2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1228

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1228

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 19, 2009

Recorder Job Number: 7250

Committee Clerk Signature Ellen LeTang

Chairman Keiser: Opened the hearing on HB 1228 relating to liability for injury or damage incurred during equine activity.

Francis Wald: Representative from District 37. HB deals with equine activity. The issue is the difficulty in obtaining insurance for activities involving horses. On page 2 I'm putting a $250,000 legal cap on any legal action brought against someone. On line 13 on page 2 under the provisions in chapter 36-11 deals with livestock at large or better term "open range". This will impact availability.

Representative Thorpe: Who makes the determination (inaudible).

Wald: I guess the court or jury will sort that out.

Chairman Keiser: This cap on liability is this for all phases, per incident, with 10 people, the maximum is $250,000?

Wald: Correct.

James Odermann~Owner and operator of a working cattle ranch in Billings County. See testimony, attachment 1.

Representative Gruchalla: Are these trail ride activity licensed by anyone?

Odermann: By knowledge, no. Defer question to Sara.

Sara Coleman~Director of the North Dakota Tourism Division. I'm not aware of any licensing requirements or trail rides operations in North Dakota.

Representative Sukut: What part of your overall operation would you expect this adventure to overall operations?

Odermann: That's a good question. If I knew the answer, we would be jumping into it. It is an adventure business. When we research this, we could not charge enough to provide rides in the summer season. I don't know. This adventure business has decreased substantially because of the liability.

Representative N Johnson: Does this language equine activity, does that cover rodeos, secondly, how does the Medora Foundation cover trail rides.

Odermann: Medora Foundation has greater footing than small operators. As far as rodeos, looking at Representative Wald for an answer, no.

Representative Boe: What level of liability do policy were you trying to get.

Odermann: We could not sell enough rides.

Representative Boe: What level of liability do you need to protect yourself?

Odermann: We are looking at one million dollar insurance policy.

Vice Chairman Kasper: Do you have other equine activities currently.

Odermann: We do not other equine activities that would be consider nature in rural tourism at this time because of liability.

Vice Chairman Kasper: If you can't afford the premium for the liability, even if we limited to $250,000, one claim could be devastating whether or not you have insurance. Would you be willing to rise?

Odermann: That is the question we have looked at and we can't answer.

Vice Chairman Kasper: If this bill were to pass, do you think it will give you enough protection or it still a question whether or not you would?

Odermann: The concern we have is losing opportunity for development in North Dakota. We need to make sure we have some protection in term of maximum exposure could be.

Vice Chairman Kasper: No, have you done any preliminary studies that if this bill passed, you would be able to get into this business. Are we doing enough for you to expand this business?

Odermann: We have already ran a business plan. I stand not only for myself but as a member of North Dakota Nature & Rural Tourism Association, also looking across the state. What can we do to get protection in this issue?

Chairman Keiser: This is being able to afford insurance.

Sara Coleman: No, I don't believe there was last session. We didn't have enough. Premium have been very volatile.

Representative Nottestad: Are covered?

Coleman: I believed that are covered.

Vice Chairman Kasper: Are we going far enough with this liability. Are there other items in the nature area are being done that have liability issues beyond horses?

Coleman: Yes, it is a broader issue than that. We have a lot of demand in, yet our farm and ranchers are leery about opening their land.

Vice Chairman Kasper: Do you thing that it would be required that a disclosure statement be presented to the tourist about the limit of liability under North Dakota laws. Do you think that would inhabit people from coming out to these ranches?

Coleman: I don't think they read those in too much detail when there are on vacation. People do expect some risks.

Representative Amerman: Liability only if you charge a fee?

Coleman: I believe that that is the case. They will take donations but I don't know how well that will hold up in court?

Representative Vigesaa: Are their plenty of companies with this liability?

Representative Wald: No, there isn't. You are in the Lloyds market.

Representative Vigesaa: What amount of the premium?

Representative Wald: All over the base:

Representative Thorpe: What is the difference in premium rate a million, two million or $250,000, is there a difference?

Representative Wald: The higher the limits the more premium you are going to pay. Yes, I think it would help to put a cap, until it's tested in the courts. It's good preventative medicine.

Representative Amerman: It's a limit of $250,000 for any number of claims, five people got hurt, and each one would get $50,000.

Representative Wald: I do suspect their medical insurance would cover some.

Representative Sukut: Any merit to thinking about a regional organization working together?

Coleman: Absolutely yes. It is something we have started to discuss.

Anyone in opposition, neutral

Closes on HB 1228.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1228

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 20, 2009

Recorder Job Number: 7302

Committee Clerk Signature Ellen LeTang

Chairman Keiser: Opened the committee work session on HB 1228.

Vice Chairman Kasper: Is the $250,000 is enough, what would happen if we capped the liability at $250,000?

Representative Boe: It doesn't take much to get $250,000 on a single issue.

Vice Chairman Kasper: This is a recreation to do the activity. If we limit the activity and we would require that anyone partaking in the activity must sign in advanced.

Representative Ruby: Why don't we set the limits like cars?

Representative Clark: Did we get a sense on how Wyoming handles it?

