

2011 HOUSE JUDICIARY

HB 1142

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1142  
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12842

Conference Committee

Committee Clerk Signature



## Minutes:

Chairman DeKrey: We will open the hearing on HB 1142.

Sara Otte Coleman, Director of the Tourism Division, ND Dept of Commerce:  
Explained the bill; support. (Attachments 1,2,3,4,5,6)

Rep. Drovdahl: Sponsor, support. Agriculture is our leading economic stimulator in the state of North Dakota. The business people who are involved in agriculture business have been successful because they have been aggressive in looking for alternate sources of income. Examples include the many variety of crops that they are currently growing and other programs such as Pride of Dakota, where many of them have branched out and expanded their business and opportunities. We as a state have been progressive in promoting any of these activities that provide growth to our state, to our state businesses, and will lead to the creation of additional employment. The second or third leading industry in ND is tourism. The growth in tourism has been tremendous over the last number of years; it has created a lot of jobs and a lot of business for our citizens. Merging these two industries has been very beneficial to the people of ND and to the state of ND. Whenever we have problems with that industry, we like to address them and continue to encourage that growth. This past summer, my local economic development person came to me and asked me if I would present this bill because it was a challenge for a lot of businesses, as you have already started to hear their testimony. What he didn't realize that when he gave me a sample, I put that sample in, and they continued to work on it to improve it, and those are the amendments that Sara brought forward. I do support the amendments. I support the program, because I think that anything we can do to help any business, agriculture, tourism, or a combination is what we're all about in ND.

Chairman DeKrey: Thank you.

Rep. Koppelman: If you look at the definition of agritourism it is pretty broad in the bill. Then if you look at the top of page 2, the requirement to post; I realize that your amendment says that an agritourism operator has no duty to warn anyone beyond

that provision, but yet this provision remains. My concern is if the definition of agritourism is as broad as it is, virtually anybody could be defined as an agritourism operator when someone comes onto their property. So if I were a farmer or rancher in ND, and I invited some folks over for a Sunday afternoon picnic, and they watched my cattle grazing, and there was an accident, if I didn't have this posted, it might mean something, but I'm not sure what it means because there doesn't seem to be a penalty for not-posting. That posting requirement might create some potential problems. Has anyone taken that into consideration?

Sara Otte Coleman: In a normal operation you are going to have existing liability insurance that would protect for the Sunday afternoon BBQ. I don't know that this would be applicable if it weren't a specific agritourism operation. Again, the design is to try and create an environment where more insurance providers will come in and offer affordable insurance. As far as the legal part of that, I would defer to some of the attorneys who are in the room, in terms of how that would be carried out.

Rep. Klemin: I guess I can see where this would be beneficial to agritourism operators, because it basically provides them with absolute immunity from any liability, and they don't even have the duty to tell anybody about an inherent risk, as I understand the amendment. It seems that this is not very favorable to any person who might be a customer of an agritourism facility, since they have absolutely no recourse other than to their own health care provider, I suppose, if there is an injury or a death. I'm wondering if this doesn't just go too far with the absolute immunity from liability. Could you respond to that?

Sara Otte Coleman: Obviously we understand that agricultural operations do have inherent risks; they cannot control their property to the level that you could if you were building a hotel or an attraction of some sort. There are more inherent risks in there. Understandably, participants in that activity need to understand that when they come in. There would knowledge and warnings about the inherent risks. The posting would be there, so we aren't eliminating that. The amendment is saying that there wouldn't be any further warnings in addition to the postings, probably the contract or waivers that people would sign. There wouldn't be any additional warnings needed; to alleviate the gray areas that may occur, if a lawsuit were to take place.

Rep. Klemin: The notice, as I read it, and maybe I'm misreading it or not reading it clearly enough, isn't a notice that tells anybody about an inherent risk that's there, but rather says that they're not liable for any inherent risks. Am I reading that wrong.

Sara Otte Coleman: The intent is that they would be warned and that it would be delivered. When we worked with Legislative Council on drafting it, our initial draft did have the specific language that we wanted included, and the size of the letters and details that we saw in other states' legislation. That didn't necessarily match up with the style that we normally use here in ND, so some of that was omitted. Our intent

was that, yes, we would make sure that on the premise, there is a formal warning that keeps people aware of the fact that there is inherent risk in this activity.

Rep. Klemin: If that's the case, I don't understand your amendment, and that there is no duty to warn. Another thing about the amendment, on the liability section it says that even though they are liable, they have immunity, and there is no duty to warn, according to this amendment, as I understand it, the liability of the owner, on page 2, line 16, the owner might still be liable if he has actual knowledge of a dangerous condition and doesn't make the condition known to the participant. There seems to be a conflict between the provisions in here that you have no duty to warn. Yet, the owner/operator could be liable if he didn't warn about that. Is there some conflict there, or am I reading that incorrectly.

Sara Otte Coleman: I believe that the intent is to warn, but not to require further warnings. For example, if you had a trail riding operation; as you came onto a ranch and you were going to participate in a trial ride, you would see the warnings on the premise. Those warnings would be available to you, reminding you that horses are unpredictable and that there is some risk associated with that. From there, there would probably be a signature, releasing that; beyond that, when the trail boss or rancher, gets everybody ready to ride, they are not required to further provide additional warning beyond the initial warning. That is my understanding as to the intent of the amendment. Whether or not that carries through, or transcends, we can work on the language.

Rep. Klemin: How does, on page 2 line 16, dangerous condition, how does that differ from the definition of inherent risk on page 1.

Sara Otte Coleman: The amendment adds an unusually dangerous condition; I think to clarify the fact that inherent risk is the normal danger associated with the activity and then by adding an unusually dangerous condition would be, for example, you were riding too close to the cliff, or pushing those limits further, then there would be some liability involved.

Rep. Klemin: So we basically by putting in the word "unusually" as you do in the amendment, they are making a jury question out of every one of these situations as to determine whether this was an unusually dangerous condition, or just a normal dangerous condition.

Sara Otte Coleman: That raises a good point, I think that the point we were trying to make with the amendment, was to obviously indicate that farms and ranches are dangerous places.

Chairman DeKrey: Thank you. Further testimony in support.

Ed Erickson, Attorney General's Office: The AG is not taking a position on this bill. I am only here to assist the Dept. of Commerce; if you have any technical questions

about the bill might happen to do. To begin my non-testimony, the bill's intended to provide some certainty to agricultural tourism operators, by providing that when they provide a participant, a notice at the beginning of page 2, then they have fulfilled their duty to warn participants of these inherent risks in an agritourism operation. Once they have fulfilled that duty to warn, legally, then if a participant chooses to continue on, the participant is knowingly undertaking those risks. The amendments are simply intended to clarify both that point and also as noted to distinguish the language of the continuing liability of the owner/operator will be if the owner/operator's actual notice of an unusually dangerous condition, one that is not one of the inherent risks. We're also asking that an amendment be added to state that this isn't the exclusive statutory limitation on liability, but that other statutory limitations, such as the existing recreational use chapter would also still apply to an agritourism operation.

Rep. Klemin: As I understand the amendments, this imposes no duty to warn anyone of an inherent risk, only that the notice is not a warning of an inherent risk, but just a notice that the owner/operator is not liable for any injury or death if it results from an inherent risk. But there is still no duty to warn set out in this notice, is there.

Ed Erickson: I think I see what your point is. The notice at the beginning of page 2 is expected to operate like a warning. That could, perhaps, be improved by specifying what that's to include. When I look at that, if I were drafting such a notice for a private client, I would certainly be including the definition that's starting at the chapter, defining what the inherent risks are, and perhaps giving some examples.

Rep. Klemin: The last section on liability of owner/operator, which it says that it doesn't prevent or limit the liability, if the person has actual knowledge of an unusually dangerous condition on the premises. Is there somewhere in here, in this amendment, where there is a duty to warn imposed on the operator if he has actual knowledge of an unusually dangerous condition.

Ed Erickson: The duty to warn is a common law, and we also have some tort statutes that address that. That would continue; this would not affect those provisions in existing law, in both common law and statute.

Rep. Klemin: But the other amendment you have on here says there is no duty to warn, which seems to me that he has no duty to warn of any unusually dangerous condition, as I see it that relates to an inherent risk.

Ed Erickson: Yes, we're talking about the difference between the inherent risks and an unusual risk; something that's different. I have been provided a good example of this. There is an inherent risk of riding any horse that the horse might do whatever the horse has a mind to do. But if the owner/operator knows that a particular horse has a bad disposition that owner/operator needs to be providing some information to the customers, or he might be liable under this last section.

Rep. Klemin: That determination of an unusually dangerous condition, then is that a subjective determination, make by the owner/operator.

Ed Erickson: I think the owner/operator is going to make that decision, but I do think that a injured participant might be able to take that to court and ultimately a judge and jury would decide.

Rep. Klemin: So is this a trial attorney's full employment act.

Ed Erickson: As you're undoubtedly fully aware, that's what most lawyers refer to session as. What we're doing is changing the liability, once you get to court. Right now, these cases would go to court. There would still be the potential of going to court and it's up to the owner/operator to raise these as defenses in their action. We're not taking this out of court or removing the rights of an injured party to seek redress, just limiting that in regard to having provided this notice concerning the inherent risks of agritourism and there is no intention to immunize the unusual risks, where there would still be a requirement for specific notice under the common law, and appropriate tort statutes.

Rep. Klemin: The definition of agritourism relates to any working or historical farm, ranch, forestry operation or winery. Does that cover almost all of ND, area wise?

Ed Erickson: I didn't draft the language; I understand that that was the intent to cover anyone operating in that manner who is conducting the activity as agritourism. I don't believe that the intent was to view a casual person just visiting on a farm. They wouldn't be undertaking agritourism.

Rep. Klemin: This is almost like putting a sign at the border that says, welcome to ND, and enter at your own risk.

Ed Erickson: Of course, that's a policy decision for this body to make.

Rep. Koppelman: The definition that has been referred to perhaps needs to be tightened; because as it is read, it says that agritourism means any activity customarily carried out, on a working or historical farm, ranch, forestry operation, or winemaking. It goes on to say, if members of the general public are invited to view or allowed to participate, with or without fees or charges, any activities for educational, recreational, or entertainment purposes. That seems to me, would just about include anybody coming on a farm or ranch property with the exception of the people who live or work there. On the top of page 2, it says that the owner/operator of any facility at which agritourism occurs, shall post... and goes on to talk about that warning. What is the penalty for not posting?

Ed Erickson: The penalty is that you don't get to avail yourself of the defense provided by that notice. If a participant was injured and chose to sue the operator,

the operator could not raise this chapter to be created as a defense. They might have other defenses, but not this chapter.

Rep. Koppelman: In talking about the unintended exposure of liability, if Rep. Klemin's concern is valid, about this encompassing virtually all of ND, and the description of what agritourism is, including everything, educational, recreational, entertainment, whether you charge a fee or not. If it had the fee requirement, I could understand that you are charging people to come to your operation. But this is saying, again if I invite some folks over to Sunday picnic for a recreational afternoon, they're out watching the cattle graze and they get kicked by a cow, there is some liability exposure there and I don't have a sign posted, because I have no intention of being in this business, I don't have any of the liability protection this act provides, as you've just explained, I'm in big trouble.

Ed Erickson: Perhaps, the owner/operator would have general liability insurance if they were not operating an agritourism operation. That might be where they would have to go, the same as the typical homeowner's insurance. If I have guests over at my home and someone slips and falls, because I did something like have a slippery rug, my general liability policy would cover it, and I'm not engaged in a business at home.

Rep. Koppelman: I understand that; however, because of the broad definition of agritourism I think a clever attorney could say, you weren't simply inviting friends to your farm, according to the definition in law, you were engaging in agritourism. What's more, you didn't have the posting that is required by law; and therefore, you aren't entitled to the liability protection in law. This goes way beyond what a general liability policy would insulate you from.

Ed Erickson: In that case, if we're arguing out of this chapter, then the person simply on the law as it existed prior to this chapter.

Rep. Koppelman: That's my point. If you enact this chapter, they could go to this very chapter, allege that you are participating in agritourism, therefore you come under this chapter, allege you haven't posted the signage required, therefore you don't qualify for the liability protection and therefore you have exposure.

Ed Erickson: Yes, I think that this is exactly how this would operate. The person would have whatever liability protection provided by other statutes, or that they otherwise possess.

Rep. Koppelman: I don't think it would shut them out of this chapter if they didn't post a sign. I think if the language defining what agritourism is, is not more specific, and it's as general as it is, virtually anyone owning/operating a farm or ranch in ND, could arguably be engaged in that. If they let anyone on their farm, other than their family or people that work there; because virtually every other purpose is listed; therefore, that would bring them under this chapter. If they then violated the chapter,

by not posting a sign that you required to be posted, you said a moment ago, that they forfeit all the liability protection under the chapter. So if you can establish that they are in the agritourism business, even though that might not have been their intent, but that's what it defines it as in law, and they were negligent by not posting signs, somebody was injured, they don't have this liability protection, now it goes beyond the common protection in law, the common protection you're talking about in liability policies and it gets to an exposure to liability, unintended that it may be, that this chapter, if enacted could create a problem. I think there is a potential problem that we need to tighten up.

Ed Erickson: I think you're looking at it correctly. One thing in the set of amendments we wanted to do, was to add the provision of the affective other laws, that any limitation or legal liability afforded to an operator under this chapter, if in addition to, and not a substitution of any other limitation of legal liability, otherwise provided by law. If a person who falls under this chapter, fails to provide the notice, they just don't get the benefit of this chapter. There is no additional liability created by this chapter.

Rep. Koppelman: What you just read deals with liability limitation, not with liability exposure. I agree with what you said about limitation, but what you may need to add then is that this chapter creates no greater liability exposure, than any other section of law or something along those lines if that is what you want to achieve.

Ed Erickson: I believe that was the intent and if you want to make it better, we could perhaps even include that language that you suggested.

Rep. Kretschmar: Was there a reason that the statute does not include property damage as a collectible matter. It seems to me that you can break my leg if I'm out on your land, but don't put a dent into my car.

Ed Erickson: I wasn't involved with that drafting, so I'm not the one to speak to why things were included or not included. But as you suggest, that perhaps would be an item to be added; speaking of property damage in addition to personal injury.

Chairman DeKrey: We're trying to alleviate liability for agritourism, but under the definition it is with or without fees. So if you're trying to engage in agritourism, I would assume you would be doing this to make money. What situation could arise that you wouldn't be charging fees, that you would have these people on the premises.

Ed Erickson: I think there might be situations where an agritourism operator might waive fees for certain groups; school kids coming out to see what a farm looks like, for example. There might be veterans' day. I understand from my in-laws in the Air Force, that there are a number of folks who do free days for Air Force families at different events. I can see a number of situations in that fashion.

Chairman DeKrey: Thank you. Further testimony in support.

Larry Maslowski, Sr Analyst and Director, Consumer Protection Property & Casualty Division, ND Insurance Department: Support (attachment 7).

Rep. Delmore: Are you talking about an amendment that you would put on here that would help clarify some of this. You've got rhetoric here, but I don't understand exactly what you're asking us.

Larry Maslowski: Basically, we're in support of the concept of this bill, as it's originally designed. I just had a moment to look at the amendments and, even with the amendments, I think we are supportive of the bill. I'm not offering any amendments.

Rep. Delmore: Well then, we have lots of questions in this committee about insurance; I would think that might be insurance and liability; an area where you would be bringing some information for us.

Larry Maslowski: What sort of information are you looking for.

Rep. Delmore: You talk about a stricter standard based on assumption of risk; you use a number of things that I would think that your department probably would have access to helping us pursue, in light of what these people are hoping to do for the agritourism.

Larry Maslowski: I guess my intent, and my testimony, is simply to reiterate what was in the study that was accomplished. The conclusion that was reached there, is that we offer at least 9 different ideas for the Legislature to consider that may have some impact on the affordability and availability of insurance. Two of them dealt with the concept of assumption of risk. This bill deals with the assumption of risk concept. The conclusion in that report was risk was going to be assessed by the insurance industry. We hope that this is going to result in fewer claims and less exposure to the insurance industry, thus resulting in a decrease in the cost of premiums and making it more affordable for the local ND farmers and ranchers, etc.

Rep. Klemin: It was mentioned that some other states have adopted this type of immunity for agritourism operations. I believe she said that there were 8 states, Kansas and 7 other states. Have you had the opportunity or done any review of how enactment of this law, in these other states, going back to 2004 in Kansas has affected the insurance rates for agritourism businesses in those other states.

Larry Maslowski: No we have not done that kind of study.

Rep. Klemin: So other states that have done this, you're suggesting that it might result in lower insurance rates here in ND. We don't know what exactly has happened in the other states that have done this. Is that right.

Larry Maslowski: That's correct. I might add, the mere enactment of statute in and of itself may take several years of time before that impact is actually felt by the insurance industry, in terms of fewer claims to actually translate into a reduction of premium. In my opinion, I don't expect to see everything change the day that this goes into effect; but at some subsequent time we would think it would improve this scenario.

Chairman DeKrey: Thank you. Further testimony in support of HB 1142.

Chuck Fleming, Business Development Division Director of the ND Dept. of Agriculture: Support (attached 8).

Chairman DeKrey: Thank you. Further testimony in support.

Tracy Potter, Executive Director, Ft. Abraham Foundation: Support (attached 9). I would like to answer just a few of the questions that have asked. Your question about people who are coming without pay. Well, even if you're in the business, there are people who come without pay. The media you invite on to your land, FAM tours, etc. that the department sponsors. That's the reason for the inclusion of that language. The affects on the other law, I think Mr. Erickson explained, that other amendment, on line 16, probably covers that pretty well. The bill does not provide any kind of absolute immunity as is clear, and will not prevent the ability of people to litigate these issues. It does provide an affirmative defense. That is what this bill is designed to do, provide an affirmative defense to an operator who does nothing wrong. If they are negligent in some way, if they have failed to take proper care, if they're aware of but don't talk to the customers about the unusual risks, then the defense is not there for them. It limits its liability to the lack of care or to negligence. I had the same question about what this means, in terms of that amendment on whether or not an agritourism business has no duty to warn, so what does that do to the previous duty to warn that's placed in there. It was indicated to me, in questioning, that it meant to say beyond this statute, beyond the duties that are already in here. I think there are some areas that may need additional clarification with that language.

Chairman DeKrey: Thank you. Further testimony in support.

James Odermann, member of ND Nature and Rural Tourism Association: Support (attached 10,11,12,13,14)

Rep. Steiner: Can you explain the operation that you have at your ranch. Have you had tourists at your ranch, and how do you handle them, and does it all work as far as your insurance now. Are you still in operation with bringing tourists on.

James Odermann: Yes, we do have an agritourism operation and probably the number one interest that we have is prairie dog shooters. We have people as far away as North Carolina driving up 24 hours straight to be able to get a chance to shoot prairie dogs at the first sign of spring. Basically, we are in the process of achieving and one of the reasons that we really like this legislation, is because it gives us a process by which we can embark on protecting ourselves and also protecting our customers. We protect ourselves by putting up the signage, working with our attorney to develop a form that customers sign to come onto our property, to say that these are the inherent risks, this is what you are going to face; you sign off

on this or you can't do business with us, to protect them and to protect us. The other thing that it does, it is a physical opportunity for people to come onto the place to say that, these folks are part of a network of agritourism operators. It is really important from our perspective to know that we're not out there alone.

Rep. Klemin: You've actually done what you think is necessary to provide you with protection from liability through the notice that you're already providing through the sign that you have, and by requiring a participant or a customer to sign a waiver form. Is that correct.

James Odermann: We have done that. Here is the catch, it goes back to one of the things that you talked about earlier. Because of the gray area, relative to the contract that we would develop, and there is always some enterprising young or old attorney, who is looking for ways to be able to get another customer. So, while we are running this contract by our attorney and saying what you think, will this protect us, he might say yes, but when we get in front of a jury, that is a whole different ball game. So this legislation makes it possible for us to be able to say we have some protection based on what NDCC is; if there is negligence on our part, we fully expect that we should be liable for that part. Assuming that we meet the test within the statute here, we should not have to assume additional exposure from the liability perspective.

Rep. Klemin: You're actually engaged in agritourism operation, in addition to your own ranching activity, in this prairie dog shooting.

James Odermann: Yes.

Rep. Klemin: The definition of agritourism in this bill seems to go a lot further than the prairie dog shooting activity that you're talking about. Would this bill, as you understand it, protect you elsewhere on your ranch from any other kind of activity, as long as it is not an unusually dangerous condition.

James Odermann: There are a couple of things. Within our own operation, we have an umbrella liability policy that protects our farm and ranch activities. The liability policy from that umbrella, does not provide the kind of liability coverage that we need for this kind of activity. My insurance carrier has pretty much said, especially when we wanted to engage in a horse trail riding operation, he said there is no kill switch on a horse, the liability is going to be exponentially higher. Yes, our prairie dog hunting, nature guided trails and other activities might be narrowly focused but there are many other operators who are doing things that are far beyond what we are doing in our operation. I think we need to have it very broadly focused because there are a lot of entrepreneurs in ND who are looking for ways to be able to showcase what we really have here, in terms of scenic beauty, agricultural production, in terms of cottage industries that can come up as a result of the production that we get off of our land.

Rep. Onstad: For years, people have allowed prairie dog shooting on their farm, going out and hiking through some trails, riding horses, but as soon as we advertise that and made a charge for it, then that's when the liability came in for the extra concern; and what actually happened in your situation, on the cost of your liability insurance for that special package.

James Odermann: We were at risk, if you will. We developed a document that the people signed off on, the attorney said it's probably okay. The reality of it is, we probably screened our customers closer than we needed to do, lost the business, didn't get the business. That's how we tried to solve the issue. The other thing to remember is that it isn't a multi-million dollar business. It's a supplement to the Ag production enterprises that we currently have. It works well, because it's at times when are free in terms of the work schedule that we have at our farm and/or ranch to be able to cater to these kinds of customers.

Chairman DeKrey: Thank you. Further testimony in support.

Cal Klewin, Economic Development Association of ND: The Association is a member based association that supports economic development activities in ND. We have a membership of cities, counties, and economic development corporations, entities throughout the state. We support HB 1142 in the fact that it offers our agriculture community to develop businesses beyond their agricultural production and enhance their productivity and economic base in the farms and ranches (see attached 15).

Chairman DeKrey: Further testimony in support of HB 1142.

Jesse Scofield: Support (see attached 16).

Chairman DeKrey: Thank you. Further testimony in support.

Jay Dohn, Operator of Rolling Plains Adventures Ranch: Support (see attached 17).

Chairman DeKrey: Thank you. Further testimony in support.

Terri Thiel, Executive Director, Dickinson Convention & Visitors Bureau: Support (see attached 5,6,18,19).

Rep. Koppelman: What is the difference between agritourism as we would define it here and somebody who has a bed and breakfast on their ranch and welcomes tourists that way.

Terri Thiel: The bed and breakfast business has patrons coming to stay with people who live in their home and provide beds and meals. They don't provide any experiences.

Rep. Koppelman: Would they be covered by this as well on the farm.

Terri Thiel: I don't know. You're the lawyer.

Rep. Koppelman: I just play one in the legislature.

Chairman DeKrey: Thank you. Further testimony in support.

Sheri Grossman, President of Destination Marketing Association of ND: Support (see attached 20).

Chairman DeKrey: Thank you. Further testimony in support.

Alexis Brinkman, passed out testimony of Bill Shalhoob (see attached 21 and 22).

Chairman DeKrey: Thank you. Further testimony in support.

Recessed

Ch. DeKrey: Call to order, we have a quorum, we're taking testimony in opposition to HB 1142.

Alan Austad, ND Association for Justice: Members of the ND Association for Justice, are trial lawyers that serve across the state doing all sorts of legal work from estates and wills, plaintiffs' work and prosecutors and the defense attorneys. Testifying on behalf of the bill for the ND Association for Justice is Jackie Stebbins.

Jackie Stebbins, ND Association for Justice: Opposed (see attached 23). I'm going to start my testimony by actually going back to some of the arguments that the proponents of the bill made and to talk about why our organization would disagree with those statements. First, you heard the argument many times, it's not about availability of insurance, it's about the cost. The problem with the bill as we see it, is reasonable, prudent business owners in ND should carry insurance. It's part of being a prudent business person in ND. Agritourism business should be no different. This builds into the second argument I heard, you can't believe the money that people would pay to come and shoot a prairie dog or to milk a cow, or ride a horse. No one is disputing that agritourism is a wonderful opportunity for ND that North Dakotans want to capitalize on. But if there is, indeed, a crowd of people in the state, maybe in bigger cities like Bismarck or Fargo, or maybe there's the attraction from people in other states who would like to come to ND to milk a cow, ride 4-wheelers, hike on a trail. Let's encourage and foster this. If there's money to be made there, the business owner can see that, and build it into the fees that they will charge, just as any other business would do. I think that tends to defeat the argument that the insurance is available but it's too costly. If you use those fees you're making, you take the fees that you can make, you build it into what you're going to charge. Again, prudent reasonable practice in ND says you have

insurance. Just to walk through the handout I passed around, I think something that needs to be noted is that this bill does not encourage personal responsibility. Now we hear the words personal responsibility an awful lot in the politics, in the country, and in the state of ND. I think that North Dakotans really believe in personal responsibility. Again, the proponents of the bill would say that personal responsibility of the participant engaging in the agritourism. Our position is what about the personal responsibility of the owners and operators. Personal responsibility means purchasing insurance and not having your business operate in a careless manner. The problem with this bill is that it encourages the owners and operators to act in a reckless and careless fashion and then be able to throw up their hands and say "immunity", remember the ND legislature passed a bill which granted me immunity; this is agritourism, that's a problem which I think goes back to this area of personal responsibility. The idea that we would promote people running their agritourism business in a responsible and prudent fashion (started going off testimony).

Rep. Delmore: I was just wondering if you think the definition itself could also be tightened.

Jackie Stebbins: The amendment that we would propose would just be to delete "with or". To the question of whether the definition of agritourism too broad. It is a fairly broad definition. I guess just looking at particularly at this bill, with the concept of the bill, is really all I would speak to. The concept of the bill, I believe the proponents of the bill spoke to this, which the intent is to give owners and operators of agritourism this immunity. With that intent in mind, our organization does oppose the bill as written.

Rep. Delmore: Are you familiar with other states like Kansas; I don't know how many others would be closer to what ND is like and what legislation they've introduced. Are you familiar with some of that and do the amendments you offered help to clarify the bill so that it would be something usable as it is in other states.

Jackie Stebbins: I don't have that knowledge of the other states. I know a proponent of the bill had earlier talked about 8 states. I don't have that information. One question that was asked by this committee, that I'm not sure if it were ever answered, was in those states that enacted a law such as this, did insurance premiums go down. There wasn't an answer to that. That's probably an important answer to have. To somewhat answer that question, this bill is senseless in that it really doesn't add anything to our state laws. If anything, it probably adds confusion. A lot of what is in this bill is in our common law and state law. So really, I believe a discussion earlier between Rep. Koppelman and another person testifying may be lends light to the idea that this bill would just build in confusion rather than add any clarity.

Rep. Koppelman: What is the ND Association for Justice, trial lawyers by a different name basically, or what.

Jackie Stebbins: I believe Mr. Austad did note that ND Association for Justice is a collection of attorneys in the state of ND, mainly consisting of plaintiffs' attorneys, but many attorneys like me practice family law, criminal defense, estate/probate, you name it.

Rep. Koppelman: If you're amendments were adopted, and I realize that you're opposed to the bill, but recommended amendments if we were to pass the bill, if they were adopted they would in essence neuter the bill and make it completely useless because if you remove "with or" from the first amendment you suggested, removes from the definition the idea of someone who would charge a fee for this activity which, by definition, is someone who is in the business. So what you would be doing is offering, by striking that, any immunity or protection or any kind of liability limitation only to those people who do the Sunday afternoon picnic that we talked about before.

Jackie Stebbins: I will try to answer each question. Sunday picnics are covered in other aspects of the law, which gets back to my previous comment that this bill would be needless. To answer your first question, the ND Association for Justice takes the position that this committee would give this bill as written a Do Not Pass recommendation. In the alternative, yes, we would ask the committee to give a pass recommendation only with the amendments, but it's no secret that when you're first asking the bill not to be passed, that the amendments that you would seek would do the best for your position without taking away the bill. In the ND Association for Justice takes the opinion that giving absolute immunity to build agritourism will spread different costs out in different places. As I go back to health insurance costs, taxpayer costs, etc.

Rep. Koppelman: We heard that before. I understand your point. You talked about absolute immunity. This bill doesn't grant absolute immunity. It appears to me that it might be broad depending on your definition, but it's not complete immunity.

Jackie Stebbins: When proponents of the bill will note, as does the opponent of the bill today, have noted that agritourism carries inherent risk, 4-wheelers, horses, trail rides, there is a whole range of things that could fall into agritourism. If you are denoting that here are the inherent risks and from those inherent risks the owner/operator will have no liability that seems like absolute immunity in the agritourism realm.

Rep. Koppelman: But the bill talks about inherent risks and also about other types of risks that go beyond the inherent ones. I assume those would be things like negligence and it appears to not grant immunity for those things, it allows liability in those areas, doesn't it.

Jackie Stebbins: I'm not sure I understand your question.

Rep. Koppelman: If you look at the bill, it specifies some areas in section 2, where it says "it defines inherent risk" and talks about surface and substrate conditions of land, surface and substrate conditions of water, etc. and there are only five items there; but it talks later about the fact that the liability of the owner/operator, it says that it doesn't prevent or limit the liability of any owner/operator if the owner/operator willfully injures a participant, has actual knowledge of a dangerous condition, etc. and doesn't make that known, provides faulty equipment, so there are plenty of areas in there that someone, if they are truly negligent and aren't careful as you talked about, aren't responsible, could be held liable.

Jackie Stebbins: But if you use negligent in a general context, not in a legal context. I believe what Ch. DeKrey and Rep. Koppelman are speaking to is lines 12-18 on page 2. As written, you would have to willfully injure a participant, not negligently injure a participant, then you would not have the immunity; you would have actual knowledge of a dangerous condition but you hadn't made it known or you provide faulty equipment. But if you go back to page 1, subsection 2a-b, take subsection 2a-4, behavior of wild or domestic animals. To go back to the fly-by-night operator analogy, someone in Chicago has a kicking mule. It's kicked 30 kids. The man brings his kicking mule to ND to a petting zoo in Bowman County. There's the 31<sup>st</sup> child that's kicked by this kicking mule. Is it absolute immunity.

Rep. Koppelman: So the example used by the Asst Attorney General today, that if you had a horse that was prone to bucking, and you didn't warn someone that you would be potentially liable was incorrect.

Jackie Stebbins: I believe that the AAG may have been speaking to the bill with the proposed amendments. So I'm not comfortable answering that. But I would make the argument to say that, I believe it was brought up earlier that with inherent risk people would understand that there is an inherent risk of riding a horse. I think there is a difference in saying there is an inherent risk of riding a horse and I put a sign on the wall or encouraging a careless, irresponsible person who has a horse that is known to buck, has bucked before, and letting that owner/operator of the agritourism business with the bucking horse, let's someone on and then when it bucks the person off, say, I'm immune, sorry. That's the problem I see in this bill.

Rep. Klemin: Just a couple of questions, on page 1, you had referred to the behavior of wild or domestic animals. A lot of farms have dogs, the dog bite would be an inherent risk then under this bill if it passes this way. Do you see it that way.

Jackie Stebbins: This bill is pretty specific when it denotes the inherent risk, and it does denote the behavior of wild or domestic animals. The agritourism definition is a bit broad as we have spoken of before. To get back to an old point, it was brought up earlier, won't this just be question of fact for the jury. The question you pose, might be a question for a jury and if the intent of this bill is to have people involved in agritourism activities immune from the civil justice system, we're right back where we started; because with this bill, we're building in confusion. There would still be

questions of fact for the jury, so this bill really isn't clarifying anything but making more confusion. I think your question speaks to that.

Rep. Klemin: Going on to page 2, there is a provision in here about assumption of risk that the participant assumes the risk and that the operator of the facility can plead assumption of risk by the participant as an affirmative defense. Of course, you don't have an affirmative defense unless you have a lawsuit. Can't we do that already.

Jackie Stebbins: Yes, assumption of risk is an affirmative defense. So this statute is doing nothing more than outlining something that is already there. If a potential plaintiff brings a lawsuit because a bale at a pumpkin patch fell on their leg and broke it. The defense would have the right to bring the affirmative defense, yes but you were jumping on that bale weren't you. That's already a defense available to the agritourism operator. The person that broke his leg, you were jumping on the hay bale that made that hay bale fall and broke your leg. You assumed risk or you were acting carelessly. That's already available to a defendant in a civil lawsuit. This doesn't do anything differently.

Rep. Klemin: In fact, isn't our concept of comparative fault that we have already in statute, defines fault to include assumption of risk.

Jackie Stebbins: I don't have it in front of me, but yes that sounds correct.

Rep. Klemin: So that's part of our statute already, and the defendant can already use assumption of risk as an affirmative defense. In fact, I think there is a jury instruction on that. In speaking of the hay bales at the pumpkin patch, they've got these 1,000 or 1500 lb square bales stacked all over with tunnels in them that the kids can crawl through, and I've wondered about how safe that really is. I didn't see anything supporting those bales other than other bales. I do know that there are a lot of volunteers who go out and help at the pumpkin patch who are there during the fall, when all the pumpkins are around, in fact my wife is one of them. There are hundreds of people who go out there and work at the pumpkin patch for free to help with it because they have thousands of people, around 50,000 this past fall. Are all of those volunteers going to be immune from liability too, under this statute if the pumpkin patch meets the definition of agritourism here and they post their sign.

Jackie Stebbins: A very lawyerly answer is probably it depends and it would take a lot of research that is probably the best answer I can offer now. But to go back to the earlier point, that if you are running an agritourism business, which again, people are embracing in ND. If there were 50,000 people at the pumpkin patch, that's wonderful news to hear. Again, let's a pumpkin patch, just to be general, is a prudent business, taken the time to do a cost benefit analysis to decide their fees and base those fees on the insurance premium, hopefully it's not a concern that your insurance company would take care of it.

Rep. Klemin: I didn't see anybody from the pumpkin patch here today, saying their insurance rates were too high. That seems like, with all the pumpkins and they are out on the farm, they got tractors and everything else, it seems like they must be a working or historical farm under this statute.

Jackie Stebbins: That argument by the proponents was heard many times. It's available but it costs too much. Again, to function in any small business, as an attorney, in a small firm, I have to carry malpractice insurance. The day you're sworn in in the House chambers. You sign your name at the end of the day, you have to prove that you're ready to take on your malpractice insurance. It's part of being a careful, responsible business owner, in a variety of businesses, not just agritourism. The problem with this bill is to encourage people to go without insurance to encourage the fly-by-night operations to come in and make that quick buck and have no accountability to anyone if one of those inherent risks falls on someone participating in the business.

Rep. Klemin: I recognize that you didn't have the copy of the amendments that were proposed by S. Otte Coleman, but one of those amendments is to on page 2, line 16 has knowledge of an unusually dangerous condition; which to me would seem to indicate that if it was a dangerous condition versus an inherent risk there's still no liability with that amendment. It would have to be an unusually dangerous condition. Do you have any idea what that means from a legal standpoint, unusually dangerous.

Jackie Stebbins: I believe this question did come up a little earlier in the proponent's testimony. It was brought up that if it is an unusually dangerous condition, what is unusually dangerous. Is that going to be the burden that we would ask the agritourism owners/operators to bear, to decide what's dangerous and what's unusually dangerous. It looks like another question of fact that would go to a jury, and then we're right back where we started trying to avoid the process.

Rep. Klemin: Another one of the amendments was on page 2, line 7 where the amendment was to say that an agritourism operator has no duty to warn any participant of inherent risks. Isn't that sort of contrary to the way the law has progressed with respect to people getting injured by product's liability cases and other things that the courts have increasingly found a duty to warn, and this would be contrary to that general trend.

Jackie Stebbins: Without research or law in front of me, but common sense would say, especially in a good neighbor state like ND, you have a duty to warn. If there is a dangerous condition I think it's common sense, and again the problem with the bill is that it removes that common sense element and encourages carelessness. Because at the end, if someone knows that they're immune from lawsuit or harm, they don't really have an incentive to be more careful and more responsible as owners of business.

Rep. Klemin: So really the owner/operator of an agritourism business, whatever it turns out to be under this bill, really can say that's too bad you got back, and come back next year.

Jackie Stebbins: I believe it was earlier stated that this bill is very closely related to posting a very large sign at the ND border that says welcome to ND enter at your own risk. As this bill is written, ND probably wouldn't want that sign at our borders, given the testimony of how important agritourism has become to ND, the money there is to be made, the contacts with people around the world. Common sense would dictate that many North Dakotans probably wouldn't want to put that sign on the border. This bill is very closely related to that sign.

Rep. Maragos: From your standpoint, if an accident were to occur on an agritourism venture, and say this law was in effect, do you firmly believe, as an attorney, you still wouldn't have somewhere in the law grounds to sue on behalf of the plaintiff.

Jackie Stebbins: If I'm understanding you correctly, this bill is passed into law, someone is participating in a farm, ranch or forestry operation, and under the definition of agritourism is harmed, your question, could the harmed individual who became the plaintiff and bring a lawsuit, correct.

Rep. Maragos: Yes, is it your opinion that, if this were passed, they would not have anywhere in the law to bring suit for damages or relief for their complaint.

Jackie Stebbins: Without having the specific circumstances in front of me, that is hard because it is a broad question, where you have to assume some facts. Could a lawsuit still be brought, probably; but do you make it incredibly hard for that plaintiff who has been harmed to bring the lawsuit, if as a plaintiff you've read this bill and you know, again assuming some facts there, you knew you were participating in agritourism, you read this bill and say, I guess I assume the risk. Plaintiff's attorneys generally take cases like this on a contingency fee basis. Not many plaintiff's attorneys would want to assume that risk, if it is a losing case.

Rep. Maragos: One other matter that was brought up earlier in the testimony, were the waivers of liability, say someone signs a waiver saying that they won't hold the person liable who is allowing me to do this activity. Are those really looked upon by the court as significant; can people really sign away their ability to keep themselves safe. I don't think that this will hold the agritourism operator harmless.

