

2013 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB746)

Received: 2/19/2014 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
larry.konopacki@legis.wisconsin.gov
Rep.Tranel@legis.wisconsin.gov
Sandra.Smith-Loomans@legis.wisconsin.gov
Jeff.Curry@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Liability protections for landowners who provide agritourism opportunities

Instructions:

See attached (February 19 e-mail from Larry Konopacki)

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tkuczens 2/19/2014	jdye 2/20/2014		_____			
/1			rschluet 2/20/2014	_____	mbarman 2/20/2014	mbarman 2/20/2014	

FE Sent For:

<END>

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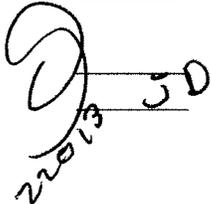
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Liability protections for landowners who provide agritourism opportunities ✓

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/?	tkuczens	1 2/20 jld	jd				

FE Sent For:

<END>

Kuczenski, Tracy

From: Konopacki, Larry
Sent: Wednesday, February 19, 2014 4:57 PM
To: Kuczenski, Tracy
Cc: Smith-Loomans, Sandra; Curry, Jeff; Rep.Tranel
Subject: AB 746 Amendment

Hi Tracy, would you please prepare a substitute amendment to AB 746 that makes the following changes to the bill? Please prepare it for Rep. Nerison and please ask them to copy Rep. Tranel and me when the draft is sent out.

- ✓• Incorporate the changes in Assembly Amendment 3.
- ✓• Incorporate the changes in Assembly Amendment 7 except replace “members of the general public” with “visitors” on page 1 line 8 and on page 3, line 15.
 - For purposes of proposed section 895.524 (2) (b) 2., define “willful or wanton disregard” 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.” (this definition is taken from the definition of “willful and wanton misconduct” in Black’s Law Dictionary, 7th ed.)
 - Provide that the evidentiary standard applicable to proposed section 895.524 (2) (b) 2. and 3. is that the proof must show, by clear and convincing evidence, that the provider satisfied the elements of the subdivision.

It appears that this may be the last amendment that you will have to draft for this bill, depending on how fast word spreads that there is a pretty broad consensus supporting this.

Thanks,

Larry

Larry A. Konopacki
Wisconsin Legislative Council
(608) 267-0683
larry.konopacki@legis.wisconsin.gov



State of Wisconsin
2013 - 2014 LEGISLATURE

50331/r



LRB-3272/1

TKK:eev:jm

+jld

ASSEMBLY SUBSTITUTE AMENDMENT

Keep inserts
RMNR

2013 ASSEMBLY BILL 746

to

2/19/14 ASAP 2/20/14

February 10, 2014 - Introduced by Representatives NERISON, TRANEL, BALLWEG, BERNIER, BORN, CZAJA, HULSEY, KLEEFISCH, T. LARSON, LOUDENBECK, MARKLEIN, MURPHY, NYGREN, A. OTT, PETRYK, PRIDEMORE, RIPP, STRACHOTA, TAUCHEN, THIESFELDT and WRIGHT, cosponsored by Senators MOULTON, HARSDORF and SCHULTZ. Referred to Committee on Agriculture.

4

Regen

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

6

Analysis by the Legislative Reference Bureau

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

ASSEMBLY BILL 746

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.

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 provider intentionally causes the participant's injury or death.

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

Insert
2-1

①

~~SECTION 895.524~~ 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.

(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.

ASSEMBLY BILL 746

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

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

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

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

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

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

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

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

24 2. The agricultural tourism provider posts and maintains, in a clearly visible
25 location at the entrance to the property where the agricultural tourism activity takes

each[✓]

ASSEMBLY BILL 746

SECTION 1

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

12 (b) ^{10 subject to subd 20 5} An agricultural tourism provider is not immune from civil liability for injury
 13 to or the death of a participant if any of the following [✓] apply: ^{e applies}

le 14 1. The agricultural tourism provider fails to conspicuously post a sign warning
 15 of a dangerous inconspicuous condition known to him or her on the property; the
 16 agricultural tourism provider owns, leases, rents, or is otherwise in lawful control
 17 or possession of the property; and the death or injury is caused by the dangerous
 18 inconspicuous condition.

19 ~~a~~ a (2) The agricultural tourism provider acts with a willful or wanton disregard for
 20 the safety of the participant. Insert 4-20 ✓

✓ 21 ~~b~~ b (3) The agricultural tourism provider intentionally causes the participant's
 22 injury or death.

Insert
4-23

23 (3) APPRECIATION OF CONDITIONS AND RISK OF PARTICIPATION IN AN AGRICULTURAL
 24 TOURISM ACTIVITY. A participant in an agricultural tourism activity engaged in on
 25 property owned or leased by an agricultural tourism provider who offers facilities to

ASSEMBLY BILL 746

1 the general public for participation in agricultural tourism activities accepts the
2 risks inherent in the agricultural tourism activity of which the ordinary prudent
3 person is or should be aware.

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

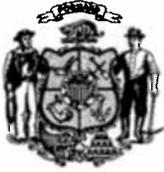
Insert
5-5

6 SECTION 2. Initial applicability.

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

8 (END)

Insert 5-7 ✓



ASSEMBLY AMENDMENT 7,
TO ASSEMBLY BILL 746

How
insert

February 19, 2014 - Offered by Representative TRANEL.

