

HOUSE BILL NO. 1142

Introduced by

Representatives DeKrey, Drovdal, Kaldor

Senators Klein, Uglen, O'Connell

1 A BILL for an Act to create and enact a new chapter to title 53 of the North Dakota Century
2 Code, relating to registered agritourism activity liability.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new chapter to title 53 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Definitions.**

7 In this chapter, unless the context otherwise requires:

8 1. "Agritourism activity" means any rural activity ~~customarily carried out on a working or~~
9 ~~historical farm, ranch, forestry operation, or winery, if, including farming and ranching~~
10 ~~activities, or any historic, cultural, or natural attraction, that is viewed or enjoyed by~~
11 ~~members of the general public are invited to view or allowed to participate, with or~~
12 ~~without fees or charges, in the activities, for educational, recreational, or entertainment~~
13 ~~purposes, regardless of whether the member of the general public pays to participate~~
14 ~~in the rural activity or to view or enjoy the attraction; provided, however, that~~
15 ~~agritourism does not include any rural activity in which an individual is paid to~~
16 ~~participate.~~

17 2. "Inherent risk" means:

18 a. Any condition, ~~or danger, or hazard~~ that is ~~a normal and customary~~ an integral
19 part of ~~an~~ agritourism ~~operation~~, including:

20 (1) Surface and subsurface conditions of the land;

21 (2) Surface and subsurface conditions of the water;

22 (3) Natural conditions of land, vegetation, and water;

23 (4) The behavior of wild or domestic animals; and

24 (5) Structures and equipment ordinarily used in farming or ranching; and

b. ~~Any act of negligence on the part~~The potential of a participant to act in a negligent manner, including failing to follow instructions or failing to exercise reasonable caution while engaging in an agritourism activity.

3. "Participant" means a member of the general public who ~~is invited to view or allowed to participate in agritourism, with or without fees or charges~~engages in a registered agritourism activity.

4. "Registered agritourism activity" means an agritourism activity that is registered with the agriculture commissioner.

5. "Registered agritourism location" means a legally described parcel of real property that is registered with the agriculture commissioner and on which a registered agritourism activity occurs.

6. "Registered agritourism operator" means a person that is registered with the agriculture commissioner and that is engaged in the provision of a registered agritourism activity.

Registration - Requirements.

1. A person may become a registered agritourism operator by registering with the agriculture commissioner.

2. The registration must include a description of the agritourism activity that the person provides or intends to provide and a legal description of the real property on which the agritourism activity occurs or will occur.

3. The agriculture commissioner may not impose any fees or other charges to register agritourism operators.

4. A registration under this section is effective for five years.

Registered agritourism operators - Maintenance of list.

The agriculture commissioner shall:

1. Maintain a list of all registered agritourism operators;

2. Maintain a legal description of all real property on which registered agritourism activity occurs or will occur; and

3. Maintain a list of all registered agritourism activities.

Liability of registered agritourism operator.

This chapter does not prevent or limit the liability of a registered agritourism operator if the operator:

1. Injures a participant willfully or through conduct that amounts to gross negligence; or

2. a. Has actual knowledge of or should have known of:

(1) A dangerous condition on the registered agritourism location, including in a facility on the location;

(2) A dangerous condition with respect to equipment used in the registered agritourism activity; or

(3) The dangerous propensity of a particular animal used in the registered agritourism activity; and

b. Does not exercise ordinary care to remedy the danger or to warn a participant of the danger; and

c. The danger causes injury to the participant or contributes to the injury of the participant.

~~**Notice regarding liability – Requirements.**~~

~~The owner or operator of any facility at which agritourism occurs shall post in a conspicuous location on the premises and include in each written contract pertaining to an individual's participation in agritourism a notice indicating that under the laws of this state, the owner or operator is not liable for any injury to or for the death of a participant if the injury or death results from an inherent risk, as defined in this chapter.~~

~~**Participant in agritourism – Assumption of risk.**~~

~~Except as otherwise provided, a participant assumes all inherent risks of agritourism. In any action for damages arising from an individual's participation in agritourism, the owner or operator of the facility at which the activity occurred may plead assumption of risk by the participant as an affirmative defense.~~

~~**Liability of owner or operator.**~~

~~This chapter does not prevent or limit the liability of the owner or operator of an agritourism facility if the owner or operator:~~

~~1. Willfully injures a participant;~~

- 1 — ~~2. Has actual knowledge of a dangerous condition on the premises, does not make the~~
- 2 ~~condition known to the participant, and the participant is injured as a result; or~~
- 3 — ~~3. Provides faulty equipment to a participant and the participant is injured as a result.~~