



State of Wisconsin
2013 - 2014 LEGISLATURE



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**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO ASSEMBLY BILL 746**

February 20, 2014 – Offered by Representatives NERISON and TRANEL.

1 **AN ACT** *to renumber* 895.52 (1) (a); *to renumber and amend* 895.525 (2); *to*
2 *amend* 895.52 (1) (g); and *to create* 895.52 (1) (ag), 895.52 (6) (a) 7., 895.524
3 and 895.525 (2) (a) of the statutes; **relating to:** limits on liability for persons
4 offering agricultural tourism activities.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 **SECTION 1.** 895.52 (1) (a) of the statutes is renumbered 895.52 (1) (ar).

6 **SECTION 2.** 895.52 (1) (ag) of the statutes is created to read:

7 895.52 (1) (ag) “Agricultural tourism activity” means an educational or
8 recreational activity that takes place on a farm, ranch, grove, or other place where
9 agricultural, horticultural, or silvicultural crops are grown or farm animals or
10 farmed fish are raised, and that allows visitors to tour, explore, observe, learn about,
11 participate in, or be entertained by an aspect of agricultural production, harvesting,
12 or husbandry that occurs on the farm, ranch, grove, or other place.

1 **SECTION 3.** 895.52 (1) (g) of the statutes, as affected by 2013 Wisconsin Act 20,
2 is amended to read:

3 895.52 (1) (g) “Recreational activity” means any outdoor activity undertaken
4 for the purpose of exercise, relaxation or pleasure, including practice or instruction
5 in any such activity. “Recreational activity” includes hunting, fishing, trapping,
6 camping, picnicking, exploring caves, nature study, bicycling, horseback riding,
7 bird-watching, motorcycling, operating an all-terrain vehicle or utility terrain
8 vehicle, operating a vehicle, as defined in s. 340.01 (74), on a road designated under
9 s. 23.115, ballooning, hang gliding, hiking, tobogganing, sledding, sleigh riding,
10 snowmobiling, skiing, skating, water sports, sight-seeing, rock-climbing, cutting or
11 removing wood, climbing observation towers, animal training, harvesting the
12 products of nature, participating in an agricultural tourism activity, sport shooting
13 and any other outdoor sport, game or educational activity. “Recreational activity”
14 does not include any organized team sport activity sponsored by the owner of the
15 property on which the activity takes place.

16 **SECTION 4.** 895.52 (6) (a) 7. of the statutes is created to read:

17 895.52 (6) (a) 7. A payment made to purchase products or goods offered for sale
18 on the property.

19 **SECTION 5.** 895.524 of the statutes is created to read:

20 **895.524 Participation in an agricultural tourism activity; limitations**
21 **on civil liability, assumption of risk. (1) DEFINITIONS.** In this section:

22 (a) “Agricultural tourism activity” means an educational or recreational
23 activity that takes place on a farm, ranch, grove, or other place where agricultural,
24 horticultural, or silvicultural crops are grown or farm animals or farmed fish are
25 raised, and that allows members of the general public, whether or not for a fee, to

1 tour, explore, observe, learn about, participate in, or be entertained by an aspect of
2 agricultural production, harvesting, or husbandry that occurs on the farm, ranch,
3 grove, or other place.

4 (b) "Agricultural tourism provider" means a person who operates, provides, or
5 demonstrates an agricultural tourism activity.

6 (c) "Participant" means an individual, other than an agricultural tourism
7 provider, who observes or participates in an agricultural tourism activity.

8 (d) "Property" means the real property where an agricultural tourism activity
9 takes place and the buildings, structures, and improvements on that real property.

10 (e) "Risk inherent in an agricultural tourism activity" means a danger or
11 condition that is an integral part of an agricultural tourism activity, including all of
12 the following:

13 1. The surface and subsurface conditions of land and the natural condition of
14 vegetation and water on the property.

15 2. The unpredictable behavior of wild, domestic, or farm animals on the
16 property.

17 3. The ordinary dangers of structures or equipment ordinarily used where
18 agricultural, horticultural, or silvicultural crops are grown or farm animals or
19 farmed fish are raised.

20 4. The possibility that a participant in an agricultural tourism activity may act
21 in a negligent manner, including by failing to follow instructions given by the
22 agricultural tourism operator or by failing to exercise reasonable caution while
23 engaging in the agricultural tourism activity, that may contribute to the injury to
24 that participant or to another participant.

1 **(2) IMMUNITY FROM LIABILITY.** (a) Subject to par. (b), an agricultural tourism
2 provider is immune from civil liability for injury to or the death of an individual who
3 is participating in an agricultural tourism activity on property owned, leased, or
4 managed by the agricultural tourism provider if all of the following apply:

5 1. The participant is injured or killed as a result of a risk inherent in an
6 agricultural tourism activity.

