

Amendments to Texas Farm Animal Liability Act Effective September 1

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The Texas Legislature has passed and Governor Abbott has signed House Bill 365, which will make important changes to the Texas Farm Animal Liability Act (FALA). All farm animal owners should pay careful attention to the changes coming to the FALA, which will modify the scope of application and will also require additional steps be taken by farm animal owners.



Photo via Britt Fisk, Clayton, NM

Background

The Texas Farm Animal Liability Act is a statute offering limited liability to farm animal owners if injuries are caused by an inherent risk to a farm animal activity. For example, when a person rides a horse, there is an inherent risk that person could get bucked off. Through the FALA, the Texas legislature intended to ensure the horse owner in this example would not be liable for resulting

injuries. The statute was passed in 1995 and was amended in 2011 to expand the scope beyond just equine animals to all “farm animals.”

In 2020, the Texas Supreme Court issued its opinion in *Waak v. Rodriguez*, a case involving an employee who was killed while moving a bull. The Court found that the FALA was inapplicable if the injured party was a “rancher or ranch hand.” The Court believed that the legislature intended the Act’s protections to apply only to situations such as “shows, rides, exhibitions, competitions, and the like.” For more information on this decision, [click here](#).

In the aftermath of the *Waak* decision, the Texas Legislature met for the 87th Legislative Session. Representative Andrew Murr introduced House Bill 365. This bill was designed to essentially modify the FALA to ensure that it does, in fact, apply to working ranches and in situations involving injured ranchers and ranch hands, among other changes. In other words, HB 365 would essentially undo the Texas Supreme Court’s verdict in the *Waak* case going forward.

HB 365

House Bill 365 was passed by the Legislature and signed into law by Governor Abbott on June 4, 2021. The new provisions of the Farm Animal Liability Act included in this bill will be effective as of September 1, 2021. [Read bill text [here](#).]

There are a number of key changes made by HB 365 of which farm animal owners should be aware.

1. *Expanded activity descriptions*

Specifically, this bill would add language to ensure its application to working farms and ranches and in instances where a rancher or ranch hand is injured. For example, the title of the statute would change from “Liability Arising from Farm Animal Activities or Livestock Shows” to “Liability Arising from Farm Animals.” Tex. H.B. 365, 87th Leg. R.S. (2021). In order to achieve this objective, a number of definitions have been amended. Do note that “farm” means “any real estate, land area, facility, or ranch used wholly or partly for raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, agricultural, apicultural, or aquacultural operation. *Id.* § 87.001(2-a).

The meaning of “farm animal activity” will now also include owning, raising, transporting, or pasturing a farm animal. Similarly, the definition also includes assisting in or providing animal health management activities, including vaccines, assisting in or conducting customary tasks on a farm concerning farm animals, and transporting or moving a farm animal. *Id.* at § 87.001(3). “Engages in a farm animal activity” will be modified to include feeding, vaccinating, exercising, weaning, transporting, producing, herding, corralling, branding, dehorning, assisting in or providing health management activities, and engaging in routine or customary activities on a farm to handle and

manage farm animals. *Id.* at § 87.001(1).

The bill also adds express language to a couple of additional definitions. It adds “farm owners or lessees” to the description of those protected throughout the bill, *see, e.g., id.* at § 87.001 (3); § 87.005(a), and includes a person who handles, buys, or sells livestock animals to the definition of “livestock producer.” *Id.* at § 87.001(6-a).

2. *Expanded definition of “farm animal professional”*

Currently, the FALA defines a farm animal professional as a person engaged for compensation in instructing a participant, or renting to a participant a farm animal for the purpose of riding, driving, or being a passenger on the farm animal; renting tack to the participant; examining or administering medical treatment to a farm animal as a veterinarian; and someone providing veterinary or farrier services—who would be required to hang the sign. Tex. Civ. Practice & Remedies Code § 87.001(5). HB 365 will expand the “farm animal professional” definition to add persons engaged for compensation in the following activities: “providing nonmedical care or treatment to a farm animal, including vaccinations; assisting in providing animal health management activities, including vaccination; providing care, feeding, and husbandry of farm animals; assisting or conducting customary tasks on a farm concerning farm animals; and transporting or moving livestock.” Tex. H.B. 365, 87th Leg. R.S. (2021) at § 87.001(5).