Jackie Stebbins: You're probably referring to page 2, parts 1-6, where it speaks out "shall post in a conspicuous location on the premises" and have a written contract, is that correct.

Rep. Maragos: Yes, would that be a valid contract.

Jackie Stebbins: There is tort law and contract law, where we are speaking of both. To put forth an answer, I would have to assume a lot. Can people always sign away their rights in a contract, no. We don't have the facts or contracts in front us, but I would go back to my original point; why do we have this bill. If this bill is to encourage agritourism by granting immunity, so if someone is harmed, a lawsuit doesn't come, if we know a lawsuit is still going to come, it seems the bill has no purpose.

Rep. Maragos: I think it might have the purpose of reducing their insurance premiums.

Jackie Stebbins: As I sat through the earlier hearing, I did not hear that. Again, I don't have information, no hard and fast evidence, that said premiums are reduced with a law like this. Again, it goes back to the earlier argument, who is going to bear the burden. If it's not the insurance company, it's going to be the taxpayers and people who have health insurance.

Rep. Onstad: Basically, the proponents came forward because they would like to start this agribusiness, then they find out the cost of additional insurance to cover them is expensive. Obviously, some have worked out a business plan, and it just doesn't cut the mustard for the business plans to want to do that. Are there any changes, in current law that would actually guarantee these people that their insurance is going to be lower if this immunity request is granted. Do we know for sure that it will lower their insurance or won't.

Jackie Stebbins: If people have worked out a business plan, an agritourism business, and they've decided that this insurance is too costly, is there any other way under law that insurance premiums would go down under other parts of the law, is that what you're asking.

Rep. Onstad: Just to clear that up, they found it was costly so they've come to us and asked for some minor changes in the current statute that probably lessens their liability; therefore, they are assuming that their insurance costs will go down.

Jackie Stebbins: That's a big assumption; to assume that insurance premiums will go down. Without any of that before this committee, it's hard to know. I'm sure many of us in here pay insurance premiums and many of us probably don't know them to go down, but to go up or stay the same. There are too many assumptions to answer that. The point that I would go back to is, there was a lot of testimony about all the money to be made from agritourism. If there is money to be made, like in any other business, there really shouldn't be a reason why the insurance premiums can't be built into the overall business plan. Availability wasn't the question, the concern is affordability. If there is a lot of money to be made, it doesn't seem to outlandish to continue to ask business owners/operators to be prudent and to carry insurance.

Rep. Onstad: In some cases, they aren't able to get insurance because of the risk involved.

Jackie Stebbins: I guess I can't speak to that. I don't have any firsthand knowledge, but that takes me back to a prior point, we're still then asking people to assume inherent risks, and it's been brought up that there are inherent risks in agritourism. Who would bear the burden of those risks. People, assuming that it's inherently risky, you could probably make the assumption that people will be harmed, so somewhere, somehow the money will have to come from somewhere and it just seems reasonable and responsible to carry insurance to assist you with that. I can't speak to how much it would cost.

Rep. Onstad: Or if they're unable to get it at all. Let's say they have a riding stable, and they're not able to get insurance.

Jackie Stebbins: The only answer I could answer to that, was what I heard from the proponents of the bill. The availability isn't the problem, it is the cost, and that would be all I can speak to.

Rep. Onstad: It just seems to me that in prior sessions, a lot of times insurance was unavailable for them to find insurance in some cases. I think most of it dealt with riding stables and trail rides and those sorts of activities. That really comes to be an expense.

Jackie Stebbins: There may be other ways to deal with that. The ND Association for Justice just doesn't feel that this bill is meeting those goals.

Rep. Klemin: I just wanted to also get your comment about some current law and I know you may not have researched this, but we already have a recreational use statute that gives limited liability to owners of recreational lands which includes agricultural lands, and I know we have it come through this committee, I think; it seems that this bill duplicates some of what is already afforded to operators of recreational uses on agricultural lands that is currently in the law in the recreational statute. Would you agree with that.

Jackie Stebbins: Yes, I would. Recreational use immunity is on the books; 53-08. It goes back to an earlier point, then this bill is unnecessary. If we're duplicating other parts of the law and just restating things like on page 2, the assumption of risk that we already spoke of, this bill becomes unnecessary, if anything it will just bring more confusion and I would assume that's not the purpose of any bill, to bring more confusion. We would take the position that this bill will bring confusion and is duplicative.

Rep. Koppelman: You made many allegations about the bill, but two of them are that it is a grant of complete immunity, and I think we've already talked about the fact that maybe that's not the case. The second that struck me, was that it was invitation

for people not to carry liability insurance. I didn't hear that from any of the proponents, and we've just had a round of discussing this again, I think they are talking about that the insurance premiums are too high, and this is a way to lower them. I don't know that to be a fact, but at least this is their objective. Not to have people go without insurance.

Jackie Stebbins: The ND Association for Justice does take the position that this is absolute immunity. To answer the next part of the question, I don't believe I heard any of the proponents for the bill either talk about this bill encouraging people to go without insurance. They were the proponents of the bill, I am opposing the bill. The ND Association for Justice does take the position that this would encourage people to go without insurance because, where would the motivation be to carry it if you feel as an agritourism owner/operator that you are immune from liability. There is no incentive to carry insurance. I think the argument that availability and cost is one argument and this would be another argument. There is no motivation in this bill to protect yourself if you already feel that you are protected by state law just granting you immunity.

Rep. Beadle: I understand what you're saying, that it is absolute immunity, but in looking through page 2, lines 1-6, the way that I interpret it that they have the sign that's posted, and include any written contracts. That shows that there will be a guaranteed disclaimer that the business operators have to provide to the participants. Wouldn't that still leave it open where you can bring suit; the operators are not immune if there is any sort of neglect, if they don't include anything as far as their disclaimer, or if they just don't do that. That still leaves them open to being liable for any problems that occur.

Jackie Stebbins: Two parts, I believe, when we take the position of absolute immunity, obviously that's notwithstanding page 2, lines 15-18; those are spelled out. I believe we have already covered that, that you would have to willfully harm someone, etc. To answer the question about page 2, parts 1-6, about the written contract, there is still the argument to say, it's one thing to say there's an inherent risk of riding horses and it's another thing to knowingly have a horse that bucks, rears up, sits on you; that's another thing. The warning about an inherent risk and knowing that there is an inherent risk that can harm someone.

Rep. Beadle: I completely understand that, if you know there is an inherent risk as far as the bucking horse that is definitely something that needs to be spelled out. I think most intelligent business owners would still make sure that they minimized that risk as much as possible. The way that I view this, if you knowingly put them on a horse that is going to buck, I think that would be willfully injuring the participant, so that will follow through with them still being held liable. It seems like the bulk of it is, what is the difference between willfully and negligently, and we really just adopt the recommendation you have of making it negligently, would that solve a lot of the concern that you have, because you don't have the malicious intent that goes in there.

Jackie Stebbins: At the end, the difference between willfully and negligently, generally speaking yes, negligently would be a lesser standard. I believe somewhere in there you asked what do I think. I'm not a juror, and a juror would probably be asked to decide that, which again gets us back to basically where we are without this bill.

Chairman DeKrey: Thank you. Further testimony in opposition. We will close the hearing.

Ch. DeKrey asked the intern to find more information on Kansas laws and the other 13 states.

Ch. DeKrey appointed Subcommittee: Rep. Klemin, Rep. Steiner, Rep. Beadle, Rep. Onstad, Rep. Guggisberg.

Sara Otte Coleman dropped off materials on the other states with agritourism laws (see attached 24).

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1142  
February 9, 2011  
14283

Conference Committee

Committee Clerk Signature



## Minutes:

Chairman DeKrey: We will open the hearing on HB 1142.

Rep. Onstad: I move amendment .01004 (see attached 1). Basically, HB 1142 deals with agritourism. After the subcommittee met and working with the Tourism Dept. and a few others, this amendment allows a process to register your agritourism activity. That activity would be registered with the Ag Commissioner, under the Pride of Dakota program. If you get down to page 2, the liability of a registered agritourism operator, that's always been the contention of this bill. It really says this chapter is not to prevent or limit the liability of a registered agritourism operator if the operator injures a participant, willfully has knowledge or should have known about dangerous conditions. It sets up that registry and if you have some inherent risks, you better notify your participants of that risk.

Rep. Steiner: Second the motion.

Rep. Klemin: Are these the same amendments as before.

Rep. Onstad: No, these are different, if you looked at page 2, it really takes away those paragraphs that you questioned giving them immunity. This chapter does not prevent or limit the liability of a registered agritourism operator.

Rep. Koppelman: Does this registration require everybody engaged in agritourism to register before they can participate.

Rep. Onstad: It's not a requirement, but it would question the fly-by-night outfit. If you go through the section of registering and you become part of a database that you are registered. Does this help reduce their insurance, I don't know, we're not sure. We're just saying that if you go through the act of registering, you are legitimate.

Rep. Koppelman: So the registration is allowed, it's an advantage, but it's not required.

Rep. Onstad: Yes.

Chairman DeKrey: Voice vote, motion carried. We now have the bill before us as amended. What are the committee's wishes in regard to HB 1142?

Rep. Onstad: I move a Do Pass as amended on HB 1142.

Rep. Delmore: Second the motion.

Chairman DeKrey: Discussion on the bill as amended.

Rep. Klemin: I would ask that we defeat this motion to recommend a Do Pass on this bill. I have had very little opportunity to look at these amendments, but nevertheless, it appears that they don't really add anything to the law that we don't already have. What's in the law right now are two sections, one is the recreational use statute, chapter 53-08 and we also have another chapter, 53-10 relating to equine activities, sponsors or professionals in which there are provisions relating to limited liability in those situations. I have copies of these things (see attached 2). We have a recreational use statute already. I know that it wasn't very long ago that we went over this and thoroughly looked at the provisions in the recreational use statute, which would take care of some of the provisions in this bill, HB 1142. The equine activity statute, it wasn't that long ago that we looked at that too, and made some adjustments on it. Another issue is the provision for modified comparative fault. This was adopted in ND during the tort reform period that we had in the 1980' and 1990's. Section 32-03.2-02 defines comparative fault and two of the main issues is that one provides that if the injured person is negligent and has what we call contributory fault, his loss is not barred, unless his fault is as great as the fault that anybody else who contributed to his injuries. For example, if he's 50% at fault himself, he can't recover under this. But if he's 49% at fault, he can recover 51% of his damages from those that are 51% at fault. This modified comparative fault statute also provides that when two or more parties contribute to the injury, the liability of each party is several only, and is not joint. That was a major reform; we used to be joint and several liability, now it's only several liability unless the people act in concert in committing the act. Finally, under this there is a definition of fault, it's an all encompassing definition, which includes all of the kinds of things that we've traditionally talked about in the past, including negligence, malpractice, absolute liability, failure to warn, reckless or willful conduct, assumption of risk, etc. Then finally I've given you a copy of a pattern jury instruction on the assumption of risk. A person assume a risk of injury if he has actual knowledge of a risk of loss or injury, has the freedom of choice to avoid the risk, voluntarily encounters the risk, and the injury or loss is proximately caused by the encounter. So, we do have an assumption of risk in ND, and people that engage in certain activities, knowing what the risks are, are deemed to have assumed the risk and may be held responsible for their own fault. I also have a couple of Supreme Court cases that looked at the issue of these release agreements; where people can sign a release with someone,

waiving liability, saying that they acknowledge what they are getting into and so forth. Those releases have been upheld on several occasions by the ND Supreme Court. So what does this bill on agritourism do that we don't already have. First, it seems to give an additional element of immunity to people who are engaged in these activities who come to an agritourism place and basically they are being asked to assume the risk, if you will, of all of these inherent kinds of risks. I didn't have an opportunity to go through what your amendment does to all of those inherent risks, but basically those inherent risks cover just about everything that could happen while walking or swimming or sleeping. If I am encouraging people to come to my agritourism facility to pay me to be a guest there and engage in these kinds of activities, and particularly people who are not used to being in those environments, then we should expect these operators to take good care of our guests and not make them responsible for everything that could happen to them there. We don't ask somebody from New York City to come to ND to stay in a cabin and assume the liability that the cabin is safe for him and his family. Why should we do that? Now if the whole goal here is to try and lower insurance premiums for people who engage in these agritourism activities, then we've had information from the Insurance Dept., as I understand it, there is no evidence that this has occurred in the other states that have done this. Now, much of what I saw in the other amendment seemed to come right out of the Kansas statute. One thing that I don't see in here, that the Kansas statute has, was a \$2,000 tax credit. Maybe that's why things were encouraged there. Looking through these amendments just briefly, I'm not sure that this takes the place of that person has to assume the responsibility that some other participant; at the agritourism facility might also be negligent and cause his injury for some reason. But there again, our definition of modified comparative fault takes all of that into account. The liability of a registered agritourism operator doesn't prevent or limit liability if the operator injures a participant willfully (in other words goes up and pokes a hayfork through his rear end because he had ticked off at him) or through conduct that amounts to gross negligence. Well I don't know if you know what gross negligence is, but that is defined in our laws as a "failure to exercise even slight care". Now typically, negligence actions are determined on the base of ordinary negligence. That is the usual standard and the court or jury can find that by a preponderance of the evidence if one, both or many were negligent. Gross negligence, or the failure to exercise even slight care, is hardly ever something that you come across. Has actual knowledge or should have known of a dangerous condition on land, equipment, or propensity of an animal and didn't exercise ordinary care to remedy the danger or warn a participant and caused injury. That in and of itself, doesn't sound too bad, but this seems to say that, for example, the dog gets the first bite free. I don't think that's appropriate. We usually don't do that, but that is what this would say. So, for a variety of reasons here, 1) we have a lot of duplication of what we already have in ND law; 2) I don't believe that we need this; 3) it's providing an immunity that I'm not sure is really going to accomplish the result of lowering insurance, because it hasn't done that in other places yet; and 4) I know you've heard this phrase a lot of time about another level of beaurocracy but this whole registration provision is exactly that. For those reasons, I would recommend defeating this motion to Do Pass the bill.

Rep. Koppelman: As I look at the proposed amendments, and I also have not had an opportunity to review them in detail, but it appears that it is an attempt to improve the bill. The session isn't over, we know that these things have a life of their own sometimes and go on unless we kill the bill. As I look at the information that Rep. Klemin handed out about our current statutes though, I'm not so sure the folks that want to engage in this activity really have any protection under current statute, because you talked about the recreational use area. But it specifically says that the recreational use limits on liability are strictly for people that do not charge for entry on their land. I assume that when this was passed, the reason for that, first of all, I don't think we had nearly the potential for agritourism that we're talking about today. Secondly, I assume that recreational use of land was prevalently hunting, bird watching, hiking, mountain biking, photography, whatever it is you want to do to go out on the land and do and typically those things aren't charged for, they are things that historically that landowners have just done to be neighborly. But then it goes on to talk about the duty of care and failure to warn, etc. but then it says beginning on page 2, all bets are off if you charge to allow people on your land; specifically it says this chapter does not limit in any way, any liability that otherwise exists for ... injuries suffered in any case in which the owner of the land a) charges the person for entry onto the land, other than the amount, if any, to the owner of the land paid by the state. That raises another question, that is if you look in 53-08-04, on page 1, it appears that we've done all sorts of things to limit the liability of people who decide to lease their land to the state or to political subdivisions, but the big gap seems to be someone that wants to charge people to come onto their land for something like agritourism.

Rep. Klemin: There is, you didn't read the second part of that, there are limits on charges.

Rep. Koppelman: What.

Rep. Klemin: Well, 2b.

Rep. Koppelman: Okay, it says that injuries suffered in any case in which the owner of the land charges the person for entry onto the land other than the amount, if any, paid to the owner of the land by the state; and b) the total charges collected by the owner in the previous calendar year for all recreational use of land under the control of the owner are more than: 1) twice the total amount of property taxes imposed on the land for the previous calendar year; or 2) in the case of agricultural land, four times the total amount of property taxes imposed on the land for the previous calendar year. What does that mean, does that mean that if you happen to meet certain monetary calculations, that you have some liability protection, if you don't, you don't.

Rep. Klemin: What it means is that there is a threshold, you can charge a certain amount, once you reach that threshold then this doesn't apply.

Rep. Koppelman: So anybody really wanting to do this as a serious business wouldn't be protected.

Rep. Klemin: As I understand the testimony, most of these are sidelines on an existing operations.

Rep. Koppelman: Be that as it may, I guess I've never known the legislature to be in the business of trying to make sure that businesses don't make much money, and it appears that that is what this would do.

Rep. Onstad: Again, to respond, this registers a legitimate agritourism business with the Ag Commissioner and so on. Part of that process, in the registration process, do you have insurance, do you realize the inherent risks and all that. It also sets up, if you're going to get into that part and realizing that you're not covered by liability, you better give proper notification, you better look at waivers, etc. It's not set in there that it is required, but that you can do it if you choose. It doesn't in any way change what we currently have in law. That latter part on page 2 is really language that some of the trial lawyers provided and were okay with to put that in as part of the notification process for agritourism. I know it's not a perfect bill, and there's no guarantee that you're going to be able to get insurance, we're just asking that if you want to get into agritourism business, and you have inherent risks, it's probably best that you register with the Ag Commissioner and go through that process. That's really what this is stating.

Chairman DeKrey: Well, I'm going to support it. We spend millions of dollars in this state on commerce activities, trying to bring businesses here, and here we have the business right here, all we have to do is give it a chance to get developed. We spend a lot of time in this committee, arguing about who should be liable for what. It doesn't look to me, the way this is written, that anyone is going to get out of anything.

Rep. Guggisberg: Do we have any proof here that by passing this, it's going to lower insurance premiums.

Chairman DeKrey: No. The clerk will call the roll on a Do Pass motion as Amended.

**13 YES 1 NO 0 ABSENT**

**DO PASS AS AMENDED**

**CARRIER: Rep. Onstad**

VR  
2/10/11  
1063

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1142

Page 1, line 2, after "to" insert "registered"

Page 1, line 2, after "agritourism" insert "activity"

Page 1, line 8, after "Agritourism" insert "activity"

Page 1, line 8, after "any" insert "rural"

Page 1, line 8, remove "customarily carried out on a working or historical"

Page 1, line 9, replace "farm, ranch, forestry operation, or winery, if" with ", including farming and ranching activities, or any historic, cultural, or natural attraction, that is viewed or enjoyed by"

Page 1, line 9, remove "are invited"

Page 1, line 10, replace "to view or allowed to participate, with or without fees or charges, in the activities" with an underscored comma

Page 1, line 11, after "purposes" insert ", regardless of whether the member of the general public pays to participate in the rural activity or to view or enjoy the attraction; provided, however, that agritourism does not include any rural activity in which an individual is paid to participate"

Page 1, line 13, replace the first underscored comma with "or"

Page 1, line 13, remove ", or hazard"

Page 1, line 13, replace "a normal and customary" with "an integral"

Page 1, line 13, remove "an"

Page 1, line 14, remove "operation"

Page 1, line 17, after "of" insert "land,"

Page 1, line 17, after "vegetation" insert ", and water"

Page 1, line 19, after "equipment" insert "ordinarily used in farming or ranching"

Page 1, line 20, replace "Any act of negligence on the part" with "The potential"

Page 1, line 20, after "participant" insert "to act in a negligent manner"

Page 1, line 21, after "in" insert "an"

Page 1, line 22, after "agritourism" insert "activity"

Page 1, line 23, remove "is invited to view or allowed"

Page 1, line 24, replace "to participate in agritourism, with or without fees or charges" with "engages in a registered agritourism activity"

Page 1, after line 24, insert:

- 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."

Page 2, remove lines 1 through 18

Renumber accordingly

Date: 2/9/11  
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1142

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.0030.01004 02000

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Rep. Onstad Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin		✓	Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Onstad

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

REPORT OF STANDING COMMITTEE

HB 1142: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1142 was placed on the Sixth order on the calendar.

Page 1, line 2, after "to" insert "registered"

Page 1, line 2, after "agritourism" insert "activity"

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  - (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."

Page 2, remove lines 1 through 18  
Renumber accordingly

2011 SENATE JUDICIARY

HB 1142

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HB1142  
3/16/11  
Job #15534

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to registered agritourism activity liability

## Minutes:

There is attached testimony

## Senator Nething – Chairman

**Representative DeKrey** – District 14 – Introduces the bill and explains that it does not resemble the original bill at all. He says what it does now is it allows you to register your business with the Ag Commissioner and restates liability as it already is in the Century Code. He mentions that Senator Olafson has a proposed amendment and he prefers the amendment more than the House bill. His preference is that the amendment be considered.

**Senator Nething** – Asks what does this bill do.

**Rep. DeKrey** – Replies that with the amendment it puts the registration in the Tourism Dept. and not the Dept. of Agriculture and clarifies what liability is for a land owner that takes on something like this. It does not exempt anyone from any liability. Giving them this kind of status in the Century Code will give the Insurance industry a place to see this is an acceptable business in ND.

**Representative David Drovda** – District 39 – Co-sponsor of this bill.

**Randy Mosser** – Elkhorn Outfitters, Medora, ND– See written testimony

**Jay Doan** – Owner/Operator of Rolling Plains Adventures Ranch – McKenzie, ND – See written testimony.

**Senator Sorvaag** – Asks Doan if he had trouble getting insurance.

**Doan** – Replies they have not but they carry a high insurance policy because they also run an outfitting business as well. He says right now they are covered but fears that as they grow it could become a problem.

**Senator Olafson** – Asks Doan to explain what he does in his business.

**Doan** - Gives a description of what they offer on their working ranch.

**Senator Olafson** – Asks if people want to work cattle thru the chute.

**Doan** – Responds yes, that in particular. He says they are expanding branding and running them thru the chutes, and the roping.

**Senator Nething** – Asks if they are a dude ranch.

**Doan** – Says they do not consider themselves a dude ranch by any means.

**Senator Nelson** – Asks if there are any dude ranches in the state.

**Doan** – Said he believes there are none.

**Senator Olafson** – Asks him if they have had any injuries with any participants on the ranch.

**Doan** – No, and knocks on wood.

**Sara Otte Coleman** – Director of the Tourism Division of ND – See written testimony.

**Larry Maslowski** – Senior Analyst & Director of Protection Property & Casualty Division of ND – See written testimony. Also provides an Insurance Marketplace Report. He says he agrees with the amended bill.

**Chuck Fleming** – Director of Business Development Division of the ND Dept. of Agriculture  
See written testimony.

**James Odermann** – Billings County – See written testimony. Provides testimony on behalf of several people

**Maria Effertz Hanson** – Black Butte Adventures, Velva ND – See written testimony. She also provides testimony on the behalf of other people.

**Cal Klewin** – Economic Development Association of ND – See written testimony.

**Steve Weninger** – Sentinel Butte – See written testimony.

**Alexis Brinkman** – Assistant Director of ND Tourism Alliance Partnership – In support of the bill with amendments. Provides written testimony on behalf of several people.

Opposition – 0

Neutral

**Allan Austad** – ND Association for Justice – In support of the bill - Suggests they do like the bill in Kansas did and at the end of the bill granted for 5 years a \$2000 tax credit up to the limit of what they paid for liability insurance. He said he has talked to people there and they say that is what increased their agritourism.

Close the hearing HB1142

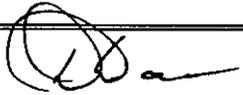
**Senator Olafson** distributes his amendments

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HB1142  
3/21/11  
Job #15778

Conference Committee

Committee Clerk Signature 

## Explanation or reason for introduction of bill/resolution:

Relating to registered agritourism activity liability

## Minutes:

**Senator Nething – Chairman**

**Senator Olafson** describes how the bill has evolved since being brought over from the House. He offers an amendment. He explains this provides the immunity that agritourism operators need. He says they have taken out that they need to provide a description of the property because that could be a very complex description which would be a lot of paperwork and not relative to the issue at hand. He continues that as part of the registration process the bill says in order to have immunity from liability they have to be a registered agritourism operator.

**Senator Olafson** moves the amendment

**Senator Lyson** seconds

Verbal vote – all yes

**Senator Olafson** moves a do pass as amended

**Senator Lyson** seconds

## Discussion

**Senator Sorvaag** says he won't vote for this because he doesn't understand the rationale. He says buying insurance is a cost of doing business and feels if tourism wants to get this off the ground then give them a grant instead. **Senator Olafson** responds the reason this is needed is because of the inherent risks in this activity. He explains there is much beyond the control of the operator. **Senator Nelson** says she has concerns also and doesn't why something that is much more dangerous would have less responsibility. **Senator Olafson** said they still have to have insurance, this just makes it more affordable.

Roll call vote – 4 yes, 2 no

Motion passes

**Senator Olafson will carry**

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 tourism division.
5. "Registered agritourism operator" means a person that is registered with the tourism division 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 tourism division.
2. The registration must include a description of the agritourism activity that the person provides or intends to provide.
3. The tourism division 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 tourism division 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:
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  - (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.

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

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

Renumber accordingly

Date: 3/21/11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1142

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Senator Olafson Seconded By Senator Lyson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman			Carolyn Nelson		
Curtis Olafson - V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Senator

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

Verbal yes



**REPORT OF STANDING COMMITTEE**

HB 1142, as engrossed: **Judiciary Committee (Sen. Nething, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1142 was placed on the Sixth order on the calendar.

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.

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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.

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1. A person may become a registered agritourism operator by registering with the division of tourism.

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Renumber accordingly

2011 HOUSE JUDICIARY

CONFERENCE COMMITTEE

HB 1142

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1142  
April 12, 2011  
16524

Conference Committee

Committee Clerk Signature



## Minutes:

Chairman Kretschmar: We will open the conference committee on HB 1142.

Rep. DeKrey: I would like the Senate to go through the amendments that you made. We want to be assured in the House that we are not gouging into liability laws in the state of ND, where we would be accepting unknowing tourists in ND that wanted to partake in agritourism to injury and then not being able to be compensated if the individual was grossly negligent.

Sen. Olafson: I will try and explain the Senate amendments. As the bill came to us in the Senate, many people in the agritourism business thought that the bill really didn't do much in terms of helping their industry. We worked with a lot of the people in the agritourism industry, the Dept of Tourism, etc. to try and come up with some new language for the bill which would try and help the industry and protect people who would be participants in agritourism operations. If you begin on page 3, the bill basically is a hog house rewrite of the bill, that's mainly because the Legislative Council attorney recommended that we rewrite it so that it will read a lot cleaner, rather than try and amend it. We have the definition for agritourism activity; we have the definition of inherent risk. When you flip over to page 4, the definition of participant, registered agritourism activity and registered agritourism operator. Beginning on line 8 we have a requirement that in order to qualify for any immunity of liability under the bill, that the operators have to register. There are a couple of good reasons why we did that. The registration requires that they register with the Dept of Tourism and it must include a description of the agritourism activity. In the original bill there was a description of the land on which the activity would take place, but we thought that was pretty cumbersome, because if you have a big cattle ranch, which encompasses 10,000 acres and you have to provide a legal description of all of that, that didn't seem to really accomplish much other than create a lot of cumbersome paperwork and the Dept of Tourism may not impose any fees. They are glad to conduct this registration process without any fees, and it is effective for five years. On lines 16-18, the Dept of Tourism shall maintain a list of all registered agritourism operators and activities. The reason for that is to help facilitate the process of attracting people to agritourism operations; that way, the Tourism Dept

can put out information and people may want to go on a circuit of agritourism operators and enjoy different places. This way the Dept of Tourism can maintain that list and have that available to people who might want to access the agritourism activities that we would have in ND. On lines 19-23, requires the posting of a notice and a written contract pertaining to the individual's participation in the activity, indicating that under laws of this state, the registered agritourism operator is not liable for any injury to or death of a participant if the injury or death resulted from an inherent risk. Lines 25-27 provide the affirmative defense. Beginning on line 29, that's where the language begins that states if an agritourism operator injures a participant willfully or through conduct that amounts to gross negligence or has knowledge of a dangerous condition, including in a facility or dangerous equipment, or a dangerous propensity of a particular animal, does not exercise ordinary care to remedy the danger or to warn a participant of the danger, and the danger causes injury. If any of those conditions are in place, the operator is liable and they do not qualify for immunity of liability if anything from page 4 line 31 through page 5, line 11. If any of those conditions are present, if the agritourism operator has any of those conditions present, if he doesn't take necessary steps to protect the participant, then the operator is liable for injuries. I had talked about the provision to register earlier, one of the reasons why we thought that was important is because, under the provisions of this bill, the Dept of Tourism shall provide a copy of the applicable law to each person that registers or reregisters as an agritourism operator. The purpose of that is to make sure that the agritourism operators are not operating under the false assumption that they can do anything that they want. They will be provided with a copy of the law, the Dept of Tourism will stress to them that they should not think that this precludes their need for liability insurance, that they would understand that if they injure a participant willfully or through gross negligence, that they will be liable. Once they are registered, that will be thoroughly explained to them by the Dept of Tourism; they have already crafted a document to stress to operators that they need to maintain liability insurance, they need to make sure that these dangers don't exist or they will be liable. All of that, as part of the registration process, will be stressed thoroughly by the Dept to the operators that register. That is what we did with the bill. We think it provides an opportunity for the agritourism operators to conduct these activities and run a small business on their farming operation. It still provides some protection for the operator. It must be noted, these types of operations carry a lot of inherent risk. This is not something that you can always control. A lot of these are going to be operations where they are going to be working with animals; horses, cattle. They are going to be working with all terrain vehicles, riding in conditions that have a lot of inherent risk. It's just part of the process. I've been a cattle rancher and farmer all of my life, and I've been beat up and it's part of the process. It's important that people understand that and recognize that going in.

Rep. Kretschmar: I am reluctant to give people immunity for ordinary negligence. It seemed to me, quite a number of years ago, we had a guest statute in ND. That provided that if you had a guest riding in the car with you and you had an accident, the guest had to prove that you were grossly negligent to recover anything. We did away with that law in ND. We have comparative negligence situation now. I would

much rather have that in this situation too than letting the agritourism operators off the hook for ordinary negligence.

Sen. Nething: I think there is a distinction between the risk involved with an automobile where you have an individual in control, primarily the driver. Here the risk is different, because you are dealing in the agriculture realm where there aren't a lot of items that can be controlled by an operator; such as a horse being spooked by a rabbit jumping out in front of it, there's no way for an operator to foresee that. But yet, they are trying to come up with a way of balancing what that operator controls and what is not controlled; shifting that knowledge of inherent risk to the participant. Hopefully, we had thought this bill would do that, because this is a small area in our state, but there is a lot of interest in it from people who would like to be a rancher, cowboy, or even a farmer; they tell me people even pay to come out and pick your rocks just to say that they had the experience. That's the type of activity that we are trying to permit; at the same time, there are things that the operator can't control, we call them inherent risks. Obviously, in this bill, the way it is amended, is that you have to be registered in order to gain this immunity or partial immunity. Then at the same time, those participants, after learning all of this, and they have to have their notice ahead of time, are assuming certain inherent risks. I do think there is a distinction between that of our ordinary statutes. It doesn't give immunity to anybody that plans gross negligence. That's what we were trying to capture.

Sen. Sorvaag: I was a dissenting vote, both in committee and on the Floor on this. I like the amendment, a certain part of it, but mine was more of a fundamental reason that managing risk is part of doing business. It isn't that they can't get insurance, it's that they don't like the dollar value that the insurance costs. I know it can be high; but there is a concern that they will be underinsured because of this. We can pick out things that they can and can't but all of it is going to end up in a court of law. Are they going to be adequately covered. That's where I come from. I don't support the bill for that reason. I wanted to note that before we vote.

Sen. Olafson: I would point out for the committee's information that we received testimony from the Dept of Tourism, from some of the operators who would like to engage in this type of business that they've have quotes that have been reported as high as \$10,000 per year. There has been widespread support from not only the Dept of Tourism but the ND Tourism Alliance Partnership. We have a convention and visitors bureau here from a city in the western part of the state. We have several agritourism operators who testified in support. We have the Dept of Agriculture and there is broad support from throughout the state for doing this. Again, I would stress that the Dept of Tourism fully understands that they do not want people thinking that they have complete immunity from liability if we pass this bill. They fully understand that they need to stress to people that they would be foolish not to have adequate liability insurance in place.

Rep. DeKrey: There are other instances where a person is not covered. One that comes to mind, if someone hits your cow on the road, it is almost impossible for

them to collect on your insurance. I had the reverse of that happen. My kid was coming home from football practice, he totaled my pick-up hitting the neighbor's cow, and when we went to put our claim in, the owner of the cow, and there wasn't a doubt as to who's cow it was, was not liable. That's just an assumed risk when you are going down the road that you might hit something. I guess I don't see that this is a whole lot different than that. In the rest of our liability in the Century Code, there is in ND the assumption of risk. Nobody collects hardly anything in ND in a lawsuit, for the most part, unless the owner/operator is grossly negligent. I really don't see where this is much different than what we've already got in the statute, except that we have it in one place now in the Century Code that explains that. I think the Dept of Tourism has gone above and beyond how they are going to clarify this to the operator on what is going to be expected of them.

Rep. Kretschmar: There was some testimony in the House Judiciary Committee that it's not going to make much difference on insurance rates. That is up to the insurance companies.

Sen. Nething: We used to have assumption of risk as almost a pure defense. That was pretty well eliminated when we went to this comparative negligence. In comparative negligence, it is to balance the equities between the degrees of negligence. The problem here, is that we have these inherent risks. That's why this is differentiated between the assumption of risk applying here and not in other areas. I guess the key to me is whether or not we have adequately described inherent risk, and I think we've done a pretty good job understanding what agribusiness is.

Rep. Onstad: When we talked about the registration and insurance, there is no requirement to have insurance. It seems like that should be part of the registration. On the House side, on page 4, line 22 it all relied on saying "not liable". To move it forward and if registration takes care of the problem that would be excellent. That is a good change that they have to identify and register. I'm glad that the "not liable" is gone. We recognize that this can be a growing industry, there's no guarantees that they can still get affordable insurance or even get insurance at all.

Chairman DeKrey: I move that the House accede to the Senate amendments.

Sen. Nething: Seconded the motion.

**4 YES 2 NO 0 ABSENT**

**HOUSE ACCEDE TO THE SENATE AMENDMENTS**

# 2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: JUDICIARY

Bill/Resolution No. 1142 as (re) engrossed

Date: 4/12/11

Roll Call Vote #: 1

- Action Taken**
- HOUSE accede to Senate amendments
  - HOUSE accede to Senate amendments and further amend
  - SENATE recede from Senate amendments
  - SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1103 - 1104

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) 1142 was placed on the Seventh order of business on the calendar

Motion Made by: Rep. Dekrey Seconded by: Sen. Nething

Representatives				Senators			
		Yes	No			Yes	No
<u>Rep. Kretschmar</u>			✓	<u>Sen. Olafson</u>		✓	
<u>Rep. Dekrey</u>		✓		<u>Sen. Nething</u>		✓	
<u>Rep. Onstad</u>		✓		<u>Sen. Sorvaag</u>			✓

Vote Count Yes: 4 No: 2 Absent: 0

House Carrier Rep. Kretschmar Senate Carrier Sen. Olafson

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

**REPORT OF CONFERENCE COMMITTEE**

**HB 1142, as engrossed:** Your conference committee (Sens. Olafson, Nething, Sorvaag and Reps. Kretschmar, DeKrey, Onstad) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ pages 1103-1104 and place HB 1142 on the Seventh order.

Engrossed HB 1142 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

HB 1142

**DEPARTMENT OF COMMERCE TESTIMONY ON HB 1142  
JANUARY 12, 2011, 9:00 A.M.  
JUDICIARY COMMITTEE  
PRAIRIE ROOM  
REPRESENTATIVE DUANE DEKREY, CHAIRMAN**

**SARA OTTE COLEMAN – TOURISM DIVISION DIRECTOR, ND DEPARTMENT OF COMMERCE**

Mr. Chairman and members of the Committee, I am Sara Otte Coleman, Tourism Division Director for the North Dakota Department of Commerce. I urge your support of House Bill 1142. The purpose of this bill is to promote the growth of the Agritourism industry in North Dakota by providing better protection for Agritourism producers who welcome the public onto their land. This will be achieved by limiting liability through signage, which advises visitors of inherent risks.

The State of Kansas was the first to pass legislation similar to this in 2004. As of July 2010, there were 284 Agritourism operations in Kansas. Of these businesses, 52% were established since the Kansas Act was passed. In addition, 13 other states have enacted legislation which addresses Agritourism and outdoor recreation liability and 7 have enacted legislation similar to that of Kansas, the most recent being Tennessee in 2009.

North Dakota leads the nation in the production of 12 crops and 39 million acres or 90% of our land is devoted to sustaining our state's largest industry, yet according to the most recent USDA census we rank 32<sup>nd</sup> in the number of Agritourism businesses. Our visitors expect they will be able to experience a farm or ranch when they choose North Dakota as their travel destination.

The demand for farm and ranch vacation experiences is strong, and a number of farmers and ranchers have expressed an interest in providing this service. But to do this, affordable liability insurance is imperative. Most policies covering farm and ranch activities do not cover recreational activities on the land. Operators either need to add a rider to their existing policy or get a new policy with a company that provides insurance for their particular activity. Premium rates vary among insurance companies based on the exposure of risk for a particular fee-recreation activity, but quotes have been reported by some operators as high as \$10,000 per year. The start-up operation must ask if the difference between the premium paid and the income gained is enough to allow a sufficient financial gain and make the venture worthwhile. HB 1142 provides standardized language limiting the liability of operators for

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1142

By the North Dakota Department of Commerce, Division of Tourism

Page 2, line 7, after "agritourism -" insert "duty to warn-"

Page 2, line 8, after "provided," Insert "an agritourism operator has no duty to warn any participant of inherent risks of an agritourism activity and"

Page 2, line 16, replace "a" with "an unusually"

Page 2, after line 18, insert:

**"Effect on other laws.**

Any limitation on legal liability afforded to an agritourism operator by this chapter shall be in addition to any other limitation of legal liability otherwise provided by law.

