2013 DRAFTING REQUEST

Bill

Received:	**9/27/2013**	Received By:	**tkuczens**
Wanted:	**As time permits**	Same as LRB:	
For:	**Lee Nerison (608) 266-3534**	By/Representing:	**Sandra Smith-Loomans**
May Contact:		Drafter:	**tkuczens**
Subject:	**Courts - immunity liability**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Nerison@legis.wisconsin.gov**
Carbon copy (CC) to: **tracy.kuczenski@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Liability protections for landowners who provide agritourism opportunities

---

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	tkuczens 10/31/2013			_____ _____			
/P1	tkuczens 2/5/2014	evinz 2/5/2014	rschluet 11/5/2013	_____ _____	sbasford 11/5/2013		
/1			jmurphy 2/5/2014	_____ _____	srose 2/5/2014	mbarman 2/6/2014	

FE Sent For:

Not Needed

<END>

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See attached

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/?	tkuczens 10/31/2013			_____ _____			
/P1		evinz 11/5/2013	rschluet 11/5/2013	_____ _____	sbasford 11/5/2013		
FE Sent For:		4 eev 2/5/14	4 eev 2/5/14	2/5			

<END>

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Pre Topic:

No specific pre topic given

Topic:

Liability protections for landowners who provide agritourism opportunities

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Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	tkuczens	/1 eev 11/1/13	/1 eev 11/5/13	11/13 jm			

FE Sent For:

<END>

Kuczenski, Tracy

From: Smith-Loomans, Sandra
Sent: Wednesday, September 25, 2013 4:01 PM
To: Kuczenski, Tracy
Cc: Louis, Stephanie
Subject: RE: Drafting request from Rep. Tranel re: Farm Tours

Hi Tracy,

Stephanie in Rep. Tranel's office says that 10:30 in Rep. Nerison's office (310 North) will work. How does that sound to you?

Sandra

From: Kuczenski, Tracy
Sent: Wednesday, September 25, 2013 3:06 PM
To: Smith-Loomans, Sandra
Cc: Louis, Stephanie
Subject: RE: Drafting request from Rep. Tranel re: Farm Tours

Hi Sandra-

I would be happy to meet with you. I am available at any time tomorrow. Let me know what time might work best.

Tracy

Tracy K. Kuczenski
Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
tracy.kuczenski@legis.wisconsin.gov
(608) 266-9867

From: Smith-Loomans, Sandra
Sent: Wednesday, September 25, 2013 3:02 PM
To: Kuczenski, Tracy
Cc: Louis, Stephanie
Subject: RE: Drafting request from Rep. Tranel re: Farm Tours

Hi Tracy,

I know this is short notice, but are you available to meet sometime tomorrow on this bill draft? Early afternoon is best. The meeting would be with our office and Rep. Tranel's office, one or both Representatives may attend.

We are looking to draft something similar to the Arkansas and Idaho agritourism liability laws (see attached).

Thanks,

Sandra Smith-Loomans
Clerk, Assembly Committee on Agriculture
Office of Representative Lee Nerison
96th Assembly District
P.O. Box 8953
Madison, WI 53708-8953

Phone: (608) 266-3534
Toll-free: (888) 534-0096

From: Kuczenski, Tracy
Sent: Tuesday, September 10, 2013 9:00 AM
To: Louis, Stephanie
Subject: RE: Drafting request from Rep. Tranel re: Farm Tours

Hi Stephanie –

I would be happy to prepare a draft that accomplishes Rep. Tranel's objectives. Rather than attempt to incorporate these changes into and thereby change the scope of the recreational immunity statute, however, perhaps it would make more sense to create a separate statutory provision uniquely tailored to address farmers who offer recreational activities on their property. This new statutory section would incorporate some of the provisions under s. 895.52 but would create a new definition for recreational activities that includes activities held in farm buildings.