3. *Modifications to signage and contractual language requirement*

One of the most important changes for farm and ranch owners to be aware of has to do with the requirements that a sign be hung for farm animal professionals. The amendments will require farm animal professionals (which is more broadly defined, as noted above) as well as all farm owners or lessees to post and maintain a sign with statutory language per the Act’s requirements. *Id.* at § 87.005. Additionally, the same statutory language must be included in every written contract that a farm animal professional, owner, or lessee enters into with a participant, employee, or independent contractor for professional services, instruction, or the rental of equipment or tack of a farm animal. *Id.*

The required language has been slightly modified by the new bill, and will read as follows effective September 1:

WARNING

UNDER TEXAS LAW (CHAPTER 87, CIVIL PRACTICE AND REMEDIES CODE), A FARM ANIMAL PROFESSIONAL OR FARM OWNER OR LESSEE IS NOT LIABLE FOR AN INJURY TO OR THE DEATH OF A PARTICIPANT IN FARM ANIMAL ACTIVITIES, INCLUDING AN EMPLOYEE OR INDEPENDENT CONTRACTOR,

RESULTING FROM THE INHERENT RISKS OF FARM ANIMAL ACTIVITIES.

This is critical for farm and ranch owners. Previously, farm and ranch owners and lessees were not required to hang the sign. Now, however, they will need to do so. Moreover, because the statutory language required for the sign has been changed (by including farm owners or lessees to the list of those protected and adding the language about independent contractors or employees), farm animal professionals and farm and ranch owners may want to obtain signs with this new language out of an abundance of caution.

4. Change in “Farm Animal” Definition

In an amendment that was added during the House committee process, the new FALA will expand “farm animal” to include “a honeybee kept in a managed colony.” *Id.* at § 87.001(2-b). This means that for beekeepers, the FALA’s protections will now be available for the first time.

5. Modification to “Limitation on Liability” Section

The bill will also alter the structure of the section titled “limitation on liability.” The changes will provide that all persons, including a farm owner or lessee, are not liable for damages or injury caused by the inherent risk of a farm animal, farm animal activity, showing of an animal at a livestock show, or the raising or handling of livestock on the farm. *Id.* at § 87.003. Additionally, there was a slight change to the list of inherent risks that will ensure it applies to injuries to a person on the animal, handling the animal, or otherwise around the animal. *Id.*

6. Inclusion of Employees and Independent Contractors

Previously, there had been disagreements in lower court opinions regarding whether the Farm Animal Liability Act applied to independent contractors and/or employees who were injured. *See, e.g., Young v. McKim*, 373 S.W.3d 776 (Tex. Ct. App. – Houston 14th Dist. 2012) (FALA applied as defense to claim by injured independent contractor); *Dodge v. Durdin*, 187 S.W.3d 523 (Tex. Ct. App. – Houston 1st Dist. 2002) (FALA inapplicable when employee was kicked by horse because Act does not apply to injured employees); *Johnson v. Smith*, 88 S.W.3d 729 (Tex. Ct. App. – Corpus Christi 2002) (FALA available defense when independent contractor breeding horses was bit in face). As of September 1, this question will be answered as the amended statute includes both independent contractors and employees in the definition of a “participant.” Tex. H.B. 365, 87th Leg. R.S. (2021) at § 87.001(9). Thus, this defense is available even in situations with an injured employee or independent contractor

7. Labor Laws Not Affected

The bill also expressly provides that nothing in the Farm Animal Liability Act affects the applicability

of Chapter 406 of the Labor Code, or an employer's ability to refuse to subscribe to workers' compensation. Tex. H.B. 365, 87th Leg. R.S. (2021) at § 87.0021.

Conclusion

The passage of House Bill 365 makes important changes to the Texas Farm Animal Liability Act. In addition to expanding the scope of the Act to expressly cover working farms and ranches and to apply to cases involving injured employees and independent contractors, the Act will also require farm and ranch owners or lessees to hang a sign with the required statutory language

This entry was posted in [Farm Animal Liability Act](#), [Texas Legislature](#).