Renumber accordingly

**HOUSE BILL NO. 1142**

**North Dakota Agritourism Insurance Affordability Act**

My name is Karen Gehrig. I am the owner/operator of the Red Barn and Berry Farm (rbbf.com) and the current President of the North Dakota Farmers Market and Growers Association (NDFMGA) (ndfarmersmarkets.com). RBBF is a new u-pick raspberry farm located on 40 acres in the sand hills of Kindred, ND, just 28 miles southwest of Fargo, ND. In the future, we will also remodel our 2 story red barn so we can rent it out for weddings, receptions, fall festivals, corporate gatherings and other events and hopefully add a high tunnel for growing and selling fresh produce.

I have served on the Board of Directors for NDFMGA for over 4 years. I have seen tremendous growth of new farmers markets, CSA (Community Supported Agriculture) and farm tours in North Dakota. I have seen wineries open up and to their surprise, people from all over showed up and asked to take a tour of the vineyard. I have seen the increase in Wine & Grape Harvest Festivals, Garlic Festivals, Corn mazes, several High Tunnel tours, Cross Country Skiing farms and several other Farm Tours. It is definitely a growing business called Agritourism.

Speaking as a small farm business owner and a representative for the NDFMGA, we are in support of **House Bill No. 1142, North Dakota Agritourism Insurance Affordability Act.**

As a small agritourism farmer, current liability insurance rates are expensive and hard to obtain because of the potential for lawsuits from curious visitors to our unique facilities associated with this type of business.

The purpose of this bill is to promote the growth of the agritourism industry in North Dakota. Potential operators are often discouraged by the lack of affordable liability insurance. With this bill, insurance companies will feel more comfortable about offering liability insurance to this type of industry at an affordable fair price in exchange for some very simple rules for these farmers to follow. It is a simple win win situation to help promote agritourism farmers such as the Red Barn and Berry Farm and other members of the NDFMGA.

Thank you for your consideration.

Karen Gehrig

# North Dakota

LEGENDARY



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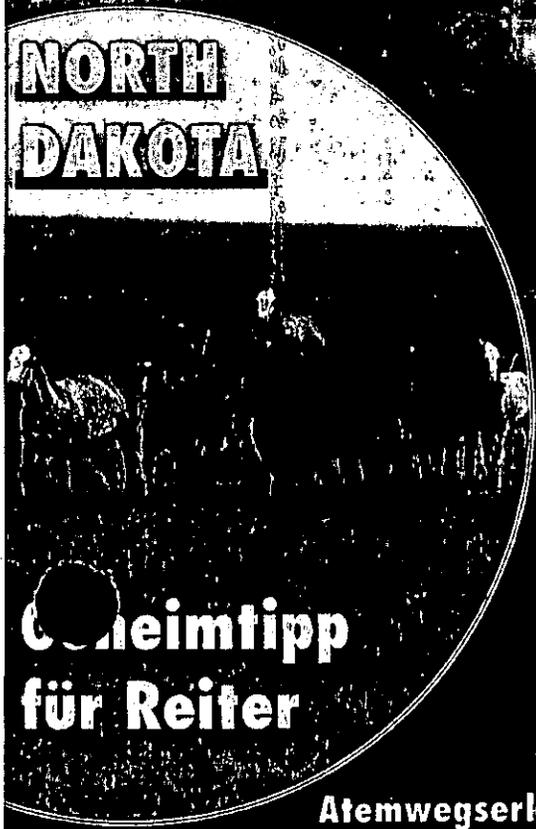
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6

**HOUSE BILL NO. 1142**

**Presented by:** Larry Maslowski  
Senior Analyst and Director, Consumer Protection Property  
and Casualty Division  
North Dakota Insurance Department

**Before:** House Judiciary Committee  
Representative Duane DeKrey, Chairman

**Date:** January 12, 2011

**TESTIMONY**

Good morning, Chairman DeKrey and committee members. My name is Larry Maslowski and I am the Senior Analyst and Director of the Consumer Protection Property and Casualty Division of the North Dakota Insurance Department. I appear before you in support of House Bill No. 1142.

The 59th Legislative Assembly passed 2005 Senate Bill No. 2031 directing the Insurance Commissioner to study the state's liability insurance marketplace focusing on travel and tourism liability insurance availability and affordability.

The Travel and Tourism Liability Insurance Marketplace Report dated April 2006 describes the processes used in the study, the study results and provides some alternatives for consideration by the Legislature.

The study revealed that for less risky activities insurance was generally available and for those riskier activities insurance was not as available. In many instances the issue we found was not one of availability as much as it was an issue of affordability particularly for the smaller sized operation.

Two of the alternatives provided in the report dealt with the Legislature implementing a statute that would provide immunity based upon the doctrine of assumption of risk.

The bill provides that a participant assumes all inherent risks of agritourism. If there is a lawsuit brought for damages arising from an individual's participation in agritourism, the owner or operator of the facility may use assumption of risk as a defense. For example, is it possible that when going on trail ride you might be stepped on or even kicked by a horse? The trail ride operator would argue that these are risks inherent in being around a horse.

By implementing a new stricter standard based on assumption of risk for these types of agritourism recreational activities, it is felt that the exposure to the insurance industry would be less, which should mean fewer claims which over time should translate into more affordable insurance.

As indicated in the Executive Summary of the report whether this will be successful or not will, in the end, be determined by the insurance industry's response to the level of risk. However, we will not know if we do not try. We feel this is a step in the right direction.

COMMISSIONER  
DOUG GOEHRING

ndda@nd.gov  
www.agdepartment.com



**NORTH DAKOTA**  
**DEPARTMENT OF AGRICULTURE**  
STATE CAPITOL  
600 E. BOULEVARD AVE. - DEPT. 602  
BISMARCK, ND 58505-0020

**Testimony of Charles Fleming**  
**North Dakota Department of Agriculture**  
**House Bill 1142**  
**House Judiciary Committee**  
**Prairie Room**  
**January 12, 2011**

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Chairman DeKrey and members of the House Judiciary committee, my name is Charles Fleming and I am the Business Development Division Director of the North Dakota Department of Agriculture and I am here to testify on behalf of Agriculture Commissioner Doug Goehring in favor of House Bill 1142.

Commissioner Goehring and members of our staff have been working with the Tourism Division of the Department of Commerce and the Insurance Department to find ways in which we can encourage the development of agri-tourism in North Dakota. One of the largest barriers is the high cost of liability insurance for these operations.

This bill provides a reasonable solution by having the participants at these businesses assume all inherent risks. Inherent risks are defined in #2 on page one of the bill. Similar laws in other states have resulted in an increase in the agri-tourism industry.

The potential to develop this industry in North Dakota is tremendous. It may be unbelievable to some of us that there are people willing to pay (and pay big) to come to a ranch to put up hay, milk a cow, or ride in a combine.

This bill would remove one of the major barriers slowing down the development of this industry.

Commissioner Goehring requests your favorable consideration of House Bill 1142.

Thank you.

Agritourism comments on HB 1142

Mister Chairman and members of the House Judiciary Committee, my name is Tracy Potter. I am the executive director of the Fort Abraham Lincoln Foundation and a member of the executive committee of the Tourism Alliance Partnership. It is in that capacity as a member of TAP that I am here in support of HB 1142.

My compliments to the Chairman for sponsoring this legislation that could help some rural families stay on the farm through adding some tourism dollars to the family's budget.

One of the unfortunate characteristics of our state's tourism product is the lack of cash registers. We live in a beautiful place and one of its most charming features is its rural nature. Over many years I have led many tours of journalists and other visitors all over North Dakota and I will tell you that their reactions to our countryside is usually more enthusiastic than our own. Our wide open spaces, beautiful farms and rural lifestyle are very attractive to tourists.

Unfortunately, tourists don't have many ways to really experience rural life here. And we don't have enough ways to sell them some memories along with strawberry pie and coffee.

HB 1142 might help change that. There is no lack of entrepreneurial spirit - or neighborliness - in rural North Dakota, but there are obstacles to getting started in an agritourism business in North Dakota. One of those is the difficulty of obtaining appropriate insurance coverage.

My particular experience is with trail ride insurance at Fort Lincoln. Every year it was a struggle to find a company who could provide surplus lines coverage, and premiums amounted to 25% of the total revenue of the business.

The word "liability" has a chilling effect on the entrepreneurial spirit. Passing a law that says the person who is actually responsible for an accident or injury is responsible seems like a pretty good idea.

Thank you for considering these remarks.



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**James A. & Leona M. Odermann**  
2767 129th Ave. SW · Belfield, ND 58622-9330  
701-575-4767 · odermann@goesp.com

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**Testimony, North Dakota House of Representatives  
Judiciary Committee  
Presented: January 12, 2011 – 9:00 a.m.**

Good morning. My name is James Odermann. I live in Billings County and speak to you in support of House Bill 1142. I am a member of the North Dakota Nature and Rural Tourism Association and an active agricultural producer seeking to develop an agri-tourism enterprise.

This proposed legislation achieves two major goals for North Dakotans:

First, the bill creates an environment in which another economic sector of North Dakota could develop and flourish.

Second, HB 1142 provides educational and entertainment opportunities for visitors to our state's food producers, at the same time offering these same agricultural producers/agri-tourism operators protection for their huge capital investments.

Tourism is a major element of our economy, showcasing the quality of our state's place and sharing North Dakota with the world. Our natural resources of clean air, abundant water and productive land make North Dakota a "must visit" destination.

The entrepreneurial spirit of our producers is embodied in our agri-tourism professionals. These operators are more than food factories, seeking to bridge the gap between consumers and producers through education and communication.

In the end, agri-tourism is a vertically integrated enterprise that, in the right environment, can provide economic opportunities for producer families and rural communities. It could well be the springboard for revitalization, a sort of rural renaissance.

This proposed legislation offers rural entrepreneurs a system of networking with fellow agri-tourism operators and provides protection against frivolous legal challenges. Today's agricultural producers have made tremendous financial and personal investments that need the protection offered in House Bill 1142.

This protection may keep young people in North Dakota to develop non-traditional revenue streams for production agriculture that can enhance local economies and promote our state. I speak today asking for your favorable consideration of House Bill 1142 to provide agri-tourism liability protection.

Thank you for the opportunity to discuss this issue today. I would be happy to answer any questions you may have.

House Judiciary Committee

Duane DeKrey, Chairman

January 10, 2011

Mr. Chairman and members of the committee, this letter is in support of improved laws for limiting the liability of private landowners who wish to enter into the rural and agriculture tourism business. By providing better protection for the rural tourism producer, more land owners and individuals will become comfortable in opening up their property and sharing their knowledge and way of life with visitors.

In 2005, our family officially opened Black Butte Adventures, a hiking, biking and agriculture tourism operation on our family's ranch land near Sawyer, ND. While I cannot say we are successful in terms of giving up our 'day jobs', this business has provided us an avenue to educate people from around the world and in our own state. We share with guests our way of life, our ranching practices and our history. Our goal is to provide an education to every visitor that people that live off the land want to sustain and create a better place for future generations.

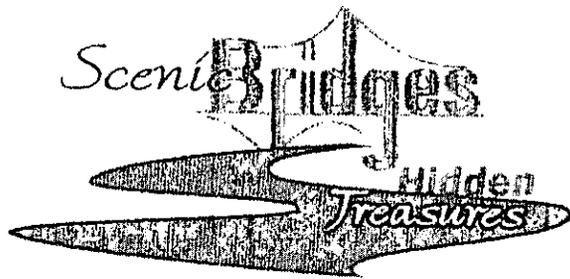
Our budget is slim to none, and a 90% of our income goes to liability insurance. At this time, we have one carrier that will take the risk and they charge \$650 for six months of operation. Because we are using land that has been in our family four generations and because the property is still primarily livestock production land, I am not willing to take the risk and go uninsured. If our small operation becomes unaffordable, we will simply shut the gates.

Our success is small, but if we had more operators in the region, we could attract an even greater audience and benefit our communities and rural residents. This legislation will give more people the comfort level to take the risk of becoming a tourism operator. It will also allow us, as existing operators, to grow our business and create opportunity for my children if they choose to stay.

I apologize for not being able to be at the hearing, but welcome any questions about our business or the opportunity ahead for rural North Dakota.

Sincerely,

Maria Effertz Hanson  
Black Butte Adventures  
[www.blackbuttheadventures.com](http://www.blackbuttheadventures.com)  
[blackbuttheadventures@srt.com](mailto:blackbuttheadventures@srt.com)  
701-626-2226



**Convention & Visitors Bureau** (2)  
**250 Main St W – P.O. Box 724**  
**Valley City, ND 58072-0724**  
**(701) 845-1891**  
**[www.hellovalley.com](http://www.hellovalley.com)**

January 10, 2011

House Judiciary Committee  
Chairman Duane DeKrey  
600 East Boulevard Avenue  
Bismarck, ND 58505

Honorable Chairman DeKrey and Committee Members,

The Valley City Convention and Visitors Bureau would like to go on record for support of House Bill 1142. The ND Agritourism Insurance Affordability Act would assist farm families in creating new recreational opportunities on their land. Fourteen other states have enacted similar legislation to encourage farmers to help educate the public and provide a different type of recreation.

Agritourism is growing in North Dakota and this bill would work towards affordable insurance rates for family farmers who diversify with recreational opportunities. These recreational opportunities translate into overnight stays which fuel income for CVB's which in turn promote North Dakota. The agritourism visitors shop and dine in local communities adding to economic growth. This all means new dollars in the North Dakota economy.

Please help us grow Agritourism by supporting HB 1142.

Thank you.

Mary Lee Nielson, Marketing Coordinator  
Valley City Convention & Visitors Bureau



Sheyenne River Valley National Scenic Byway  
 Rosebud Visitor Center  
 250 West Main Street Suite 1  
 Valley City, ND 58072  
[www.hellovalley.com](http://www.hellovalley.com)

House Judiciary Committee  
 Honorable Duane DeKrey, Chairman  
 600 E Boulevard Ave  
 Bismarck, ND 58505

RE: House Bill 1142 ND Agritourism Insurance Affordability Act

Chairman DeKrey and Committee Members:

The Sheyenne River Valley National Scenic Byway Committee would like to go on record support HB 1142. Putting standards in place for the safety of the public is important to the growth of agritourism.

Tourism is included in the Governor's 5 Target Industries for creating new jobs in ND. Supporting the ND Agritourism Insurance Affordability Act is a step in the right direction for tourism growth. A local farm family had a wildly popular corn maze that was shut down two years ago- one of the primary reasons was the unbelievable cost of liability insurance. The farm family opportunity for diversification is gone and the byway lost an amenity that brought folks in from the tri-state area. Busses were not uncommon at the maze. It is a significant loss.

Give farm families the chance to expand into tourism. Please support House Bill 1142- the ND Agritourism Insurance Affordability Act. Thank you.

Sincerely,

Chairman, Sheyenne River Valley National Scenic Byway Committee

January 9, 2011

House Judiciary Committee - Bill 1142

Chairman: Representative Dekrey & committee members;

We're writing in support of House Bill 1142. My wife and I have been in a rural tourism business for the past 23 years in northwest North Dakota. Our business is located on the shores of Lake Sakakawea in Williams County. Our rural business provides food, lodging and recreational opportunities for our guests. We're not sure that our rural business would fall under the definition of an "agritourism business" however we do know how expensive and difficult it is to obtain liability and property insurance coverage. We would like to be able to offer jet skis or snowmobiles to the public, however finding an insurance provider and dealing with the cost for the coverage makes it prohibitive.

In your efforts to encourage the development of agritourism across North Dakota we would ask that you would examine the present environment for insurance carriers to offer more affordable plans to folks that are trying to market their rural tourism businesses

Is insurance including liability, casualty and property accessible, available and affordable for up and coming agritourism business operators as well as any rural tourism business?

If you have any questions our Email address is: [lundslanding@nccray.com](mailto:lundslanding@nccray.com)

Sincerely,

Jim and Analene Torgerson

Lunds Landing Marina & Lodge

# HAZEN COMMUNITY DEVELOPMENT, INC.

Didn't testify

15

P.O. Box 717  
HAZEN, ND 58545-0717

PHONE - 701-748-6886  
EMAIL - [HCD@WESTRIV.COM](mailto:HCD@WESTRIV.COM)

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WEB - [WWW.HAZENND.ORG](http://WWW.HAZENND.ORG)

January 11, 2011

HB-1142  
House Judiciary Committee  
Duane DeKrey, Chairman

Re: HB 1142

Dear Representative Dekrey

I am writing in support of HB 1142.

I have been involved in rural economic development for two decades and have witnessed individual efforts by entrepreneurs to start sustainable businesses which ultimately will grow North Dakota's agri-tourism industry. There have been many ebbs and tides, but overall I see opportunity to gain a foothold in agri-business as North Dakota becomes more prominent (in a positive light) in national news stories surrounding ND's energy based economic growth.

One of the major hurdles for agri-business owners to deal with is the high cost of insurance. HB 1142 can help lower that barrier. Components of the bill, I understand, have been time tested in other states. I encourage you and all members of the legislature to support this bill and help our agri-tourism industry get a stronger foothold towards growing our economy.

Kind Regards,

Duke Wm. Rosendahl  
Executive Director  
Hazen Community Development, Inc.

16

Good morning, my name is Jessie Scofield and I recently moved back to my family's ranch in western North Dakota, 30 miles south of Watford City in McKenzie County. I am currently in the process of opening a guest ranch on the 3,000 acres where I grew up working alongside my father raising cattle and horses.

My husband and I have always had an interest in raising a family in a rural environment and becoming stewards of my family's land, which would position us as the third generation to make a living on the ranch, however I have found over the years the number of small family farms that once dotted the landscape in my community have significantly decreased, being taken over by larger operations or separated and sold. I believe in order for a ranch of this size to support two families, we must diversify our business opportunities.

In developing plans to move forward with my business, my marketing research has indicated that there is a significant interest among visitors to our state in an agri-tourism experience. Guests are intrigued by the farming and ranching heritage that surrounds us and they want to immerse themselves in the experience, learning by getting involved in the daily tasks that occur on a working ranch, such as horseback riding, feeding cattle, fixing fence and operating equipment. These activities are a part of our daily operations, but do involve risks to guests who wish to be involved in the process. These risks make standard farm and ranch insurance providers nervous and at this point we haven't found affordable insurance that would allow guests to participate in a ranch experience that involve such activities.

My research has also revealed that tourists have come to expect a hands-on, authentic ranch experience that provides them with an educational, agricultural experience when looking for a North Dakota vacation. As far as I know, there are no operating ranch vacation businesses in Western North Dakota.

My husband and I will open our doors to guests who would like to stay in our cabin, camp and hike our trails in the spring. I would like to be able to provide a full ranch experience for guests where they can ride a horse, come along on a cattle drive or even help us fix a fence, but start-up costs, the short tourism season and the challenge of finding an insurance provider make this type of business challenging and daunting.

A commonsense language bill would allow guests to enjoy a farming and ranching experience and keep us from risking an operation that has been in our family for three generations. It would also open the door to more business opportunities for young families who are in similar situations, working to keep their small farms operating and in the family.

Thank you for your time.

January 12, 2011

Testimony of Mr. Jay Doan – Part Owner/Operator of Rolling Plains Adventures Ranch,  
Mckenzie, North Dakota

Mr. Chairman and honorable members of the House Judiciary Committee, my name is Jay Doan and I am a fifth generation rancher from Mckenzie, North Dakota. I am also the part owner and operator of the Rolling Plains Adventures Ranch. The Rolling Plains Adventure Ranch offers guests the opportunity to participate in a working cattle ranch through activities such as horseback riding, cattle drives, and various other ranch activities. Through our operation, we attempt to provide guests with a sense of what the term "Cowboy" really implies.

As a member of the agritourism industry, I sincerely appreciate the opportunity to speak to you today in favor of House Bill 1142. House Bill 1142 provides for a shift of liability involved with the agritourism industry from the owner or operator of the facility to the participant of the agritourism activity, provided that all necessary precautions against potential risk are taken by the owner. Many examples of agritourism, including my own, carry a certain amount of this risk. Common sense dictates that when the nature of an activity and its inherent risks are known to the participant, the participant should assume that risk. House Bill 1142 solidifies this common sense approach to liability into statutory law. Under House Bill 1142, owners and operators of agritourism businesses are not excluded from liability altogether, however. The last section of the bill prevents abuse of the protections offered by rightly stipulating exceptions to its previous segments. I believe this to be a necessary, appropriate, and fair addition.

Additionally, the protections extended by this bill not only benefit individual agritourism businesses, they will also benefit the state as a whole. Legislative support for appropriate limits to owner/operator liability as well as continued support for the agritourism industry as a whole will further enhance and contribute to the quality of life for the State of North Dakota. By expanding on the potential of an already prospering industry through measures like House Bill 1142, we can attract more people to the state, provide more jobs for North Dakota citizens, and bring additional income to state coffers. I thank you, Mr. Chairman and members of the committee, for your time and would appreciate your DO PASS vote on House Bill 1142.



72 EAST MUSEUM DRIVE  
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Testimony of Terri Thiel, Executive Director, Dickinson Convention & Visitors Bureau  
 House Bill: 1142  
 January 12, 2011

Chairman DeKrey and members of the House Judiciary Committee, my name is Terri Thiel and I am the Executive Director of the Dickinson Convention & Visitors Bureau. The Dickinson Convention & Visitors Bureau is in support of House Bill 1142, relating to agritourism liability.

Agritourism offers a variety of activities that visitors can experience. From sharing farm education, which can include how agriculture products are grown and delivered to the table, to providing a western ranch vacation complete with fulfilling the dream of being a cowboy or cowgirl for a day, visitors are eager to experience the life that is no longer available to them in today's urban centers.

During my years in the tourism industry, our office has received visitor requests over and over again, asking for information on ranch vacations in southwest North Dakota, and most frequently from the international visitors and writers. The majority wish to ride a horse, go to a ranch, and become the western image during their stay in North Dakota.

Numerous agritourism, ranch vacations that have been in the visitor business have either gone out of business, or have reduced what they have to offer due to the issues of insurance liability as it stands today. Most of them that have stayed in business merely offer a cabin setting, and information on what there is to do and see in the area. Without the ability to provide a "real experience", people are looking elsewhere to ranch vacations in other states that do have the ability, and our local ranch vacations lose business and revenue.

Through the ND Tourism Division, I have made an acquaintance with Dr. Margit Brinke - Dr. Peter Kränzle, German writers from Augsburg, who have been to North Dakota, producing stories that are invaluable to our industry. We keep in contact regularly. The German Quarter Horse Journal and the publication AMERICA Journal (western lifestyle) that they contract with promote and write about the ranch life in North Dakota. The common question I receive from my international contacts is, do you have more product? Ranch vacations.

The information that I hear at conferences and in my office is the obstacle of insurance. Some businesses have left, have decided not to start up, or have reduced what they have to offer.

Please support House Bill 1142.

Sincerely,

Terri Thiel  
 Executive Director

Explore  
 the WESTERN EDGE



HB-1142

Testimony of Nicole Haase – Cannonball Company Manager (or private land owner)

House Judiciary Committee

Duane DeKrey, Chairman

Mr. Chairman and members of the committee, for the record I am Nicole Haase, Cannonball Company Manager. I urge your support of House Bill 1142. The purpose of this bill is to promote the growth of the agritourism industry in North Dakota by providing better protection for agritourism producers who welcome the public onto their land. This will be achieved by limiting liability through signage, which advises visitors of inherent risks. The state of North Dakota has a phenomenal resource in agritourism which already brings in revenue for the state. However, there is potential for exponential growth in the agritourism area if it were easier for land owners to offer with less risk involved.

The State of Kansas was the first to pass legislation similar to this in 2004. As of July 2010, there were 284 agritourism operations in Kansas. 52% of these businesses were established since the Kansas act was passed. In addition, 13 other states have enacted legislation which addresses agritourism and outdoor recreation liability and seven have enacted legislation similar to that of Kansas, the most recent being Tennessee in 2009.

The demand for farm and ranch vacation experiences is strong, and a number of farmers and ranchers have expressed an interest in providing this service. But to do this, adequate liability insurance is imperative. Most policies covering farm and ranch activities do not cover recreational activities on the land. Operators either need to add a rider to their existing policy or get a new policy with a company



that provides insurance for their particular activity. But this bill, which provides standardized language limiting the liability of operators for injuries caused by inherent risks, conditions and hazards that are an integral part of an agritourism activity, will have the positive effect of making liability insurance more available and affordable.

Hunting, farming and ranching in North Dakota is one of these agritourism arenas. With the adoption of this bill there is potential for people to open their land not only to hunting, but also farm vacations that offer experiences such as planting and harvesting. While hunting, farming and ranching, an individual encounters uneven and unpredictable surface conditions as well as unpredictable animals. This bill would continue to hold landowners liable if they know of a risk and do not tell an individual about that risk. However, it would relieve the risk of a landowner for any individual who may fall into a badger hole and break a limb or encounter an animal which could cause bodily harm to the individual or many other situations that arise during a hunt and are out of the control of the land owner.

We do not expect that an agritourism owner not be held responsible for safety in his or her business, however, we do want to give individuals the opportunity to provide as many agritourism opportunities as possible for the good of the entire state of North Dakota, and this bill can help. The more tourism opportunities we can provide, the more benefits that will be spread throughout our state. Interest in farm and ranch experiences in North Dakota is growing, not only from out-of-state visitors, but from foreign countries as well. I therefore ask for your support of the North Dakota Agritourism Limited Liability Act so that we can not only expand this segment of our industry, but continue to share our heritage with others.

Thank you,

  
Nicole Haase



Testimony of Sheri Grossman  
 President, Destination Marketing Association of North Dakota  
 House Bill 1142  
 January 12, 2011

Chairman DeKrey and Members of the House Judiciary Committee:

My name is Sheri Grossman and I am the President of Destination Marketing Association of North Dakota (DMAND). DMAND is a cooperative association of independent Convention and Visitor Bureaus, as well as additional communities who share a broad-based community support and whose primary objective is the promotion of North Dakota.

I encourage you to support House Bill 1142. Tourism in North Dakota has a major statewide impact on our economy. Agritourism is a prime example that tourism isn't just something for the larger cities. As we market North Dakota, we like to promote the fact that we offer a unique visit—something different. For many of our visitors, agritourism is that “something different” they want to experience. Many visitors are looking for a hands-on experience and agritourism provides this throughout every corner of North Dakota.

Visitors often expect agritourism operators in rural states such as North Dakota. Unfortunately, potential operators are often discouraged by the lack of affordable liability insurance. Liability insurance is a major concern for operators that offer, or are considering offering, farm and ranch experiences. This bill provides standardized language limiting the liability of operators for injuries caused by inherent risks—the conditions that are considered beyond the control of the agritourism operator. House Bill 1142 makes liability insurance more affordable and decreases this additional financial burden on farmers and ranchers interested in welcoming the public onto their land.

Recent United States Travel Association research shows North Dakota leads the nation in growth of travel expenditures, travel generated payroll, travel generated taxes, and travel generated employment. The interest in agritourism is increasing and this bill makes it possible for agritourism to continue playing a role in growing tourism in North Dakota.

Thank you for your time and consideration.

# North Dakota Tourism Alliance Partnership

P.O. Box 2599  
Bismarck, ND 58502  
(701) 355-4458  
FAX (701) 223-4645

Testimony of Bill Shalhoob  
Tourism Alliance Partnership Chairman  
HB 1142

2010/2011 MEMBERS

- Basin Electric  
Power Cooperative
- Bismarck-Mandan CVB
- Buffalo City Tourism
- Days Inn - Grand Dakota Lodge
- Destination Marketing  
Association of North Dakota
- Devils Lake CVB
- Dickinson CVB
- Fargo-Moorhead CVB
- Fort Abraham  
Lincoln Foundation
- Greater Grand Forks CVB
- International Peace Garden
- Lewis & Clark Fort  
Mandan Foundation
- Municipal Airport Authority  
of the City of Fargo
- ND Tourism Division (ex-officio)
- Newman Outdoor Advertising
- Norsk Hostfest Association
- Odney Communications Group
- Select Inn of Bismarck
- Spirit Lake Casino and Resort
- State Historical Society of  
North Dakota Foundation
- Theodore Roosevelt  
Medora Foundation
- Three Affiliated Tribes  
Tourism Dept.
- Trail Mountain  
Band of Chippewa Indians
- Williston CVB
- Woodland Resort, Inc.

Chairman DeKrey and members of the committee, my name is Bill Shalhoob. As chairman of the Tourism Alliance Partnership (TAP), I am here today to ask you to support HB 1142. TAP is a coalition of tourism-related industries, including CVB's, state attractions, businesses and other interested stakeholders in this viable and growing sector of North Dakota's economy.

The tourism industry in North Dakota has seen tremendous growth in recent years and is currently a \$4.13 billion industry, employing more than 31,000 people annually and accounting for \$760 million in total wages. Increased interest in agritourism, rural tourism and outdoor recreation continue to provide an outstanding opportunity for the expansion of this industry in North Dakota. However, taking advantage of this opportunity begins with ensuring our state's laws support the expansion of these ventures and protect those working to grow this sector of the tourism industry.

Each day in North Dakota as business owners carry out their day-to-day operations they risk being sued by customers or visitors for injuries that occur on the business premises or as a result of the business operation. For owners of agritourism businesses, this risk occurs at an increased level.

Agritourism involves hosting curious visitors, many of which are new to a farm or ranch setting and unfamiliar with the equipment and facilities associated with a working agricultural or ranch operation. This unfamiliarity with uneven terrain, animals and the operation of large equipment substantially increases the risk of injury and lawsuits. HB 1142 is intended to limit the liability of agritourism professionals for injuries that result from those conditions that are considered beyond the control of the agritourism professional.

This new law will not take the place of liability insurance, nor will it prevent suit from being filed in the unfortunate event of an injury at an agritourism operation, but it does provide a more favorable business climate for insurance companies to offer liability coverage for these types of operations.

North Dakota leads the nation in the production of 12 crops, however, according to the latest USDA census, the state ranks 32<sup>nd</sup> in the number of agritourism businesses. Often, visitors expect agritourism operations in rural states such as North Dakota, but potential operators are discouraged by the lack of affordable liability insurance. Supporting legislation regarding liability and affordable insurance issues for recreational and nature-based tourism businesses has been on TAP's legislative agenda for many years and we believe this bill will provide the means to begin to expand agritourism in North Dakota and further build the state's tourism industry.

We strongly encourage you to support HB 1142. Thank you for your consideration and I would be happy to answer any questions.

Michael A. Dwyer  
Executive Vice President  
701-223-4615  
701-223-4645 (Fax)

**NORTH DAKOTA**

*Water Users  
Association*

**PO Box 2254 • Bismarck, ND 58502-2254**

January 12, 2011

Dear Chairman DeKrey and Members of the Judiciary Committee:

I am writing on behalf of the North Dakota Water Users Association in support of HB 1142.

On December 9, 2010, the following resolution was adopted by the North Dakota Water Users Association, North Dakota Water Resource Districts Association and North Dakota Irrigation Association regarding legislation related to the liability of tourism professionals:

*"We support legislation intended to limit the liability of tourism professionals for injuries that occur through no fault of the tourism professionals, on land and water activities in North Dakota."*

HB 1142 is an important step in promoting the expansion of the tourism industry on both the lands and waters of North Dakota. Thank you for your consideration.

Sincerely,

*Kent Vesterso*

Kent Vesterso  
President

12 January 2011

Representative Duane Dekrey, Chair  
House Judiciary Committee

**Re: House Bill 1142**

Dear House Judiciary Committee Members:

My name is Jackie M. Stebbins and I appear today on behalf of North Dakota Association for Justice. We oppose HB 1142 as written and ask this committee for a *do not pass* recommendation of the bill as it is written. In the alternative, we would ask the committee *only* to recommend that this bill pass with the amendments we propose today that would protect North Dakota agritourism businesses that operate responsibly and carefully.

**North Dakota Association for Justice asks this committee to give a do not pass recommendation on this bill for the following reasons:**

- Responsible people in North Dakota actively participating in agritourism 1) carry insurance for their agritourism business and 2) the insurance they carry shields them from liability that arises out of their agritourism business. In North Dakota, we encourage personal responsibility from our citizens and businesses. This bill does not encourage personal responsibility.
- This bill would effectively give insurance companies another shield from liability and insurance companies do not need such a shield. It will shield insurance companies from losses that they build into the premiums they charge their customers.
- This bill would allow insurance companies to collect premiums for obligations they would no longer have, and reputable business owners/operators would pay for insurance that would avail them no benefit.
- This bill as written encourages people in agritourism to go without insurance. It encourages people in agritourism to act in a careless and irresponsible manner. North Dakotans do not appreciate careless and reckless behavior.
- North Dakota should encourage people to participate in agritourism. And when people participate, we should expect the owners/operators of the businesses to act in a

responsible and careful manner. The very nature of agritourism (ie riding four wheelers, riding horses, interacting with animals, etc.) poses inherent risks. Thus, it is in North Dakota's best interests to promote the goals of safety, care and responsibility in agritourism. This bill will not accomplish those goals.

- If agritourism has inherent risks, people will get hurt when those risks fall upon them. The real issue is who should bear these risks?
- If this bill passes as written, the owner/operator of the business is not held liable for a "participant's" injury or death. Therefore, the injured person/people will incur large medical expenses that will be paid for by taxpayers through Medicare or Medicaid and through higher health insurance premiums, rather than the owner/operator simply carrying adequate insurance to protect themselves and others. The latter is the prudent and responsible way to conduct business in this state.
- North Dakota with its booming economy is seen as the shining city on the hill. We are the source of many states' envy as they struggle with job loss and economic recess. Thus, it is imperative that North Dakota not pass bills where people can set up operations in North Dakota, with the idea of making a quick buck off of agritourism, knowing they have a shield from liability if they act in a careless and irresponsible manner.
- Agritourism should not be promoted in a way that hurts the very North Dakota citizens for whose benefit it is promoted. Nor should the state provide a shield for those who do not operate in a responsible manner.
- North Dakotans have high moral codes and a good neighbor attitude. However, the state of North Dakota must not enact laws that would shield someone who carelessly and irresponsibly participates in agritourism. This bill promotes fly-by-night operations that could move out of North Dakota without any responsibility or accountability to those they may harm along the way.
- Our system of justice requires that the person responsible for causing damages or injuring people should pay for the damages they cause. If our state government passes a law like this, then personal responsibility is nothing more than a free pass for businesses that carelessly injure people.
- This bill only serves to shield careless, irresponsible businesses. The good people of North Dakota tend to be careful and responsible and to insure their businesses to protect people from getting hurt and to protect them when they get hurt. Those businesses will not benefit from this bill: only the careless fly-by-night operations will.
- Based upon these foregoing reasons, this committee should give HB 1142 a do not pass recommendation.

**North Dakota Association for Justice asks in the alternative, that this bill *ONLY* receive a recommendation to pass with the following proposed amendments:**

- Page One, Line Ten – strike the words “with or”;
- Page One, Line Eighteen – strike the entire provision, “The behavior of wild or domestic animals; and”;
- Page One, Line Nineteen – strike the entire provision, “Structures and equipment; and”;
- Page One, Line Twenty-Four – strike the words “with or”; and
- Page Two, Line Fifteen – remove the word “willfully” and replace it with “negligently”.

Thank you for your consideration.

Sincerely,

**JACKIE M. STEBBINS**  
**Member of North Dakota Association for Justice**

Monday January 17, 2011

Chairman DeKrey and Members of the House Judiciary Committee,

Enclosed you will find copies of state statutes from the states that the Department of Commerce, the Agriculture Department and the Insurance Department reviewed when developing a HB 1142. They include: Kansas, North Carolina, Virginia, Illinois, Utah, Louisiana, Oklahoma, Tennessee and South Dakota. You will note, the National Agriculture Law Center has identified 22 states that have some legislation addressing agritourism.

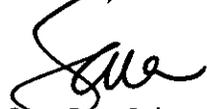
I wanted to clarify the intent of the legislation is to provide specific legislation addressing the inherent risks of agritourism- in order to provide an incentive to insurance providers to offer more affordable coverage here in North Dakota. In looking at the various recommendations that resulted from the 2006 Insurance department interim study it was determined this was the best option to obtain better insurance coverage. Larry Maslowski is surveying these states to see if there is quantifiable data on the results of premium decreases in these states.

The intent is not to encourage "fly-by 'nighers" but rather to provide some protection to the many successful farms and ranches willing to share their stories with our visitors. You heard from several ranch operations in the west but there is equal interest from visitors in experiencing our cutting-edge large farm operations statewide. Here again, it is not necessarily that they can't afford the insurance but rather they don't know what income it will derive and whether it is worth risking their operation, which in many cases has been in the family for many generations.

We appreciate your insight in this matter and look forward to working with you to clarify the language to help us remove this barrier to tourism development.

Please let me know if I can get you additional information.

Warm regards,



Sara Otte Coleman

Tourism Division Director, North Dakota Department of Commerce



[www.NationalAgLawCenter.org](http://www.NationalAgLawCenter.org) | [NatAgLaw@uark.edu](mailto:NatAgLaw@uark.edu) | (479) 575-7646

## A National AgLaw Center Research Publication

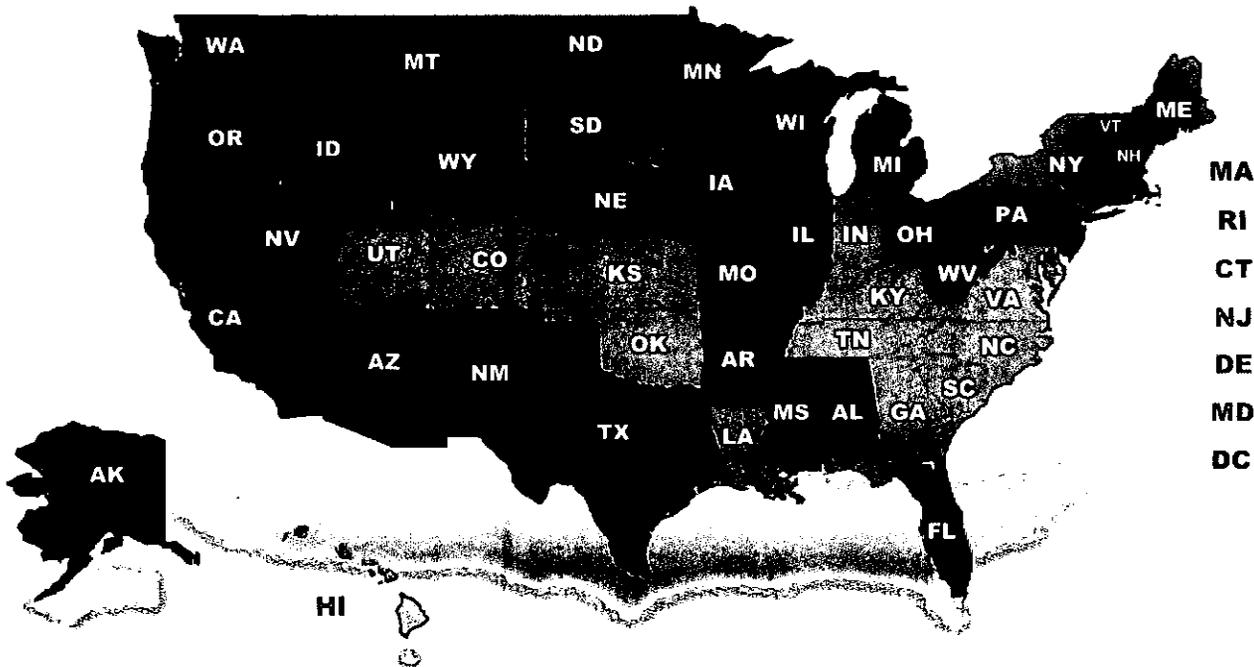
### States' Agritourism Statutes

**Shannon Mirus**  
*Staff Attorney*  
*National Agricultural Law Center*

Currently, twenty-two states in the United States have enacted statutes that address agritourism. These statutes vary from liability protections for agritourism operators to tax credits to zoning requirements. Familiarity with these statutes is essential to anyone who engages in agritourism. States' Agritourism Statutes provides the statutory text of each of the states' agritourism statutes. It is important to note that there are other statutes that impact agritourism operators in each state; however, the statutes included below are the statutes that specifically mention and directly address agritourism. Several states have pending legislation; these new statutes will be added to the compilation as they are passed.