If this approach sounds like something Rep. Tranel would like to explore, I will need the following information:
1. A description of the activities to be covered under the statute (for purposes of defining "recreational activities" both indoors and outdoors).
2. Clarification that the level of immunity would mirror immunity provided in other recreational use statutes (like s. 895.52)

It would be helpful to see what other states are doing, so I would appreciate receiving copies of other statutes.

Thank you,
Tracy

Tracy K. Kuczenski
Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
tracy.kuczenski@legis.wisconsin.gov
(608) 266-9867

From: Louis, Stephanie
Sent: Monday, September 09, 2013 11:34 AM
To: Kuczenski, Tracy
Subject: Drafting request from Rep. Tranel re: Farm Tours

Tracy,

I've been doing some research in the Farm Tour laws (Wisconsin statute section 895.52) from other states and Rep. Tranel is interested in changing the statute to reflect stronger protections for farmers.

I'm looking to incorporate signage, possibly optional, for farmers to post stating they are not liable for injuries resulting from participating in recreational activities, unless of course there is a malicious act of the landowner. Further, I'm not sure if it could be incorporated, but adding something about contributory negligence of the participants in recreational activities.

Also, I can't remember if I talked to you earlier this year about liability of recreational activities inside buildings, but as I understand 895.52 doesn't cover anything inside say a barn. Is there anything we can do to have recreational activities included in barns or other agri-business buildings?

I can get copies of language from other states if you would like. Please let me know if I can answer any questions.

Also, I'm working with Sandra in Rep. Nerison's office so his entire office can have access to the draft.

Thank you,

Stephanie Louis

Office of Rep. Tranel
slouis@legis.wi.gov
608-266-1170

Sept. 26, 2013

Rep. Nerison

*Scope of agritourism – broad
- agriculture / farming opasture walks (cattle are there)
- hayrides
- pumpkin / U-pick
- educational tour

→ part of activity of farming (inherent dangers) – ex/horses, un-predictable animals, surroundings

pattern on Idaho
~~require~~ permit to post notice / warning but not require
→ duty to warn / posting if want immunity but otherwise optional.
1 inch – clearly visible at entrance to patch / activity.
*Agritourism Association (operator discretion)

land use value? definition of "agricultural use" for purpose of property taxation & income
assessment – agricultural purpose, not business.
per Joe Kreye – no impact

167.33(3), (4)

cf. 2011 SB 388

State of Arkansas
88th General Assembly
Regular Session, 2011

As Engrossed: H3/2/11 H3/10/11

A Bill

HOUSE BILL 1424

By: Representatives Westerman, Linck
By: Senator Fletcher

For An Act To Be Entitled

AN ACT TO ESTABLISH LIABILITY PROTECTION FOR AGRITOURISM; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH LIABILITY PROTECTION FOR AGRITOURISM.

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

SECTION 1. Arkansas Code Title 2, is amended to add an additional chapter to read as follows:

Chapter 11 – Agritourism Act

2-11-101. Title.

This chapter shall be known and may be cited as the "Agritourism Act".

2-11-102. Legislative intent – Construction -- Purpose.

(a) It is the intent of this chapter to:

(1) Promote rural tourism and rural economic development by encouraging owners or operators of farms, ranches, and other rural land or attractions, including historic, cultural, and natural attractions, to invite members of the public to view, observe, and participate in the operations and attractions for educational, entertainment, or recreational purposes; and

(2) Encourage agritourism activities by limiting civil liability of those engaged in agritourism or providing the activities of agritourism.

(b) This chapter shall be liberally construed to carry out the purposes described in subsection (a) of this section.