Representative Schneider: Self insure. I didn't hear about cap, I don't think they do.

Chairman Keiser: This is a reasonable cap to hold an appropriate level.

Representative Clark: Something mentioned in Medora.

Representative Boe: On snowmobiles, with the signing of easements from farmers, the state took the liability.

Representative Gruchalla: You would include licensing for tack.

Representative N Johnson: For the Medora Foundation, they have a larger footing.

Representative Thorpe: They probably carry an excess policy.

Representative Amerman: How much would a waiver help?

Representative Schneider: Depends on what the waiver said. It seemed to be only one individual who came here.

Representative Sukut: Knows someone in Medora who did try to start the trail ride business and the insurance was too high to start the business. Representative Boe had a good idea.

Chairman Keiser: I like the idea but the fiscal note that will be astromical that's never going to go.

Vice Chairman Kasper: Where do you see the state's liability?

Chairman Keiser: It was Representative Boe's idea.

Chairman Keiser: Closes the committee work session.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1228

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 27, 2009

Recorder Job Number: 7878

Committee Clerk Signature Ellen LeTang

Chairman Keiser: Opened the committee work session on HB 1228.

Chairman Keiser: There is a similar bill in Natural Resources on equine liability. We have a bill that looks very similar to this except that it's more general. It has the same limitations, $250,000 and is for all recreational activities. This bill is specific to equine. Do you want to take action on this bill?

Representative Schneider: What is your sense that Natural Resources recommendation?

Chairman Keiser: I don't know if we have a sense. I'm going to oppose this bill whenever it come up. I don't think can rightfully single out one business entity and say we are going to protect and let everyone else go down. Most importantly, the $250,000 is both an aggregate and an individual and all we are doing is giving the state a lot of potential for a liability. I will not support it.

Representative N Johnson: Can you explain how the state takes the (?).

Chairman Keiser: If the total liability is $250,000 and they have no real assets and the injury is 10 million. The insurance will pay the $250,000 but who is going to pay the rest? It goes through bankruptcy and the state gets it or Medicare.

Representative Ruby: Like auto insurance, you set minimums not maximums.

Chairman Keiser: Other states with a lot of outfits are somehow able.

Vice Chairman Kasper: That was in this committee and they have a lot more in the pool.

Chairman Keiser: I just wonder why we can't pool with them?

What are the wished of the committee?

Vice Chairman Kasper: Moves a Do Not Pass.

Representative Schneider: Second.

Voting roll call was taken for a Do Not Pass on HB 1228 with 11 yea's, 0 nay's, 2 absent and Representative Thorpe is the carrier.

Date: Jan 27-2009
Roll Call Vote # _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1228

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☒ Do Not Pass ☐ As Amended

Motion Made By Kasper Seconded By Schneider

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe		
Representative Clark	✓		Representative Gruchalla	✓	
Representative N Johnson	✓		Representative Schneider	✓	
Representative Nottestad	✓		Representative Thorpe	✓	
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa					

Total (Yes) 11 No 0

Absent 2

Floor Assignment Thorpe

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1228: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO NOT PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1228 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

HB 1228

Testimony, North Dakota House of Representatives
Industry, Business and Labor Committee
Presented: January 19, 2009 – 2:00 p.m.
Presented by: James Odermann

Good afternoon. My name is James Odermann. We, my family and I, own and operate a working cattle ranch in Billings County, 17 miles northeast of Medora as the eagle flies. We also seek to operate a North Dakota based nature and rural tourism business at the same location.

This legislation, House Bill 1228, is an important part of our future business planning discussion because it can help us engage in vertical expansion. We already have the land base for our agricultural operation. We would not need to make additional capital expenditures to purchase more land and/or equipment.

A major limiting factor in any expansion plans is the liability exposure. Nature and based rural tourism activities, in this case equine activities, is no different. As active beef producers, we have the horses and assorted equipment needed to offer recreational opportunities to visitors.

There is a special romance about horseback riding and the connection with horseback riding in the rugged terrain of the North Dakota badlands. This bill specifically deals with equine related activities and horses are animals. Horses, if trained properly, have a predisposition to getting along with riders.

We recognize the need to make sure equipment is well maintained and properly fitted to horses. This is only part of good management and concern for customers and fellow citizens.

However, in nature there are, as you well know, various challenging situations that can turn even the calmest of animals into raging, terrified, galloping beasts that can inflict harm. These kinds of situations are beyond our control, and those of fellow operators. We need some type of protection and the liability limit of $250,000 per occurrence provides that.

The Tourism Division of the North Dakota Department of Commerce has moved our great state front and center. Depending which economist you read and/or listen to, tourism in first, second or third in terms of creating new wealth.

This growth can continue as we "Share North Dakota" with each other and out of state visitors. North Dakotans are enterprising and welcoming people. The need for some type of cap on the liability limits would be a great first step in helping expand on a tradition of heritage tourism that is overtaking our state and nation.

I would sincerely ask for your favorable consideration of this legislation to help rural residents, our rural communities and our state.

Thank you for your attention. I would be happy to answer any questions you may have.