The primary aim of this compilation is to provide the researcher with easy and free access to a state's statutory language by simply clicking on the state's image in the map below.

Note: If you cannot see a map of the United States below, [click here](#) to install the latest version of Adobe Flash Player.



**KSA 74-50**

**The Kansas Agritourism Promotion Act**

**Chapter 74, Article 50, Sections 165-173**

**As Agreed to April 1, 2004**

AN ACT concerning agritourism activities; providing for promotion thereof; relating to participants' assumption of the inherent risks thereof; providing for certain income tax credits.

Section 1:

This act may be cited as the agritourism promotion act.

Section 2:

The purpose of this act is to promote rural tourism and rural economic development by encouraging owners or operators of farms, ranches, and rural attractions, including historic, cultural, and natural attractions, to invite members of the public to view, observe and participate in such operations and attractions for recreational or entertainment purposes. This act shall be liberally construed to effectuate that purpose.

Section 3:

As used in sections 1 through 8, and amendments thereto:

(a) "Agritourism activity" means any activity which allows members of the general public, for recreational, entertainment or educational purposes, to view or enjoy rural activities, including, but not limited to, farming activities, ranching activities or historic, cultural or natural attractions. An activity may be an agritourism activity whether or not the participant pays to participate in the activity. An activity is not an agritourism activity if the participant is paid to participate in the activity.

(b) "Inherent risks of a registered agritourism activity" means those dangers or conditions which are an integral part of such agritourism activity including, but not limited to, certain hazards such as surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of structures or equipment ordinarily used in farming or ranching operations. "Inherent risks of a registered agritourism activity" also includes the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to follow instructions given by the registered agritourism operator or failing to exercise reasonable caution while engaging in the registered agritourism activity.

(c) "Participant" means any person who engages in a registered agritourism activity.

(d) "Registered agritourism activity" means any agritourism activity registered with the secretary pursuant to section 4, and amendments thereto.

(e) "Registered agritourism location" means a specific parcel of land which is registered with the secretary pursuant to section 4, and amendments thereto, and where a registered agritourism operator engages in registered agritourism activities.

(f) "Registered agritourism operator" means any person who is engaged in the business of providing one or more agritourism activities and is registered with the secretary pursuant to section 4, and amendments thereto.

#### Section 4:

(a) Any person who is engaged in the business of providing one or more agritourism activities may register with the secretary of commerce. The registration shall contain all of the following:

- (1) Information describing the agritourism activity which the person conducts or intends to conduct.
- (2) Information describing the location where the person conducts or intends to conduct such agritourism activity.

(b) The secretary shall maintain a list of all registered agritourism operators, the registered agritourism activities conducted by each operator and the registered agritourism location where the operator conducts such activities. Such list shall be made available to the public. The secretary, in conjunction with other agritourism and rural economic efforts of the secretary, shall promote and publicize registered agritourism operators, activities and locations to advance the purpose of this act by promoting and encouraging tourism.

(c) Registration pursuant to this section shall be for a period of five years.

(d) No fee shall be charged to persons registering under this section.

#### Section 5:

(a) At every registered agritourism location, the registered agritourism operator shall post and maintain signage which contains the warning notice specified in subsection (c). This section shall be deemed satisfied if such signage is placed in a clearly visible location at or near the registered agritourism location. The warning notice specified in subsection (c) shall appear on the sign in black letters, with each letter to be a minimum of one inch in height.

(b) Every written contract entered into by a registered agritourism operator for the providing of a registered agritourism activity shall contain in clearly readable print the warning notice and language specified in subsection (c).

(c) The signs described in subsection (a) and the contracts described in subsection (b) shall contain the following warning notice:

*WARNING*

*Under Kansas law, there is no liability for an injury or death of a participant in a registered agritourism activity conducted at this registered agritourism location if such injury or death results from the inherent risks of such agritourism activity. Inherent risks of agritourism activities include, but shall not be limited to, the potential of you as a participant to act in a negligent manner that may contribute to your injury or death and the potential of another participant to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this registered agritourism activity.*

(d) Upon request, the registered agritourism operator shall provide to any participant a written description of the registered agritourism activity, as set forth in the registration pursuant to section 4, and amendments thereto, for which this act limits the registered agritourism operator's liability at the registered agritourism location.

Section 6:

Except as provided in section 7, and amendments thereto, any participant is assuming the inherent risks of a registered agritourism activity when such participant engages in such agritourism activity. In any action for damages arising from the operation of a registered agritourism activity, the registered agritourism operator, pursuant to K.S.A. 60-208, and amendments thereto, shall plead an affirmative defense of assumption of risk by the participant.

Section 7:

Nothing in this act shall prevent or limit the liability of a registered agritourism operator if: (a) The registered agritourism operator injures the participant by willful or wanton conduct; or (b) the registered agritourism operator has actual knowledge of a dangerous condition in the land, facilities or equipment used in the registered agritourism activity or the dangerous propensity of a particular animal used in such activity and does not make such dangerous condition known to the participant and such dangerous condition causes the participant to sustain injuries.

Section 8:

Any limitation on legal liability afforded to a registered agritourism operator by this act shall be in addition to any other limitation of legal liability otherwise provided by law.

Section 9:

(a) For taxable years commencing on and after December 31, 2003, December 31, 2004, December 31, 2005, December 31, 2006, and December 31, 2007, there shall be allowed as a credit against the tax

liability of a taxpayer imposed under the Kansas income tax act, an amount equal to 20% of the cost of liability insurance paid by a registered agritourism operator who operates an agritourism activity on the effective date of this act. No tax credit claimed pursuant to this subsection shall exceed \$2,000. If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the amount thereof which exceeds such tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of tax credit has been deducted from tax liability, except that no such tax credit shall be carried forward for deduction after the third taxable year succeeding the taxable year in which the tax credit is claimed.

(b) For the first five taxable years commencing after a taxpayer opens such taxpayer's business, after the effective date of this act, there shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act, an amount equal to 20% of the cost of liability insurance paid by a registered agritourism operator who starts an agritourism activity after the effective date of this act. No tax credit claimed pursuant to this subsection shall exceed \$2,000. If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the amount thereof which exceeds such tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of tax credit has been deducted from tax liability, except that no such tax credit shall be carried forward for deduction after the third taxable year succeeding the taxable year in which the tax credit is claimed.

(c) The secretary of commerce shall adopt rules and regulations establishing criteria for determining those costs which qualify as costs of liability insurance for agritourism activities of a registered agritourism operator.

(d) On or before the 15th day of the regular legislative session in 2006, the secretary of commerce shall submit to the senate standing committee on commerce and the house standing committee on tourism and parks a report on the implementation and use of the tax credit provided by this section.

(e) As used in this section, terms have the meanings provided by section 3, and amendments thereto.

Section 10:

This act shall take effect and be in force from and after its publication in the statute book.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

HOUSE BILL 329  
RATIFIED BILL

AN ACT TO LIMIT LIABILITY ARISING FROM CERTAIN AGRITOURISM  
ACTIVITIES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 99E of the General Statutes is amended by adding a new Article to read:

"Article 4.

"Agritourism Activity Liability.

**"§ 99E-30. Definitions.**

As used in this Article, the following terms mean:

- (1) Agritourism activity. – Any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity.
- (2) Agritourism professional. – Any person who is engaged in the business of providing one or more agritourism activities, whether or not for compensation.
- (3) Inherent risks of agritourism activity. – Those dangers or conditions that are an integral part of an agritourism activity including certain hazards, including surface and subsurface conditions, natural conditions of land, vegetation, and waters, the behavior of wild or domestic animals, and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. Inherent risks of agritourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.
- (4) Participant. – Any person, other than the agritourism professional, who engages in an agritourism activity.
- (5) Person. – An individual, fiduciary, firm, association, partnership, limited liability company, corporation, unit of government, or any other group acting as a unit.

**"§ 99E-31. Liability.**

(a) Except as provided in subsection (b) of this section, an agritourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism activities, so long as the warning contained in G.S. 99E-32 is posted as required and, except as provided in subsection (b) of this section, no participant or participant's representative can maintain an action against or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities. In any action for damages against an agritourism professional for agritourism activity, the agritourism

professional must plead the affirmative defense of assumption of the risk of agritourism activity by the participant.

(b) Nothing in subsection (a) of this section prevents or limits the liability of an agritourism professional if the agritourism professional does any one or more of the following:

- (1) Commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant.
- (2) Has actual knowledge or reasonably should have known of a dangerous condition on the land, facilities, or equipment used in the activity or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant.

(c) Nothing in subsection (a) of this section prevents or limits the liability of an agritourism professional under liability provisions as set forth in Chapter 99B of the General Statutes.

(d) Any limitation on legal liability afforded by this section to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law.

**"§ 99E-32. Warning required."**

(a) Every agritourism professional must post and maintain signs that contain the warning notice specified in subsection (b) of this section. The sign must be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice must consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an agritourism professional for the providing of professional services, instruction, or the rental of equipment to a participant, whether or not the contract involves agritourism activities on or off the location or at the site of the agritourism activity, must contain in clearly readable print the warning notice specified in subsection (b) of this section.

(b) The signs and contracts described in subsection (a) of this section must contain the following notice of warning:

**"WARNING**

Under North Carolina law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity.'

(c) Failure to comply with the requirements concerning warning signs and notices provided in this subsection will prevent an agritourism professional from invoking the privileges of immunity provided by this Article."

**SECTION 2.** This act becomes effective January 1, 2006, and applies to agritourism activities, as defined in G.S. 99E-30 as enacted in Section 1 of this act, that occur on or after that date.

In the General Assembly read three times and ratified this the 20<sup>th</sup> day of July, 2005.

\_\_\_\_\_  
Marc Basnight  
President Pro Tempore of the Senate

\_\_\_\_\_  
James B. Black  
Speaker of the House of Representatives

\_\_\_\_\_  
Michael F. Easley  
Governor

Approved \_\_\_\_\_ .m. this \_\_\_\_\_ day of \_\_\_\_\_, 2005

## CHAPTER 710

Act to amend the Code of Virginia by adding in Title 3.1 a chapter numbered 27.7, consisting of sections numbered 3.1-796.137, 3.1-796.138, and 3.1-796.139, relating to agritourism activity liability.

[S 38]

Approved April 5, 2006

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 3.1 a chapter numbered 27.7, consisting of sections numbered 3.1-796.137, 3.1-796.138, and 3.1-796.139, as follows:

### CHAPTER 27.7. AGRITOURISM ACTIVITY LIABILITY.

§ 3.1-796.137. *Definitions.*

*As used in this chapter, unless the context requires a different meaning:*

*"Agricultural products" means any livestock, aquaculture, poultry, horticultural, floricultural, viticultural, silvicultural, or other farm crops.*

*"Agritourism activity" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, historical, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity.*

*"Agritourism professional" means any person who is engaged in the business of providing one or more agritourism activities, whether or not for compensation.*

*"Farm or ranch" means one or more areas of land used for the production, cultivation, growing, harvesting or processing of agricultural products.*

*"Inherent risks of agritourism activity" mean those dangers or conditions that are an integral part of an agritourism activity including certain hazards, including surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. Inherent risks of agritourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.*

*"Participant" means any person, other than an agritourism professional, who engages in an agritourism activity.*

§ 3.1-796.138. *Liability limited; liability actions prohibited.*

*Except as provided in subsection B, an agritourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism activities, so long as the warning contained in § 3.1-796.139 is posted as required and, except as provided in subsection B, no participant or participant's representative is authorized to maintain an action against or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities; provided that in*

any action for damages against an agritourism professional for agritourism activity, the agritourism professional shall plead the affirmative defense of assumption of the risk of agritourism activity by the participant.

B. Nothing in subsection A shall prevent or limit the liability of an agritourism professional if the agritourism professional does any one or more of the following:

1. Commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant;
2. Has actual knowledge or reasonably should have known of a dangerous condition on the land or in the facilities or equipment used in the activity, or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant; or
3. Intentionally injures the participant.

C. Any limitation on legal liability afforded by this section to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law.

§ 3.1-796.139. *Warning required.*

4. Every agritourism professional shall post and maintain signs that contain the warning notice specified in subsection B. The sign shall be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice shall consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an agritourism professional for the providing of professional services, instruction, or the rental of equipment to a participant, whether or not the contract involves agritourism activities on or off the location or at the site of the agritourism activity, shall contain in clearly readable print the warning notice specified in subsection B.

B. The signs and contracts described in subsection A shall contain the following notice of warning:

"WARNING: Under Virginia law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity."

C. Failure to comply with the requirements concerning warning signs and notices provided in this section shall prevent an agritourism professional from invoking the privileges of immunity provided by this chapter.

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HB5652



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB5652

by Rep. Keith P. Sommer

SYNOPSIS AS INTRODUCED:

New Act

Creates the Agritourism and Farm Animal Activity Liability Act. Makes legislative findings including that the use and exhibition of farm animals significantly contributes to the Illinois economy and these activities have inherent risks. Provides definitions for terms that include agritourism activity, agritourism and farm animal professional, and inherent risks of farm animal and agritourism activity. Provides that an agritourism and farm animal activity professional is not liable for injury to or death of a participant in an activity if the professional provided a specified written warning, did not engage in willful and wanton disregard for the participant's safety, and did not fail to warn of a known danger. Provides written warning requirements that are to be posted and included in written contracts. Provides that the failure to comply with the warning requirements prevents a professional from invoking the liability limits of the Act. Effective immediately.

LRB095 15441 AJ0 41433 b

A BILL FOR

1 AN ACT concerning agricultural activity liability.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Agritourism and Farm Animal Activity Liability Act.

6 Section 5. Legislative findings. The General Assembly  
7 finds that activities involving the use and exhibition of farm  
8 animals including but not limited to agritourism activities are  
9 engaged in by a large number of citizens of Illinois,  
10 significantly contributing to the economy of Illinois. Since it  
11 is recognized that there are inherent risks in working with,  
12 exhibiting, and using farm animals which should be understood  
13 by participants in farm animal activities and agritourism and  
14 which are essentially impossible for owners of farm animals or  
15 sponsors of farm animal activities and agritourism professions  
16 to eliminate, it is the purpose of this statute is to define  
17 the areas of responsibility and affirmative acts for which  
18 activity sponsors, professionals, and participants shall be  
19 responsible, to specify risks of injury for which activity  
20 sponsors, professionals, and participants shall not be  
21 responsible, and to specify areas of responsibilities of farm  
22 animal participants. Therefore, the General Assembly  
determines that to preserve and promote activities involving

1 farm animals and agritourism and the health and safety of the  
2 citizens of Illinois, these statutory provisions are necessary  
3 to instruct persons voluntarily engaging in farm animal  
4 activities and agritourism of the potential risks inherent in  
5 the activities.

6 Section 10. Definitions. In this Act:

7 (a) "Agritourism activity" means any activity carried out  
8 on a farm that allows individuals, for recreational,  
9 entertainment, or educational purposes, to view or participate  
10 in production agriculture as defined by Section 3-35 of the Use  
11 Tax Act or hunting, fishing, or trapping. An activity is an  
12 agritourism activity whether or not the participant paid to  
13 participate in the activity.

14 (b) "Agritourism and farm animal activity professional"  
15 means any person who is engaged in the business of providing  
16 one or more agritourism or farm animal activities, whether or  
17 not for compensation.

18 (c) "Farm animal activity" means any activity that allows  
19 individuals to participate in any manner in the leading,  
20 showing, exhibiting, riding, providing or assisting in  
21 providing medical treatment of, grooming, fixing or attending  
22 to farm animal equipment, driving, or being a passenger upon a  
23 farm animal, or a spectator at any of these activities. Any  
24 such activity is a farm animal activity whether carried out on  
25 or off-site of the agritourism and farm animal professional's

1 business, such as at a clinic, parade, fair, exhibition, or  
2 other location of this sort, however informal or impromptu,  
3 that is sponsored by an agritourism and farm animal activity  
4 professional.

5 (d) "Farm animal" means an animal in one of the following  
6 categories: cattle, oxen, sheep, swine, goats, horses, ponies,  
7 mules, donkeys, hinnies, alpacas, llamas, ratites, (ostrich,  
8 rhea, emu), and poultry.

9 (e) "Inherent risks of farm animal and agritourism  
10 activity" means those dangers or conditions that are an  
11 integral part of an agritourism or farm animal activity  
12 including certain hazards, including surface and subsurface  
13 conditions, natural conditions of land, vegetation, and  
14 waters, the unpredictable behavior of wild or domestic animals,  
15 and the dangers of structures or equipment ordinarily used in  
16 farming operations. Inherent risks of agritourism and farm  
17 animal activity also include the potential of a participant to  
18 act in a negligent manner that may contribute to injury to the  
19 participant or others, including failing to follow  
20 instructions given by the agritourism professional or failing  
21 to exercise reasonable caution while engaging in the  
22 agritourism activity.

23 (f) "Participant" means any person, other than the  
24 agritourism and farm animal professional, who engages in an  
25 agritourism or farm animal activity.

(g) "Person" means an individual, fiduciary, firm,

1 association, partnership, limited liability company,  
2 corporation, unit of government, or any other group acting as a  
3 unit.

4 Section 15. Liability.

5 (a) Except as provided in subsection (b) of this Section,  
6 an agritourism and farm animal activity professional is not  
7 liable for injury to or death of a participant resulting from  
8 the inherent risks of farm animal and agritourism activity, so  
9 long as the warning contained in Section 20 is posted as  
10 required and, except as provided in subsection (b) of this  
11 Section, no participant or participant's representative can  
12 maintain an action against or recover from an agritourism or  
13 farm animal activity professional for injury, loss, damage, or  
14 death of the participant resulting from any of the inherent  
15 risks of agritourism or farm animal activities.

16 (b) Nothing in subsection (a) of this Section prevents or  
17 limits the liability of an agritourism and farm animal activity  
18 professional if the agritourism and farm animal activity  
19 professional does any one or more of the following:

20 (1) Commits an act or omission that constitutes willful  
21 or wanton disregard for the safety of the participant, and  
22 that act or omission proximately causes injury, damage, or  
23 death to the participant.

24 (2) Has actual knowledge or reasonably should have  
25 known of a dangerous condition on the land, facilities, or

1 equipment used in the activity and does not make the danger  
2 known to the participant, and the danger proximately causes  
3 injury, damage, or death to the participant.

4 (c) Any limitation on legal liability afforded by this  
5 Section to an agritourism and farm animal activity professional  
6 is in addition to any other limitations of legal liability  
7 otherwise provided by law.

8 (d) Liability may be limited under the terms of this Act  
9 regardless of whether the agritourism or farm animal activity  
10 is open to the public.

11 Section 20. Warning required.

12 (a) Every agritourism professional must post and maintain  
13 signs that contain the warning notice specified in subsection  
14 (b) of this Section. The sign must be placed in a clearly  
15 visible location at the entrance to the agritourism and farm  
16 animal activity location and at the site of the agritourism  
17 activity or farm animal activity. The warning notice must  
18 consist of a sign in black letters, with each letter to be a  
19 minimum of one inch in height.

20 Every written contract entered into by an agritourism and  
21 farm animal professional for the providing of professional  
22 services, instruction, or the rental of equipment to a  
23 participant, whether or not the contract involves agritourism  
24 activities or farm animal activities on or off the location or  
25 at the site of the activity, must contain in clearly readable

1 print the warning notice specified in subsection (b) of this  
2 Section.

3 (b) The signs and contracts described in subsection (a) of  
4 this Section must contain the following notice of warning:

5 "WARNING

6 Under Illinois law, each participant who engages in an  
7 agritourism or farm animal activity expressly assumes the risks  
8 of engaging in and the legal responsibility for injury, loss,  
9 or damage to participant, person, or property resulting from  
10 the risk of agritourism or farm animal activity."

11 (c) Failure to comply with the requirements concerning  
12 warnings signs and notices provided in this subsection will  
13 prevent an agritourism and farm animal professional from  
14 invoking the liability limitations provided by this Act.

15 Section 99. Effective date. This Act takes effect upon  
16 becoming law.



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**AFFIRMATIVE DEFENSE FOR  
AGRI-TOURISM ACTIVITY**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael T. Morley**

Senate Sponsor: Margaret Dayton

Cosponsors: Kerry W. Gibson John G. Mathis

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**LONG TITLE**

**General Description:**

This bill provides an affirmative defense for an operator of an agri-tourism activity.

**Highlighted Provisions:**

This bill:

- ▶ defines agri-tourism; and
- ▶ provides an affirmative defense for an owner or operator of an agri-tourism activity

if:

- the injured person disregarded safety measures; or
- any equipment, including animals, utilized during the activity was used in an

unsafe manner.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**78B-4-512**, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **78B-4-512** is enacted to read:

**78B-4-512. Affirmative defense for agri-tourism industry.**

31 (1) As used in this section, "agri-tourism" means an activity that allows members of the  
32 general public to view or enjoy agricultural related activities, including farming, ranching, or  
33 historic, cultural, or natural attractions, for recreational, entertainment, or educational purposes.

34 (a) An activity may be an agri-tourism activity whether or not the participant pays to  
35 participate in the activity.

36 (b) An activity is not an agri-tourism activity if the participant is paid to participate in  
37 the activity.

38 (2) In any action for damages for personal injury, death, or property damage in which  
39 an owner or operator of an agri-tourism activity is named as a defendant, it shall be an  
40 affirmative defense to liability that:

41 (a) the injured person deliberately disregarded conspicuously posted signs, verbal  
42 instructions, or other warnings regarding safety measures during the activity; or

43 (b) any equipment, animals, or appliance used by the injured person during the activity  
44 were used in a manner or for a purpose other than that for which a reasonable person should  
have known they were intended.



EXPLANATION OF 2008  
LIMITATION OF LIABILITY LAW  
ON AGRITOURISM OPERATIONS  
IN LOUISIANA  
**La. R.S. 9: 2795.5**

Louisiana law makes a person responsible for injuries that occur as a result of that person's negligence, imprudence, lack of skill, total disregard for the safety of others and for intentionally harming another person. The law also makes a person responsible for any defect or condition in his or her property that causes injury if the defect or condition was known and the injury could have been prevented by the exercise of reasonable care. These standards are not new. They date back to the days of the Roman Empire.

These rules of law mean that each day business owners carrying out the day-to-day operations of their businesses risk getting sued by customers or visitors for injuries that occur on the business premises or as a result of the business operations. Owners of agritourism businesses face the same risks, but at a higher level.

Agritourism involves hosting curious visitors, many of whom are new to a farm, ranch or forestry setting and the unique equipment and facilities associated with a working agricultural or forestry operation. This unfamiliarity with uneven terrain, animals that are not kept as pets and the operation of large equipment substantially increases the risk of injury and, of course, lawsuits.

In response to the vulnerability for lawsuits and the problem with obtaining liability insurance, the Louisiana legislature passed House Bill 633 by Representative Anders as Act 591 of 2008; thereby enacting the **Agritourism Limited Liability Law** (R.S. 9:2795.4). This law is intended to limit the liability of agritourism professional for injuries that occur through no fault of the agritourism professional. A copy of the complete law is found at the end of this explanation.

The law defines agritourism, who is an agritourism professional, who is a participant in an agritourism activity, and what constitutes an inherent risk of an agritourism activity. Examples of integral conditions, dangers, or hazards are rough terrain, vines and other vegetation that someone may trip on, the behavior of wild or domestic animals, and risks associated with the normal and proper use of machinery and equipment.

The decision as to what type of activities are "agritourism activities" is left to the commissioner of agriculture and forestry to make by regulation. Those regulations may be found in the Louisiana Administrative Code at (LAC 7:XLV.101, 103,105). The current text of the regulations may be found at the end of this explanation.

In order to be eligible for coverage under this law, an agritourism professional engaging in one or more agritourism activity as defined by the commissioner, must submit a plan of operation for each agritourism activity to the director of the extension service of the Louisiana State University Agricultural Center and the director must approve the plan.

Upon approval of the plan, the agritourism professional will be eligible for coverage under the law so long as: (1) the law is in effect, (2) the particular activity or type of activity is included in the regulations as an agritourism activity, and (3) the agritourism professional is conducting business in accordance with the plan.

To invoke the limitation of liability provided by this law, an agritourism professional must post and maintain a sign or signs that contain a warning notice in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice must be in black letters, with each letter a minimum of one inch in height. The warning must also be in any contract signed by the agritourism professional for the providing of professional services, instructions, or the rental of equipment and the warning must be in clearly readable print. The warning sign and the warning on the contract must read as follows:

#### **WARNING**

**Under Louisiana law, R.S. 9:2795.5, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity.**

HOWEVER, additional warning signs at the entrance and the site of the agritourism activity may be needed. If there is a particularly dangerous condition or an animal with known dangerous propensities the agritourism profession must eliminate the danger, keep the participants away, or post conspicuous signs warning of the particular danger. For example, if the agritourism professional has a creek or stream on the property, knows that there is a deep hole in the streambed that is hard to see, and knows that participants walk down the streambed then the agritourism must either fill up the hole, or take steps to prevent participants from walking that portion of the streambed, or post a warning at the hole. Another example, if the agritourism activity involves hiking or walking through woods or fields and wild hogs are known to be in the vicinity the agritourism professional must, at a minimum, post warning signs about the danger posed by the wild hogs.

Even under the law, an agritourism professional may still be liable for injuries caused by his or her willful or wanton disregard for the safety of the participants, intentionally injuring a participant, or failing to protect against a particularly known danger. Another risk that an agritourism professional may be liable for is injury caused to a participant by another participant, especially if the use of equipment is involved.

In summary, the Louisiana Agritourism Law is intended to protect an agritourism professional from liability because of an injury suffered by a participant if the injury is solely the result of a condition, danger, or hazard that is an integral part of the agritourism activity.

HOWEVER, THERE IS NO ABSOLUTE FREEDOM FROM LIABILITY. Failure to post the warning signs and to place the warning in contracts prevents the law from being used to avoid liability. Further, as stated above, there are several situations where an agritourism professional may still be liable for injuries suffered by a participant.

REMEMBER, there is no way to prevent lawsuits, but the posting of warning signs; making participants aware of the inherent dangers; explaining safe ways of participating; stopping unsafe participation; correcting, eliminating, isolating, or warning of especially dangerous conditions or animals, and having regard for the safety of participants can shield an agritourism professional from liability under the Agritourism Law.

HOWEVER, this law is not a guarantee of freedom from lawsuit or liability and it **does not** take the place of liability insurance.

**2795.5. Limitation of liability; agritourism activities; definitions; exceptions; required warning**

A. As used in this Section, the following terms shall have the following meanings, unless the context requires otherwise:

(1) "Agritourism" means the travel or visit by the general public to, or the practice of inviting the general public to travel to or visit, a working farm, ranch, or other commercial agricultural, aquacultural, horticultural, or forestry operation for the purpose of enjoyment, education, or participation in the activities of the farm, ranch, or other agricultural, aquacultural, horticultural, or forestry operation.

(2) "Agritourism activities" means those activities related to agritourism as defined in rules and regulations adopted by the commissioner of agriculture and forestry in accordance with the Administrative Procedure Act, and which the conduct of any such activity is set forth in a plan of operation approved by the director of the Louisiana Cooperative Extension Service of the Louisiana State University Agricultural Center or his designee.

(3) "Agritourism professional" means any person and his employees or authorized agents who offers or conducts one or more agritourism activities for agritourism purposes.

(4) "Inherent risks of agritourism activity" means those conditions, dangers, or hazards that are an integral part of an agritourism activity, including surface and subsurface conditions of land and water; natural conditions of vegetation; the behavior of wild or domestic animals; those arising from the form or use of structures or equipment ordinarily used on a working farm, ranch, or other commercial agricultural, aquacultural, horticultural, or forestry operation; and the mistakes or negligent acts of a participant that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.

(5) "Participant" means any person, other than an agritourism professional, who engages in an agritourism activity, even if that person did not pay to participate in the agritourism activity.

B.(1) Except as provided in Paragraph (2) of this Subsection, an agritourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism activities, so long as the warning contained in Subsection C of this Section is posted as required and, except as provided in Paragraph (2) of this Subsection, no participant or participant's representative can maintain an action against or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities. In any action for damages arising out of an agritourism activity against an agritourism professional, the agritourism professional shall plead the provisions of this Section as an affirmative defense.

(2) Nothing contained in Paragraph (1) of this Subsection prevents or limits the liability of an agritourism professional, if the agritourism professional does any one or more of the following:

(a) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant and that act or omission caused injury, damage, or death to the participant.

(b) Intentionally injures the participant.

(c) Owns, leases, rents, or otherwise is in lawful possession and control of the land or facility upon which the participant sustained injuries because of a dangerous latent condition, including but not limited to the dangerous propensity of a particular animal used in such activity, which was known or should have been known to the agritourism professional and for which warning signs have not been conspicuously posted.

(d) Any limitation on liability provided in Paragraph (1) of this Subsection to an agritourism professional is in addition to any other limitation of liability otherwise provided by law.

(3) Nothing contained in Paragraph (1) of this Subsection shall prevent or limit the liability of an agritourism professional under liability provisions as set forth in the Louisiana Products Liability Act, R.S. 9:2800.51 through 2800.60.

C.(1) Every agritourism professional shall post and maintain signs that contain the warning notice specified in Paragraph (2) of this Subsection and shall be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice shall consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an agritourism professional for the providing of professional services, instruction, or the rental of equipment to a participant, whether or not the contract involves agritourism activities on or off the location or at the site of the agritourism activity, shall contain in clearly readable print the warning notice specified in Paragraph (2) of this Subsection.

(2) The signs and contracts described in Paragraph (1) of this Subsection shall contain the following notice of warning:

**"WARNING**

Under Louisiana law, R.S. 9:2795.5, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity."

(3) Failure to comply with the requirements concerning warning signs and notices provided in this Subsection shall prevent an agritourism professional from invoking the limitation of liability provided by this Section.

## **Part XLV. Agritourism**

### **Chapter 1. Agritourism Activities; Plans of Operation**

#### **§101. Definitions**

A. The words and terms defined in R.S. 9:2795.5 are applicable to this Chapter.

B. The following words and terms are defined for the purposes of this Chapter.

*Agricultural Operation*—a working farm, ranch, or other commercial agricultural, aquacultural, horticultural, or forestry operation.

*Agritourism Plan of Operation*—a planning document that will assist agritourism professionals in identifying and addressing possible inherent risks on their operations through recommended best management practices. Components of the plan will include listing of activities, their risks, suggestions for minimizing those risks, and a plan for the location of warning signs.

*Commissioner*—the Commissioner of Agriculture and Forestry for Louisiana.

*Department*—the Louisiana Department of Agriculture and Forestry.

#### **§103. Agritourism Activities**

A. Agritourism activities are activities engaged in by a participant for one or more of the purposes of enjoyment of, education about, or participation in, the activities of an agricultural operation.

B. The commissioner has defined certain activities as agritourism activities when such activities are conducted in relation to an agricultural operation. The defining of an activity as an agritourism activity also includes the enjoyment of, education about or participation in closely related activities even though such closely related activities may not be specifically listed in the definition. For example, an agricultural craft tour or visit includes such things as attending on-site lectures, hands on participation in the making of an art or craft article, and purchase of an article.

1. The commissioner may add or remove activities to or from the list of agritourism activities from time to time by publishing a supplemental list of agritourism activities in the Potpourri Section of the *Louisiana Register* and by updating the list of activities on the department's website.

2. Interested persons may request activities to be added or deleted from the list of agritourism activities.

a. All such requests shall be submitted in writing to the department by letter or e-mail. Each request shall provide the name, address, and contact information for the person making the request, a description of the activity, and how it is related to an agricultural operation.

b. The commissioner shall make the determination as to whether the activity will be added or deleted from the list of agritourism activities. The requesting party shall be notified of the commissioner's decision.

C. A list of the agritourism activities shall be published annually in the Potpourri Section of the February issue of the *Louisiana Register* and on the department's website.

D. The initial annual listing of agritourism activities established by the commissioner is listed below.

Annual Listing of Agritourism Activities in Accordance with LA 7:XLV.101-105	
Notice: The activities listed below are agritourism activities only when conducted in relation to an agricultural operation as defined in LAC 7:XLV.101.	
Agricultural Crafts Tours and Visits	Farm/Ranch Vacations
Agricultural Exhibits Tours and Visits	Farmers Markets/on Farm Sales/Roadside Stands Visits and Participation
Agricultural Fairs and Festivals Visits and Participation	Fishing
Agricultural Operations Planting, Harvesting and Working Activities	Game/Exotic Farm Animal Tours and Visits
Agricultural Operations Tours and Visits	Garden/Nursery Tours and Visits
Bed and Breakfasts Tours, Visits, and Stays	Guided Crop Tours and Visits
Bird Watching	Hiking/Packing Trips
Boating/Swamp Tours	Historical Tours of or Visits to Former Agricultural Operations
Camping/Picnicking	Horseback/Pony Riding
Christmas Tree Farms Visits and Tree Cutting	Hunting
Corn/Hay Bale/Other Mazes Visits and Participation	Hunting/Working Dog Trials/Training
Crop Harvesting at U-Pick Operations	Petting Zoos Tours, Visits, and Interaction with Animals
Educational Tours and Visits	Pumpkin Patch Visits and Participation
Equine Activity [as defined in R.S. 9:2795.3(A)(3)] Attendance and Participation	Skeet Shooting
Farm Animal Activity [as defined in R.S. 9:2795.1(A)(3)] Attendance and Participation	Wagon Rides Attendance and Participation
	Winery Tours and Visits
	Youth Camp Stays and Participation

**§105. Procedure for Submission of Plan of Operation**

A. Any agritourism professional who conducts an agritourism activity and seeks to avail himself of R.S. 9:2795.5 shall submit a written and completed agritourism plan of operation for each such activity to the Louisiana Cooperative Extension Service of the Louisiana State University Agricultural Center for approval. Multiple activities may be included in the plan. The agritourism plan of operation may be sent to Dora Ann Hatch, LSU AgCenter, 11959 Highway 9, Homer, LA 71040.

1. An agritourism professional who adds an agritourism activity after his agritourism plan of operation has been approved shall submit an agritourism plan of operation for the new activity to the Louisiana Cooperative Extension Service of the Louisiana State University Agricultural Center for approval.

2. An agritourism plan of operation shall be submitted for each separate agricultural operation where agritourism activities are to be conducted.

B. The agritourism plan of operation shall include:

1. the name, physical address, mailing address, and telephone number of the agritourism professional;

2. the name under which the agritourism professional will operate, the physical address, mailing address and telephone number of the agricultural operation, if different than the information provided for the agritourism professional;

3. the business structure, (sole proprietorship, partnership, corporation, limited liability company, joint venture, or other structure);

4. the physical location of the agricultural operation;

5. the nature of the agritourism activities to be conducted at the location;

6. the known inherent risks to participants in the agritourism activities;

7. the best management practices, including the placement of warning signs, to be used by the agritourism professional for reducing these risks and for warning participants of the risks;

8. any other information requested by the Louisiana Cooperative Extension Service of the Louisiana State University Agricultural Center.

C. An agritourism professional, upon approval and implementation of his agritourism plan of operation, shall be presumed to be conducting an agritourism activity for each activity listed on an approved agritourism plan of operation.



## Oklahoma Livestock Activities Liability Limitation Act

Citation: 76 Okl. St. Ann. § 50.1 - 50.4

Summary: The Oklahoma Livestock Activities Liability Limitation Act provides that it is the intent of the Oklahoma Legislature to encourage livestock activities & agritourism activities by limiting the civil liability of livestock activities sponsors, participants and livestock professionals involved in such activities. An agritourism operator, livestock activity sponsor, a participant or a livestock professional acting in good faith and pursuant to the standards of the livestock industry shall not be liable for injuries to any person engaged in livestock activities when such injuries result from the inherent risks of livestock activities. Liability is not limited by this statute where the equine professional or agritourism operator knowingly provided faulty tack or equipment, failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity, owns or otherwise is in lawful possession of the land or facilities upon which the participant sustained injuries because of a known, dangerous latent condition, or if he or she commits an act or omission that constitutes willful or wanton disregard for the safety of the participant or intentionally injures the participant. Oklahoma also has a unique provision that explicitly states that two or more persons may agree, in writing, to extend the waiver of liability pursuant to the provisions of the Oklahoma Livestock Activities Liability Limitation Act.