1
2 2-11-103. Definitions.
3 As used in this chapter:
4 (1) "Agribusiness operation" means an agricultural,
5 horticultural, viticultural, forestry, dairy, livestock, poultry, bee, or any
6 other farm, ranch, plantation, or range business operation;
7 (2)(A) "Agritourism activity" means an interactive or passive
8 activity carried out with or without payment to an agritourism activity
9 operator on a farm, ranch, or agribusiness operation related to agriculture,
10 food production, historic traditions, or nature-watching conducted by an
11 agritourism activity operator for the education, entertainment, or recreation
12 of participants.
13 (B) "Agritorism activity" includes without limitation:
14 (i) A farming or ranching activity;
15 (ii) The viewing of historic, cultural, or natural
16 attractions;
17 (iii) A harvest-your-own activity;
18 (iv) Nature-watching; and
19 (v) An activity involving an animal exhibition at an
20 agricultural fair.
21 (C) "Agritourism activity" does not include:
22 (i) A road side fruit and vegetable stand; or
23 (ii) An operation exclusively devoted to the sale of
24 merchandise or food at retail;
25 (3) "Agritourism activity operator" means an individual or
26 entity that provides the facilities and equipment necessary to participate in
27 an agritourism activity;
28 (4) "Inherent risk" means dangers or conditions that are an
29 integral part of an agritourism activity including without limitation:
30 (A) The propensity of a wild or domestic animal to behave
31 in ways that may result in injury, harm, or death to persons on or around the
32 wild or domestic animal;
33 (B) Hazards such as surface and subsurface conditions;
34 (C) Natural conditions of land, vegetation, and waters;
35 (D) Ordinary dangers of structures or equipment used in
36 farming or ranching operations; and

1 (E) The potential of a participant to act in a negligent
2 way that may contribute to injury to the participant or others, whether
3 failing to follow safety procedures or failing to act with reasonable caution
4 while engaging in the agritourism activity; and
5 (5) "Participant" is defined as a person, other than the
6 agritourism activity operator, who engages in an agritourism activity.
7
8 2-11-104. Assumption of risk by participant.
9 Except as provided in § 2-11-105, a participant assumes the inherent
10 risk of an agritourism activity by engaging in the agritourism activity.
11
12 2-11-105. Liability of agritourism activity operator.
13 This chapter shall not prevent or limit the liability of an agritourism
14 activity operator if the agritourism activity operator or an agent of the
15 agritourism activity operator:
16 *(1) Commits an act or omission of gross negligence concerning*
17 *the* safety of a participant that proximately causes injury, damage, or death
18 to the participant;
19 (2)(A) Has actual knowledge of a dangerous condition on the
20 land, facilities, or equipment used in the activity or the dangerous
21 propensity of a particular animal used in the activity that proximately
22 causes injury, damage, or death to the participant and does not make the
23 danger known to the participant that proximately causes injury, damage, or
24 death to the participant;
25 *(3)* Intentionally injures a participant; or
26 *(4)* Commits other acts, errors, or omissions that constitute
27 willful or wanton misconduct, gross negligence, or criminal conduct that
28 proximately causes injury, damage, or death.
29
30 2-11-106. Limitation on liability.
31 (a) An agritourism activity operator or participant is not liable for
32 damages arising from the personal injury or death of a participant if:
33 (1) The injury or death results from an inherent risk; and
34 (2) The warning contained in § 2-11-107 is posted.
35 (b) The limitation of liability provided by this section is in
36 addition to any other limitation of liability provided by law.

2-11-107. Warning required.

(a) At each agritourism activity, the agritourism activity operator shall post and maintain signage in a clearly visible location at or near the *main entrance to the agritourism activity and in black letters at least one (1") in height* containing the following warning:

"WARNING – Under Arkansas law, an agritourism activity operator is not liable for the injury or death of a participant in an agritourism activity resulting from the inherent risk of agritourism activities. Inherent risks include without limitation the risk of animals, weather, land conditions, and the potential for you as a participant to act in a negligent way that may contribute to your own injury or death. You are assuming the risk of participating in this agritourism activity."

(b) The agritourism activity operator shall include, in clearly visible print, the warning contained in subsection (a) of this section in a written contract between the agritourism activity operator and each *participant.*

(c) At each agritourism activity, the agritourism operator shall post and maintain signage of a specific or known hazard in the particular area on or surrounding the agritourism activity.

