



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Assembly Bill 746

**Assembly Substitute
Amendment 2**

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2013 Assembly Bill 746 exempts an agricultural tourism provider from liability for the death of or injury to a participant in an agricultural tourism activity if the death or injury occurs as a result of a risk inherent in the agricultural tourism activity and the agricultural tourism provider posts and maintains, in a clearly visible location at the entrance to the property or at the location of each agricultural tourism activity, a sign that contains a notice concerning the risk inherent in the agricultural tourism activity.

The bill withholds this exemption from civil liability from an agricultural tourism provider if any of the following circumstances apply: (1) the agricultural tourism provider fails to post a sign warning of a dangerous, but inconspicuous, condition known to the provider on the property, the agricultural tourism provider owns or is in lawful control of the property, and the death or injury is caused by the dangerous inconspicuous condition; (2) the agricultural tourism provider acts with willful or wanton disregard for the safety of the participant; or (3) the agricultural tourism provider intentionally causes the participant's injury or death.

The bill defines "agricultural tourism provider" to mean a person who operates, provides, or demonstrates an agricultural tourism activity.

The bill defines "agricultural tourism activity" to mean an educational or recreational activity that takes place on a farm, ranch, grove, or other place where agricultural, horticultural, or silvicultural crops are grown or farm animals or farmed fish are raised, and that allows members of the general public, whether or not for a fee, to tour, explore, observe, learn about, participate in, or be entertained by an aspect of agricultural production, harvesting, or husbandry that occurs on the farm, ranch, grove, or other place.

The bill defines “risk inherent in an agricultural tourism activity” as a danger or condition that is an integral part of an agricultural tourism activity, including the surface or subsurface conditions of the land and the natural condition of vegetation and water on the property; the unpredictable behavior of wild, domestic, or farm animals on the property; the ordinary dangers of structures or equipment ordinarily used where agricultural, horticultural, or silvicultural crops are grown or farm animals or farmed fish are raised; and the possibility that a participant in an agricultural tourism activity may act in a negligent manner that may contribute to the injury to that participant or another participant.

Assembly Substitute Amendment 2 makes all of the following changes to the bill:

- It requires that a sign be posted at each entry to the property or at the location of the activity for the liability exemption to apply.
- It eliminates the exception to the liability protection provided under the bill that applies if the agricultural tourism provider fails to post a sign warning of a dangerous, but inconspicuous, condition known to the provider on the property, the agricultural tourism provider owns or is in lawful control of the property, and the death or injury is caused by the dangerous inconspicuous condition.
- It provides that agricultural tourism activities are recreational activities under the recreational immunity laws. For purposes of the recreational immunity laws, the substitute amendment defines agricultural tourism activities similar to the definition described above, except that the activity need not be made available to members of the general public and the definition is silent on whether a fee may be charged for such an activity. The substitute amendment also specifies that payments made to purchase products or goods offered for sale on the property do not count toward the general \$2,000 cap on payments received by the activity provider that is a condition under the recreational immunity law.
- It defines “willful or wanton disregard” under the second exception to the general liability waiver under the bill described above to mean “conduct committed with an intentional or reckless disregard for the safety of others, such as by failing to exercise ordinary care to prevent a known danger or to discover a danger.”
- It specifies that the second and third exceptions to the general liability waiver under the bill described above must be proved by clear and convincing evidence.

Bill History

On February 20, 2014, Assembly Substitute Amendment 2 was offered by Representatives Tranel and Nerison. On the same day, the Assembly adopted the substitute amendment by a voice vote and passed Assembly Bill 746, as amended, by a vote of Ayes, 85; Noes, 9.

LAK:ksm