Statute in Full:

### § 50.1. Short title--Legislative intent--Construction

- A. This act shall be known and may be cited as the "Oklahoma Livestock Activities Liability Limitation Act."
- B. 1. The Oklahoma Legislature recognizes that persons who engage in livestock activities may incur injuries as a result of the risks involved in such activities even in the absence of any fault or negligence on the part of persons or entities who sponsor, participate or organize those activities.
- 2. The Oklahoma Legislature finds that the state and its citizens derive numerous economic and personal benefits from livestock activities.
- 3. It is, therefore, the intent of the Oklahoma Legislature to encourage livestock activities by limiting the civil liability of livestock activities sponsors, participants and livestock professionals involved in such activities.
- C. The provisions of the Oklahoma Livestock Activities Liability Limitation Act shall not be construed to conflict or amend Sections 10 through 15.1 of Title 76 of the Oklahoma Statutes.

### § 50.2. Definitions

As used in the Oklahoma Livestock Activities Liability Limitation Act:

- 1. "Engages in a livestock activity" includes training, racing, showing, riding, or assisting in medical treatment of, or driving livestock, or engaging in any agritourism activity involving livestock or on a location where livestock are displayed or raised, and any person assisting a participant, livestock activity sponsor or livestock professional. The term "engages in a livestock activity" does not include being a spectator at a livestock activity, except in cases where the spectator places himself or herself in immediate proximity to livestock activity;
- 2. "Agritourism activity" includes, but is not limited to, any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity

whether or not the participant pays to participate in the activity;

3. "Livestock" means any cattle, bison, hog, sheep, goat, equine livestock, including but not limited to animals of the families bovidae, cervidae and antilocapridae or birds of the ratite group;

4. "Livestock activity" includes but is not limited to:

- a. livestock shows, fairs, livestock sales, competitions, performances, or parades that involve any or all breeds of livestock and any of the livestock disciplines, including, but not limited to, rodeos, auctions, driving, pulling, judging, cutting and showing,
- b. livestock training or teaching activities or both such training and teaching activities,
- c. boarding or pasturing livestock,
- d. inspecting or evaluating livestock belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the live stock or is permitting a prospective purchaser of the livestock to inspect or evaluate the livestock,
- e. drives, rides, trips, hunts or other livestock activities of any type however informal or impromptu that are sponsored by a livestock activity sponsor,
- f. placing or replacing horseshoes on an equine, or otherwise preparing livestock for show, and
- g. agritourism activities involving the viewing of, handling of, riding of, showing of, or other interactive activities with livestock;

5. "Livestock activity sponsor" means an individual, group, club, partnership or corporation, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for, a livestock activity, including but not limited to: livestock clubs, 4-H clubs, FFA chapters, school and college-sponsored classes, programs and activities, therapeutic riding programs, and operators, instructors, and promoters of livestock facilities, including, but not limited to, barns, stables, clubhouses, ponyride strings, fairs and arenas at which the activity is held;

6. "Livestock professional" means a person engaged for compensation in:

- a. instructing a participant or renting to a participant livestock for the purpose of engaging in livestock activity, or
- b. renting equipment or tack to a participant;

7. "Inherent risks of livestock activities" means those dangers or conditions which are an integral part of livestock activities, including but not limited to:

- a. the propensity of livestock to behave in ways that may result in injury to persons on or around them,
- b. the unpredictability of livestock's reaction to such things as sounds, sudden movement and unfamiliar objects, persons or other animals,
- c. certain hazards such as surface and subsurface conditions unknown to the livestock activity sponsor,
- d. collisions with other livestock or objects, and
- e. the potential of tack to become dislodged or move in ways that may result in injury to persons on or around livestock activities; and

8. "Participant" means any person, whether amateur or professional, who engages in a livestock activity, whether or not a fee is paid to participate in the livestock activity.

### **§ 50.3. Scope of liability**

A. Except as provided in subsection B of this section, a livestock activity sponsor, a participant or a livestock professional acting in good faith and pursuant to the standards of the livestock industry shall not be liable for injuries to any person engaged in livestock activities when such injuries result from the in-

herent risks of livestock activities.

B. The provisions of the Oklahoma Livestock Activities Liability Limitation Act shall not apply to employees of the sponsor or livestock professional in the performance of their duties who are covered by or subject to the provisions of the worker's compensation laws of Title 85 of the Oklahoma Statutes.

1. Nothing in subsection A of this section shall prevent or limit the liability of a livestock, a participant or a livestock professional, if the livestock activity sponsor, a participant, or livestock professional:

- a. commits an act or omission that constitutes a willful or wanton disregard for the safety of any person engaged in livestock activities, and that act or omission caused the injury,
- b. intentionally injures a person engaged in livestock activities,
- c. provided the equipment or tack, which was faulty, and such equipment or tack was faulty to the extent that it did cause the injury. The provisions of this paragraph shall not apply to livestock activities sponsored by youth organizations when youth participants share equipment or tack between themselves,
- d. provided the livestock and failed to make a reasonable effort to determine the ability of the participant to manage the particular livestock based upon the participant's representations of such participant's activity. Provided, however, a participant in a livestock show, livestock sale, or rodeo shall be presumed to be competent in the handling of livestock if an entry form is required for the activity and signed by the participant, or
- e. owns, leases, rents, or otherwise is in lawful possession and control of the land or facilities upon which a dangerous condition which was known to the livestock activity sponsor, livestock professional or person and not made known to the participant.

2. Nothing in subsection A of this section shall prevent or limit the liability of a livestock activity sponsor, a participant, or a livestock professional:

- a. under liability provisions as set forth in the products liability laws, or
- b. for livestock activities which result in the death of any person engaged in livestock activities from the inherent risks of livestock activities.

C. A sponsor shall not be held vicariously liable for the acts or omissions of a participant or a livestock professional.

#### **§ 50.4. Waiver of liability**

Two or more persons may agree, in writing, to extend the waiver of liability pursuant to the provisions of the Oklahoma Livestock Activities Liabilities Limitation Act. Such waiver shall be valid and binding by its terms.



STATE OF TENNESSE

PUBLIC CHAPTER NO. 498

SENATE BILL NO. 2164

By Tracy, Bunch, Burks, Gresham, Overbey, Ford, Crowe, Faulk,  
Southerland, Black

Substituted for: House Bill No. 1931

By Bone, Ty Cobb, Hawk, Bell, Evans, McDaniel, Harrison, Shipley, Ford, Roach,  
Carr

AN ACT to amend Tennessee Code Annotated, Title 43 and Title 70, Chapter 7, relative  
to agritourism.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 43, is amended by adding  
Sections 2 through 4 as a new, appropriately designated chapter.

SECTION 2. For purposes of this chapter, unless the context otherwise requires:

(1) "Agritourism activity" means any activity carried out on a farm or  
ranch, eligible for greenbelt classification under Title 67, Chapter 5, Part 10, that  
allows members of the general public, for recreational, entertainment, or  
educational purposes, to view or enjoy rural activities, including farming,  
ranching, historic, cultural, or harvest-your-own activities, or natural activities and  
attractions. An activity is an agritourism activity whether or not a participant  
provides compensation in money or other valuable compensation to participate in  
the activity. Agritourism activity includes an activity involving any animal  
exhibition at an agricultural fair, regardless of the location of the fair;

(2) "Agritourism professional" means any person who is engaged in the  
business of providing one (1) or more agritourism activities, whether or not for  
compensation;

(3) "Inherent risks of agritourism activity" means those dangers,  
conditions, or hazards that are an integral part of an agritourism activity including,  
but not limited to, surface and subsurface conditions; natural conditions of land,  
vegetation, and waters; the behavior of wild or domestic animals; and ordinary  
dangers of structures or equipment ordinarily used in farming and ranching  
operations. Inherent risks of agritourism activity also include the potential of a  
participant to act in a negligent manner that may contribute to injury to the  
participant or others, including failing to follow instructions given by an  
agritourism professional or failing to exercise reasonable caution while engaging  
in an agritourism activity;

(4) "Participant" means any person, other than the agritourism professional, who engages in an agritourism activity; and

(5) "Person" means an individual, fiduciary, firm, association, partnership, limited liability company, corporation, unit of government, or any other group acting as a unit.

SECTION 3. (a) Except as provided in subsection (b):

(1) No agritourism professional shall be liable for injury to or death of a participant resulting solely from the inherent risks of agritourism activities, as long as the warning contained in Section 4(b) is posted as required; and

(2) No participant or participant's representative shall maintain an action against or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities.

(b) Nothing in subsection (a) prevents or limits the liability of an agritourism professional if the agritourism professional or any of its agents does any one (1) or more of the following:

(1) Commits an act or omission that constitutes reckless disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant;

(2) Has actual knowledge or reasonably should have known of a dangerous condition on the land, facilities, or equipment used in the activity or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant;

(3) Fails to train, or improperly or inadequately trains, employees who are actively involved in agritourism activities and an act or omission of the employee proximately causes injury, damage, or death to the participant;

(4) Intentionally injures the participant; or

(5) Commits any other act, error, or omission that constitutes willful or wanton misconduct, gross negligence, or criminal conduct.

(c) Nothing in subsection (a):

(1) Prevents or limits the liability of an agritourism professional under the product liability provisions in Title 29, Chapter 28; or

(2) Shall be construed so as to negate that assumption of the risk is an affirmative defense.

(d) Any limitation on legal liability afforded by this section to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law.

SECTION 4. (a)(1) Every agritourism professional shall post and maintain a sign that contains the warning notice specified in subsection (b). The sign shall be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice shall consist of a sign in black letters, with each letter to be a minimum of one inch (1") in height.

(2) Every written contract entered into by an agritourism professional for the providing of professional services, instruction, or the rental of equipment to a participant for purposes of engaging in or participating in an agritourism activity, whether or not the contract involves agritourism activities on or off the site of the agritourism activity, shall contain in clearly readable print the warning notice specified in subsection (b).

(b) The signs and contracts described in subsection (a) shall contain the following language or substantially similar language:

WARNING

Under Tennessee law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location or by this agritourism professional if such injury or death results from the inherent risks of the agritourism activity.

Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity.

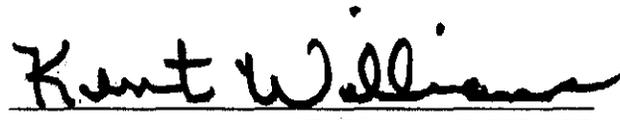
(c) Failure to comply with this section shall prevent an agritourism professional from invoking the privileges of immunity provided by this chapter.

SECTION 5. This act shall take effect July 1, 2009, the public welfare requiring it.

**PASSED: June 2, 2009**

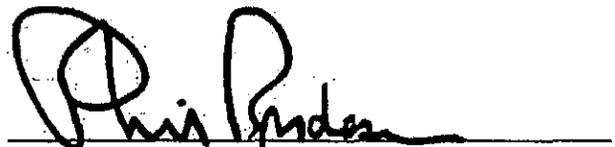


RON RAMSEY  
SPEAKER OF THE SENATE



KENT WILLIAMS, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 23rd day of June 2009



PHIL BREDESEN, GOVERNOR



University of Arkansas School of Law

**An Agricultural Law Research Project**

**States' Agritourism Statutes**

**State of South Dakota**

[www.NationalAgLawCenter.org](http://www.NationalAgLawCenter.org)



UNIVERSITY of ARKANSAS  
SCHOOL of LAW

## States' Agritourism Statutes

### STATE OF SOUTH DAKOTA

#### **SDCL § 20-9-12 to § 20-9-18**

*Current through the 2010 Regular Session and Supreme Court Rule 10-03*

#### **20-9-12. Definition of terms**

Terms used in §§ 20-9-12 to 20-9-18, inclusive, mean:

- (1) "Charge," the admission price or fee asked in return for invitation or permission to enter or go upon the land. Any nonmonetary gift to an owner that is less than one hundred dollars in value may not be construed to be a charge;
- (2) "Land," land, trails; water, watercourses, private ways and agricultural structures, and machinery or equipment if attached to the realty;
- (3) "Outdoor recreational purpose," includes, but is not limited to, any of the following activities, or any combination thereof: hunting, fishing, swimming other than in a swimming pool, boating, canoeing, camping, picnicking, hiking, biking, off-road driving, nature study, water skiing, winter sports, snowmobiling, viewing, or enjoying historical, archaeological, scenic, or scientific sites;
- (4) "Agritourism activity," any activity carried out on a farm, on a ranch, in a forest, or on an agribusiness operation that allows members of the general public, for recreational, entertainment, or educational purposes, to view or participate in agricultural activities, including farming, ranching, historical, cultural, harvest-your-own, or nature-based activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity. An activity is not an agritourism activity if the participant is paid to participate in the activity;
- (5) "Owner," the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the premises.

**20-9-13. Landowner not obligated to keep land safe for use by others for outdoor recreational purposes or to give warning--Exception**

Except as provided in § 20-9-16, an owner of land owes no duty of care to keep the land safe for entry or use by others for outdoor recreational purposes or agritourism activities, or to give any warning of a dangerous condition, use, structure, or activity on his land to persons entering for outdoor recreational purposes.

**20-9-14. Liability of landowner for invitation to use property for outdoor recreation or agritourism--Exception**

Except as provided in § 20-9-16, an owner of land who either directly or indirectly invites or permits without charge any person to use his property for outdoor recreational purposes or agritourism activities, including any person who is on the property pursuant to § 41-9-8, does not thereby:

- (1) Extend any assurance that the land is safe for any purpose;
- (2) Confer upon any person the legal status of an invitee or licensee to whom a duty of care is owed; or
- (3) Assume responsibility for, or incur liability for, any injury to persons or property caused by an act of omission of the owner as to maintenance of the land.

**20-9-15. Landowner liability for land leased to state or its political subdivisions for outdoor recreation or agritourism**

Unless otherwise agreed in writing, the provisions of §§ 20-9-13 and 20-9-14 apply to the duties and liability of an owner of land leased to the state or any political subdivision thereof for outdoor recreational purposes or agritourism activities.

**20-9-16. Liability of landowner for gross negligence or injury suffered where consideration charged or law violated**

Nothing in §§ 20-9-12 to 20-9-18, inclusive, limits in any way any liability which otherwise exists:

- (1) For gross negligence or willful or wanton misconduct of the owner;
- (2) For injury suffered in any case where the owner of land charges any person who enters or goes on the land for the outdoor recreational use of the land or for agritourism activity, except that in the case of land leased to the state or a political subdivision of the state, any consideration received by the owner for the lease may not be deemed a charge within the meaning of this section nor may any incentive payment paid to the owner by the state or federal government to promote public access for outdoor recreational purposes or agritourism activities be considered a charge; or

(3) For injury suffered in any case where the owner has violated a county or municipal ordinance or state law which violation is a proximate cause of the injury.

**20-9-17. Liability for injury to persons or property or failure to exercise care in use of land for outdoor recreation or agritourism**

Sections 20-9-12 to 20-9-18, inclusive, may not be construed to create a duty of care or ground of liability for injury to persons or property, or relieve any person using the land of another for outdoor recreational purposes or agritourism activities from any obligation which he may have in the absence of §§ 20-9-12 to 20-9-18, inclusive, to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care.

**20-9-18. Doctrine of attractive nuisance not affected**

Sections 20-9-12 to 20-9-18, inclusive, does not affect the doctrine of attractive nuisance or other legal doctrines relating to liability arising from artificial conditions highly dangerous to children.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1142

- Page 1, line 2, after "to" insert "registered"
- Page 1, line 2, after "agritourism" insert "activity"
- Page 1, line 8, after "Agritourism" insert "activity"
- Page 1, line 8, after "any" insert "rural"
- Page 1, line 8, remove "customarily carried out on a working or historical"
- Page 1, line 9, replace "farm, ranch, forestry operation, or winery, if" with ", including farming and ranching activities, or any historic, cultural, or natural attraction, that is viewed or enjoyed by"
- Page 1, line 9, remove "are invited"
- Page 1, line 10, replace "to view or allowed to participate, with or without fees or charges, in the activities" with an underscored comma
- Page 1, line 11, after "purposes" insert ", regardless of whether the member of the general public pays to participate in the rural activity or to view or enjoy the attraction; provided, however, that agritourism does not include any rural activity in which an individual is paid to participate"
- Page 1, line 13, replace the first underscored comma with "or"
- Page 1, line 13, remove ", or hazard"
- Page 1, line 13, replace "a normal and customary" with "an integral"
- Page 1, line 13, remove "an"
- Page 1, line 14, remove "operation"
- Page 1, line 17, after "of" insert "land,"
- Page 1, line 17, after "vegetation" insert ", and water"
- Page 1, line 19, after "equipment" insert "ordinarily used in farming or ranching"
- Page 1, line 20, replace "Any act of negligence on the part" with "The potential"
- Page 1, line 20, after "participant" insert "to act in a negligent manner"
- Page 1, line 21, after "in" insert "an"
- Page 1, line 22, after "agritourism" insert "activity"
- Page 1, line 23, remove "is invited to view or allowed"
- Page 1, line 24, replace "to participate in agritourism, with or without fees or charges" with "engages in a registered agritourism activity"
- Page 1, after line 24, insert:

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."

Page 2, remove lines 1 through 18

Renumber accordingly

**CHAPTER 53-08  
LIABILITY LIMITED FOR OWNER OF RECREATION LANDS**

**53-08-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Charge" means the amount of money asked in return for an invitation to enter or go upon the land.
2. "Land" includes all public and private land, roads, water, watercourses, and ways and buildings, structures, and machinery or equipment thereon.
3. "Owner" includes tenant, lessee, occupant, or person in control of the premises.
4. "Recreational purposes" includes any activity engaged in for the purpose of exercise, relaxation, pleasure, or education.

**53-08-02. Duty of care of landowner.** Subject to the provisions of section 53-08-05, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.

**53-08-03. Not invitee or licensee of landowner.** Subject to the provisions of section 53-08-05, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:

1. Extend any assurance that the premises are safe for any purpose;
2. Confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or
3. Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

**53-08-04. Leased land to state or political subdivisions.** Unless otherwise agreed in writing, an owner of land leased to the state or its political subdivisions for recreational purposes owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon such land of any hazardous conditions, uses, structures, or activities thereon. An owner who leases land to the state or its political subdivisions for recreational purposes does not by giving such lease:

1. Extend any assurance to any person using the land that the premises are safe for any purpose;
2. Confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or
3. Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land.

The provisions of this section apply whether the person entering upon the leased land is an invitee, licensee, trespasser, or otherwise.

**53-08-05. Failure to warn against dangerous conditions - Charge to enter.** This chapter does not limit in any way any liability that otherwise exists for:

1. Willful and malicious failure to guard or warn against a dangerous condition, use, structure, or activity; or

## **CHAPTER 53-10**

### **EQUINE ACTIVITY SPONSOR OR PROFESSIONAL**

**53-10-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Engages in an equine activity" means a person who rides, trains, drives, or is a passenger upon an equine, whether mounted or unmounted, and does not mean a spectator in equine activity or a person who participates in the equine activity but does not ride, train, drive, or ride as a passenger upon an equine.
2. "Equine" means a horse, pony, mule, donkey, or hinny.
3. "Equine activity" means:
  - a. An equine show, fair, competition, performance, or parade that involves any breed of equine in any equine discipline, including dressage, a hunter and jumper horse show, grand prix jumping, a three-day event, combined training, a rodeo, driving, pulling, cutting, polo, steeplechasing, endurance, trail riding, guided trail rides, pleasure trail riding, wagon and buggy rides, and western games and hunting;
  - b. An equine training or teaching activity;
  - c. Boarding an equine;
  - d. Riding, inspecting, or evaluating an equine belonging to another whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect, or evaluate the equine; and
  - e. A ride, trip, hunt, or other equine activity of any type however informal or impromptu that is sponsored by an equine activity sponsor.
4. "Equine activity sponsor" means an individual, group, club, partnership, corporation, or limited liability company, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facility for an equine activity including a pony club, 4-H club, hunt club, riding club, school or college-sponsored class or program, therapeutic riding program, and an operator, instructor, or promoter of an equine facility including but not limited to a stable, clubhouse, pony ride string, fair, or arena at which the activity is held.
5. "Equine professional" means a person engaged for compensation in:
  - a. Instructing a participant or renting to a participant an equine for the purpose of riding, driving, or being a passenger upon an equine; or
  - b. In renting equipment or tack to a participant.
6. "Participant" means any person, whether amateur or professional, who directly engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

**53-10-02. Liability of equine activity sponsor or equine professional limited.**

1. Except as provided in subsection 2, an equine activity sponsor or an equine professional is not liable for an injury to or the death of a participant engaged in an equine activity, and, except as provided in subsection 2, no participant or

## CHAPTER 32-03.2 FAULT, DAMAGES, AND PAYMENTS

**32-03.2-01. Definition.** As used in this chapter, "fault" includes acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to tort liability or dram shop liability. The term also includes strict liability for product defect, breach of warranty, negligence or assumption of risk, misuse of a product for which the defendant otherwise would be liable, and failure to exercise reasonable care to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.



**32-03.2-02. Modified comparative fault.** Contributory fault does not bar recovery in an action by any person to recover damages for death or injury to person or property unless the fault was as great as the combined fault of all other persons who contribute to the injury, but any damages allowed must be diminished in proportion to the amount of contributing fault attributable to the person recovering. The court may, and when requested by any party, shall direct the jury to find separate special verdicts determining the amount of damages and the percentage of fault attributable to each person, whether or not a party, who contributed to the injury. The court shall then reduce the amount of such damages in proportion to the amount of fault attributable to the person recovering. When two or more parties are found to have contributed to the injury, the liability of each party is several only, and is not joint, and each party is liable only for the amount of damages attributable to the percentage of fault of that party, except that any persons who act in concert in committing a tortious act or aid or encourage the act, or ratifies or adopts the act for their benefit, are jointly liable for all damages attributable to their combined percentage of fault. Under this section, fault includes negligence, malpractice, absolute liability, dram shop liability, failure to warn, reckless or willful conduct, assumption of risk, misuse of product, failure to avoid injury, and product liability, including product liability involving negligence or strict liability or breach of warranty for product defect.

**32-03.2-02.1. Automobile accident damage liability.** Notwithstanding section 32-03.2-02, in an action by any person to recover direct and indirect damages for injury to property, the damages may not be diminished in proportion to the amount of contributing fault attributable to the person recovering, or otherwise, if:

1. The person seeking damages is seeking property damages resulting from a motor vehicle accident in which two persons are at fault;
2. The person seeking damages is seeking to recover direct physical property damages of not more than five thousand dollars and indirect physical property damages not to exceed one thousand dollars; and
3. The percentage of fault of the person against whom recovery is sought is over fifty percent.

This section applies regardless as to whether the person seeking direct and indirect damages for injury to property also seeks damages for personal injury, however, damages for personal injury are not available under this section.

**32-03.2-03. Pure comparative fault - Product liability actions.** Repealed by S.L. 1993, ch. 324, § 5.

**32-03.2-04. Economic and noneconomic damages for wrongful death or injury to person.** In any civil action for damages for wrongful death or injury to a person and whether arising out of breach of contract or tort, damages may be awarded by the trier of fact as follows:

1. Compensation for economic damages, which are damages arising from medical expenses and medical care, rehabilitation services, custodial care, loss of earnings and earning capacity, loss of income or support, burial costs, cost of substitute

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**Assumption of Risk**

A person assumes the risk of [injury] [loss] if the person 1) has actual knowledge of a risk of [injury] [loss], 2) has freedom of choice to avoid the risk, 3) voluntarily encounters the risk, and 4) [injury] [loss] is proximately caused by the encounter. If you find that a person has assumed the risk of [injury] [loss] you may consider that as evidence of fault.

\* \* \* \* \*

NDCC 32-03.2-02

*Rodenberg v. Fargo-Moorhead Young Men's Christian Ass'n*, 2001 ND 139, 632 NW2d 407  
*Spieker v. Westgo, Inc.*, 479 NW2d 837 (ND 1992)  
*Olson v. Chesterton*, 256 NW2d 530 (ND 1977)

**ELKHORN OUTFITTERS**  
**1509 East River Road**  
**Medora, ND 58645**

March 15, 2011

Senate Judiciary Committee  
Chairman David Nething  
600 East Boulevard Avenue  
Bismarck, ND 58505

Honorable Chairman Nething and Committee Members:

My husband Randy Mosser and I would like to go on record for support of House Bill 1142 with the proposed Senate amendments. My name is Sue Mosser, and together, my husband and I started our "Agritourism business" in 1994. We ranch north of Medora and thought it would be a good way to diversify our ranch if we invited bow hunters to our ranch in the fall and horseback riders (with their own horses) in the summer time. The majority of our clients are actually from the Great Lake states. The reason we went to bow hunting only was the cost of the insurance. Way cheaper to have bow hunting rather than gun. And anytime a horse is mentioned the insurance companies just cringe, (or shout with joy!)

Agritourism sure helped us out financially through the drought years or low commodity prices. Agritourism promotes growth for the region. My clients buy groceries in Dickinson before they come out and check out the shops in Medora. I think more ranchers would welcome more tourists to their ranch if they weren't afraid of getting sued for accidents and being unable to find affordable liability insurance. Please help promote Agritourism in ND by supporting HB 1142 with the proposed Senate amendment.

Thank you,

Sue Mosser

March 16, 2011

Testimony of Mr. Jay Doan – Part Owner/Operator of Rolling Plains Adventures Ranch, Mckenzie, North Dakota

Mr. Chairman and honorable members of the Committee, my name is Jay Doan and I am a fifth generation rancher from Mckenzie, North Dakota. I am also the part owner and operator of the Rolling Plains Adventures Ranch. The Rolling Plains Adventure Ranch offers guests the opportunity to participate in a working cattle ranch through activities such as horseback riding, cattle drives, and various other ranch activities. Through our operation, we attempt to provide guests with a sense of what the term "Cowboy" really implies.

As a participant in the agritourism industry, I sincerely appreciate the opportunity to speak to you today in favor of House Bill 1142. House Bill 1142 provides for a shift of liability involved with the agritourism industry from the owner or operator of the facility to the participant of the agritourism activity, provided that all necessary precautions against potential risk are taken by the owner. Many examples of agritourism, including my own, carry a certain amount of this risk. Common sense dictates that when the nature of an activity and its inherent risks are known to the participant, the participant should assume that risk. House Bill 1142 solidifies this common sense approach to liability into statutory law. Under House Bill 1142, owners and operators of agritourism businesses are not excluded from liability altogether, however. The last section of the bill prevents abuse of the protections offered by rightly stipulating exceptions to its previous segments. I believe this to be a necessary, appropriate, and fair addition.

As the bill currently stands, registration of agritourism activities, locations, and operators is required for the protections to hold weight. Though it may be necessary to properly regulate agritourism operations in order to provide legal safeguards, such detailed descriptions and regulation of agritourism locations and activities is problematic. It will be difficult, at best, to be in full compliance with the listing requirements of all agritourism activities and the complete legal description of properties involved in agritourism operations.

This being said, the protections extended by this bill not only benefit individual agritourism businesses, they will also benefit the state as a whole. Legislative support for appropriate limits to owner/operator liability as well as continued support for the agritourism industry as a whole will further enhance and contribute to the quality of life for the State of North Dakota. By expanding on the potential of an already prospering industry through measures like House Bill 1142, we can attract more people to the state, provide more jobs for North Dakota citizens, and bring additional income to state coffers. I thank you, Mr. Chairman and members of the committee, for your time and would appreciate your DO PASS vote on House Bill 1142.

(5)

**DEPARTMENT OF COMMERCE TESTIMONY ON HB 1142**  
**MARCH 16, 2011, 10:45 A.M.**  
**JUDICIARY COMMITTEE**  
**FORT LINCOLN ROOM**  
**SENATOR NETHING, CHAIRMAN**

**SARA OTTE COLEMAN – TOURISM DIVISION DIRECTOR, ND DEPARTMENT OF COMMERCE**

Mr. Chairman and members of the Committee, I am Sara Otte Coleman, Tourism Division Director for the North Dakota Department of Commerce. I urge your support of House Bill 1142. The purpose of this bill is to promote the growth of the Agritourism industry in North Dakota by providing better protection for Agritourism producers who welcome the public onto their land. This will be achieved by limiting liability through signage and waivers, which advises visitors of inherent risks.

The State of Kansas was the first to pass legislation similar to this in 2004. As of July 2010, there were 284 Agritourism operations in Kansas. Of these businesses, 52% were established since the Kansas Act was passed. In addition, 13 other states have enacted legislation which addresses Agritourism and outdoor recreation liability and 7 have enacted legislation similar to that of Kansas, the most recent being Tennessee in 2009. Currently Missouri and Indiana have similar legislation in-process. Although it is difficult to document the exact impact the legislation will have on improving rates and availability of insurance due to the variables involved, insurance companies and underwriters have indicated that having Agritourism immunity in statute is helpful.

North Dakota leads the nation in the production of 12 crops and 39 million acres or 90% of our land is devoted to sustaining our state's largest industry, yet according to the most recent USDA census we rank 32<sup>nd</sup> in the number of Agritourism businesses. Our visitors expect they will be able to experience a farm or ranch when they choose North Dakota as their travel destination.

The demand for farm and ranch vacation experiences is strong, and a number of farmers and ranchers have expressed an interest in providing this service. But to do this, affordable liability insurance is imperative. Most policies covering farm and ranch activities do not cover recreational activities on the land. Operators either need to add a rider to their existing policy or get a new policy with a company that provides insurance for their particular activity. Premium rates vary among insurance companies based on the exposure of risk for a particular fee-recreation activity, but quotes have been reported by some operators as high as \$10,000 per year. The start-up operation must ask if the difference between

the premium paid and the income gained is enough to allow a sufficient financial gain and make the venture worthwhile. HB 1142 originally included standardized language limiting the liability of operators for injuries caused by inherent risks, conditions and hazards that are an integral part of an Agritourism activity, and we feel this will have the positive effect of making liability insurance more available and affordable. This necessary language as outlined in the amendments is necessary to see any benefit from this bill.

The Department of Commerce has been working with the Agriculture Department, the Insurance Department (who conducted a legislatively mandated study on this issue back in 2006), tourism and agriculture industry associations, insurance providers, rural economic developers, farmers and ranchers, potential new businesses and legislators to create a tool to eliminate this barrier to Agritourism development. The result of that work is HB 1142. The additional requirement of having tourism operators register with our Division will provide a means for us to measure the growth. It will also eliminate this protection for operators who do not register. We feel these additions along with cleaner definitions strengthen the bill.

The trial lawyers have argued in the past that this type of immunity is already available in other sections of the law. We would conclude that this is not the case since the equine immunity found in NDCC Chapter 53-10-01 has been in place since 1991, yet we have only a handful of ranch vacation and trail ride operations available to visitors. The general liability limitation for owners of recreation lands found in NDCC Chapter 53-08-05 also does not apply if the operator charges for their services. Our goal is economic development and growing businesses.

Interest from the residents of our cities, out-of-state visitors, and international travelers in Agritourism experiences is growing. And as our state becomes more urbanized, it's vitally important that we provide our own residents access to a way of life that has been the foundation of our state, not only today, but long before this land was called "North Dakota." I, therefore, ask for your support of HB 1142 - the North Dakota Agritourism Limited Liability Act- so that we can, not only expand this segment of our industry, but continue to share our heritage with others.

# North Dakota **AGRI TOURISM**

*Turning Farms, Ranches and Gardens  
into Great Destinations!*

**North Dakota leads the nation in ag production ...**

- ✓ Spring Wheat
- ✓ Barley
- ✓ Canola
- ✓ Lentils
- ✓ Durum Wheat
- ✓ Dry Edible Beans
- ✓ Flaxseed
- ✓ Navy Beans
- ✓ Sunflowers
- ✓ Pinto Beans
- ✓ Dry Edible Peas
- ✓ Honey

**... but it ranks #32 in the number of agritourism businesses**

## **What is AgriTourism?**

In simple terms, agritourism is the crossroads of tourism and agriculture. It's when the public visits working farms, ranches or wineries to buy products, enjoy entertainment, participate in activities, eat a meal or stay overnight.

## **What activities can visitors do on a farm or ranch?**

Visiting a farm, ranch or winery offers wonderful, unique experiences. Picking fruits and vegetables, riding a horse, roping a calf or stomping grapes are just a few of the activities visitors want to experience.

## **Why is AgriTourism growing so fast?**

People want to get back to nature and escape from the stress of city life. Parents want their children to know how food is grown and that milk actually comes from a cow - not a carton.

## **What is the emotional appeal of AgriTourism?**

Most people have a farm somewhere on their family tree, but even in North Dakota, this is changing rapidly. Maybe their parents were raised on a farm, or they have fond memories of spending summers on their grandparents' farms. Agritourism rekindles the positive emotions from these family visits.

## **Why do farmers participate in AgriTourism?**

Farmers who sell directly to the public and add special activities for visitors find they can continue to enjoy and share their rural lifestyle while adding another source of income.



**What are the trends that support the growth of AgriTourism?**

**According to the US Travel Association:**

- Tourists are increasingly traveling by cars
- Tourists are taking shorter trips & planning at the last minute
- Travelers are looking for new experiences
- Families want to strengthen relationships by being together
- According to NDSU research, out-of-state visitors spend \$4.36 billion in North Dakota

**Longwoods International Research shows:**

- The reasons for visiting North Dakota
  - 21% came for the outdoor experience (#1)
  - 18% came for a special event (#3)
- Activities enjoyed while visiting North Dakota
  - 44% experienced rural/farming areas (#1)
  - 39% went to small towns
  - 19% sought wildlife

**Suggested activities**

- |                            |                     |                    |
|----------------------------|---------------------|--------------------|
| ✓ Seeding & Harvesting     | ✓ Haying            | ✓ Working Ranches  |
| ✓ Hiking/Biking Trails     | ✓ Hunting Packages  | ✓ Farm Tours       |
| ✓ Ag-themed Events & Meals | ✓ Wildlife Watching | ✓ Hunting Packages |
| ✓ You-Pick Gardens         | ✓ Skeet Shooting    | ✓ Vineyards        |
| ✓ Horseback Riding         | ✓ Wagon Rides       | ✓ Campfires        |
| ✓ Pumpkin Patches          | ✓ Corn Mazes        |                    |

**Demand for AgriTourism: It's in the numbers**

- 63 million Americans (over the age of 16) visit farms annually.
- Demand for ag-based experiences is worldwide
  - 15 international tour operators are asking for more agritourism offerings to sell
  - 3 million international visitors interested in this type of experience when visiting US
- Wildlife viewing - fastest growing segment of nature-based tourism
- 1/3 of Americans hiked while traveling
- 2.5% of all farms received dollars from farm based recreation
- \$1 Billion Industry Nationwide

**Resources**

- North Dakota Tourism
  - Free marketing
  - Travel guide and website listings
  - Brochure distribution program
  - Travel & trade show participation
  - Assistance in connecting with other programs and agencies
- NDSU Extension Service
  - Marketing Assistance
  - Research
  - Contacts at the county level
- North Dakota Agriculture Department
  - Farmers Markets
  - Pride of Dakota

**To Learn More**

Dean Ihla, Tourism Development Manager  
 ND Dept of Commerce - Tourism Division  
 1600 East Century Avenue, Suite 2  
 PO Box 2057  
 Bismarck, ND 58502-2057  
 dihla@nd.gov 701-328-3505

**HOUSE BILL NO. 1142**

**Presented by:** Larry Maslowski  
Senior Analyst and Director, Consumer Protection Property  
and Casualty Division  
North Dakota Insurance Department

**Before:** Senate Judiciary Committee  
Senator David Nething, Chairman

**Date:** March 16, 2011

**TESTIMONY**

Good morning, Chairman Nething and committee members. My name is Larry Maslowski, I am the Senior Analyst and Director of the Consumer Protection Property and Casualty Division of the North Dakota Insurance Department. I appear before you in general support of Engrossed House Bill No. 1142.

The 59<sup>th</sup> Legislative Assembly passed 2005 Senate Bill No. 2031 directing the Insurance Commissioner to study the state's liability insurance marketplace focusing on travel and tourism liability insurance availability and affordability. The *Travel and Tourism Liability Insurance Marketplace Report* dated April 2006 describes the processes used in the study, the study results and provides some alternatives for consideration by the Legislature.

The study revealed that for less risky activities insurance was generally available and for those riskier activities insurance was not as available. In many instances the issue we found was not one of availability as much as it was an issue of affordability, particularly for the smaller size operation.

Attached to this testimony is a copy of the Executive Summary from this report. The Legislative Assembly had directed the Insurance Commissioner to identify proposed

legislation that might make liability insurance for these types of risk more available or affordable. In the Executive Summary you will find eight possible legislative alternatives. The first two alternatives provided in the report dealt with the Legislature implementing a statute that would provide immunity based upon the doctrine of assumption of risk. The findings and alternatives presented in this report were the basis for the development of House Bill No. 1142.

The ability of an agri-tourism entity to use as a defense the assumption of risk principle has the potential to reduce the number of lawsuits for accidents, injuries or deaths that would be due to the natural risk inherent in the activity. For example, is it possible that when going on trail ride you might be stepped on or even kicked by a horse? Is this not a risk inherent in being around a horse?

By strengthening the law to permit use of the assumption of risk principle as a defense against these types of suits, it is felt that the exposure and expense to the insurance industry would be less in that fewer lawsuits would be brought. Over time it is felt this would translate into more affordable insurance.

Having provided you with this background regarding the intent of the original bill, I acknowledge that the House chose to amend the language such that any reference to use of assumption of risk as a defense was removed.

While other revisions to the bill including the registration requirement do not cause us concern, the absence of language providing the clear ability to use assumption of risk as a defense is of concern. Nothing will have been gained by this legislation if that language is not present. We would support amendments directed at adding such language back into the bill.

In the House I was asked if any of the eight states that have recently and specifically introduced similar laws had done any specific studies after implementation of their laws that would indicate whether there was any positive impact in the affordability or

availability of insurance. We surveyed the eight states and found that none of the states had done an analysis of this kind.

In conclusion, as indicated in the Executive Summary of the report referenced above, whether this legislative action will be successful or not will, in the end, be determined by the insurance industry's response to the level of risk.

Thank you for the opportunity to testify. I would stand for any questions you might have.

## EXECUTIVE SUMMARY

The 2005 Legislative Assembly passed Senate Bill No. 2032 directing the Insurance Commissioner to study the state's liability insurance marketplace focusing on travel and tourism liability insurance availability and affordability.

