



2013 ASSEMBLY BILL 746

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, HARSDFORF and SCHULTZ. Referred to Committee on Agriculture.

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

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

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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:

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

2 **895.524 Participation in an agricultural tourism activity; limitations**
3 **on civil liability, assumption of risk. (1) DEFINITIONS.** In this section:

4 (a) "Agricultural tourism activity" means an educational or recreational
5 activity that takes place on a farm, ranch, grove, or other place where agricultural,
6 horticultural, or silvicultural crops are grown or farm animals or farmed fish are
7 raised, and that allows members of the general public, whether or not for a fee, to
8 tour, explore, observe, learn about, participate in, or be entertained by an aspect of
9 agricultural production, harvesting, or husbandry that occurs on the farm, ranch,
10 grove, or other place.

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

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

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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

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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) 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:

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

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

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

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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.

6 **SECTION 2. Initial applicability.**

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

8 (END)