

LFC Requester:

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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date 2/21/25 *Check all that apply:*
Prepared: _____
Bill HB 521 Original Correct
Number: _____ ion _____
 Amend Substit
 ment ute _____

Spons _____
or: John Block
Agency _____
Name and _____
Code _____
Number: NMDA - 199
Person Writing _____
Analysis: Jeff Witte
Pho _____
ne: 575-294-3817
Short Agritourism
Title: Promotion Act
ema Jheitz@nmda.nm
il: su.edu

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
N/A	N/A	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	N/A	N/A	N/A	N/A

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Senate Bill 521 (SB 521) enacts the Agritourism Promotion Act (Act) designed to protect agritourism operators from liability for injuries or deaths resulting from the inherent risks associated with agritourism activities. Agritourism encompasses activities on farms or ranches that allow the public to engage in recreational, entertainment, or educational experiences related to agriculture. Key provisions of this Act include:

- Defines agritourism: Agritourism is defined as “activities that allow members of the public, for recreational, entertainment or educational purposes, to view and enjoy rural activities, including farming and ranching activities; historic, cultural or natural attractions; harvesting; winemaking; farm-to-table activities; and other similar agricultural experiences”.
- Limited liability: Agritourism operators are not liable for losses, injuries or deaths of participants arising from inherent risks of agritourism activities, provided certain conditions are met.
- Posting notices and written notices: Operators must post clear and visible warning signs at the entrance to the agritourism site and at the activity location. These signs must include specific language informing participants of the inherent risks involved. Alternatively, operators can obtain written agreements from participants acknowledging the inherent risks. These agreements must be signed before participation and include specific language as outlined in the Act.
- Exceptions to immunity: The Act does not provide immunity if injury or death results from an operator’s gross negligence, willful or wanton misconduct, or intentional acts.
- Rulemaking: The office of the superintendent of insurance will promulgate rules for state-backed insurance programs and tiered insurance requirements as a means to limit liability and reduce the cost of coverage.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

The United States department of agriculture (USDA) has identified agritourism as a potential strategy to help increase the viability of beginning, small and mid-sized farms and ranches as well as identifying its potential to revitalize rural economies, educate the public about agriculture and to preserve agricultural heritage. Examples of agritourism in New Mexico include pumpkin picking patches, corn mazes, “u-pick” operations, petting and feeding zoos, hayrides, cut-your-

own Christmas tree or flower farms, dude ranches, demonstration farms, agricultural museums, living history farms, on-farm farmers' markets, winery tours and wine tasting, rural bed & breakfasts and garden tours.

Agritourism plays a vital role in New Mexico's agricultural economy by diversifying income sources for farmers and ranchers. It generates revenue through activities like farm tours, wine tastings, and product sales, while also promoting local agricultural products such as chile, pecans, and wine. Agritourism supports rural communities by boosting local businesses, creating jobs, and encouraging visitors to appreciate sustainable farming practices. It offers educational experiences that raise awareness about the importance of local food systems and conservation, while also preserving New Mexico's agricultural heritage and cultural traditions. Overall, agritourism strengthens both the agricultural and tourism sectors, contributing significantly to the state's economy. According to the USDA 2022 census of agriculture, New Mexico farms had 326 agritourism and recreational services (down from 465 reported the 2017 census of agriculture). New Mexico generated over \$20,391.0 (twenty million three hundred ninety-one dollars) in revenue in 2022, up from \$18,683.0 (eighteen million six hundred eighty-three dollars) in 2017.

With a growing state wine industry and a desire for families to form a connection to agriculture, the demand for these types of operations continues to grow. Some agritourism operations have incorporated a school curriculum as a part of their educational component, which makes these destinations appealing to teachers as a learning tool. These operations attract many local visitors and tourists, contributing to their local economies. Incorporating agritourism programs into traditional farms and ranches allows operators the opportunity to generate alternative sources of income which helps to cover the operating expenses. By diversifying through agritourism, farm and ranch families are able to keep multiple generations involved in their family operations.

There are currently no laws in New Mexico to protect agritourism operators from inherent risks of the agritourism activity. This Act addresses this by providing limited liability to agritourism operators. The Act also defines "inherent risks of agritourism activity" as those dangers or conditions that are an integral part of an agritourism activity, including: surface and subsurface conditions; natural conditions of land, vegetation, foliage and waters; the behavior or presence of wild or domestic animals; exposure to the use of farm equipment; ordinary dangers of structures or equipment ordinarily and routinely used in farming or ranching operations; and participant negligence. A participant is defined as a person who engages in agritourism and assumes responsibility for the person's own safety while adhering to posted rules and instructions.

Liability insurance continues as a significant concern to New Mexico's agritourism industry. Insurance companies have cancelled coverage or refuse to bind coverage for agritourism operators. Those insurance providers who can, or would provide coverage, only offer very costly liability coverage to the agritourism operators, with policies that are typically designed for either amusement parks or fairs; both of which are significantly different than agritourism with respect to number of attendees, diversity in activities, and attendee oversight.

In the past, New Mexico has recognized liability issues with respect to outdoor activities (alpine skiing, equine related) by enacting statutes providing limited liability for those operations, but not agritourism.

NMDA has and continues to be directly involved in the state's agritourism industry through the

administration of competitive grant programs and the development of individualized marketing programs.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

As written in section 3A, “an agritourism operator is not liable for injury to or the death of a participant resulting from the inherent risks of agritourism activities as long as the warning contained in section 4 of the Agritourism Liability Act is posted as required.”

This Act defines “agritourism operator” as any person who is engaged in “the business” of providing one of more agritourism activities.

This Act defines "agritourism" to mean activities that allow members of the public, for recreational, entertainment or educational purposes, to view or enjoy rural activities, including farming and ranching activities; historic, cultural or natural attractions; harvesting; winemaking; farm-to-table activities; and other similar agricultural experiences.

It is a little unclear how wide the phrase “in the business of” should be interpreted. Does this only include operators who are titled business entities (llc., inc., sole proprietorships, etc.) or include any operator providing agritourism activities for a commercial purpose?

The possibility exists that agritourism could be conducted by an entity not engaged in the practice of one’s occupation, profession, or trade; nor making a living by engaging in commerce, or otherwise not considered a business. Accordingly, a non-business entity conducting agritourism would not be defined as an agritourism operator and therefore precluded from the limited liability protection or requirements outlined within this Act.

OTHER SUBSTANTIVE ISSUES

Pursuant to section 3B, Subsection A of this section does not limit the liability of an agritourism operator if the agritourism operator: (1) commits an act or omission that constitutes willful, wanton or reckless disregard for the safety of the participant and that act or omission proximately causes injury or death to the participant; (2) has actual knowledge or reasonably should have known of a dangerous condition on the land or in the facilities or equipment or the dangerous propensity of a particular animal used in the course of agritourism and does not make the danger known to the participant and the danger proximately causes injury or death to the participant; or (3) intentionally injures the participant. The Act does not absolve agritourism operators of liability

due to negligence in their operation but does continue to provide significant protections to participants.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Agritourism is an emerging industry in New Mexico. Currently there are no statutes that provide a clear definition of agritourism, nor define the responsibilities related to liability issues associated with agritourism activities. By not enacting SB 521, New Mexico's agritourism related businesses and the public will not have a clear definition of liability responsibilities associated with a new and growing industry. Insurance companies will continue to deny coverage or require agricultural tourism operations to obtain costly amusement park or fair insurance coverage for agritourism activities, which will continue to deter some agribusinesses from implementing agritourism into their operations.

AMENDMENTS

N/A