The Insurance Commissioner's office surveyed insurance agents and certain insurance companies regarding the issue. It also reviewed the North Dakota Natural and Rural Tourism Association's survey of travel and tourism businesses.

The surveys showed that travel and tourism liability risks vary widely. The availability of liability insurance correlates to the risk of the activities conducted. Most companies are willing to write low risk activities but few are willing to write high risk activities.

The affordability of liability insurance correlates to the size of the business. Large businesses can more readily afford the high premiums associated with high risk activities than can small businesses.

Other states have studied the issue and have enacted laws in an attempt to address the issue. Those laws are discussed more fully herein.

The Legislative Assembly directed the Insurance Commissioner to identify proposed legislative changes that might make liability insurance more available or affordable. Those legislative alternatives include:

1. Provide immunity for a registered travel and tourism business through an assumption of risk law.
2. Provide immunity for minimal fee activities through an assumption of risk law.
3. Provide immunity conditioned on carrying a minimum amount of liability insurance.
4. Establish a state-sponsored residual market program for travel and tourism liability insurance using either a joint underwriting association or a government sponsored pool.
5. Provide tax credits against income tax for the cost of liability insurance, subject to a maximum credit.
6. Provide money to fund a travel and tourism coordinator to assist operators in addressing insurance issues, particularly with respect to developing good risk management practices.
7. Relax regulatory oversight of commercial liability rate and form filings.

8. Facilitate the establishment of either a risk retention group or a risk purchasing group for travel and tourism activities.

Legislative changes may make travel and tourism liability insurance more readily available and affordable, but the insurance companies will assess the risks and determine the pricing, thereby ultimately determining whether insurance is available and affordable.

The report includes summaries of the surveys, information concerning the company responses, information concerning action by other states, a discussion of barriers to writing liability insurance and a summary which sets forth various legislative alternatives.



# Travel and Tourism Liability Insurance Marketplace Report

~ April 2006 ~

*Prepared by the North  
Dakota Insurance  
Department*

NORTH  
DAKOTA

*Protecting the  
public good.*

Insurance  
Department

*Jim Poolman, Commissioner*

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# TRAVEL AND TOURISM LIABILITY INSURANCE MARKETPLACE REPORT

## I. INTRODUCTION

Insurance Commissioner Jim Poolman submits this report to the Legislative Council at the request of the 2005 Legislative Assembly.

The directive, as set forth in Section 21 of Senate Bill No. 2032, reads, in part:

. . . During the 2005-06 interim, the insurance commissioner shall compile existing data regarding the state's liability insurance marketplace. The data must include information regarding issues that may result in barriers for businesses seeking to obtain affordable liability insurance coverage, with specific focus on the travel and tourism industry, and must include information regarding successful actions taken by other states to improve the availability and affordability of liability insurance. Before July 1, 2006, the insurance commissioner shall report to the legislative council the data compiled and identify proposed legislative changes necessary to implement any recommendations to make the state's law and availability of liability insurance more attractive to businesses in this state.

## II. DATA COLLECTION – SURVEY RESULTS

### 1. Background

To gather the information requested by the Legislature, the Insurance Department, with the help of the North Dakota Natural and Rural Tourism Association (Association) and the Professional Insurance Agents (PIA of North Dakota), first compiled a list of businesses associated with the travel and tourism industry. Based on this list and to identify the market issues facing each business activity, the Association surveyed travel and tourism businesses while the Department surveyed insurance agents and insurance companies.

## 2. Types of Businesses

For purposes of this report, the businesses were grouped into two general types:

**Agri-Business** Business activities based on or connected to the operation of a farm or ranch. These are also referred to as Agri-Tourism, Ag Tourism, Agritainment, Ag Recreation, Eco Tourism, Nature Tourism, Adventure Tourism, Aero Tourism, Recreational Tourism, Entertainment Tourism, Cultural Tourism, Heritage Tourism, Fee Recreational Enterprises, Alternative Enterprises, Rural Tourism, etc.

**Non-Agri-Business\*** Business activities not connected to a farm or ranch operation. These are also referred to as Eco Tourism, Nature Tourism, Adventure Tourism, Aero Tourism, Recreational Tourism, Entertainment Tourism, Cultural Tourism, Heritage Tourism, Fee Recreational Enterprises, Alternative Enterprises, Rural Tourism, etc.

\*It should be noted that Non-Agri-Businesses are referred to as "Small Business" in the surveys.

The Travel and Tourism Survey revealed that 63% of the businesses identified themselves as Non-Agri-Business, 14% identified themselves as Agri-Business with Tourism as a secondary source of income, and 1% responded as a Tourism Business with Agri-Business as a secondary source of income. We were unable to categorize 22% of the responses.

The Agent Survey revealed that of those agents who received requests for coverage, 70% received requests that related to Non-Agri-Business, 23% received requests related to Agri-Business, and 7% were unspecified.

Of those agents who did not receive requests for coverage but were generally aware of coverage being available, 4% of the agents were aware that insurance was available for Agri-Business, 26% were aware that insurance was available for Non-Agri-Business, and 70% responded but did not specify the type of business.

The results of the two surveys are reasonably similar and show that businesses seeking tourism and travel liability insurance coverage are predominately Non-Agri-Businesses, with Non-Agri-Business activities outnumbering Agri-Business 3 to 1.

### 3. Travel and Tourism Activity List

Travel and tourism businesses vary widely, as represented by the following list which describes most of the activities:

Amusement	Pitch Fork Fondue
Air Suspension	Nature
Corn Maze	Bike Trails
Hang Gliding	Bird Watching
Hot Air Balloon	Camping
Paint Ball	Canoeing
Rock Climbing Wall	Eco Tour
Automotive	Guided River Tours
Off Road Racing	Hiking
Snowmobile Trails	Kayaking
Entertainment	Photography
Concerts (Music)	Star Gazing
Dances	Swimming
Theatre	Production
Reenactment	Ag Snacks
Equine	(Soy-Wheat-Sunflower)
Buggy Rides	Bakery
Roping Competition	Farmers Market
Hay Rides	Flea Market
Rodeo	Flour Milling
Trail Rides	Meat/Meat
Wagon Train	Processing
Historical	Orchard
Archeological Digs	Pumpkin Patch
Historical Tours	Roadside Antiques
Paleontology Digs	Roadside Arts and Crafts
Hunting/Fishing	Roadside Produce
Boating	(Jams/Jellies/Pies)
Fishing – Fee	Strawberry Patch
Fishing – Guided	Vegetable Patch
Fish Pond	Vineyard
Hunting – Fee	Winery
Hunting – Guided	Services
Livestock	Conference Center
Animal Petting	Transportation/Shuttle Service
Lodging/Restaurant	Weddings
BBQs	Working Vacation
Bed and Breakfast	
Cabin/TP	
Chuck Wagon	
Concessions	

4. **Specific Business Activities**

The tables attached as Exhibits 1 and 2 summarize the results of the Travel and Tourism and the Agent Surveys, respectively. Only the top business activities in each of the categories are shown. Exhibits 3 and 4, attached, show the complete list of Travel and Tourism activities and actual responses.

**Comments**

The surveys show:

1. As noted above, the Travel and Tourism industry includes Agri-Businesses as well as Non-Agri-Businesses with Non-Agri-Businesses outnumbering Agri-Businesses 3 to 1.
2. Business activities cover a wide variety of activities with varying degrees of risk.
3. The general business categories with the largest number of insurance concerns were:
  - a. Equine
  - b. Hunting/fishing
  - c. Lodging and restaurant
  - d. Services

5. **Availability of Liability Insurance**

Both the Travel and Tourism Survey and the Agent Survey surveyed whether liability insurance was available with an existing carrier, whether the business had to switch to a new carrier to find insurance, or whether the business was forced into the surplus market for insurance coverage. The results are:

Business Type	Travel and Tourism Survey Coverage Found With:			Agent Survey Coverage Found With:			
	Current Carrier	New Carrier	No Insurance Found	Current Carrier	New Carrier	Surplus Carrier	No Insurance Found
Agri-business	40%	40%	0%	18%	8%	32%	36%
Non-agri-business	44%	20%	5%	43%	11%	24%	19%

Both surveys show that insurance companies are able to provide insurance for many of the travel and tourism activities and agents are able to place insurance for those activities, but that a significant number of businesses must look to a new carrier or a surplus lines carrier to find insurance.

It is important to note that the Agent Survey showed that 36% of agents dealing with Agri-Businesses and 19% of the agents dealing with Non-Agri-Business could not find liability insurance for those businesses in either market. See attached Exhibit 3, Part 4 of the Travel and Tourism Survey and Exhibit 4, Part 4 of the Agent Survey for more details.

Insurance is generally considered to be available if a business can find coverage with a carrier in the “admitted” insurance market, which is regulated by the Insurance Department.

If a business cannot find coverage in the “admitted” market, it then must seek coverage in the “surplus” market, which is less regulated than the “admitted” market. If insurance is only available on the surplus market, then liability insurance is considered not to be readily available. If insurance is not available in either market, then clearly insurance is not available.

#### Comments

The survey results are mixed. The Travel and Tourism Survey suggests that only a small number of businesses are unable to get coverage. It should be noted, however, that not all respondents responded to this part of the survey.

In contrast, the Agent Survey shows that 68% (32% + 36%) of the Agri-Businesses and 43% (24% + 19%) of the Non-Agri-Businesses could not find coverage in the “admitted” market and were either forced into the “surplus” market, or could not find insurance in either market.

These results show that in general the availability of liability insurance is limited while for some businesses the availability of liability insurance is severely limited.

#### 6. Affordability of Liability Insurance

The Travel and Tourism Survey and the Agent Survey also surveyed the affordability of liability insurance and whether the respondent considered the cost to be low, reasonable, very high, or prohibitive.

The table below shows the results for both Agri-Business and Non-Agri-Business and are categorized into those businesses that found insurance with an existing carrier, those that had to switch to a new admitted carrier, and those that were forced to the surplus market.

Business Type	Travel and Tourism Survey				Agent Survey			
	Respondents Considered the Cost:				Respondents Considered the Cost:			
	Low	Reason- able	Very High	Prohib- itive	Low	Reason- able	Very High	Prohib- itive
1. Agri-Business								
a. Current carrier	0%	20%	27%	20%	11%	67%	22%	0%
b. New carrier	0%	7%	20%	20%	0%	75%	25%	0%
c. Surplus lines	NA	NA	NA	NA	0%	31%	50%	19%
2. Non-Agri-Business								
a. Current carrier	2%	24%	5%	11%	8%	84%	8%	0%
b. New carrier	0%	11%	9%	11%	0%	69%	31%	0%
c. Surplus lines	NA	NA	NA	NA	0%	33%	36%	31%

The Travel and Tourism Survey shows that of the Agri-Businesses that received a quote and considered the insurance too expensive, 5% discontinued the activity. For Non-Agri-Businesses, 9% responded that they do not have insurance and 8% responded that they discontinued the activity.

It should be noted that the Travel and Tourism Survey also surveyed whether the business had filed a claim against the liability policy, the number of years the business had been operating and how liability coverage was purchased. The responses to these questions were considered not to be relevant to this report and are not included in the report. The responses for those questions can be found in Exhibit 3, Part 4.

The two survey results are reasonably consistent and show that the cost of insurance in the surplus market is considered to be more expensive than in the admitted market. In fact, 69% (50% + 19%) of the Agri-Businesses and 67% (36% + 31%) of the Non-Agri-Businesses found the cost of liability insurance on the surplus market to be either "very high" or "prohibitive". Also, the Agent Survey showed that 22% of the businesses that remained with the same carrier considered the cost of liability insurance to be "very high". This is consistent with the Department's knowledge of the marketplace in general.

Comments

The cost of liability insurance is considered by many to be "very high" and even "prohibitive". This suggests that in many cases liability insurance is not affordable and prevents tourism activities from being offered.

**III. BARRIERS**

The Insurance Department was asked to identify barriers for businesses seeking to obtain affordable insurance coverage. Those barriers relate directly to insurance companies offering insurance coverage at an affordable rate. To identify insurance company barriers to writing

affordable liability insurance for travel and tourism activities, the Insurance Department surveyed several companies including the domestic property and casualty insurers, county mutual insurers, and leading nondomestic commercial and farm owner insurers.

Two comments were particularly informative. State Auto wrote:

State Auto will enter a market provided:

- Competitors are needed.
- It can make a difference in the marketplace.
- It has personnel with the necessary skill sets.
- The hazard of loss is predictable.
- A large number of homogeneous risks exist.
- The pricing needed to sustain a viable insurance market is reasonably affordable to consumers.

State Auto, in deciding whether or not to write a risk, also considers management expertise, condition of facilities, risk potential, ability to secure reinsurance, or ability to grow surplus to cover large risks.

Farmers Union Mutual wrote:

If Farmers Union writes the underlying insurance, it can endorse the policy to include liability coverage for some of the industries listed. Our agents also can utilize a brokerage [surplus] market and place more of the business there. High risk activities such as equine, hang gliding, and rock wall climbing are the most difficult to place, if at all.

[Travel and Tourism] industries may have unusual exposures, little training and very little experience thereby increasing risks. Some industries are hazardous and, therefore, hard to insure or very costly. The insured may be without insurance not because the company cannot write it, but rather because the business chose not to purchase it because of cost.

Farmers Union looks for good risk management, proper safety measures, and adequate training.

The company responses are further summarized in Exhibit 5.

Barriers can be separated into those related to Underwriting and those related to Rating. The barriers identified by the companies include:

1. Underwriting

- a. Companies lack the experience and expertise necessary to evaluate the higher risk activities.
- b. Companies find that the high or specialty risk exposures of some travel and tourism activities exceed the company's risk tolerance level.
- c. The companies find that the risk associated with the activities are not compatible with the company's existing risk programs.
- d. Companies find in some cases that the risks lack size, experience, training, safety controls, and risk management procedures thereby increasing the company's risk of loss.

2. Rating

- a. The number of Travel and Tourism activities with similar risk features is too small to allow a company to spread the risk over a large number of policyholders. Without a large number of similar risks, the company is unable to hold individual premiums to an affordable level.
- b. Companies are unable to accurately predict future losses because of the small number of risks and because of the potential for large claims.
- c. Companies are unable to find reinsurance for some risks, particularly the highest risk activities.
- d. Companies find that they must charge high minimum premiums even for small accounts because of the small number of similar risks.
- e. Some companies comment that the current regulatory scheme impedes the company's ability to match the rate to the risk.

**IV. ACTIONS BY STATES**

1. **North Dakota**

North Dakota has enacted N.D. Cent. Code § 53-08-02, a recreational use immunity statute (N.D. Cent. Code Chapter 53-08) that provides that an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational use, nor is the landowner required to give any warning of a dangerous condition, use, structure, or activity on the premise to persons entering for that purpose. The law protects the landowner if the use is free. It does not protect landowners that charge a fee nor does it protect willful and malicious acts.

North Dakota also has enacted Chapter 53-10, an Equine Activity statute that provides certain limitations on actions against those that sponsor equine activity or actions against equine professionals. The limitations do not completely protect those that sponsor equine activity. For example, a sponsor can be sued if any injury is caused by equipment or tack.

North Dakota has also adopted the Skiing Responsibility Act, N.D. Cent. Code Chapter 53-09, which protects ski area operators against certain lawsuits by providing that a skier assumes the risk of injury from (1) variations in terrain; (2) surface or subsurface snow or ice conditions; (3) bare spots, rocks, trees, or other forms of forest growth or debris; (4) lift towers or components thereof; (5) pole lines; and (6) snowmaking equipment that are plainly marked and plainly visible. It imposes certain duties on the ski operator with respect to posting information and warnings regarding ski conditions and a notice that North Dakota law severely limits a skier's right to compensation for injuries. It imposes the responsibilities for injury resulting from collisions on the persons involved, and includes other provisions relating to skiing injuries.

## 2. Other States

Most states have adopted recreational use statutes that protect landowners if no fee is charged for the recreational use of land. Some states protect landowners even if fees are charged provided the fees are limited. Exhibit 6 provides a state-by-state analysis of the state recreational use statutes.

Other states have passed other laws. The most significant immunity laws are found in Kansas, Texas, Colorado, and Wyoming. These and laws from other states and two countries are summarized below:

1. Kansas (SB 334). Kansas law (74-50, 165-ff) provides that there is no liability for an injury or death of a participant in a "registered" agri tourism activity conducted at a "registered" location if the injury or death results from the "inherent" risks of agri tourism activity.

The law requires that the agri tourism operator post a sign notifying the public of the Kansas law and also notifying the individual that the individual is assuming the risk of participating in the activity.

Protection from liability does not apply for wanton and willful acts or for injuries caused by known dangers.

Agri tourism operators are allowed a 20% income tax credit, up to \$2,000 maximum, for the cost of liability insurance. Tax credit expires after five years.

2. Texas law (Chapter 75 and 87) reduces the level of care of an agricultural landowner that offers recreational agri tourism activities on private agricultural land to that which a landowner owes to a trespasser, subject to certain limitations. Under Texas law a landowner owes no duty to a trespasser.

The protection applies to small agri tourism businesses that receive fees from recreational activities of no more than four times the amount of real property taxes paid by the business. If revenues exceed four times the real property taxes, the business must carry minimum liability insurance of \$500,000 per person, \$1,000,000 per occurrence, and \$100,000 single occurrence property damage. If the business carries the minimum insurance, the operator owes no further duty to those injured while a participant in the agri tourism activity.

3. Colorado enacted an “Ag Immunity Law” (CRS § 13-21-122) that relieves a landowner for injuries resulting from “inherent risks” of an “agricultural recreation activity”. The protection applies whether or not a fee is charged. “Inherent risks” and “agricultural recreation activity” are broadly defined. The law does not protect the landowner from liability for knowingly using faulty equipment or intentional or willful or wanton acts.

Colorado also has a law (CRS § 13-21-119) relating to equine activity which protects an “equine professional” from liability for injury to a participant resulting from “inherent risks of equine activities, subject to certain exceptions.” The statute requires written contracts.

4. Wyoming enacted the Wyoming Recreational Use Act (Wyo. Stat. 34-19-102) which provides that landowners are not responsible to persons who do not pay a charge to keep his land safe or to provide any warnings of any dangerous condition, use, structure, or activity and to those who are on the land for recreational activities. The landowner is still liable for “willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.” The law does not apply if a landowner charges a fee.

Wyoming also enacted the Recreational Safety Act (Wyo. Stat. § 1-1-121) that protects one who provides any “sport or recreational activity” from injuries to participants from “inherent risks” whether or not a fee is charged. The participant is deemed to have assumed the inherent risk of injury along with all legal responsibility for damage, injury, or death to himself or other person that results from the inherent risks in that sport or recreational activity. “Inherent risk” is defined as “any risk characteristic of or intrinsic to any sport or recreational opportunity and which cannot reasonably be eliminated, altered, or controlled.” The law leaves the courts to decide what is an inherent risk which cannot be reasonably eliminated or controlled. “Sport or recreational activity” is broadly defined. The law will still allow significant litigation.

5. South Dakota enacted a law (20-9-13) that relieves a landowner of any duty to keep the land safe for use by others for outdoor recreational use or to give warning of a dangerous condition or activity on land to persons entering for outdoor recreational activity, provided there is no charge for the use or activity.

The landowner is responsible for injury caused by the landowner's gross negligence or wanton misconduct, or by violation of any law.

6. Oregon enacted HB 2296 to amend 105.699 to grant immunity to landowners who directly or indirectly permit persons to use their land for recreational uses without charge. It also enacted ORS 30.687-30.697 which limits liability for damages to persons harmed in the course of equine activities with some exceptions. The bill also provides that a hunting or fishing guide must carry liability insurance of at least \$300,000.
7. Kentucky passed HB 654 that established an Agricultural and Tourism Development Cabinet to work directly with farmers in developing agri tourism programs and requested funds for the program. Tobacco settlement funds of \$400,000 were used to pay for a full-time coordinator for the agri tourism office.
8. Minnesota did not consider the issue directly but generally established a Joint Underwriting Association to address liability issues in markets in which liability insurance is not otherwise available. Industries that are unable to find insurance must apply to the Insurance Commissioner for a determination that insurance is not readily available. The agri tourism industry could apply to the Commissioner to participate in the program if it found that liability insurance was not otherwise available.
9. California has established a Small Farm Center at the University of California-Davis – [www.sfc.ucdavis.edu](http://www.sfc.ucdavis.edu) which provides information and support for agri tourism businesses.
10. New Zealand provides cover (insurance) through the Accident Compensation Corporation (ACC) for personal injuries to all people in New Zealand, including travelers from overseas. Cover is compulsory and replaces provisions that otherwise allow a person to sue for personal injury. Business operators pay premiums to the fund.
11. Canada – Tourism Industry of Canada established an Outdoor and Adventure Tourism Group that considered and received proposals for a national liability insurance program, including coverage of adventure tourism activities in Canada. Marsh Canada submitted a proposal but most operators rejected the proposal because it excluded too many tourism activities and rates were not significantly better than those available otherwise. The effort to pursue a group liability insurance program was finally abandoned. The TIAC will serve as an information clearing house for the industry. See [www.adventureinsurance.ca](http://www.adventureinsurance.ca).

Like Minnesota, several states have organized Joint Underwriting Associations (JUA) to address the issue of costly liability insurance, but not necessarily the cost of travel and tourism liability insurance. Examples include high risk auto insurance, medical and legal professional liability insurance, and nursing home liability insurance.

## V. SUMMARY AND LEGISLATIVE ALTERNATIVES

In summary, the Insurance Department study finds:

- Travel and tourism risks vary widely.
- Liability insurance for the low risk activities such as roadside produce stands, pumpkin patches, and corn mazes is reasonably available mainly through endorsements on farm or ranch policies, provided the activity is incidental to the farm or ranch operation.
- Liability insurance for higher risk activities such as bed and breakfasts, small restaurants and hunting and fishing guides is also reasonably available. The risks are similar to other larger commercial risks written by some companies. Some of these risks must go to the “surplus” market to find coverage, which most often is more expensive than coverage on the “admitted” market.
- Liability insurance for high risk activities, such as trail rides, air balloon rides, etc. is most often difficult to find, even on the surplus market. If liability insurance is available in the surplus market, it is most often too expensive for smaller businesses.
- Companies are unwilling or unable to write the high risk activities because of several factors, including the lack of the company’s experience in evaluating and writing such risks, the potential for large claims and the small number of risks over which to spread the potential claims.
- Companies are more willing to write risks for operators who are experienced, who properly maintain their equipment, and who focus on preventing accidents.
- The legislature may not be able to impact certain risk factors such as the number and size of the risks and the severity of the injuries, but it can impact the management and operation of the risk by assisting with education and training and perhaps insurance costs, and can limit the ultimate liability exposure for the risk.

The actions taken by other states and the results of the surveys discussed in this report suggest that the legislature might consider the following alternatives to assist travel and tourism business in finding affordable liability insurance:

1. Provide immunity for a registered travel and tourism business through an assumption of risk law.
2. Provide immunity for minimal fee activities through an assumption of risk law.
3. Provide immunity conditioned on carrying a minimum amount of liability insurance.

4. Establish a state-sponsored residual market program for travel and tourism liability insurance using either a joint underwriting association or a government sponsored pool.
5. Provide tax credits against income tax for the cost of liability insurance, subject to a maximum credit.
6. Provide money to fund a travel and tourism coordinator to assist operators in addressing insurance issues, particularly with respect to developing good risk management practices.
7. Relax regulatory oversight of commercial liability rate and form filings.
8. Facilitate the establishment of either a risk retention group or a risk purchasing group for travel and tourism activities.

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Respectfully submitted,



Jim Poolman  
Commissioner  
N.D. Insurance Department



**TRAVEL AND TOURISM SURVEY SUMMARY**

Exhibit 1 summarizes the Travel and Tourism Survey results. The results are based upon 487 responses categorized as Agri-Business, Non-Agri-Business, or Business Type Not Specified.

Not all activities are listed. Only those most frequently mentioned in each category are included.

Business Type	Type of Activity (487 Total)	
	Number	Percent
<b>I. Agri-Business Primary With Tourism Secondary</b>		
1. Activities	57	11.7%
a. Bird watching	6	1.2%
b. Farm tour	6	1.2%
c. Hunting access	6	1.2%
d. Hunting tour	4	.8%
2. Food-Related Services	11	2.2%
a. Jams and jellies	3	.6%
b. Snacks (seeds, nuts)	3	.6%
c. Restaurant	2	.6%
3. Lodging-Related Services	12	2.4%
a. Cabin	5	1%
b. Lodge	4	.8%
c. Camping	2	.4%
4. Entertainment-Related Services	5	1%
a. Reunions	3	.6%
b. Wedding	1	.2%
<b>II. Tourism Primary With Agri-Business Secondary</b>		
One survey submitted; however, it did not indicate which category or business activity.		
<b>III. Non-Agri-Business</b>		
1. Activities	169	34.7%
a. Historical tours	19	3.9%
b. Reenactment program	13	2.6%
c. Bird watching	12	2.4%

Business Type	Type of Activity (487 Total)	
	Number	Percent
d. Bike trails	11	2.2%
e. Trail rides/horseback	10	2%
2. Food-Related Services	49	10%
a. Restaurant	8	1.6%
b. Snacks (seeds, nuts)	7	1.4%
c. Chuck wagon	6	1.2%
d. Pitch fork fondue	5	1%
e. BBQs	4	.8%
3. Lodging-Related Services	40	8.2%
a. Camping	14	2.8%
b. Cabin	5	1%
c. Lodge	5	1%
d. Bed and breakfast	3	.6%
4. Entertainment-Related Services	107	21.9%
a. Conferences	18	3.6%
b. Reunions	17	3.4%
c. Arts and crafts	16	3.2%
d. Concerts	15	3%
e. Dances	10	2%

#### IV. Business Type Not Specified

1. Activities	12	2.4%
a. Historical tours	2	.4%
b. Hunting – Access	2	.4%
2. Food-Related Services	12	2.4%
a. Restaurant	3	.6%
b. Jams and jellies	2	.4%
3. Lodging-Related Services	4	.8%
a. Camping	2	.4%
4. Entertainment-Related Services	9	1.8%
a. Weddings	3	.6%
b. Reunions	2	.4%
c. Concerts	2	.4%

## AGENT SURVEY SUMMARY

Exhibit 2 summarizes the Agent Survey and shows the number of agents that responded for each business category and the percent of the total number of responses in that category.

Not all activities are listed. Only those most frequently mentioned in each category are included.

Business Type	Agent Received Requests for Insurance (213 Responses Total)		Agent Had General Knowledge of Insurance Availability (126 Responses Total)	
	Number	Percent	Number	Percent
<b>I. Agri-Business</b>				
1. Amusement	3	1.4%	0	0%
a. Corn maze	3	1.4%		
2. Automotive	3	1.4%	0	0%
a. Snowmobile trails	2	.9%		
b. Off road racing	1	.4%		
3. Entertainment	1	.4%	0	0%
a. Dances	1	.4%		
4. Equine	13	6.1%	1	.7%
a. Wagon train	3	1.4%		
b. Buggy rides	2	.9%		
c. Hay rides	2	.9%		
d. Roping competition	2	.9%		
e. Trail rides	2	.9%	1	.7%
5. Historical	2	.9%	1	.7%
a. Farm tours	2	.9%		
6. Hunting/Fishing	15	7%	1	.7%
a. Hunting – Access	7	3.2%		
b. Hunting – Guided	4	1.8%	1	.7%
c. Fishing – Guided	2	.9%		
7. Livestock	1	.4%	1	.7%
a. Animal petting	1	.4%	1	.7%
8. Lodging/Restaurant	1	.4%	0	0%

Business Type	Agent Received Requests for Insurance (213 Responses Total)		Agent Had General Knowledge of Insurance Availability (126 Responses Total)	
	Number	Percent	Number	Percent
a. Cabin/TP	1	.4%		
9. Nature	0	0%	0	0%
10. Production	4	1.8%	0	0%
a. Farmers market	2	.9%		
b. Ag snacks	1	.4%		
11. Services	7	3.2%	2	1.5%
a. Working ranch/farm	5	2.3%	2	1.5%
b. Reunions	1	.4%		
c. Working vacation	1	.4%		
12. Other	0	0%	0	0%
<b>II. Non-Agri-Business</b>				
1. Amusement	2	.9%	1	.7%
a. Air suspension	1	.4%		
b. Paint ball	1	.4%		
c. Corn maze			1	.7%
2. Automotive	1	.4%	2	1.5%
a. Snowmobile trails	1	.4%	1	.7%
b. Off road racing			1	.7%
3. Entertainment	10	4.6%	3	2.3%
a. Concerts	5	2.3%	3	2.3%
b. Dances	4	1.8%		
c. Theatre	1	.4%		
4. Equine	15	7%	0	0%
a. Rodeo	6	2.8%		
b. Roping competition	3	1.4%		
c. Trail rides	3	1.4%		
5. Historical	9	4.2%	3	2.3%
a. Museum	4	1.8%		
b. State historical site	2	.9%	1	.7%
c. Historical tours			1	.7%
d. Paleontology digs			1	.7%
6. Hunting/Fishing	29	13.6%	2	1.5%

Business Type	Agent Received Requests for Insurance (213 Responses Total)		Agent Had General Knowledge of Insurance Availability (126 Responses Total)	
	Number	Percent	Number	Percent
a. Hunting – Guided	10	4.6%	1	.7%
b. Fishing – Guided	7	3.2%		
c. Boat	3	1.4%		
d. Fishing – Access	3	1.4%		
e. Hunting – Access	3	1.4%		
f. Hunting – Fee	1		1	.7%
7. Livestock	0	0%	1	.7%
a. Animal petting			1	.7%
8. Lodging/Restaurant	42	19.7%	15	11.9%
a. Restaurant	13	6.1%	8	.6%
b. Concession stand	11	5.1%		
c. Catering service	6	2.8%	2	1.5%
d. Bed and breakfast	3	1.4%	2	1.5%
e. Vending machines	3	1.4%		
f. Campground – RV	2		2	1.5%
g. Chuck wagon	2		2	1.5%
9. Nature	8	3.7%	1	.7%
a. Photography	3	1.4%	1	.7%
b. Bike trails	2	.9%		
c. Camping	1	.4%		
d. Canoeing	1	.4%		
e. Hiking	1	.4%		
10. Production	13	6.1%	5	3.9%
a. Clothing – Apparel	4	1.8%	2	1.5%
b. Meat/meat processing	3	1.4%	2	1.5%
c. Ag snacks	2	.9%		
d. Bakery	2	.9%	1	.7%
e. Farmers market	1	.4%		
11. Services	19	8.9%	0	0%
a. Transportation – Bus/Car/Van	6	2.8%		
b. Working ranch/farm	0	0%		
c. Reunions	3	1.4%		
d. Weddings	3	1.4%		
12. Other	1	.4%	0	0%
a. Art museum	1	.4%		

Business Type	Agent Received Requests for Insurance (213 Responses Total)		Agent Had General Knowledge of Insurance Availability (126 Responses Total)	
	Number	Percent	Number	Percent
<b>III. None Specified</b>				
1. Amusement	6	2.8%	2	1.5%
a. Air suspension	1	.4%		
b. Corn maze	1	.4%	1	.7%
c. Hang gliding	1	.4%		
d. Hot air balloon	1	.4%		
e. Paint ball	1	.4%	1	.7%
f. Rock climbing wall	1	.4%		
2. Automotive	2	.9%	4	3.1%
a. Off road racing	1	.4%	1	.7%
b. Snowmobile trails	1	.4%	3	2.3%
3. Entertainment	4	1.8%	8	6.3%
a. Concerts	1	.4%	4	3.1%
b. Dances	1	.4%	2	1.5%
c. Reenactment	1	.4%	1	.7%
d. Theatre	1	.4%	1	.7%
4. Equine	1	.4%	16	12.6%
a. Buggy rides	1	.4%		
b. Hay rides			3	2.3%
c. Trail rides			3	2.3%
d. Horse			2	1.5%
e. Roping competition			2	1.5%
f. Wagon train			2	1.5%
5. Historical	0	0%	1	.7%
a. Museum			1	.7%
6. Hunting/Fishing	0	0%	10	7.9%
a. Boating			4	3.1%
b. Fishing – Access			2	1.5%
c. Fishing – Fee			1	.7%
d. Fishing – Guided			1	.7%
e. Fishing – Pond			1	.7%
f. Hunting – Access			1	.7%
7. Livestock	0	0%	1	.7%
a. Animal petting			1	.7%
8. Lodging/Restaurant	0	0%	29	23%

Business Type	Agent Received Requests for Insurance (213 Responses Total)		Agent Had General Knowledge of Insurance Availability (126 Responses Total)	
	Number	Percent	Number	Percent
a. Concession stand			4	3.1%
b. Chuck wagon			3	2.3%
9. Nature	0	0%	1	.7%
a. Photography			1	.7%
10. Production	0	0%	5	3.9%
a. Clothing – Apparel			1	.7%
b. Farmers market			1	.7%
c. Pumpkin patch			1	.7%
d. Roadside produce			1	.7%
e. Strawberry patch			1	.7%
11. Services	0	0%	11	8.7%
a. Conference center			2	1.5%
b. Reunions			2	1.5%
12. Other	1	.4%	0	0%
a. Trip and sportsmans	1	.4%		

**NORTH DAKOTA NATURE and RURAL TOURISM ASSOCIATION SURVEY RESULTS**

EXHIBIT 3  
Part 1

Total # of Respondents:	104
Primary activity is Agribusiness; supplement with tourism activity?	<u>YES</u> 15
Tourism Activity primary; agribusiness is secondary?	1
Do not farm/ranch; have a tourism activity (i.e. Small Business)?	66

**Agribusiness Related Response Summary**

	# of Responses
Activities	57
Food Related Services	11
Lodging Related Services	12
Entertainment Related Services	5

**Small Business Related Response Summary**

	# of Responses
Activities	169
Food Related Services	49
Lodging Related Services	40
Entertainment Related Services	107

**Business Type Not Specified Response Summary**

	# of Responses
Activities	12
Food Related Services	12
Lodging Related Services	4
Entertainment Related Services	9

**NORTH DAKOTA NATURE and RURAL TOURISM ASSOCIATION SURVEY RESULTS**

EXHIBIT 3  
Part 2

<u>Activities</u>	<u># of Responses</u>	<u>Agribusiness Primary (Tourism 2ndary)?</u>	<u>Agribusiness 2ndary Tourism Primary?</u>	<u>Non-Agribusiness?</u>	<u>Non Specified</u>
Animal Petting	4	3	0	1	0
Bike Trails	14	2	0	11	1
Bird Watching	19	6	0	12	1
Boating	6	0	0	5	1
Buggy Rides	5	1	0	4	0
Canoeing	7	1	0	6	0
Corn Maze	1	1	0	0	0
Digs - Archeology	6	0	0	6	0
Digs - Paleontology	5	0	0	5	0
Ecology Tour	1	0	0	1	0
Farm Tour	8	6	0	1	1
Fishing - Guided	2	0	0	1	1
Fishing Pond/Access	7	1	0	5	1
Flea Market	1	0	0	1	0
Hang Gliding	1	0	0	1	0
Hay Rides -	3	1	0	2	0
Hiking	12	3	0	9	0
Historical Tours	22	1	0	19	2
Hot Air Balloon	2	0	0	2	0

## NORTH DAKOTA NATURE and RURAL TOURISM ASSOCIATION SURVEY RESULTS

EXHIBIT 3  
Part 2

	<u># of Responses</u>	<u>Agribusiness Primary (Tourism 2ndary)?</u>	<u>Agribusiness 2ndary Tourism Primary?</u>	<u>Non-Agribusiness?</u>	<u>Non Specified</u>
Hunting - Access	12	6	0	4	2
Hunting - Fee	7	6	0	1	0
Hunting - Guided	6	4	0	2	0
Kayaking	3	0	0	3	0
Off-road Racing	1	0	0	1	0
Reenactment Program	13	0	0	13	0
River Tours - Guided	1	0	0	1	0
Road-side Antiques	1	0	0	1	0
Road-side Arts/Crafts	3	2	0	1	0
Rodeo	1	0	0	1	0
Star Gazing	6	2	0	4	0
Swimming	6	1	0	5	0
Trail Rides/Horseback	12	2	0	10	0
Transportation - Boat	2	0	0	1	1
Transportation - Bus	2	0	0	2	0
Transportation - Car/Van	5	1	0	3	1
Transportation - Farm Equip	1	1	0	0	0
Wagon Rides	4	1	0	3	0
Working Ranch	4	1	0	3	0

NORTH DAKOTA NATURE and RURAL TOURISM ASSOCIATION SURVEY RESULTS

EXHIBIT 3  
Part 2

	<u># of Responses</u>	<u>Agribusiness Primary (Tourism 2ndary)?</u>	<u>Agribusiness 2ndary Tourism Primary?</u>	<u>Non-Agribusiness?</u>	<u>Non Specified</u>
Working Vacation	3	1	0	2	0
<b><u>Food Related Services</u></b>					
Bakery	3	0	0	3	0
BBQs	5	0	0	4	1
Berry Patch - U Pick	1	1	0	0	0
Chuck Wagon	7	0	0	6	1
Farmers Market	1	0	0	0	1
Jams & Jellies	5	3	0	0	2
Meat Processing	1	0	0	1	0
Pitch Fork Fondue	5	0	0	5	0
Pumpkin Patch	2	1	0	0	1
Restaurant	13	2	0	8	3
Roadside Produce	3	1	0	1	1
Snacks (Seeds, Nuts)	11	3	0	7	1
Vegetable Patch	2	0	0	1	1
Vineyard	1	0	0	1	0
Winery	1	0	0	1	0
<b><u>Lodging Related Services</u></b>					
Bed & Breakfast	4	1	0	3	0
Cabin	11	5	0	5	1

**NORTH DAKOTA NATURE and RURAL TOURISM ASSOCIATION SURVEY RESULTS**

EXHIBIT 3  
Part 2

	<u># of Responses</u>	<u>Agribusiness Primary (Tourism 2ndary)?</u>	<u>Agribusiness 2ndary Tourism Primary?</u>	<u>Non-Agribusiness?</u>	<u>Non Specified</u>
Camping	18	2	0	14	2
Lodge	10	4	0	5	1
Teepee	2	0	0	2	0
<b><u>Entertainment Related Services</u></b>					
Arts & Crafts	17	0	0	16	1
Concerts	17	0	0	15	2
Conferences	19	0	0	18	1
Dances	10	0	0	10	0
Reunions	22	3	0	17	2
Theatre	6	0	0	6	0
Weddings	20	1	0	16	3