7 2. The agricultural tourism provider posts and maintains, in a clearly visible
8 location at each entrance to the property where the agricultural tourism activity
9 takes place or at the location of each agricultural tourism activity, a sign that
10 contains the following notice in black lettering, each letter a minimum of one inch
11 in height, on a white background: "NOTICE: A person who observes or participates in
12 an agricultural tourism activity on this property assumes the risks inherent in the
13 agricultural tourism activity. Risks inherent in the agricultural tourism activity
14 may include conditions on the land, the unpredictable behavior of farm animals, the
15 ordinary dangers associated with equipment used in farming operations, and the
16 potential that a participant in the agricultural tourism activity may act in a
17 negligent way that may contribute to injury or death. The agricultural tourism
18 provider is not liable for the injury or death of a person involved in an agricultural
19 tourism activity resulting from those inherent risks."

20 (b) 1. Subject to subd. 2., an agricultural tourism provider is not immune from
21 civil liability for injury to or the death of a participant if any of the following applies:

22 a. The agricultural tourism provider acts with a willful or wanton disregard for
23 the safety of the participant. In this subd. 1. a., "willful or wanton disregard" means
24 conduct committed with an intentional or reckless disregard for the safety of others,

1 such as by failing to exercise ordinary care to prevent a known danger or to discover
2 a danger.

3 b. The agricultural tourism provider intentionally causes the participant's
4 injury or death.

5 2. Any person who asserts that the acts or omissions of an agricultural tourism
6 provider satisfy the elements under subd. 1. a. or b. has the burden of proving that
7 assertion by clear and convincing evidence.

8 **(3) APPRECIATION OF CONDITIONS AND RISK OF PARTICIPATION IN AN AGRICULTURAL**
9 **TOURISM ACTIVITY.** A participant in an agricultural tourism activity engaged in on
10 property owned or leased by an agricultural tourism provider who offers facilities to
11 the general public for participation in agricultural tourism activities accepts the
12 risks inherent in the agricultural tourism activity of which the ordinary prudent
13 person is or should be aware.

14 **(4) EFFECT ON RELATED PROVISION.** Nothing in this section affects the limitation
15 of a property owner's liability under s. 895.52.

16 **SECTION 6.** 895.525 (2) of the statutes is renumbered 895.525 (2) (intro.) and
17 amended to read:

18 895.525 **(2) DEFINITION DEFINITIONS.** (intro.) In this section, "recreational;

19 **(b) "Recreational activity"** means any activity undertaken for the purpose of
20 exercise, relaxation or pleasure, including practice or instruction in any such
21 activity. "Recreational activity" does not include participating in a snow sport at a
22 ski area, as those terms are defined in s. 167.33, but includes hunting, fishing,
23 trapping, camping, bowling, billiards, picnicking, exploring caves, nature study,
24 dancing, bicycling, horseback riding, horseshoe-pitching, bird-watching,
25 motorcycling, operating an all-terrain vehicle or utility terrain vehicle, ballooning,

1 curling, throwing darts, hang gliding, hiking, sleigh riding, snowmobiling, skating,
2 participation in water sports, weight and fitness training, sight-seeing,
3 rock-climbing, cutting or removing wood, climbing observation towers, animal
4 training, harvesting the products of nature, participating in an agricultural tourism
5 activity, sport shooting, and participating in a snow sport outside a ski area, as those
6 terms are defined in s. 167.33, and any other sport, game or educational activity.

7 **SECTION 7.** 895.525 (2) (a) of the statutes is created to read:

8 895.525 (2) (a) “Agricultural tourism activity” means an educational or
9 recreational activity that takes place on a farm, ranch, grove, or other place where
10 agricultural, horticultural, or silvicultural crops are grown or farm animals or
11 farmed fish are raised, and that allows visitors to tour, explore, observe, learn about,
12 participate in, or be entertained by an aspect of agricultural production, harvesting,
13 or husbandry that occurs on the farm, ranch, grove, or other place.

14 **SECTION 8. Initial applicability.**

15 (1) (a) In this subsection:

16 1. “Owner” has the meaning given in section 895.52 (1) (d) of the statutes.

17 2. “Property” has the meaning given in section 895.52 (1) (f) of the statutes.

18 3. “Recreational activity” has the meaning given in section 895.52 (1) (g) of the
19 statutes, as affected by this act.

20 (b) The treatment of section 895.52 (1) (a), (ag), and (g) and (6) (a) 7. of the
21 statutes first applies to the death of, any injury to, or any death or injury caused by,
22 a person engaging in a recreational activity on the owner’s property on the effective
23 date of this subsection.

24 (2) The treatment of section 895.524 of the statutes first applies to an injury
25 or death that occurs on the effective date of this subsection.