/s/Westerman

APPROVED: 04/01/2011

LEGISLATURE OF THE STATE OF IDAHO

Sixty-second Legislature First Regular Session - 2013

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 113

BY AGRICULTURAL AFFAIRS COMMITTEE

AN ACT

RELATING TO ACTIONS IN PARTICULAR CASES; AMENDING TITLE 6, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 30, TITLE 6, IDAHO CODE, TO PROVIDE A SHORT TITLE REGARDING THE IDAHO AGRITOURISM PROMOTION ACT, TO PROVIDE A PURPOSE, TO DEFINE TERMS, TO LIMIT LIABILITY, TO PROHIBIT CERTAIN ACTION, TO REQUIRE CERTAIN PLEADING, TO PROVIDE EXCEPTIONS TO THE PREVENTION OR LIMITATION OF LIABILITY, TO PROVIDE THAT LIMITATION ON LEGAL LIABILITY IS IN ADDITION TO ANY OTHER LIMITATIONS ON LEGAL LIABILITY OTHERWISE SPECIFIED BY LAW, TO PROVIDE WARNING NOTICE REQUIREMENTS, TO SPECIFY THE FORM OF WARNING NOTICES, TO PROVIDE THAT FAILURE TO COMPLY WITH WARNING NOTICE REQUIREMENTS WILL PREVENT THE INVOCATION OF CERTAIN PRIVILEGES OF IMMUNITY AND TO PROVIDE THAT THE USE OF A FARM OR RANCH FOR AGRITOURISM ACTIVITIES SHALL NOT AFFECT THE ASSESSMENT OF THE PROPERTY AS LAND ACTIVELY DEVOTED TO AGRICULTURE AS PROVIDED BY SPECIFIED LAW.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 6, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 30, Title 6, Idaho Code, and to read as follows:

CHAPTER 30

IDAHO AGRITOURISM PROMOTION ACT

6-3001. SHORT TITLE. This act shall be known as the "Idaho Agritourism Promotion Act."

6-3002. PURPOSE. The legislature finds that agriculture plays a substantial role in the economy, culture and history of Idaho. As an increasing number of Idahoans are removed from day-to-day agricultural experiences, agritourism provides a valuable opportunity for the general public to interact with, experience and understand agriculture. Inherent risks exist on farms and ranches, the elimination of which would diminish the agritourism experience. Uncertainty of potential liability associated with inherent risks has a negative impact on the establishment and success of agritourism operations.

6-3003. DEFINITIONS. As used in this chapter, the term:

(1) "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, but not limited to, farming, ranching, historic, cultural, on-site educational programs, recreational farming programs that may include on-site hospitality services, guided and self-guided tours, bed and breakfast accommodations, petting zoos, farm festivals, corn mazes, harvest-your-own

operations, hayrides, barn parties, horseback riding, fee fishing and camping. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

(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 or conditions that are an integral part of an agritourism activity including certain hazards, including surface and subsurface conditions, natural conditions of land, vegetation, 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" means any person, other than the agritourism professional, who engages in an agritourism activity.

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

6-3004. LIABILITY. (1) Except as provided in subsection (2) 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 section 6-3005, Idaho Code, is posted as required and, except as provided in subsection (2) 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 from any of the inherent risks of agritourism activities. In any action for damages against an agritourism professional for agritourism activities, the agritourism professional must plead the affirmative defense of assumption of the risk of agritourism activity by the participant.

(2) Nothing in subsection (1) of this section prevents or limits the liability of an agritourism professional if the agritourism professional does any one (1) or more of the following:

(a) 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;

(b) 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) 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.

6-3005. WARNING REQUIRED. (1) Every agritourism professional must post and maintain signs that contain the warning notice specified in subsection (2) 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 (1) 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 (2) of this section.

(2) The signs and contracts described in subsection (1) of this section must contain the following notice of warning:

WARNING

Under Idaho 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.

