

LEGISLATIVE BILL 329

Approved by the Governor May 27, 2015

Introduced by Schilz, 47; Coash, 27; Harr, 8; Groene, 42; Davis, 43;
McCollister, 20.

A BILL FOR AN ACT relating to tourism; to adopt the Nebraska Agritourism Promotion Act.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 7 of this act shall be known and may be cited as the Nebraska Agritourism Promotion Act.

Sec. 2. The purposes of the Nebraska Agritourism Promotion Act are to:

(1) Promote tourism and rural economic development by encouraging owners of farms, ranches, and other rural land, including agricultural, historical, ecological, cultural, and natural attractions, to allow access to members of the public for educational, entertainment, and recreational purposes;

(2) Promote a better understanding by visitors of agricultural operations and features, including the production of livestock and agricultural products, the land and other natural attributes, and wildlife; and

(3) Encourage agritourism activities by limiting civil liability of owners of farms, ranches, and other rural land.

Sec. 3. For purposes of the Nebraska Agritourism Promotion Act:

(1) Agritourism activities include any one or any combination of the following: Hunting, fishing, swimming, boating, canoeing, kayaking, tubing, water sports, camping, picnicking, hiking, backpacking, bicycling, horseback riding, nature study, birding, farm, ranch, and vineyard tours and activities, harvest-your-own activities, waterskiing, snow-shoeing, cross-country skiing, visiting and viewing historical, ecological, archaeological, scenic, or scientific sites, and similar activities;

(2) Fee means the amount of money asked in return for an invitation or permission to enter the premises;

(3) Inherent risks means those conditions, dangers, or hazards that are an integral part of land or waters used for agritourism activities, including the following:

(a) Surface and subsurface conditions and natural conditions of land, vegetation, and waters;

(b) The behavior of wild or domestic animals;

(c) The ordinary dangers of structures or equipment ordinarily used in farming or ranching operations when such structures or equipment are used for farming or ranching purposes; and

(d) The potential of a participant to act in a negligent way that may contribute to injury to the participant or others whether by failing to follow safety procedures or failing to act with reasonable caution while engaging in an agritourism activity;

(4) Owner includes any person who is a tenant, lessee, occupant, or person in control of the premises or any agent of such a person whose gross annual income from agritourism activities does not exceed five hundred thousand dollars;

(5) Participant means an individual who engages in agritourism activities on premises owned by another but does not include an owner of the premises or any agent, employee, or contractor of the owner;

(6) Person means an individual, corporation, limited liability company, partnership, unincorporated association, or other legal or commercial entity and does not include a governmental entity or political subdivision; and

(7) Premises includes land, roads, pathways, trails, water, watercourses, private ways, and buildings and structures attached to the land outside of cities and villages and does not include land zoned commercial, industrial, or residential.

Sec. 4. (1) Except as provided in section 5 of this act, an owner who allows a participant on the owner's premises for agritourism activities shall not be liable for injury to or death of the participant or damage to the participant's property resulting from an inherent risk on the owner's premises.

(2) Except as provided in section 5 of this act, no participant or participant's representative shall maintain an action against or recover for injury to or death of the participant or damage to the participant's property resulting from an inherent risk on the owner's premises when such owner allows the participant on the owner's premises for agritourism activities.

Sec. 5. Nothing in the Nebraska Agritourism Promotion Act limits any liability of an owner:

(1) Who fails to exercise reasonable care to protect against the particular dangers of structures or equipment used or kept on the owner's premises;

(2) Who has actual knowledge of a particular dangerous condition on the owner's premises and does not make the particular danger known to the participant if the particular danger is a proximate cause of injury to or death of the participant or damage to the participant's property;

(3) Who reasonably should have known of a particular dangerous condition

of equipment used or kept on the owner's premises and does not make the particular danger known to the participant if the particular danger is a proximate cause of injury to or death of the participant or damage to the participant's property;

(4) Who fails to properly train or supervise or improperly or inadequately trains or supervises employees who are actively involved in agritourism activities and an act or omission of the employee resulting from improper or inadequate training or supervision is a proximate cause of injury to or death of the participant or damage to the participant's property; or

(5) Who commits an act or omission that is a proximate cause of injury to or the death of the participant or damage to the participant's property if the act or omission:

(a) Constitutes willful or wanton disregard for the safety of the participant;

(b) Constitutes gross negligence;

(c) Was intentional;

(d) Did not constitute an inherent risk;

(e) Occurred while the owner or the owner's employees were under the influence of alcohol or illegal drugs; or

(f) Would otherwise be a violation of any other statute or rule or regulation of the State of Nebraska, a state regulatory body, or a political subdivision.

Sec. 6. (1) Nothing in section 4 of this act limits any liability of an owner who receives a fee for allowing a participant on the premises if the owner fails to do at least one of the following:

(a) Post and maintain signage containing the warning as described in subsection (2) of this section in a clearly visible and conspicuous location at or near the entrance to the property used for agritourism activities; or

(b) Include the warning as described in subsection (2) of this section in any written contract between the owner of the property and each participant allowed on the premises for a fee. Such warning shall be in a conspicuous location within the contract and be written in not less than twelve-point boldface type.

(2) The warning notice shall read as follows: WARNING - Under Nebraska law, an owner of property, including lands and waters, is not liable for the injury to or death of the participant in agritourism activities or damage to the participant's property resulting from the inherent risks of such activities. Inherent risks include, without limitation, the risk of animals and land and water conditions, the ordinary dangers of structures or equipment ordinarily used in farming or ranching operations, and the potential for you or another participant to act in a negligent manner that may contribute to your own injury or death. You are assuming the risk of participating in the agritourism activities for which you are entering the owner's premises.

Sec. 7. Nothing in the Nebraska Agritourism Promotion Act limits the obligation of a participant entering upon or using premises of another for agritourism activities to exercise due care in his or her use of such premises and in his or her agritourism activities on the premises.