-45: Reserved for future codification purposes.

§ 99E-46: Reserved for future codification purposes.

§ 99E-47: Reserved for future codification purposes.

§ 99E-48: Reserved for future codification purposes.

§ 99E-49: Reserved for future codification purposes.

Article 6.

Successor Asbestos-Related Liability.

§ 99E-50. Definitions.

The following definitions apply in this Article:

(1) Asbestos claim. – Any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including any of the following:

a. The health effects of exposure to asbestos, including a claim for personal injury or death, mental or emotional injury, risk of disease or other injury, or the costs of medical monitoring or surveillance.
b. Any claim made by or on behalf of any person exposed to asbestos or a representative, spouse, parent, child, or other relative of the person.
c. Any claim for damage or loss caused by the installation, presence, or removal of asbestos.

(2) Corporation. – Any corporation established under either domestic or foreign charter and includes a corporate subsidiary and any business entity in which a corporation participates or is a stockholder, a partner, or a joint venturer.

(3) Successor. – A corporation that assumes or incurs or has assumed or incurred successor asbestos-related liabilities through operation of law, including, but not limited to, a merger or consolidation or plan of merger or consolidation related to such consolidation or merger or by appointment as administrator or as trustee in bankruptcy, debtor in possession, liquidation, or receivership and that became a successor before January 1, 1972. Successor includes any of that successor corporation's successors.

(4) Successor asbestos-related liability. – Any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, which are related in any way to asbestos claims and were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation with or into another corporation, or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under G.S. 99E-53, were or are paid or otherwise discharged or committed to be paid or otherwise discharged, by or on behalf of the corporation or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this State or another jurisdiction.

(5) Transferor. – A corporation from which successor asbestos-related liabilities are or were assumed or incurred. (2014-110, s. 4.1.)

§ 99E-51. Applicability.

The limitations in G.S. 99E-52 shall apply to any successor but shall not apply to any of the following:

(1) Workers' compensation benefits paid by or on behalf of an employer to an employee under the provisions of Chapter 97 of the General Statutes, or a comparable workers' compensation law of another jurisdiction.

(2) Any claim against a corporation that does not constitute a successor asbestos-related liability.

(3) Any obligation under the National Labor Relations Act, 29 U.S.C. § 151, et seq., as amended, or under any collective bargaining agreement.

(4) A successor that, after a merger or consolidation, continued in the business of mining asbestos or in the business of selling or distributing asbestos fibers or in the business of manufacturing, distributing, removing, or installing asbestos-containing products which were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor. (2014-110, s. 4.1.)

§ 99E-52. Limitation on successor asbestos-related liability.

(a) Except as further limited in subsection (b) of this section, the cumulative successor asbestos-related liabilities of a successor corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The successor corporation does not have responsibility for successor asbestos-related liabilities in excess of this limitation.

(b) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor determined as of the time of the earlier merger or consolidation shall be substituted for the limitation set forth in subsection (a) of this section for purposes of determining the limitation of liability of a successor corporation. (2014-110, s. 4.1.)

§ 99E-53. Establishing fair market value of total gross assets.

(a) A successor corporation may establish the fair market value of total gross assets for the purpose of the limitations under G.S. 99E-35 [G.S. 99E-52] through any method reasonable under the circumstances, including either of the following:

(1) By reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arms-length transaction.

(2) In the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(b) Total gross assets include intangible assets.

(c) To the extent total gross assets include any liability insurance that was issued to the transferor whose assets are being valued for purposes of this section, the applicability, terms, conditions, and limits of such insurance shall not be affected by this statute nor shall this statute otherwise affect the rights and obligations of an insurer, transferor, or successor under any insurance contract and/or any related agreements, including, without limitation, preenactment settlements resolving coverage-related disputes, and the rights of an insurer to seek payment for applicable deductibles, retrospective premiums, or self-insured retentions or to seek contribution from a successor for uninsured or self-insured periods or periods where insurance is uncollectible or otherwise unavailable. Without limiting the foregoing, to the extent total gross assets include any such liability insurance, a settlement of a dispute concerning any such liability insurance coverage entered into by a transferor or successor with the insurers of the transferor before the effective date of this act shall be determinative of the total coverage of such liability insurance to be included in the calculation of the transferor's total gross assets. (2014-110, s. 4.1.)

§ 99E-54. Adjustment.

(a) Except as provided in subsections (b), (c), and (d) of this section, the fair market value of total gross assets at the time of the merger or consolidation shall increase annually at a rate equal to the sum of the following:

(1) The prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation, unless the prime rate is not published in that edition of the Wall Street Journal, in which case any reasonable determination of the prime rate on the first day of the calendar year may be used.

(2) One percent (1%).