(3) 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 the provisions of this chapter.

6-3006. TAXATION STATUS. The use of a farm or ranch to conduct an agritourism activity shall not affect the assessment of the property as land actively devoted to agriculture as provided in section 63-604, Idaho Code.

DOR?

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB-3272/? P1
TKK: ... eev
RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA✓
xref N/A

10/31/13
soon

gen cat

AN ACT ...; **relating to:** limits on liability for persons offering agricultural tourism activities.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

SECTION 1. 895.524 of the statutes is created to read:

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

(a) "Agricultural tourism activity" means 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.

****NOTE: You provided me with a copy of Idaho House Bill 113 from Idaho's 2013 Legislative session to work with in crafting this bill. The definition for "agritourism activity" in Idaho's bill is significantly broader than the definition provided above. For example, Idaho's bill defines agritourism activity to include "rural activities" such as bed and breakfast accommodations, on–site hospitality services, barn parties, and camping. In this draft, the definition for agricultural tourism does not include any of those activities. Instead, the definition is more narrowly tailored to include only those activities that are directly related to the practice of agriculture. Are you comfortable with this definition?

Under Wisconsin law, bed and breakfast establishments, campgrounds, and places where food is served (such as a "barn party") must be permitted (have a permit) and are subject to minimum health and safety standards under chapter 254. For purposes of this draft, I assumed that it was not your intent that a person staying at a bed and breakfast, camping, or attending a "barn party" in connection with an agricultural tourism operation would assume the risk for staying at the B&B or camping or attending a barn party so long as a sign was posted warning that person of the risk of agricultural tourism activities. Correct? *

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

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

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

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

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

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

3. 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.

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

(2) IMMUNITY FROM LIABILITY. (a) Subject to par. (b), an agricultural tourism provider is immune from civil liability for injury to or the death of a participant resulting from risks inherent ~~to~~ in the agricultural tourism activities if all of the following apply:

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

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

injury or death of a person involved in an agricultural tourism activity resulting from those inherent risks."

****NOTE: Do you want to require the agricultural tourism provider to distribute a flyer that contains this same notice or a similar notice?

****NOTE: What if a participant in an agricultural tourism activity is required to sign a contract or waiver? Should any version of this notice be included in that contract or waiver?

(b) An agricultural tourism provider is not immune from civil liability for injury to or the death of a participant if any of the following apply:

1. The agricultural tourism provider fails to conspicuously post a sign warning of a dangerous inconspicuous condition known to him or her on the property; the agricultural tourism provider owns, leases, rents, or is otherwise in lawful control or possession of the property; and the death or injury is caused by the dangerous inconspicuous condition.

2. The agricultural tourism provider acts with a willful or wanton disregard for the safety of the participant.

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

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

****NOTE: Do you want to exempt agricultural tourism activities from the definition of "recreational activity" in s. 895.525? This would make the provisions of s. 895.525 inapplicable to agricultural tourism activities. If so, do you want to do either of the following:

1. Specify that negligent participation in an agricultural tourism activity is governed by the contributory negligence provisions under s. 895.045? See, for example, s. 895.525 (3), stats.

2. Explicitly provide for the responsibilities of participants in agricultural tourism activities? See s. 895.525 (4), stats.

****NOTE: Alternatively, do you want to explicitly specify that "recreational activities" includes "agricultural tourism activities" for purposes of identifying the responsibilities of participants and specifying that contributory negligence principles apply?

If the bill draft does not treat s. 895.525 at all, it is possible that some agricultural tourism activities would fall within the definition of recreational activity and some would not.

(B)

4

1 **(5)** EFFECT ON RELATED PROVISION. Nothing in this section affects the limitation

2 of a property owner's liability under s. 895.52.

3 **SECTION 2. Initial applicability.**

4 (1) This act first applies to actions filed on the effective date of this subsection.

