

March 15, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1142

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new chapter to title 53 of the North Dakota Century Code, relating to registered agritourism activity liability.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Definitions.

In this chapter, unless the context otherwise requires:

1. "Agritourism activity" means any activity, including farming and ranching activities, or any historic, cultural, or natural attraction, that is viewed or enjoyed by members of the general public, for educational, recreational, or entertainment purposes, regardless of whether the member of the general public pays to participate in the activity or to view or enjoy the attraction.
2. "Inherent risk" means:
 - a. Any condition or danger that is an integral part of agritourism, including:
 - (1) Surface and subsurface conditions of the land;
 - (2) Surface and subsurface conditions of the water;
 - (3) Natural conditions of land, vegetation, and water;
 - (4) The behavior of wild or domestic animals; and
 - (5) Structures and equipment ordinarily used in farming or ranching; and
 - b. 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 engages in a registered agritourism activity.
4. "Registered agritourism activity" means an agritourism activity that is registered with the division of tourism.
5. "Registered agritourism operator" means a person that is registered with the division of tourism 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 division of tourism.
2. The registration must include a description of the agritourism activity that the person provides or intends to provide.
3. The division of tourism 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 division of tourism shall:

1. Maintain a list of all registered agritourism operators; and
2. Maintain a list of all registered agritourism activities.

Notice regarding liability - Requirements.

A registered agritourism operator 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 registered agritourism 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.

Participant in agritourism activity - 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, a registered agritourism operator may plead assumption of risk by the participant as an affirmative defense.

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 property, including in a facility, at which a registered agritourism activity occurs;
 - (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;

- 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.

Division of tourism - Copy of law - Provision to registered agritourism operator.

The division of tourism shall provide a copy of the applicable law to each person that registers or reregisters as an agritourism operator."

Renumber accordingly