(b) The rate defined in subsection (a) of this section shall not be compounded.

(c) The adjustment of the fair market value of total gross assets shall continue as provided in subsection (a) of this section until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the successor corporation or a predecessor or by or on behalf of a transferor after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

(d) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance that may be included in the definition of total gross assets by subsection (c) of G.S. 99E-53. (2014-110, s. 4.1.)

§ 99E-55. Scope of Article; application.

(a) This Article shall be liberally construed with regard to successors.

(b) This Article shall apply to all asbestos claims filed against a successor on or after the effective date of this act. (2014-110, s. 4.1.)

§ 99E-56: Reserved for future codification purposes.

§ 99E-57: Reserved for future codification purposes.

§ 99E-58: Reserved for future codification purposes.

§ 99E-59: Reserved for future codification purposes.

§ 99E-60: Reserved for future codification purposes.

§ 99E-61: Reserved for future codification purposes.

§ 99E-62: Reserved for future codification purposes.

§ 99E-63: Reserved for future codification purposes.

§ 99E-64: Reserved for future codification purposes.

Article 7.

Liability for Public Safety Telecommunicators and Dispatchers.

§ 99E-65. Standard of proof.

In any civil action arising from any act or omission by the defendant in the performance of any lawful and prescribed actions pertaining to the defendant's assigned job duties as a 911 or public safety telecommunicator or dispatcher at a primary public safety answering point as defined in G.S. 62A-40(18) or at any public safety agency to which 911 calls are transferred from a primary PSAP as defined in G.S. 62A-40(16) for dispatch of appropriate public safety agencies, the plaintiff's burden of proof shall be by clear and convincing evidence. (2015-71, s. 1.)

§ 99E-66: Reserved for future codification purposes.

§ 99E-67: Reserved for future codification purposes.

§ 99E-68: Reserved for future codification purposes.

§ 99E-69: Reserved for future codification purposes.

Article 8.

COVID-19 Limited Immunity.

§ 99E-70. Definitions.

The following definitions apply in this Article:

(1) COVID-19. – The disease caused by the SARS-CoV-2 virus.

(2) Person. – An individual; corporation; nonprofit corporation; business trust; estate; trust; partnership; limited liability company; sole proprietorship; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal entity. (2020-89, s. 1.)

§ 99E-71. Limited immunity.

(a) In any claim for relief arising from any act or omission alleged to have resulted in the contraction of COVID-19, including any claim based on violation of subsection (b) of this section, no person shall be liable for any act or omission that does not amount to gross negligence, willful or wanton conduct, or intentional wrongdoing.

(b) Every person shall provide, with respect to any premises owned by the person or under the person's possession, custody, or control, reasonable notice of actions taken by the person for the purpose of reducing the risk of transmission of COVID-19 to individuals present on the premises. No person shall be liable for the failure of any individual to comply with rules, policies, or guidelines contained in the notice required by this subsection. This subsection shall not apply to premises owned by an individual, other than premises that are used in the operation of a sole proprietorship.

(c) This section does not apply to claims before the Industrial Commission seeking benefits payable under the Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes. (2020-89, s. 1.)

§ 99E-72. Applicability.

This Article applies to claims arising no later than 180 days after the expiration or rescission of Executive Order No. 116 issued March 10, 2020. (2020-89, s. 1.)

§ 99E-73: Reserved for future codification purposes.

§ 99E-74: Reserved for future codification purposes.

§ 99E-75: Reserved for future codification purposes.

§ 99E-76: Reserved for future codification purposes.

§ 99E-77: Reserved for future codification purposes.

§ 99E-78: Reserved for future codification purposes.

§ 99E-79: Reserved for future codification purposes.

Article 9.

Private Pools COVID-19 Limited Liability.

§ 99E-80. Definitions.

The following definitions apply in this Article:

(1) COVID-19. – The disease caused by the SARS-CoV-2 virus.

(2) Community pool. – A privately owned community swimming pool, including, without limitation, a swimming pool owned or operated by a multiunit apartment complex, homeowners association, or condominium unit owners association. (2020-90, s. 6(a).)

§ 99E-81. Limited liability for reopening community pools.

(a) Owners and operators of community pools and their agents shall not be liable in any claim or action seeking damages for injury or death resulting from transmission of COVID-19 alleged to have resulted from the reopening of the community pool in accordance with applicable executive orders of the Governor.

(b) The immunity provided by this section shall not apply to claims for injury or death resulting from gross negligence, wanton conduct, or intentional wrongdoing. (2020-90, s. 6(a).)

§ 99E-82. Applicability.

This Article applies to claims or actions arising no later than one year after the expiration or rescission of Executive Order No. 116 issued March 10, 2020. (2020-90, s. 6(a).)