5 **(END)**

Insert 5-3

INSERT 5-2

****NOTE: Under current law s. 895.52 (6), a private property owner that offers agricultural tourism activities that are also "recreational activities," as that term is defined in s. 895.52 (1) (g), owes a duty to keep his or her property safe, inspect the property, and give warning of an unsafe condition on the property if that property owner collects more than $2,000 in payment for the use of the property over the year in which an injury or death occurs. Is that consistent with your intent?

Kuczenski, Tracy

From: Hanus, Andrew
Sent: Tuesday, February 04, 2014 4:12 PM
To: Kuczenski, Tracy
Subject: RE: LRB-3272 - Ag Tourism Liability Draft

Thank you, Tracy. I really appreciate it.

Andrew Hanus
Office of Assembly Speaker Vos
211 West, State Capitol
Phone: (608) 266-9171

From: Kuczenski, Tracy
Sent: Tuesday, February 04, 2014 3:58 PM
To: Hanus, Andrew
Subject: RE: LRB-3272 - Ag Tourism Liability Draft

Hi Andrew -- I told Sandra I'd get it out to her tomorrow. That's about as rushed as I can get it right now. We are all in the same boat here.

Tracy

From: Hanus, Andrew
Sent: Tuesday, February 04, 2014 3:49 PM
To: Kuczenski, Tracy
Subject: LRB-3272 - Ag Tourism Liability Draft

Hi Tracy,

Could you please put a rush on the changes to LRB-3272 requested by Sandra in Rep. Nerison's office? Our office is hoping to get this bill on the floor by or on February 20th. I know you guys are swamped right now, but if you or anyone else could get it back to them with a quick turnaround, we'd really appreciate it!

Thanks,

Andrew

Andrew Hanus
Office of Assembly Speaker Vos
211 West, State Capitol
Phone: (608) 266-9171

Kuczenski, Tracy

From: Smith-Loomans, Sandra
Sent: Tuesday, February 04, 2014 2:54 PM
To: Kuczenski, Tracy
Subject: LRB 3272/P1: Liability protections for landowners who provide agritourism opportunities
Attachments: 20140204142404794.pdf

Hi Tracy,

In addition to removing your drafter's notes, attached is the one change that Rep. Nerison would like made on this p-draft: on page 3, line 17, please change "and" to "or".

Thanks,

Sandra Smith-Loomans
Clerk, Assembly Committee on Agriculture
Office of Representative Lee Nerison
(608) 266-3534

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB–3272/P1
TKK:eev:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT *to create* 895.524 of the statutes; **relating to:** limits on liability for persons offering agricultural tourism activities.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

SECTION 1. 895.524 of the statutes is created to read:

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

(a) "Agricultural tourism activity" means 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

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.

delete

****NOTE: You provided me with a copy of Idaho House Bill 113 from Idaho's 2013 legislative session to work with in crafting this bill. The definition for "agritourism activity" in Idaho's bill is significantly broader than the definition provided above. For example, Idaho's bill defines agritourism activity to include "rural activities" such as bed and breakfast accommodations, on–site hospitality services, barn parties, and camping. In this draft, the definition for agricultural tourism does not include any of those activities. Instead, the definition is more narrowly tailored to include only those activities that are directly related to the practice of agriculture. Are you comfortable with this definition?

Under Wisconsin law, bed and breakfast establishments, campgrounds, and places where food is served (such as a "barn party") must have a permit and are subject to minimum health and safety standards under chapter 254. For purposes of this draft, I assumed that it was not your intent that a person staying at a bed and breakfast, camping, or attending a "barn party" in connection with an agricultural tourism operation would assume the risk for staying at the B&B or camping or attending a barn party so long as a sign was posted warning that person of the risk of agricultural tourism activities. Correct?

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 agricultural tourism activity" means a danger or condition
11 that is an integral part of an agricultural tourism activity, including all of the
12 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.

3. 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.