**NORTH DAKOTA NATURE and RURAL TOURISM ASSOCIATION SURVEY RESULTS**

EXHIBIT 3  
Part 3

**Agribusiness responses to Insurance Questions (15 responses):**

% of respondents able to find coverage with current insurer 40%	<u>Affordability Same Carrier?</u>			
	Low 0%	Reasonable 20%	Very High 27%	Cost Prohibitive 20%
% of respondents able to find coverage with different insurer 40%	<u>Affordability Other Carrier?</u>			
	Low 0%	Reasonable 7%	Very High 20%	Cost Prohibitive 20%
% of respondents who were unable to find coverage 0%				

**Small Business responses to Insurance Questions (66 responses):**

% of respondents able to find coverage with current insurer 44%	<u>Affordability Same Carrier?</u>			
	Low 2%	Reasonable 24%	Very High 5%	Cost Prohibitive 11%
% of respondents able to find coverage with different insurer 20%	<u>Affordability Other Carrier?</u>			
	Low 0%	Reasonable 11%	Very High 9%	Cost Prohibitive 11%
% of respondents who were unable to find coverage 5%				

**NORTH DAKOTA NATURE and RURAL TOURISM ASSOCIATION SURVEY RESULTS**

EXHIBIT 3  
Part 4

**Companies/Agencies Identified as Possible Sources of Insurance:**

**Companies**

CNA Insurance  
Farmers Union  
Grinnell Mutual  
Gulf Insurance  
Heritage Insurance  
North Dakota Insurance Reserve Fund  
Nodak Mutual Insurance Company

**Agencies**

Illinois RB Jones, Englewood, CO  
McKay Insurance - Iowa  
Vaaler Insurance  
Warner & Company  
World Wide Outfitters

**Respondents received insurance quote that was too expensive so that:**

	<u>Agribusiness</u>	<u>Small Business</u>
Do not have insurance:	0%	9%
Discontinued activity:	5%	8%

**% of Respondents that have filed claim on their liability policy:**

<u>Agribusiness</u>	<u>Small Business</u>
7%	6%

**# of Years In business:**

	<u>Agribusiness</u>	<u>Small Business</u>
1 - 3 Years	13%	6%
3 - 7 Years	27%	0%
7 - 15 Years	27%	14%
Over 15 Years	7%	18%

**How was Liability Coverage purchased?**

	<u>Agribusiness</u>	<u>Small Business</u>
Package Policy	47%	17%
Stand Alone Liability Coverage	20%	18%

NORTH DAKOTA INSURANCE AGENT SURVEY RESULTS

EXHIBIT 4 PART 1

Total # of Respondents: 120  
 # of Respondents who received requests for travel & tourism insurance coverage: 28  
 # of Respondents who did not receive requests for travel & tourism insurance coverage: 92

Agent Received Request for Insurance: Agribusiness Related Response Summary

	# of Responses		Coverage same Admitted Carrier?				Coverage other Admitted Carrier?				Coverage Surplus Lines Carrier?				No Coverage Available?			
			Affordability Same Admitted Carrier?			Cost	Affordability Other Admitted Carrier?			Cost	Affordability Surplus Lines Carrier?			Cost				
			Low	Reasonable	High	Prohibitive		Low	Reasonable	High	Prohibitive		Low	Reasonable	High	Prohibitive		
Amusement	3	6%	1		1		0					0			1		1	
Automotive	3	6%	0				0					0					3	
Entertainment	1	2%	0				0					0					1	
Equine	13	26%	0				0					5	2	3			7	
Historical	2	4%	1		1		1		1			0					0	
Hunting/Fishing	15	30%	3	1	2		0					9		3	3	3	1	
Livestock	1	2%	0				0					1			1		0	
Lodging/Restaurant	1	2%	1			1	0					0					0	
Nature	0	0%	0				0					0					0	
Production	4	8%	1			1	3		2	1		0					0	
Services	7	14%	2		2		0					0					5	
Other	0	0%	0				0					0					0	
	50		9	1	6	2	0	4	0	3	1	0	16	0	5	8	3	18
			18%	11%	67%	22%	0%	8%	0%	75%	25%	0%	32%	0	31%	50%	19%	36%

NORTH DAKOTA INSURANCE AGENT SURVEY RESULTS

EXHIBIT 4 PART 1

Total # of Respondents: 120

# of Respondents who received requests for travel & tourism insurance coverage: 28

Agent Received Request for Insurance: Small Business Related Response Summary

	# of Responses	Coverage same Admitted Carrier?					Coverage other Admitted Carrier?					Coverage Surplus Lines Carrier?					No Coverage Available?
		Low	Reasonable	High	Prohibitive	Cost	Low	Reasonable	High	Prohibitive	Cost	Low	Reasonable	High	Prohibitive	Cost	
Amusement	2 1%	0					1										1
Automotive	1 1%	0					0					1		1			0
Entertainment	10 7%	5		4	1		0					4		1	1	2	0
Equine	15 10%	3		3			1		1			7		4	1	2	4
Historical	9 6%	3		3			3		3			2		1		1	0
Hunting/Fishing	29 19%	5		4	1		4			4		10		1	7	2	8
Livestock	0 0%	0					0					0					0
Lodging/Restaurant	42 28%	25	2	20	3		7		6	1		5		1	3	1	4
Nature	8 5%	2		2			0					1		1			5
Production	13 9%	11	3	8			0					1				1	1
Services	19 13%	9		9			0					5		2	1	2	5
Other	1 1%	1		1			0					0					0
	149	84	5	54	5	0	16	0	11	5	0	36	0	12	13	11	28
		43%	8%	84%	8%	0%	11%	0%	89%	31%	0%	24%	0%	33%	36%	31%	19%

NORTH DAKOTA INSURANCE AGENT SURVEY RESULTS

EXHIBIT 4 PART 1

Total # of Respondents: 120

# of Respondents who received requests for travel & tourism insurance coverage: 28

Agent Received Request for Insurance: Business Not Specified Response Summary

	# of Responses	%	Coverage same Admitted Carrier?				Coverage other Admitted Carrier?				Coverage Surplus Lines Carrier?				No Coverage Available?
			Low	Reasonable	High	Cost Prohibitive	Low	Reasonable	High	Cost Prohibitive	Low	Reasonable	High	Cost Prohibitive	
Amusement	6	43%	1			1				4			4		0
Automotive	2	14%	1		1					1			1		0
Entertainment	4	29%	0							4			4		0
Equine	1	7%	1		1					0					0
Historical	0	0%	0							0					0
Hunting/Fishing	0	0%	0							0					0
Livestock	0	0%	0							0					0
Lodging/Restaurant	0	0%	0							0					0
Nature	0	0%	0							0					0
Production	0	0%	0							0					0
Services	0	0%	0							0					0
Other	1	7%	1		1				1	0			0		0
	14		4	0	3	1	0	1	0	0	0	1	0	0	0
			20%	0%	75%	25%	0%	7%	0%	0%	100%	0%	64%	0%	0%

NORTH DAKOTA INSURANCE AGENT SURVEY RESULTS

EXHIBIT 4 PART 2

Count	Insurance Availability					Affordability			
	Existing	Different	Surplus	None	Not Specified	Low	Reasonable	High Prohibitive	Not Specified

**Amusement**

Amusement	Small Business								
Amusement	None specified								
Corn Maze	Agri-Business	3	1	1	1		1	1	1
	None specified	1		1				1	
Hand Gliding	None specified								
Hot Air Balloon	None specified	1		1				1	
Paint Ball	Small Business								
	None specified								
Rock Climbing Wall	None specified	1		1				1	

**Automotive**

Off Road Racing	Agri-Business								
	None specified								
Snowmobile Trails	Agri-Business	2			2			1	1
	Small Business	1		1			1		
	None specified	1	1				1		

**Entertainment**

Concerts	Small Business								
	None specified								
Dances	Agri-Business	1			1				1
	Small Business	4	3	1			3	1	
	None specified	1		1				1	
Reenactment	None specified								
Theatre	Small Business	1	1				1		
	None specified	1		1				1	

**Equine**

Buggy Rides	Agri-Business								
	None specified								
Bring your own horse	Agri-Business	1			1				1
	Small Business	2		2			1		1

NORTH DAKOTA INSURANCE AGENT SURVEY RESULTS

EXHIBIT 4 PART 2

Count	Insurance Availability					Affordability			
	Existing	Different	Surplus	None	Not Specified	Low	Reasonable	High Prohibitive	Not Specified

Hayrides	Agri-Business								
	Small Business								
Rodeo	Agri-Business	1							
	Small Business	6	2	1	2		5	1	1
Roping competition	Agri-Business								
	Small Business								
Trail rides	Agri-Business	2			1			1	1
	Small Business	3			1			1	2
Wagon train	Agri-Business								
Historical									
Archeological digs	Small Business	1			1		1		
Farm tours	Agri-Business								
	Small Business	1					1		
Historical tours	Small Business	1							
Paleontology digs	Small Business	1					1		
Hunting/Fishing									
Boating	Small Business	3			1			2	1
Fishing	Agri-Business								
	Small Business								
Fishing - fee	Small Business	1			1			1	
Fishing - pond	Agri-Business								
	Small Business	7	1	1	3		1	3	2
Fishing pond	Small Business	1			1			1	
Hunting	Agri-Business								
	Small Business								
Hunting - fee	Agri-Business	1			1				1
	Small Business	1						1	1
Hunting - guided	Agri-Business								
	Small Business								

NORTH DAKOTA INSURANCE AGENT SURVEY RESULTS

EXHIBIT 4 PART 2

Count	Insurance Availability					Affordability				
	Existing	Different	Surplus	None	Not Specified	Low	Reasonable	High Prohibitive	Not Specified	

**Livestock**

Animal petting	Agri-Business	1			1				1	
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**Lodging/Restaurant**

Bed and breakfast	Small Business									
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Cabin/TP	Agri-Business	1	1						1	
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Campground - general	Small Business									
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Campground - RV	Small Business	2	1		1				2	
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Catering service	Small Business									
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Chuckwagon	Small Business	2	1		1				1	1
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Concession stand	Small Business									
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Poduck meals	Small Business	1			1					1
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Restaurant	Small Business									
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Vending machines	Small Business	3	2		1				1	2
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**Nature**

Boat launch	Small Business									
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Camping	Small Business	1			1				1	
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Canoe launch	Small Business									
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Hiking	Small Business	1			1					1
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Photography	Small Business									
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**Production**

Ag snacks	Agri-Business	1		1					1	
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	Small Business	2	1		1				1	1
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Bakery	Small Business									
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Clothing - apparel	Small Business	4	4					1	3	
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Farmers market	Agri-Business									
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	Small Business									
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Meat/meat processing	Small Business	3	2		1				2	1
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Pumpkin patch	Small Business									
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NORTH DAKOTA INSURANCE AGENT SURVEY RESULTS

EXHIBIT 4 PART 2

Count	Insurance Availability					Affordability			
	Existing	Different	Surplus	None	Not Specified	Low	Reasonable	High Prohibitive	Not Specified

Roadside produce	Agri-Business	1	1				1		
<b>Services</b>									
Conference center	Small Business								
CVB	Small Business	2	1	1			2		
Fitness center	Small Business								
Reunions	Agri-Business	1			1				1
	Small Business	3	3				3		
Transportation - boat	Small Business								
Transportation - bus/car/van	Small Business	8	1	4	1		2	1	3
Wedding venue	Small Business								
Working ranch/farm	Agri-Business	5	2		3		2	1	2
Working vacation	Agri-Business								
<b>Other</b>									
Art museum	Small Business	1	1				1		
Other: Trip & Reimburse Liability - None Applied									

## NORTH DAKOTA INSURANCE AGENT SURVEY RESULTS

EXHIBIT 4 PART 3

### Agent Received No Request for Insurance, But Knows of Market

<u>Agribusiness</u>			<u>Small Business</u>			<u>None Specified</u>		
	# of Responses			# of Responses			# of Responses	
Amusement	0	0%	Amusement	1	3%	Amusement	2	2%
Automotive	0	0%	Automotive	2	6%	Automotive	4	5%
Entertainment	0	0%	Entertainment	3	9%	Entertainment	8	9%
Equine	1	20%	Equine	0	0%	Equine	16	18%
Historical	0	0%	Historical	3	9%	Historical	1	1%
Hunting/Fishing	1	20%	Hunting/Fishing	2	6%	Hunting/Fishing	10	11%
Livestock	1	20%	Livestock	1	3%	Livestock	1	1%
Lodging/Restaurant	0	0%	Lodging/Restaurant	15	45%	Lodging/Restaurant	29	33%
Nature	0	0%	Nature	1	3%	Nature	1	1%
Production	0	0%	Production	5	15%	Production	5	6%
Services	2	40%	Services	0	0%	Services	11	13%
Other	0	0%	Other	0	0%	Other	0	0%
	5			33			88	

NORTH DAKOTA INSURANCE AGENT SURVEY RESULTS

EXHIBIT 4 PART 4

Agent Received No Request for Insurance, But Knows of Market

		Count			Count
<u>Amusement</u>					
Com Maze	Small Business	1	<u>Lodging/Restaurant</u>		
	None Specified	1	Barracks	None Specified	1
Paint Ball	None Specified	1	BBOs	None Specified	1
<u>Automotive</u>					
Off Road Racing	Small Business	1	Bed & Breakfast	Small Business	2
	None Specified	1		None Specified	2
Snowmobile Trails	Small Business	1	Cabin/TP	None Specified	1
	None Specified	3	Campground - general	None Specified	1
<u>Entertainment</u>					
Concerts	Small Business	3	Campground - RV	Small Business	2
	None Specified	4		None Specified	1
Dances	None Specified	2	Catering Service	Small Business	2
Reenactment	None Specified	1		None Specified	2
Theatre	None Specified	1	Chuck Wagon	Small Business	1
<u>Equine</u>					
Horse	None Specified	2		None Specified	3
Buggy Rides	None Specified	1	Concession Stand	None Specified	4
Hay Rides	None Specified	3	Continental Breakfast	None Specified	1
Rodeo	None Specified	3	Cream can supper	None Specified	2
Roping Competition	None Specified	2	Earth lodge	None Specified	2
Trail Rides	Agri-business	1	Pitch fork fondue	None Specified	2
	None Specified	3	Potluck meals	None Specified	2
Wagon Train	None Specified	2	Restaurant	Small Business	8
<u>Historical</u>					
Historical Tours	Small Business	1		None Specified	1
Museum	None Specified	1	Sack lunch	None Specified	1
Paleontology Digs	Small Business	1	Soda - beverages	None Specified	1
State Historical Site	Small Business	1	Vending machines	None Specified	1
<u>Hunting/Fishing</u>					
Boating	None Specified	4	<u>Nature</u>		
Fishing - Access	None Specified	2	Photography	Small Business	1
Fishing - Fee	None Specified	1		None Specified	1
Fishing - Guided	None Specified	1	<u>Production</u>		
Fishing - Pond	None Specified	1	Bakery	Small Business	1
Hunting - Access	None Specified	1	Clothing - apparel	Small Business	2
Hunting - Fee	Small Business	1		None Specified	1
Hunting - Guided	Agri-business	1	Farmers market	None Specified	1
	Small Business	1	Meat/Meat processing	Small Business	2
<u>Livestock</u>					
Animal Petting	Agri-business	1	Pumpkin patch	None Specified	1
	Small Business	1	Roadside produce	None Specified	1
	None Specified	1	Strawberry patch	None Specified	1
<u>Services</u>					
			Conference center	None Specified	2
			CVB	None Specified	1
			Fitness center	None Specified	1
			Reunions	None Specified	2
			Transportation - boat	None Specified	1
			Transportation - bus/car/van	None Specified	1
			Weddings	None Specified	1
			Working farm/ranch	Agribusiness	2
				None Specified	1
			Working vacation	None Specified	1

## NORTH DAKOTA INSURANCE AGENT SURVEY RESULTS

EXHIBIT 4 PART 5

### Companies/Agencies Identified as Possible Sources of Insurance (Admitted Market)

#### Companies

Acuity  
American Family Insurance  
Auto Owners  
Capitol Indemnity  
Continental Western  
Employers Mutual Casualty  
Farmers Insurance Group  
  
Farmers Union Mutual  
  
Grinnell Mutual  
North Dakota Insurance Reserve Fund  
North Star  
Penn America  
United Fire & Casualty

#### Agencies

ARK Agency, Payersville, MN  
Ramsgate

### Companies/Agencies Identified as Possible Sources of Insurance (Surplus Lines Market)

#### Companies

Capitol Indemnity  
Scottsdale

#### Agencies

American Family Brokerage  
Big M Agency  
Blackburns & Nickel  
Capitol Specialty  
The Interagency  
Ramsgate

**NORTH DAKOTA TOURISM LIABILITY MARKET SURVEY  
FEBRUARY 15, 2006**

**EXHIBIT 5**

<b>Company</b>	<b>Does Company Offer Liability Insurance?</b>	<b>Are Rates Affordable?</b>	<b>Any Obstacles Prevent or Restrict Offering Liability Insurance?</b>	<b>Any Actions to Remove Obstacles so Company Would Write Coverage?</b>	<b>Any Other Information?</b>
Acuity, a Mutual Insurance Company	Yes, but limited to restaurants, motels, and other limited risk operations such as bakeries or wineries. Avoids high risk activity.	Yes, for those limited coverages offered.	High exposure, limited premium.	Very little can be done.	No comment.
Adriatic Ins Co					
Amco Ins Co					
American Ins Co					
American Economy Ins Co					
American Family Mutual Ins Co	Yes. American Family covers many of the risks listed either using normal farmowner underwriting standards, provided the activity is incidental to the farming operation and is conducted on the insured's farm premises. Other risks are written as commercial risks and underwritten pursuant to commercial underwriting standards. Also, see attached letter.	Yes, for the risks written.	High risk and American Family's lack of underwriting expertise in certain areas provide obstacles for the company although specialty lines have the expertise and rates to provide proper insurance.	Actions would have to address the life safety and severity issues that are of concern to American Family.	See other answers.
American States Ins Co					
American West Ins Co					
Aspen Specialty Ins Co					

Company	Does Company Offer Liability Insurance?	Are Rates Affordable?	Any Obstacles Prevent or Restrict Offering Liability Insurance?	Any Actions to Remove Obstacles so Company Would Write Coverage?	Any Other Information?
Auto-Owners Ins Co	Auto-Owners writes liability coverage for small, low hazard, and commercial operations sponsored by Chambers of Commerce such as hay rides, parades, concessions, and small concerts. It also writes campgrounds, restaurants, and taverns except for liquor liability, hotels, motels, and bed and breakfasts.	Yes, insofar as coverage is offered.	Auto-Owners limits its coverage to low risk activities but does not believe that there are any availability or affordability issues.	No comment.	No comment.
Cass County Mutual Ins Co					
Center Mutual Ins Co	Center Mutual offers liability insurance but appears to offer coverage only as provided for in standard farm or homeowner policy.	Not addressed	Not addressed	No comment.	Recommends that state adopt an "assumption of risk" statute.
Charter Oak Fire Ins Co					
Church Mutual Ins Co	Company does not write coverage for tourism-related industries.				

Company	Does Company Offer Liability Insurance?	Are Rates Affordable?	Any Obstacles Prevent or Restrict Offering Liability Insurance?	Any Actions to Remove Obstacles so Company Would Write Coverage?	Any Other Information?
Cincinnati Ins Co	Generally not. Identifies itself as a writer of "main street" business. It might write a small concert event or theater group, museum, small hotel or small restaurant, a snack manufacturer or bakery or a conference center, but would not be interested in other risks listed.	Yes for what it would write.	Cincinnati is not interested in writing most of the exposures noted on the list. It notes that generally specialty and/or excess and surplus lines markets write such risks.	For Cincinnati it is not an issue of barriers, it's an issue of risk appetite. It does not target these kinds of risks, and does not have rate filings that allow it an appropriate premium like a specialty market would. It notes that there is also the issue of being able to write enough risks of a particular class to obtain a good spread of risk and allow the law of large numbers to be predictive of expected loss experience for a particular class. That is difficult for most of the classes noted which is another reason why they are generally handled in specialty markets.	No comment.
Continental Western Ins Co					
Dakota Fire Ins Co					
Dakota Mutual Ins Co					
Dundee Mutual Ins Co					
Farmers Alliance Mutual Ins Co					
Farmers Mutual Reinsurance Co of ND					

Company	Does Company Offer Liability Insurance?	Are Rates Affordable?	Any Obstacles Prevent or Restrict Offering Liability Insurance?	Any Actions to Remove Obstacles so Company Would Write Coverage?	Any Other Information?
Farmers Union Mutual Ins Co	Farmers Union offers coverage for some of the industries listed. If it writes the underlying insurance, it can endorse the policy to include liability coverage for some of the industries listed. Its agents also can utilize a brokerage market and place more of the business there. High risk activities such as equine, hang gliding, and rock wall climbing are the most difficult to place, if at all. See attached letter.	It considers its rates to be competitive. It notes that when one deals with activities that only operate for a short period of time with limited revenues, one oftentimes run into minimum premium issues that make insurance prohibitive. The issue is often affordability rather than availability.	Industries may have unusual exposures, little training and very little experience thereby increasing risks. Some industries are hazardous and, therefore, hard to insure or very costly. The insured may be without insurance not because the company cannot write it, but rather because the business chose not to purchase it because of cost.	Lawsuits have become very popular. The state has made some changes in the landowner issue where they cannot be sued/held responsible for allowing someone to hunt on their land. This kind of legislation is moving us in the right direction. Farmers Union looks for good risk management, proper safety measures, and adequate training.	Legislators should know that specialty markets are available to the consumer. Also, periodicals relating to the specific activity usually identify companies interested in providing insurance coverage for specific exposures. Business associations are also helpful for the businesses.
Farmland Mutual Ins Co					
Federal Ins Co					
Firemans Fund Ins Co	Yes, Fireman's Fund writes commercial, restaurants, recreation and leisure, and farm and ranch coverage including: - Hotels, motels, county clubs, casinos - Restaurants - Weddings - Valet parking - Catering - Personal and advertising injury - Golf, tennis, racquetball, swimming - Hobby farms - Commercial farming - Farm and ranch liability with extension for incidental business activities including hunting and fishing - See attached letter	Yes	Fireman's Fund primarily writes property and casualty coverage to homeowners and businesses, but other extended coverages are available through its parent, Allianz. It sees no obstacles for commercial coverage.	NA since Fireman's Fund provides most of the coverage in question.	Fireman's Fund notes that coverages written on the admitted market require filing and approval in each state, which can be extensive and time consuming. Coverages placed on the surplus (nonadmitted) market do not have that requirement.

Company	Does Company Offer Liability Insurance?	Are Rates Affordable?	Any Obstacles Prevent or Restrict Offering Liability Insurance?	Any Actions to Remove Obstacles so Company Would Write Coverage?	Any Other Information?
Flaxton Farmers Mutual Fire Ins Co					
General Casualty Co of WI					
Genesis Indemnity Ins Co					
Great American Assurance Company					
Great Divide Ins Co					
Griggs Nelson Mutual Ins Co	As a county mutual, Griggs Nelson does not provide liability insurance for anyone. Its agents may be able to provide it through Grinnell Mutual.				
Grinnell Mutual Reinsurance Company					
Hartland Mutual Ins Co					
Home Mutual Ins Co					
Homesite Ins Co of the Midwest					
Indian Harbor Ins Co					
McLean McHenry Mutual Ins Co	Yes, it does offer some coverage for a few of the activities, but it is limited to a few. It has some coverage for hunting & fishing, also ag products sales, such as farmers markets, pumpkin patch, orchard, ag snacks as long as the gross receipts do not exceed \$20,000.	Yes, its rates are affordable. The rates start at \$94 for fishing or hunting and go up to \$188 for the highest coverage. The rates for farmers market type business starts at \$24 and goes up to \$49 for the highest coverage.	The company primarily writes farm business so it is limited in its offering. The risks are more commercial than farming.	Company is reinsured by Grinnell Mutual so it is limited to what Grinnell would offer, as Grinnell is primarily the liability insurer.	Company would love to see more of these activities be more readily available to the general public. It would help to draw more people to our rural area.
Meridian Citizens Mutual Ins Co					
Milbank Ins Co					
National Surety Corp					
Nationwide Agribusiness Ins Co					
Nationwide Mutual Ins Co					
Nodak Mutual Ins Co					

Company	Does Company Offer Liability Insurance?	Are Rates Affordable?	Any Obstacles Prevent or Restrict Offering Liability Insurance?	Any Actions to Remove Obstacles so Company Would Write Coverage?	Any Other Information?
North Star Mutual Ins Co	North Star does not presently engage in underwriting any of the exposures listed except to the extent that they may be incidental to a homeowner or farmowner risk. At the present time, there is no plan to expand into any of these areas.				
Northeast Mutual Ins Co	Northeast does not offer liability insurance for commercial application. Its agents, if need be, must go to Grinnell directly to find such coverage.				
Northwest G F Mutual Ins Co					
Old West Mutual Ins Co					
Owners Ins Co					
Passport Ins Co					
Philadelphia Indemnity Ins Co					
QBE Insurance Corp					
QBE Specialty Ins Co					
Safecard Services Ins Co					
Southwest Mutual Ins Co					

Company	Does Company Offer Liability Insurance?	Are Rates Affordable?	Any Obstacles Prevent or Restrict Offering Liability Insurance?	Any Actions to Remove Obstacles so Company Would Write Coverage?	Any Other Information?
State Auto Property and Casualty Ins Co	Coverage provided for limited businesses, including hotel/motel, restaurants, concessions gift and collectible retailers, travel agencies, music, dance and entertainment industries. Also provides commercial liability for bed and breakfasts, photography studios, bakeries, farmers markets, flea markets, food or meat processing, wine manufacturing, and art, craft, and furniture retailers. Company provides endorsement for fee hunting and fishing.	Yes	Company will enter a market provided: - Competitors are needed. - It can make a difference in the marketplace. - It has personnel with the necessary skill sets. - The hazard of loss is predictable. - A large number of homogeneous risks exist. - The pricing needed to sustain a viable insurance market is reasonably affordable to consumers. Company also considers management expertise, condition of facilities, risk potential, ability to secure reinsurance, or ability to grow surplus to cover large risks.	No response.	No response.
State Farm Fire and Casualty Company	The only activity on the list that it provides liability coverage for is "bakery". It may insure other listed activities insofar as they are incidental to other coverages it writes, but it does not offer stand-alone policies for these activities	Its rates are based on its loss experience for that particular class of business. It insures enough bakeries that its loss data for that class is adequate for rate calculation. It is comfortable that its rate is reasonable. It does not formally track the rates of its competitors, so it cannot speak to how it compares to the market as a whole.	It does not insure the other activities listed because the activities fall outside the narrow focus of its business insurance programs. It has no comment regarding barriers to the liability insurance market for travel and tourism industries.		
Steele Traill County Mutual Ins Co					
Travelers Indemnity Company of America					
Travelers Property Casualty Co of America					

<b>Company</b>	<b>Does Company Offer Liability Insurance?</b>	<b>Are Rates Affordable?</b>	<b>Any Obstacles Prevent or Restrict Offering Liability Insurance?</b>	<b>Any Actions to Remove Obstacles so Company Would Write Coverage?</b>	<b>Any Other Information?</b>
Tri State Ins Co of MN					
U.S. Underwriters Ins Co					
Walsh County Mutual Ins Co					
West McLean County Farmers Mutual Ins Co					

**EXHIBIT 6**

**Table 1. Analysis of state recreational-use statutes.**

State	Year enacted	Duty to warn of hazards	Duty to keep land safe	Assure land safe for use	Liability for gross negligence/willful misconduct	Protection retained for public agency lease payments	Protection lost if fee charged
<b>Alabama</b> Ala. Code § 35-15-1	1965	No	No	No	Yes	Not specified	No, if use for noncommercial purpose
<b>Alaska</b> Ala. Stat. § 09.65.200	1980	Not specified	Not specified	Not specified	Yes	Not specified	Yes
<b>Arizona</b> Ariz. Rev. Stat. § 33-1551	1983	Not specified	Not specified	Not specified	Yes	Not specified	Yes/no, only for nonprofit corp.
<b>Arkansas</b> Ark. State. Ann. § 18-11-301	1965	No	No	No	Yes	Yes	No, provided fees only to offset costs
<b>California</b> Govt. Code § 846	1963	No	No	No	Yes	Yes	Yes
<b>Colorado</b> Coio. Rev. Stat. § 33-41-101	1963	Not specified	No	No	Yes	Yes	Yes
<b>Connecticut</b> Gen. State § 52-557f	1971	No	No	No	Yes	Yes	Yes/no, if fee to harvest firewood
<b>Delaware</b> Del. Code tit 7 § 5901	1953	No	No	No	Yes	Yes	Yes
<b>Florida</b> Fla. Stat. § 375.251	1963	No	No	No	Yes	Yes	Yes
<b>Georgia</b> Ga. Code § 51-3-20	1965	No	No	No	Yes	Yes	Yes
<b>Hawaii</b> Hawaii Rev. Stat. § 520-1	1969	No	No	No	Yes	Yes	Yes
<b>Idaho</b> Idaho Code § 36-1604	1976	No	No	No	Not specified	Yes	Yes
<b>Illinois</b> § 745 ILCS 65/1	1965	No	No	No	No	Yes	Yes/no, fees for land conservation allowed
<b>Indiana</b> Ind. Code Ann. § 14-22-10-2	1969	Not specified	No	No	Yes	Yes	Yes
<b>Iowa</b> Iowa Code Ann. § 461C.1	1967	No	No	No	Yes	Yes	Yes
<b>Kansas</b> Kansas Stat. Ann. § 58-3201	1965	No	No	No	Yes	Yes	Yes
<b>Kentucky</b> Ky. Rev. Stat. §150.645; §411.190	1968	No	No	No	Yes	Yes	Yes

Table 1 Continued

Table 1. Continued

State	Year enacted	Duty to warn of hazards	Duty to keep land safe	Assure land safe for use	Liability for gross negligence/willful misconduct	Protection retained for public agency lease payments	Protection lost if fee charged
Louisiana La. Rev. Stat. § 9:2791	1964	No	No	No	Yes	Yes	Yes
Maine Me. Rev. Stat. title 14 § 159-A	1979	No	No	No	Yes	Yes	Yes/no, fees allowed if use is noncommercial
Maryland Md. Code Nat. Res. § 5-1101	1957	No	No	No	Yes	Yes	Yes
Massachusetts Mass. Gen. Law ch. 21 § 17C	1972	Not specified	Not specified	Not specified	Yes	Yes	Yes/no, voluntary payments allowed
Michigan Mich. Comp. Laws § 324.73301	1953	No, unless known	Only reasonably safe	Not specified	Yes	Not specified	Yes/no, fees allowed for hunting, fishing and crop harvests
Minnesota Min. Stat. § 604A.20	1961	No	No	No	Yes	Yes	Yes
Mississippi Miss. Code § 89-2-1	1978	No	No	No	Yes	Yes	Yes
Missouri Mo. Ann Stat. § 537.345	1983	No	No	No	Yes	Yes	Yes
Montana Mont. Rev. Code § 70-16-301	1965	Not specified	Not specified	No	Yes	Yes	Yes
Nebraska Neb. Rev. Stat. § 37-729	1965	No	No	No	Yes	Yes	Yes/no, group rental fees allowed
Nevada Nev. Rev. Stat. § 41.510	1963	No	No	No	Yes	Yes	Yes
New Hampshire N.H. Rev. Stat. § 212.34	1961	No	No	No	Yes	Not specified	Yes/no, fees for crop picking allowed
New Jersey N.J. Stat. § 2A:42A-2	1968	No	No	No	Yes	Yes	Yes
New Mexico N.M. Stat. § 17-4-7	1973	Not specified	No	No	Yes	Yes	Yes
New York N.Y. Gen. Law § 9-103	1963	No	No	No	Yes	Yes	Yes
North Carolina N.C. Gen. Stat. § 38A-1	1995	No	Not specified	Not specified	Not specified	Yes	Yes/no, fees to cover damages allowed
North Dakota N.D. Cent. Code § 53-08-1	1965	No	No	Not specified	Yes	Yes	Yes

Table 1 Continued

Table 1. Continued

State	Year enacted	Duty to warn of hazards	Duty to keep land safe	Assure land safe for use	Liability for gross negligence/willful misconduct	Protection retained for public agency lease payments	Protection lost if fee charged
<b>Ohio</b> Ohio Rev. Code Ann. § 1533.18	1963	Not specified	Not specified	No	Not specified	Yes	Yes
<b>Oklahoma</b> Okla. Stat. Ann. title 76 § 1301	1965	No	No	No	Yes	Yes	Yes
<b>Oregon</b> Or. Rev. Stat. § 105.670	1971	Not specified	Not specified	Not specified	Yes	Not specified	Yes/no, fee for firewood cutting allowed
<b>Pennsylvania</b> Pa. Stat. title 68 § 477.1	1965	No	No	No	Yes	Yes	Yes
<b>Rhode Island</b> R.I. Gen. Law § 32-6-1	1978	No	No	No	Yes	Yes	Yes
<b>South Carolina</b> S.C. Code § 27-3-10	1962	No	No	No	Yes	Yes	Yes
<b>South Dakota</b> S.D. Codified. Laws § 20-9-12	1966	No	No	No	Yes	Yes	Yes/no, nonmonetary gift of less than \$100
<b>Tennessee</b> Tenn. Code Ann. §70-7-101; 11-10-101	1965	No	No	No	Yes	Yes	Yes
<b>Texas</b> Civ. Prac. & Rem. Code § 75.001	1965	No	No	No	Yes	Not specified	No, fees equal to 2x or 4x property taxes allowed
<b>Utah</b> Utah Code § 57-14-1	1971	No	No	No	Yes	Not specified	Yes
<b>Vermont</b> Vt. Stat. title 10 § 5212	1967	Not specified	Not specified	Not specified	Yes	Not specified	Yes/no, fees for firewood cutting allowed
<b>Virginia</b> Va. Code § 29.1-509	1950	No	No	No	Yes	Yes	Yes/no, fees for firewood cutting allowed
<b>Washington</b> Wash. Rev. Code § 4.24.200	1967	Not specified	Not specified	Not specified	Yes	Not specified	Yes/no, fees for firewood cutting allowed
<b>West Virginia</b> W.Va. Code § 19-25-1	1965	No	No	No	Yes	Not specified	No, fees up to \$50/person/year
<b>Wisconsin</b> Wisc. Stat. § 895.52	1963	No	No	Not specified	Yes	Yes	No, fee revenue up to \$2000/year allowed
<b>Wyoming</b> Wyo. Stat. § 34-19-101	1965	No	No	No	Yes	Yes	Yes

In addition to eliminating these specific landowner duties, all state statutes contain a general disclaimer of liability for an injury to a recreational user caused by the commission

or omission of the recreational user. The New Jersey statute provides an illustrative example:

*"An owner, lessee or occupant of premises who gives permission to another to enter upon such*

*premises for a sport or recreational activity or purpose does not thereby assume responsibility for or incur liability for any injury to person or property caused by any act of persons to whom the permis-*

## Results Summary

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### Filter Results

To analyze a subset of your data, you can create one or more filters.

[Add Filter...](#) **Total:** 104  
**Visible:** 104

### 2. page 2

1. My primary activity is agribusiness (farming or ranching) but I supplement my operation with a tourism/value added activity.

	Response Percent	Response Total
Yes	14.4%	15
No	85.6%	89
<b>Total Respondents</b>		<b>104</b>
(skipped this question)		0

2. I am in agribusiness but the tourism/value added activity is primary and any farm/ranch activities are secondary.

	Response Percent	Response Total
Yes	1%	1
No	99%	103
<b>Total Respondents</b>		<b>104</b>
(skipped this question)		0

3. I do not farm or ranch but do have a tourism related activity.

	Response Percent	Response Total
Yes	63.5%	66
No	36.5%	38
<b>Total Respondents</b>		<b>104</b>
(skipped this question)		0

### 3. page 3

1. Select the activities you offer:

	Response Percent	Response Total
Animal petting	6.2%	4

Bike trails		21.5%	14
Bird watching		29.2%	19
Boating		9.2%	6
Buggy rides		7.7%	5
Canoeing		10.8%	7
Corn maze		1.5%	1
Digs - Archeology		9.2%	6
Digs - Paleontology		7.7%	5
Ecology tour		1.5%	1
Farm tour		12.3%	8
Fishing - Guided		3.1%	2
Fishing - Pond/Access		10.8%	7
Flea market		1.5%	1
Hang gliding		1.5%	1
Hay rides		4.6%	3
Hiking		18.5%	12
<b>Historical tours</b>		<b>33.8%</b>	<b>22</b>
Hot air balloon		3.1%	2
Hunting - Access		18.5%	12
Hunting - Fee Hunting		10.8%	7
Hunting - Guided		9.2%	6
Kayaking		4.6%	3
Off road racing		1.5%	1
Reenactment program		20%	13
River tours - Guided		1.5%	1
Road side antiques		1.5%	1
Road side art or craft		4.6%	3
Rodeo		1.5%	1
Star gazing		9.2%	6
Swimming		9.2%	6
Trail rides / horseback riding		18.5%	12
Transportation - ATV		0%	0
Transportation - Boat		3.1%	2
Transportation - Bus		3.1%	2
Transportation - Car/Van		7.7%	5

Transportation - Farm Equip.	1.5%	1
Wagon rides	6.2%	4
Working ranch	6.2%	4
Working vacation	4.6%	3
<a href="#">View</a> Other (please specify)	33.8%	22
<b>Total Respondents</b>		<b>65</b>
(skipped this question)		39

2. Select the food related services you offer:

	Response Percent	Response Total
Bakery	8.1%	3
BBQ's	13.5%	5
Berry patch / U-pick	2.7%	1
Chuck wagon	18.9%	7
Farmers Market	2.7%	1
Flour milling	0%	0
Jams and Jellies	13.5%	5
Meat processing	2.7%	1
Orchard	0%	0
Ple sales	0%	0
Pitch Fork Fondue	13.5%	5
Pumpkin patch	5.4%	2
<b>Restaurant</b>	<b>35.1%</b>	<b>13</b>
Road side produce	8.1%	3
Snacks (seeds, nuts)	29.7%	11
Vegetable patch	5.4%	2
Vineyard	2.7%	1
Winery	2.7%	1
<a href="#">View</a> Other (please specify)	32.4%	12
<b>Total Respondents</b>		<b>37</b>
(skipped this question)		67

3. Select the lodging related services you offer:

	Response Percent	Response Total
Bed and Breakfast	9.5%	4
Cabin	26.2%	11

	<b>Camping</b>		<b>42.9%</b>	<b>18</b>
	Lodge		23.8%	10
	Teepee		4.8%	2
	Other (please specify)		31%	13
	<b>Total Respondents</b>		<b>42</b>	
	(skipped this question)			<b>62</b>

4. Select the entertainment related services you offer:

		<b>Response Percent</b>	<b>Response Total</b>
	Arts / Crafts		41.5% 17
	Concerts		41.5% 17
	Conferences		46.3% 19
	Dances		24.4% 10
	<b>Reunions</b>		<b>53.7%</b> <b>22</b>
	Theatre		14.6% 6
	Weddings		48.8% 20
	Other (please specify)		31.7% 13
	<b>Total Respondents</b>		<b>41</b>
	(skipped this question)		<b>63</b>

5. From your above responses, describe the primary tourism/value added activity that you do.

	<b>Total Respondents</b>	<b>70</b>
	(skipped this question)	<b>34</b>

4. page 4

1. I have been able to get all of my liability coverage for my tourism/value added activities with the same insurance company that insures my business operation.