AUTHORS SUBJECT TO CHANGE

1 At the locations indicated, amend the bill as follows:

2 1. Page 2, line 1: before that line insert:

Begin
Insert
2-1

3 SECTION ~~11.~~ 895.52 (1) (a) of the statutes is renumbered 895.52 (1) (ar).

4 SECTION ~~11g.~~ 895.52 (1) (ag) of the statutes is created to read:

5 895.52 (1) (ag) "Agricultural tourism activity" means an educational or
6 recreational activity that takes place on a farm, ranch, grove, or other place where
7 agricultural, horticultural, or silvicultural crops are grown or farm animals or
8 farmed fish are raised, and that allows ^{visitors} members of the general public to tour, explore,
9 observe, learn about, participate in, or be entertained by an aspect of agricultural
10 production, harvesting, or husbandry that occurs on the farm, ranch, grove, or other
11 place.

12 SECTION ~~11g.~~ 895.52 (1) (g) of the statutes, as affected by 2013 Wisconsin Act
13 20, is amended to read:



INS 2-1
CONT

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

14 SECTION ~~#~~. 895.52 (6) (a) 7. of the statutes is created to read:

15 895.52 (6) (a) 7. A payment made to purchase products or goods offered for sale
 16 on the property." ^e

End
Insert
2-1

17 2. Page 2, line 1: delete "SECTION 1" and substitute "SECTION 1w".

18 3. Page 5, line 5: after that line insert:

Begin
Insert
5-5

19 ^e SECTION ~~#~~. 895.525 (2) of the statutes is renumbered 895.525 (2) (intro.) and
 20 amended to read:

21 895.525 (2) ~~DEFINITION DEFINITIONS.~~ (intro.) In this section, ~~"recreational;~~

22 (b) "Recreational activity" means any activity undertaken for the purpose of
 23 exercise, relaxation or pleasure, including practice or instruction in any such
 24 activity. "Recreational activity" does not include participating in a snow sport at a



3 INS 5-5
CONT

1 ski area, as those terms are defined in s. 167.33, but includes hunting, fishing,
2 trapping, camping, bowling, billiards, picnicking, exploring caves, nature study,
3 dancing, bicycling, horseback riding, horseshoe-pitching, bird-watching,
4 motorcycling, operating an all-terrain vehicle or utility terrain vehicle, ballooning,
5 curling, throwing darts, hang gliding, hiking, sleigh riding, snowmobiling, skating,
6 participation in water sports, weight and fitness training, sight-seeing,
7 rock-climbing, cutting or removing wood, climbing observation towers, animal
8 training, harvesting the products of nature, participating in an agricultural tourism
9 activity, sport shooting, and participating in a snow sport outside a ski area, as those
10 terms are defined in s. 167.33, and any other sport, game or educational activity.

11 SECTION ~~18~~ 895.525 (2) (a) of the statutes is created to read:

12 895.525 (2) (a) "Agricultural tourism activity" means an educational or
13 recreational activity that takes place on a farm, ranch, grove, or other place where
14 agricultural, horticultural, or silvicultural crops are grown or farm animals or
15 farmed fish are raised, and that allows ^{visitors} ~~members of the general public~~ ✓ to tour, explore,
16 observe, learn about, participate in, or be entertained by an aspect of agricultural
17 production, harvesting, or husbandry that occurs on the farm, ranch, grove, or other
18 place." e

19 4. Page 5, line 7: delete that line and substitute: e

20 # (1) e (1c) (a) In this subsection:

- 21 1. "Owner" has the meaning given in section 895.52 (1) (d) of the statutes.
- 22 2. "Property" has the meaning given in section 895.52 (1) (f) of the statutes.
- 23 3. "Recreational activity" has the meaning given in section 895.52 (1) (g) of the
- 24 statutes, as affected by this act.



End
Insert
5-5

Begin
Insert
5-7

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

5 [#]~~(2)~~ ~~(1cm)~~ The treatment of section 895.524 of the statutes first applies to an injury
6 or death that occurs on the effective date of this subsection.

7 [#]~~(3)~~ ~~(1d)~~(a) In this subsection, "recreational activity" has the meaning given in
8 section 895.525 (2) (b) of the statutes, as affected by this act.

9 (b) The renumbering and amendment of section 895.525 (2) of the statutes and
10 the creation of section 895.525 (2) (a) of the statutes first apply to a participant in a
11 recreational activity on the effective date of this subsection. ^e

12

(END) ^e

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0331/?ins
TKK:.....

INSERT 4-20

1 ~~NO~~ In this subd. 1. a., "willful or wanton disregard" means conduct committed with
2 an intentional or reckless disregard for the safety of others, such as by failing to
3 exercise ordinary care to prevent a known danger or to discover a danger.

INSERT 4-23

4 ~~4~~ 2. Any person who asserts that the acts or omissions of an agricultural tourism
5 provider satisfy the elements under subd. 1. a. or b. has the burden of proving that
6 assertion by clear and convincing evidence.