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

(2) IMMUNITY FROM LIABILITY. (a) Subject to par. (b), an agricultural tourism provider is immune from civil liability for injury to or the death of a participant resulting from risks inherent in the agricultural tourism activities if all of the following apply:

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

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

1 injury or death of a person involved in an agricultural tourism activity resulting from
2 those inherent risks."

delete

****NOTE: Do you want to require the agricultural tourism provider to distribute a flyer that contains this same notice or a similar notice?

****NOTE: What if a participant in an agricultural tourism activity is required to sign a contract or waiver? Should any version of this notice be included in that contract or waiver?

3 (b) An agricultural tourism provider is not immune from civil liability for injury
4 to or the death of a participant if any of the following apply:
5 1. The agricultural tourism provider fails to conspicuously post a sign warning
6 of a dangerous inconspicuous condition known to him or her on the property; the
7 agricultural tourism provider owns, leases, rents, or is otherwise in lawful control
8 or possession of the property; and the death or injury is caused by the dangerous
9 inconspicuous condition.
10 2. The agricultural tourism provider acts with a willful or wanton disregard for
11 the safety of the participant.
12 3. The agricultural tourism provider intentionally causes the participant's
13 injury or death.
14 **(3)** APPRECIATION OF CONDITIONS AND RISK OF PARTICIPATION IN AN AGRICULTURAL
15 TOURISM ACTIVITY. A participant in an agricultural tourism activity engaged in on
16 property owned or leased by an agricultural tourism provider who offers facilities to
17 the general public for participation in agricultural tourism activities accepts the
18 risks inherent in the agricultural tourism activity of which the ordinary prudent
19 person is or should be aware.

delete

****NOTE: Do you want to exempt agricultural tourism activities from the definition of "recreational activity" in s. 895.525? This would make the provisions of s. 895.525 inapplicable to agricultural tourism activities. If so, do you want to do either of the following:

1. Specify that negligent participation in an agricultural tourism activity is governed by the contributory negligence provisions under s. 895.045? See s. 895.525 (3), stats.

2. Explicitly provide for the responsibilities of participants in agricultural tourism activities? See s. 895.525 (4), stats.

****NOTE: Alternatively, do you want to explicitly specify that "recreational activities" includes "agricultural tourism activities" for purposes of identifying the responsibilities of participants and specifying that contributory negligence principles apply?

If the bill draft does not treat s. 895.525 at all, it is possible that some agricultural tourism activities would fall within the definition of recreational activity and some would not.

delete

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

****NOTE: Under current law s. 895.52 (6), a private property owner that offers agricultural tourism activities that are also "recreational activities," as that term is defined in s. 895.52 (1) (g), owes a duty to keep his or her property safe, inspect the property, and give warning of an unsafe condition on the property if that property owner collects more than $2,000 in payment for the use of the property over the year in which an injury or death occurs. Is that consistent with your intent?

delete

3 **SECTION 2. Initial applicability.**

4 (1) This act first applies to actions filed on the effective date of this subsection.

5 (END)

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB–3272/~~P1~~ 1
TKK:eev:rs
RMNR
insert

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

in 2/5/14 Today (as soon as possible today per VOS' office)

regen

AN ACT ***to create*** 895.524 of the statutes; **relating to:** limits on liability for persons offering agricultural tourism activities.

Analysis by the Legislative Reference Bureau

Insert Analysis

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

SECTION 1. 895.524 of the statutes is created to read:

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

(a) "Agricultural tourism activity" means 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.

****NOTE: You provided me with a copy of Idaho House Bill 113 from Idaho's 2013 legislative session to work with in crafting this bill. The definition for "agritourism activity" in Idaho's bill is significantly broader than the definition provided above. For example, Idaho's bill defines agritourism activity to include "rural activities" such as bed and breakfast accommodations, on–site hospitality services, barn parties, and camping. In this draft, the definition for agricultural tourism does not include any of those activities. Instead, the definition is more narrowly tailored to include only those activities that are directly related to the practice of agriculture. Are you comfortable with this definition?