		<b>Response Percent</b>	<b>Response Total</b>
<b>Yes</b>		<b>60%</b>	<b>39</b>
<b>No</b>		40%	26
	<b>Total Respondents</b>		<b>65</b>
	(skipped this question)		<b>39</b>

2. I have been able to get liability coverage, but not with the same company I have my business insured with.

	Response Percent	Response Total
Yes	29.2%	19
No	70.8%	46
<b>Total Respondents</b>		<b>65</b>
(skipped this question)		39

3. I have tried to get liability coverage, but have not found one that will offer me a quote.

	Response Percent	Response Total
Yes	7.7%	5
No	92.3%	60
<b>Total Respondents</b>		<b>65</b>
(skipped this question)		39

5. page 4b

1. What was the primary reason given for no quote being offered?

<b>View</b> Total Respondents	<b>4</b>
(skipped this question)	100

6. page 5

1. I was able to find coverage with my primary farm, ranch, or business insurance company and find the premiums for the tourism/value added activity to be:

	Response Percent	Response Total
Low	2.5%	1
<b>Reasonable</b>	<b>55%</b>	<b>22</b>
Very high	17.5%	7
Cost prohibitive	25%	10
<b>Total Respondents</b>		<b>40</b>
(skipped this question)		64

2. I was able to find coverage with a company other than my primary farm, ranch, or business insurance company and find the premiums for the tourism/value added activity to be:

	Response Percent	Response Total
Low	0%	0
<b>Reasonable</b>	<b>32.1%</b>	<b>9</b>



No	0%	0
<b>Total Respondents</b>		<b>6</b>
(skipped this question)		<b>98</b>

3. Number of years in business:

	Response Percent	Response Total
1-3 years	16.2%	6
3-7 years	10.8%	4
<b>7-15 years</b>	<b>37.8%</b>	<b>14</b>
over 15 years	35.1%	13
<b>Total Respondents</b>		<b>37</b>
(skipped this question)		<b>67</b>

4. Liability coverage type:

	Response Percent	Response Total
Packaged with property, auto, etc.	47.1%	16
<b>Individual coverage</b>	<b>52.9%</b>	<b>18</b>
<b>Total Respondents</b>		<b>34</b>
(skipped this question)		<b>70</b>

5. Liability premium = \_\_\_\_\_ % of gross income (response is optional)

<a href="#">View</a> Total Respondents	7
(skipped this question)	97

6. Property premium = \_\_\_\_\_ % of gross income (response is optional)

<a href="#">View</a> Total Respondents	4
(skipped this question)	100

**TRAVEL AND TOURISM LIABILITY SURVEY OF AGENTS – SEPTEMBER 2005**

The Insurance Department is asking for your help in responding to the Legislature's request for information relating to the availability of travel and tourism liability insurance.

Senate Bill No. 2032 requires that the Commissioner report to the Legislature regarding the availability and affordability of travel and tourism liability insurance.

Travel and tourism activities are activities and services offered to a traveler or tourist. This includes activities provided by small businesses in rural communities as well as activities provided by farmers or ranchers, referred to as agri-business activities.

Your answers will help in identifying the availability of insurance in this market. Thank you for taking the time to respond to this survey. The survey is anonymous.

**PART I**

During the past 2 years have you received a request for travel and tourism liability insurance coverage?                      Yes    or    No

IF YOU ANSWERED "NO", YOU MAY STILL PARTICIPATE IN THE SURVEY BY CIRCLING THE ACTIVITIES IN PART II FOR WHICH YOU KNOW YOU HAVE AN OUTLET. THEN CONTINUE WITH PART III.

IF YOU ANSWERED "YES", PLEASE COMPLETE PART II AND CHECK THE APPROPRIATE BLOCKS FOR EACH ACTIVITY FOR WHICH YOU WERE ASKED TO PROVIDE TRAVEL AND TOURISM LIABILITY INSURANCE. THEN CONTINUE WITH PART III.

**PART II**

Type of Travel or Tourism	Business Type		Insurance Availability				Affordability			
	Small Business	Agri-Business (Farm-Related)	Placed With Existing Admitted Company	Placed With Different Admitted Company	Placed With Surplus Lines	Could Not Find	Consumer's Opinion of the Premium:			
							Low	Reasonable	High	Cost Prohibitive
<b><u>Amusement</u></b>										
Air suspension	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Corn maze	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hang gliding	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hot air balloon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Paint ball	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rock climbing wall	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>Automotive</u></b>										
Off road racing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Snowmobile trails	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>Entertainment</u></b>										
Concerts (music)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dances	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reenactment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Theatre	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>Equine</u></b>										
Buggy rides	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Type of Travel or Tourism	Business Type		Insurance Availability				Affordability			
	Small Business	Agri-Business (Farm-Related)	Placed With Existing Admitted Company	Placed With Different Admitted Company	Placed With Surplus Lines	Could Not Find	Consumer's Opinion of the Premium:			
							Low	Reasonable	High	Cost Prohibitive
Bring your own horse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hay rides	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rodeo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roping competition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trail rides	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wagon train	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Historical</b>										
Archaeological digs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Historical tours	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Museum	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Paleontology digs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
State historical site	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Hunting/Fishing</b>										
Boating	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fishing – access	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fishing – fee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fishing – guided	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fish pond	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hunting – access	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Type of Travel or Tourism	Business Type		Insurance Availability				Affordability			
	Small Business	Agri-Business (Farm-Related)	Placed With Existing Admitted Company	Placed With Different Admitted Company	Placed With Surplus Lines	Could Not Find	Consumer's Opinion of the Premium:			
							Low	Reasonable	High	Cost Prohibitive
Hunting – fee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hunting – guided	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>Livestock</u></b>										
Animal petting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>Lodging/Restaurant</u></b>										
Barracks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Casinos	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bed and breakfast	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cabin/TP	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Campground – general	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Campground – RV	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Catering service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chuckwagon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Concession stand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Continental breakfast	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cream can supper	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Earth lodge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pitch fork fondue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Potluck meals	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Restaurant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Type of Travel or Tourism	Business Type		Insurance Availability				Affordability			
	Small Business	Agri-Business (Farm-Related)	Placed With Existing Admitted Company	Placed With Different Admitted Company	Placed With Surplus Lines	Could Not Find	Consumer's Opinion of the Premium:			
							Low	Reasonable	High	Cost Prohibitive
Sack lunch	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Soda – beverages	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vending machines	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>Nature</u></b>										
Bike trails	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bird watching	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Camping	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fishing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hunting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Guided river tours	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hiking	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kayaking	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Live animal viewing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Photography	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Star gazing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Swimming	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>Production</u></b>										
Ag snacks (soy, wheat, sunflower)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bakery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clothing – apparel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Type of Travel or Tourism	Business Type		Insurance Availability				Affordability			
	Small Business	Agri-Business (Farm-Related)	Placed With Existing Admitted Company	Placed With Different Admitted Company	Placed With Surplus Lines	Could Not Find	Consumer's Opinion of the Premium:			
							Low	Reasonable	High	Cost Prohibitive
Farmers market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Flea market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Flour milling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Meat/meat processing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Orchard	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pumpkin patch	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roadside antiques	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roadside arts and crafts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roadside produce (jams, pies)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Roadside berry patch	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vegetable patch	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vineyard	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Winery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Services</b>										
Conference center	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CVB	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fitness center	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reunions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Transportation/shuttle service – boat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Transportation/shuttle service – bus/car/van	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Weddings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Type of Travel or Tourism	Business Type		Insurance Availability				Affordability			
	Small Business	Agri-Business (Farm-Related)	Placed With Existing Admitted Company	Placed With Different Admitted Company	Placed With Surplus Lines	Could Not Find	Consumer's Opinion of the Premium:			
							Low	Reasonable	High	Cost Prohibitive
Working ranch/farm	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Working vacation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Other</b>										
Art museum	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please continue with Part III.

**PART III**

1. If you have had success in finding companies to write travel and tourism liability coverage for any of the activities in Part II (even on a limited basis), please provide the names of the companies:

Regular market: \_\_\_\_\_  
\_\_\_\_\_

Surplus market: \_\_\_\_\_  
\_\_\_\_\_

2. If you have not had a request for travel and tourism liability insurance but know of companies that will provide coverage for the activities you have circled in Part II, please provide us with the names of the companies:

Regular market: \_\_\_\_\_  
\_\_\_\_\_

Surplus market: \_\_\_\_\_  
\_\_\_\_\_

3. Comments – Please feel free to make additional comments here:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**THANK YOU FOR YOUR VALUABLE INPUT!**



DEPARTMENT OF INSURANCE  
STATE OF NORTH DAKOTA

Jim Poolman  
Commissioner of Insurance

MEMORANDUM

TO: Selected North Dakota Liability Carriers

FROM: Jim Poolman, Commissioner

DATE: January 9, 2006

SUBJECT: Tourism Liability Market

The 2005 North Dakota Legislative Assembly has directed that the North Dakota Insurance Department study the availability and affordability of liability insurance for the travel and tourism industry.

In doing so I am asking for your help. In particular, I would like your perspective on the availability and affordability of liability insurance for tourism related industries. Please provide me with your comments in general and your response to the questions below.

Enclosed please find a brief description of the type of business activities that generally fall into the travel and tourism category.

Please respond to the following questions by February 1, 2006:

1. Does your company offer liability insurance coverage for the industries shown on the attached sheet? If so, please explain the coverages that are offered.
2. If your company offers coverage, do you consider your rates to be affordable? Please explain.
3. As an insurance company, what barriers, obstacles, or reasons in your opinion prevent or restrict your company's ability to provide liability insurance coverage to travel and tourism industries?

Memorandum  
January 9, 2006  
Page Two

4. As an insurance company, what actions do you believe necessary to remove, eliminate, or reduce the barriers such that your company would be willing to write coverage for the travel and tourism industries?
5. What other information do you believe should be shared with the legislators regarding the liability insurance as it relates to the travel and tourism industries?

Thank you for your comments. If you have any questions, please call Larry Maslowski at (701) 328-4976.

JP/njb  
Enclosure

## Travel and Tourism Activity list

The department has determined that the following activities whether done as an additional activity on an existing farm or ranch, or as a business venture in a rural community fall under the general description of Travel and Tourism. This list is not all inclusive, however, it is intended to provide some perspective of what types of activities are being referenced in the attached letter.

Amusement	Chuck Wagon
Air Suspension	Concessions
Corn Maze	Pitch Fork Fondue
Hang Gliding	Nature
Hot Air Balloon	Bike trails
Paint Ball	Bird watching
Rock Climbing Wall	Camping
Automotive	Canoeing
Off Road Racing	Eco tour
Snowmobile Trails	Guided river tours
Entertainment	Hiking
Concerts (music)	Kayaking
Dances	Photography
Theatre	Star gazing
Reenactment	Swimming
Equine	Production
Buggy rides	Ag snacks (soy,wheat, sunflower)
Roping competition	Bakery
Hay rides	Farmers Market
Rodeo	Flea Market
Trail rides	Flour milling
Wagon Train	Meat/Meat processing
Historical	Orchard
Archeological digs	Pumpkin patch
Historical tours	Roadside antiques
Paleontology digs	Roadside arts & crafts
Hunting/Fishing	Roadside produce
Boating	(jams/jellies/pies)
Fishing – fee	Strawberry patch
Fishing –guided	Vegetable patch
Fish pond	Vineyard
Hunting –fee	Winery
Hunting- guided	Services
Livestock	Conference center
Animal Petting	Transportation/Shuttle service
Lodging/Restaurant	Weddings
BBQ's	Working vacation
Bed & Breakfast	
Cabin/TP	

5

COMMISSIONER  
DOUG GOEHRING



ndda@nd.gov  
www.agdepartment.com

**NORTH DAKOTA  
DEPARTMENT OF AGRICULTURE**

STATE CAPITOL  
600 E. BOULEVARD AVE. - DEPT. 602  
BISMARCK, ND 58505-0020

**Testimony of Chuck Fleming  
North Dakota Department of Agriculture  
House Bill 1142  
Senate Judiciary Committee  
Ft. Lincoln Room  
March 16, 2011**

Chairman Nething and members of the Senate Judiciary Committee, my name is Chuck Fleming and I am the Director of the Business Development Division of the North Dakota Department of Agriculture and I am here to testify on behalf of Agriculture Commissioner Doug Goehring in favor of the amendments to House Bill 1142 as proposed by Senator Olafson.

Commissioner Goehring and members of our staff have been working with the Tourism Division of the Department of Commerce and the Insurance Department to find ways in which we can encourage the development of agri-tourism in North Dakota. One of the largest barriers is the high cost of liability insurance for these operations.

This amendment provides a reasonable solution by having the participants at these businesses assume inherent risks. Inherent risks are defined in Paragraph 2 on page one of the amendment.

There is protection in the amendment for participants at these agri-tourism sites if the agri-tourism operator injures a participant willfully or through conduct that amounts to gross negligence.

This seems to be a reasonable balance between the rights and responsibilities of both the agri-tourism operator and the participants.

The potential to develop this industry in North Dakota is tremendous. It may be unbelievable to some of us that there are people willing to pay (and pay big) to come to a ranch to put up hay, milk a cow, or ride in a combine.

This bill would reduce one of the major barriers slowing down the development of this industry.

Commissioner Goehring requests your favorable consideration of House Bill 1142 with the proposed amendment 11.0030.02002.

Thank you.

Testimony to the North Dakota Senate  
Judiciary Committee  
March 16, 2011 – 10:45 a.m.

My name is Jacob Odermann. I am a native of Billings County and I hope to relocate there. My fiancé and I are working with my family to transition into our agricultural operation but there are challenges: huge investments, cash flow and current high prices. There are challenges and the original version of HB 1142 would have helped us create a business plan that could minimize generational transitions through vertical expansion and a potential revenue stream.

I would like to speak about growing up in North Dakota and the experiences that I had growing up on a small agricultural operation. These experiences were major factors in my desire to provide equal opportunities to future generations. I admired the hard work, attitude, empathy and positive attitude of my family: grandparents, parents, siblings and extended family.

These experiences are what sets North Dakotans apart—and why people want to see what makes North Dakotans so strong, so resilient, so willing to lend a helping hand. I realize these experiences made me different and I think we need to create situations where current and future generations can make similar connections. In high school and college, my friends begged for chances to “experience” how I lived. This attitude of acquiring knowledge and creating memories is never been greater.

I testify today because we need to create situations where the consuming public can make the connection with nature, to see first hand where and how the food that sustains them comes from.

House Bill 1142 in its original form was leading the way to create opportunities for education about agriculture. This was done in a way that allow recreational opportunities at the same time. The original version of the bill was a big step in assuring that the new generation of agricultural operators like myself

**Please Go To Other Side**



might have an opportunity to share these experiences and work towards a sustainable revenue stream for my soon to be new wife and hopefully our family.

The capital available in the traditional agricultural sense of growing bigger is not always better We need to look to utilize the natural resources in a manner that preserves the attitude of helping each other.

There is, however, a need for responsibility on both sides. Agritourism operators need to act responsibly by creating a safe environment. Participants need to accept that there are risks beyond the control of the agritourism professional. In the spirit of what makes North Dakota great, the agritourism professional and the participant share the responsibility positive outcomes.

I urge you to support the proposed Senate amendments to HB 1141.

Thank you.



Jacob Odermann  
1006 13<sup>th</sup> Avenue West  
Williston, ND 58801  
701-269-9039



**Please Go To Other Side**



## HB 1142 - Testimony

My name is Marty Anderson. I own and operate eVision, a video production business located in Minot. I am also a past president and current board member of North Dakota Nature and Rural Tourism Association.

HB 1142, as it was originally written, has long been needed for the agri-tourism industry. Current law places an unreasonable burden on operators because operators must assume all of the risks of nature, which we well know are beyond our control.

This liability risk exposure deters potential operators from sharing their message with visitors to our state. The hesitancy results in the loss of economic opportunity for our operators, most of whom are rural residents. The impact on rural economies can be huge. This loss ultimately is felt in economic development within our state.

The original language in HB 1142 properly and specifically required the agri-tourism owner-operator to provide a safe, secure environment for participants. There is no room in this industry—or any industry—for unsafe conditions that encourage fly-by-nighters.

Tourism is about generating goodwill for our state, it is about “bragging rights” regarding the experiences and positive memories for our visitors. Agri-tourism is no different. A safe environment is paramount to the success of agri-tourism enterprises and our professional operators realize their responsibility in this arena.

Agriculture is the one number generator of new wealth in North Dakota. Tourism is not far behind. By providing assumption of risk exemption for agri-tourism, you are combining two powerful economic forces. The results could—and should—only be positive for entrepreneurs.

I respectfully ask you to exempt agri-tourism operators from the assumption of risk and restore the original language included in HB 1142. Thank you for this opportunity to speak about this issue and the agriculture and tourism industries. I would be happy to answer any questions.

Sincerely,

Marty Anderson  
Owner/Operator  
eVision

# MEMORANDUM



**TO:** Senate Judiciary Committee

**DATE:** March 14, 2011

**CC:**

**RE:** HB 1142 [aka—"agritourism bill"]

**From:** North Dakota PIA  
1211 Memorial Highway  
Bismarck, ND 58504  
**Phone:** 701-223-5025  
**Fax:** 701-223-9456

**E:** [piand@piand.com](mailto:piand@piand.com)

**Dear Committee Members:**

Because HB 1142 has been amended to completely undo the original intent of the introduced version, we have the following recommendations:

1. As currently presented, HB 1142 needs to be **KILLED** or **AMENDED**.
2. **AMENDMENT** to Include:
  - a. Some form of "Assumption of Risk by the participant".  
Assumption of Risk prevents lawsuits from participants who "*knowingly and voluntarily assume the risk inherent in a particular action that caused an accident.*"  
Example: If you ride Brahma bulls, the inherent risk is that you will get bucked off and possibly kicked or stepped upon---therefore the "Assumption of Risk by the participant" prevents a liable suit against the bull owner or event sponsor.
  - b. Agritourism owners have various "inherent risks" which they need ability to plead "Assumption of Risk by the participant" as an affirmative defense. If there is no inherent risk, the Assumption of Risk doctrine does not apply.  
This bill in any form would not apply and current statutes would prevail.
  - c. Some form of signage or notice to participants

This bill does **NOT** prevent or limit the liability of the owner or operator of an agritourism facility for negligence, willful negligence, or failure to disclosure with knowledge of a dangerous condition of premises.

If the Assumption of Risk by participant is not added to this bill, the current "strict liability" prevails which holds any agritourism owner or facility liable even if it can't be shown that they acted negligently. Nothing has changed---there will be no new "agritourism" industry.

We respectfully ask for your support of the Assumption of Risk amendment and passage thereafter of amended HB 1142.

**Kent Olson, Lobbyist #133**  
**Professional Insurance Agents of ND**

**Written Testimony of Dennis Hill  
North Dakota Association of Rural Electric Cooperatives  
Before the Senate Judiciary Committee  
March 16, 2011**

Mr. Chairman and members of the Committee, my name is Dennis Hill, Executive Director of the North Dakota Association of Rural Electric Cooperatives. A scheduling conflict with a board of directors meeting prevents me from testifying in person, but I wanted to share our Association's support for HB 1142, provided it is amended to include the section on the assumption of risk defense which was removed from the bill in the House. Without that language, the bill does nothing positive to reduce the potential liability of agritourism operators or to make obtaining liability insurance more affordable.

For the past 20 years, our Association has operated an economic development program designed to encourage business development in rural areas of the state. During the past few years, our development staff has worked with rural tourism operators to help them work together to identify efficiencies such as travel packages, internet marketing, business planning, and insurance coverage. As part of our work, we assisted with two on-line surveys to collect liability insurance data from rural tourism operators. The 2005 survey indicated that 45% of rural tourism operators carried no liability insurance on their tourism business for reasons such as cost or difficulty in finding an insurance company willing to cover the operation.

In 2007, the survey showed that close to 50% of respondents rated their liability insurance as expensive or very expensive, and a similar percentage rated their coverage as moderate to poor. In addition, 12% said they were refused coverage based on the high risk of their business or a lack of rating experience. The survey also found that 65% of the respondents operated their business for a secondary source of income.

We believe that one of the major obstacles to developing rural tourism operations is the exposure of liability risk to the operator's primary business, which in many cases is their farm or ranch. This bill, with the inclusion of the assumption of risk language, would provide some protection from

claims based on the inherent risks of the agritourism activity. Under this bill, the agritourism operator would not be absolved of liability for failure to remedy or warn of a dangerous condition of which the operator has or should have notice. To help protect and build a vibrant agritourism industry, however, we believe HB 1142 provides a needed clarification of an affirmative defense that an operator should have based on the inherent risks associated with many agritourism businesses. Therefore, we respectfully request the committee's consideration in amending the bill to include the original bill language regarding assumption of risk, and then giving the bill a DO PASS recommendation.



## BLACK BUTTE ADVENTURES

*Hiking and Biking on North Dakota Prairie*

[www.blackbutteadventures.com](http://www.blackbutteadventures.com) \* [blackbutteadventures@srt.com](mailto:blackbutteadventures@srt.com)

4777 Hwy 41 North \* Velva ND 58790 \* 701-626-2226

Testimony for HB 1142  
March 16, 2011

Mr. Chairman and members of the committee, this testimony is in support of the bill with inclusion of the assumption of risk and notice of liability as provided in the original bill.

By providing better protection for the rural tourism producer, more land owners and individuals will become comfortable in opening up their property and sharing their knowledge and way of life with visitors.

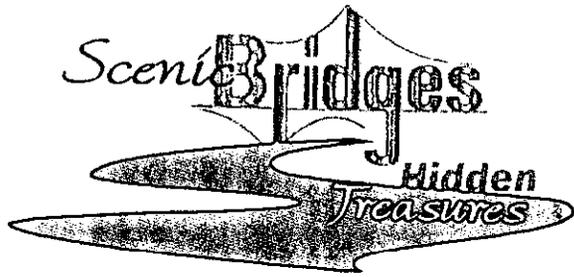
In 2005, our family officially opened Black Butte Adventures, a hiking, biking and agriculture tourism operation on our family's ranch land near Sawyer, ND. While I cannot say we are successful in terms of giving up our 'day jobs', this business has provided us an avenue to educate people from around the world and in our own state. We share with guests our way of life, our ranching practices and our history. Our goal is to provide an education to every visitor that people that live off the land want to sustain and create a better place for future generations.

Our budget is slim to none, and a 90% of our income goes to liability insurance. At this time, we have one carrier that will take the risk and they charge \$650 for six months of operation. Because we are using land that has been in our family four generations and because the property is still primarily livestock production land, I am not willing to take the risk and go uninsured. If our small operation becomes unaffordable, we will simply shut the gates.

Our success is small, but if we had more operators in the region, we could attract an even greater audience and benefit our communities and rural residents. This legislation will give more people the comfort level to take the risk of becoming a tourism operator. It will also allow us, as existing operators, to grow our business and create opportunity for my children if they choose to stay.

I would be happy to answer any questions.

Maria Effertz Hanson



*Convention & Visitors Bureau  
250 Main St W – P.O. Box 724  
Valley City, ND 58072-0724  
(701) 845-1891  
[www.hellovalley.com](http://www.hellovalley.com)*

March 14, 2011

Senate Judiciary Committee  
Chairman David Nething  
600 East Boulevard Avenue  
Bismarck, ND 58505

Honorable Chairman Nething and Committee Members,

The Valley City Convention and Visitors Bureau would like to go on record for support of House Bill 1142 with amendments regarding owner requirements and participants assumption of risk. The ND Agritourism Insurance Affordability Act would assist farm families in creating new recreational opportunities on their land. Fourteen other states have enacted similar legislation to encourage farmers to help educate the public and provide a different type of recreation.

Agritourism is growing in North Dakota and this bill would work towards affordable insurance rates for family farmers who diversify with recreational opportunities. These recreational opportunities translate into overnight stays which fuel income for CVB's which in turn promote North Dakota. The agritourism visitors shop and dine in local communities adding to economic growth. This all means new dollars in the North Dakota economy.

Please help us grow Agritourism by supporting HB 1142.

Thank you.

Mary Lee Nielson, Marketing Coordinator  
Valley City Convention & Visitors Bureau



Sheyenne River Valley National Scenic Byway  
Rosebud Visitor Center  
250 West Main Street Suite 1  
Valley City, ND 58072  
[www.hellovalley.com](http://www.hellovalley.com)

Senate Judiciary Committee  
Honorable David Nething, Chairman  
600 E Boulevard Ave  
Bismarck, ND 58505

RE: House Bill 1142 ND Agritourism Insurance Affordability Act

Chairman Nething and Committee Members:

The Sheyenne River Valley National Scenic Byway Committee would like to go on record in support of HB 1142 with amendments dealing with owner requirements and participant assumption of risk. Putting standards in place for the safety of the public is important to the growth of agritourism.

Tourism is included in the Governor's 5 Target Industries for creating new jobs in ND. Supporting the ND Agritourism Insurance Affordability Act is a step in the right direction for tourism growth. A local farm family had a wildly popular corn maze that was shut down two years ago- one of the primary reasons was the unbelievable cost of liability insurance. The farm family opportunity for diversification is gone and the byway lost an amenity that brought folks in from the tri-state area. Busses were not uncommon at the maze. It is a significant loss.

Give farm families the chance to expand into tourism. Please support House Bill 1142- the ND Agritourism Insurance Affordability Act. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Bobby Koppstein".

Chairman, Sheyenne River Valley National Scenic Byway Committee



**Testimony of**

**Economic Development Association of North Dakota**

**HB 1142**

**March 16, 2011**

Chairman Nething and members of the committee, my name is Cal Klewin. I am representing the Economic Development Association of North Dakota (EDND).

EDND is the voice of the state's economic development community and provides networking for its 80 members, which include development organizations, communities, businesses and state agencies. Our mission is to increase economic opportunities for residents of the state by supporting primary sector growth, professionalism among economic development practitioners and cooperation among development organizations.

EDND supports this legislation because it provides an affordable liability insurance option which supports the agritourism industry in North Dakota. This is intended open opportunities to many farm and ranch operations to supplement their income and bring new revenue to North Dakota.

EDND supports efforts to increase and enhance agritourism opportunities in North Dakota and this legislation is a great step toward growing this industry.

EDND urges a **DO PASS** on HB 1142.

Thank you. I would be happy to answer your questions.

**Testimony to the North Dakota Legislature  
Senate Judiciary Committee  
March 16, 2011**

Hello. My name is Steve Weninger and I live southwest of Sentinel Butte, in Golden Valley County. I am here today to ask for your support of House Bill 1142 in its original form.

We, my wife Deb and I, like horses. We like to ride horses and we know lots of people who like to ride horses. But there is a major problem that we face because of the liability situation.

We have been looking at an agritourism guest ranch operation but the cost of insurance is the thing holding us back. Somewhere along the line, people have to take some responsibility for themselves, especially if there are animals involved.

Let me explain a little further because there is a shared responsibility. It would be foolish—and negligent—of me to put a child or greenhorn rider on a young colt or horse that shows tendencies to be flighty. I would expect to be liable for that situation.

The problem arises when a trail horse—which is a living, breathing animal—is spooked by a body of water, a tree branch, a bird in the brush, the rider or one of a million things that can happen. Who should be liable for that? It seems this is a shared responsibility: I need to make sure the horse is properly prepared and the rider needs to know things outside of my control can happen. In short, the participant needs to know and accept the assumption of risk.

Cost of insurance is such a limiting factor. I was involved with the Medora Stagecoach several summers ago. The insurance was \$2,500 for three months. While the cost did decrease a little the second year because we were diligent and accepted our responsibility to create a safe environment, the cost of insurance was a major reason for leaving the business.

The presence of an assumption of risk clause in HB 1142 could cause more insurance companies to provide insurance, creating competition which, as you well know, could produce rates that are more affordable for agritourism operators. I am proud of North Dakota and I want to share the sights, sounds and experiences of rural living but at the same time I need to protect my home, my investment.

I know full well I need to create a safe environment. I want participants to have a good experience and I know I have some responsibility. I do not however, feel that I need to accept responsibility for inherent risks of nature and the living, breathing beings that are part of our natural surroundings. Please support HB 1142 in its original form. Such action would be beneficial to all of North Dakota.

Thank you for allowing me to tell my story.

Steve Weninger  
3900 164<sup>th</sup> Ave SW  
Sentinel Butte, ND 58654  
701-872-3192



Testimony of Sheri Grossman  
President, Destination Marketing Association of North Dakota  
House Bill 1142  
March 16, 2011

Chairman Nething and Members of the Senate Judiciary Committee:

My name is Sheri Grossman and I am the President of Destination Marketing Association of North Dakota (DMAND). DMAND is a cooperative association of independent Convention and Visitor Bureaus, as well as additional communities who share a broad-based community support and whose primary objective is the promotion of North Dakota.

I encourage you to adopt the proposed amendments and support House Bill 1142. Tourism in North Dakota has a major statewide impact on our economy. Agritourism is a prime example that tourism isn't just something for the larger cities. As we market North Dakota, we like to promote the fact that we offer a unique visit—something different. For many of our visitors, agritourism is that "something different" they want to experience. Many visitors are looking for a hands-on experience and agritourism provides this throughout every corner of North Dakota.

Visitors often expect agritourism operators in rural states such as North Dakota. Unfortunately, potential operators are often discouraged by the lack of affordable liability insurance. Liability insurance is a major concern for operators that offer, or are considering offering, farm and ranch experiences. If the proposed amendments are adopted, the bill will provide standardized language limiting the liability of operators for injuries caused by inherent risks—the conditions that are considered beyond the control of the agritourism operator. It would also make liability insurance more affordable and decrease this additional financial burden on farmers and ranchers interested in welcoming the public onto their land.

Recent United States Travel Association research shows North Dakota leads the nation in growth of travel expenditures, travel generated payroll, travel generated taxes, and travel generated employment. The interest in agritourism is increasing and this bill makes it possible for agritourism to continue playing a role in growing tourism in North Dakota.

Thank you for your time and consideration.

NORTH DAKOTA

Water Users  
Association

Michael A. Dwyer  
Executive Vice President  
701-223-4615  
701-223-4645 (Fax)

PO Box 2254 • Bismarck, ND 58502-2254

March 16, 2011

Dear Chairman Nething and Members of the Senate Judiciary Committee:

I am writing on behalf of the North Dakota Water Users Association in support of HB 1142.

On December 9, 2010, the following resolution was adopted by the North Dakota Water Users Association, North Dakota Water Resource Districts Association and North Dakota Irrigation Association regarding legislation related to the liability of tourism professionals:

*"We support legislation intended to limit the liability of tourism professionals for injuries that occur through no fault of the tourism professionals, on land and water activities in North Dakota."*

HB 1142 is an important step in promoting the expansion of the tourism industry on both the lands and waters of North Dakota. Thank you for your consideration.

Sincerely,

*Kent Vesterso*

Kent Vesterso  
President



72 EAST MUSEUM DRIVE  
DICKINSON, NORTH DAKOTA 58601  
701.483.4988 | 800.279.7391  
F: 701.483.9261  
E: INFO@VISITDICKINSON.COM

www.visitdickinson.com

Testimony of Terri Thiel, Executive Director, Dickinson Convention & Visitors Bureau  
House Bill: 1142  
March 16, 2011

Chairman Nething and members of the Senate Judiciary Committee, my name is Terri Thiel and I am the Executive Director of the Dickinson Convention & Visitors Bureau. I am sorry that I am not able to attend today.

The Dickinson Convention & Visitors Bureau is in support of House Bill 1142, relating to agritourism liability with the reinstatement of:

**Notice regarding liability – Requirements**  
**Participation in agritourism – Assumption in risk**

Agritourism offers a variety of activities that visitors can experience. From sharing farm education, which can include how agriculture products are grown and delivered to the table, to providing a western ranch vacation complete with fulfilling the dream of being a cowboy or cowgirl for a day, visitors are eager to experience the life that is no longer available to them in today's urban centers.

Numerous agritourism, ranch vacations that have been in the visitor business have either gone out of business, or have reduced what they have to offer due to the issues of insurance liability as it stands today. Most of them that have stayed in business merely offer a cabin setting, and information on what there is to do and see in the area. Without the ability to provide a "real experience", people are looking elsewhere to ranch vacations in other states that do have the ability, and our local ranch vacations lose business and revenue.

Through the ND Tourism Division, I have made an acquaintance with Dr. Margit Brinke - Dr. Peter Kränzle, German writers from Augsburg, who have been to North Dakota, producing stories that are invaluable to our industry. We do keep in regular contact. The German Quarter Horse Journal and the publication AMERICA Journal (western lifestyle) that they contract with promote and write about the ranch life in North Dakota. The common question I receive from my international contacts is, do you have more product? Ranch vacations.

The information that I hear at conferences and in my office is the obstacle of insurance. Some businesses have left, have decided not to start up, or have reduced what they have to offer.

Please support House Bill 1142 with the reinstatement of the original intention of the bill, Notice of liability – Requirements and also Participation in agritourism – Assumption in risk.

Sincerely,

Terri Thiel  
Executive Director

Explore  
the WESTERN EDGE

# North Dakota

## Tourism Alliance Partnership

P.O. Box 2599  
Bismarck, ND 58502  
(701) 355-4458  
FAX (701) 223-4645

### 2010/2011 MEMBERS

Basin Electric  
Power Cooperative

Bismarck-Mandan CVB

Buffalo City Tourism

Days Inn - Grand Dakota Lodge

Destination Marketing  
Association of North Dakota

Devils Lake CVB

Dickinson CVB

Fargo-Moorhead CVB

Fort Abraham  
Lincoln Foundation

Grand Forks CVB

International Peace Garden

Lewis & Clark Fort  
Mandan Foundation

Minot CVB

Municipal Airport Authority  
of the City of Fargo

ND Tourism Division (ex-officio)

Newman Outdoor Advertising

Norsk Hostfest Association

Odney Communications Group

Select Inn of Bismarck

Spirit Lake Casino and Resort

State Historical Society of  
North Dakota Foundation

Theodore Roosevelt  
Medora Foundation

Three Affiliated Tribes  
Tourism Dept.

Standing Rock  
Band of Chippewa Indians

Williston CVB

Woodland Resort, Inc.

### Testimony of Dana Bohn Tourism Alliance Partnership Executive Director *HB 1142*

Chairman Nething and members of the Senate Judiciary Committee, my name is Dana Bohn. As Executive Director of the Tourism Alliance Partnership (TAP), I am here today to ask you to support the proposed amendments to HB 1142. TAP is a coalition of tourism-related stakeholders, including CVB's, state attractions, businesses and other interested organizations in this viable and growing sector of North Dakota's economy.

The tourism industry in North Dakota has seen tremendous growth in recent years and is currently a \$4.36 billion industry, employing more than 31,000 people annually and accounting for \$760 million in total wages. Increased interest in agritourism, rural tourism and outdoor recreation continue to provide an outstanding opportunity for the expansion of this industry in North Dakota. However, taking advantage of this opportunity begins with ensuring our state's laws support the expansion of these ventures and protect those working to grow this sector of the tourism industry.

Each day in North Dakota as business owners carry out their day-to-day operations they risk being sued by customers or visitors for injuries that occur on the business premises or as a result of the business operation. For owners of agritourism businesses, this risk occurs at an increased level.

Agritourism involves hosting curious visitors, many of which are new to a farm or ranch setting and unfamiliar with the equipment and facilities associated with a working agricultural or ranch operation. This unfamiliarity with uneven terrain, animals and the operation of large equipment substantially increases the risk of injury and lawsuits. HB 1142 was originally intended to limit the liability of agritourism professionals for injuries that result from those conditions that are considered beyond

the control of the agritourism professional. Without the reinstatement of these two sections of the bill, HB 1142 fails to provide any additional protection or cost savings to agritourism businesses. The proposed amendments will add that protection back in and further define the responsibility of the agritourism activity provider.

The language related to the notice regarding liability and the assumption of risk will not take the place of liability insurance, nor will it prevent suit from being filed in the unfortunate event of an injury at an agritourism operation; but it does provide a more favorable business climate for insurance companies to offer liability coverage for these types of operations.

North Dakota leads the nation in the production of 12 crops, however, according to the latest USDA census, the state ranks 32<sup>nd</sup> in the number of agritourism businesses. Often, visitors expect agritourism operations in rural states such as North Dakota, but potential operators are discouraged by the lack of affordable liability insurance. Supporting legislation regarding liability and affordable insurance issues for recreational and nature-based tourism businesses has been on TAP's legislative agenda for many years and we believe this bill could provide the means to begin to expand agritourism in North Dakota and further build the state's tourism industry.

We strongly encourage you support the proposed amendments related to the notice regarding liability and the assumption of risk in HB 1142 and help continue to grow and strengthen North Dakota's tourism industry. Thank you for your consideration and I would be happy to answer any questions.