Under Wisconsin law, bed and breakfast establishments, campgrounds, and places where food is served (such as a "barn party") must have a permit and are subject to minimum health and safety standards under chapter 254. For purposes of this draft, I assumed that it was not your intent that a person staying at a bed and breakfast, camping, or attending a "barn party" in connection with an agricultural tourism operation would assume the risk for staying at the B&B or camping or attending a barn party so long as a sign was posted warning that person of the risk of agricultural tourism activities. Correct?

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

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

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

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

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

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

3. 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.

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

(2) IMMUNITY FROM LIABILITY. (a) Subject to par. (b), an agricultural tourism provider is immune from civil liability for injury to or the death of a participant resulting from risks inherent in the agricultural tourism activities if all of the following apply:

Insert 3-10

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

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

injury or death of a person involved in an agricultural tourism activity resulting from those inherent risks."

****NOTE: Do you want to require the agricultural tourism provider to distribute a flyer that contains this same notice or a similar notice?

****NOTE: What if a participant in an agricultural tourism activity is required to sign a contract or waiver? Should any version of this notice be included in that contract or waiver?

(b) An agricultural tourism provider is not immune from civil liability for injury to or the death of a participant if any of the following apply:

1. The agricultural tourism provider fails to conspicuously post a sign warning of a dangerous inconspicuous condition known to him or her on the property; the agricultural tourism provider owns, leases, rents, or is otherwise in lawful control or possession of the property; and the death or injury is caused by the dangerous inconspicuous condition.

2. The agricultural tourism provider acts with a willful or wanton disregard for the safety of the participant.

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

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

****NOTE: Do you want to exempt agricultural tourism activities from the definition of "recreational activity" in s. 895.525? This would make the provisions of s. 895.525 inapplicable to agricultural tourism activities. If so, do you want to do either of the following:

1. Specify that negligent participation in an agricultural tourism activity is governed by the contributory negligence provisions under s. 895.045? See s. 895.525 (3), stats.

2. Explicitly provide for the responsibilities of participants in agricultural tourism activities? See s. 895.525 (4), stats.

****NOTE: Alternatively, do you want to explicitly specify that "recreational activities" includes "agricultural tourism activities" for purposes of identifying the responsibilities of participants and specifying that contributory negligence principles apply?

If the bill draft does not treat s. 895.525 at all, it is possible that some agricultural tourism activities would fall within the definition of recreational activity and some would not.

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

****NOTE: Under current law s. 895.52 (6), a private property owner that offers agricultural tourism activities that are also "recreational activities," as that term is defined in s. 895.52 (1) (g), owes a duty to keep his or her property safe, inspect the property, and give warning of an unsafe condition on the property if that property owner collects more than $2,000 in payment for the use of the property over the year in which an injury or death occurs. Is that consistent with your intent?

SECTION 2. Initial applicability.

(1) This act first applies to actions filed on the effective date of this subsection.

(END)

INSERT ANALYSIS

This bill provides immunity from civil liability to an agricultural tourism provider for the death of or injury to a participant in an agricultural tourism activity under certain circumstances. 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 extends liability protection to the agricultural tourism provider if the participant's 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 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 cops 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.

The bill withholds immunity from civil liability to 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 provides intentionally causes the participant's injury or death.

INSERT 3–10

1 an individual who is participating in an agricultural tourism activity on

2 property owned, leased, or managed by the agricultural tourism provider

Barman, Mike

From: Smith-Loomans, Sandra
Sent: Thursday, February 06, 2014 2:19 PM
To: LRB.Legal
Subject: Draft Review: LRB -3272/1 Topic: Liability protections for landowners who provide agritourism opportunities

Please Jacket LRB -3272/1 for the ASSEMBLY.

Thanks!

Sandra Smith-Loomans
Clerk, Assembly Committee on Agriculture
Office of Representative Lee Nerison
(608) 266-3534