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FISCAL IMPACT REPORT

ORIGINAL DATE
LAST UPDATED 01/23/15 **HB** _____

SPONSOR Cotter

SHORT TITLE Agritourism Liability Limitations Act **SB** 76

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Insignificant	Insignificant			General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Tourism Department (TD)
- New Mexico Department of Agriculture (NMDA)
- Office of the Superintendent of Insurance (OSI)
- Office of the Attorney General (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 76 provides immunity from liability for agritourism professionals; provides exceptions from immunity and requires these individual and businesses post warnings about agritourism activities.

“Agritourism” is defined in this bill as “an industry that encourages participants to visit agricultural operations that combine tourism and local agriculture and that provide recreation, entertainment, or educational experiences for participants.

Examples of agritourism activities, whether by fee or free, include: demonstration farming, harvest-your-own produce or Christmas tree operations, corn mazes, petting and feeding zoos, hay rides, guest or dude ranches, agricultural museums, living history farms, farmers' markets located on farms and ranches, wine tasting and winery tours, rural bed-and-breakfast operations, garden tours; and shows, fairs, competitions, rodeos, and performances or parades that involve agritourism activities.

This bill protects agritourism professionals from claims of injury, loss, damage, or death resulting from the inherent risks of agritourism activities. “Inherent risks” are defined as “those dangers or conditions that are an integral part of an agritourism activity [including] the potential of a participant to act in a negligent manner that might contribute to injury to the participant or others.”

With regard to limitations (exceptions) from immunity, SB 76 does not provide immunity for agritourism professionals that: (1) commit an act of gross negligence; (2) intentionally cause injury, loss, damage, or death; or (3) do not make dangers known to participants.

Lastly, this bill requires that in order to be afforded the protections commensurate to Section 3, agritourism professionals must post and maintain signs that contain a warning notice and enter into a written contract with participants.

FISCAL IMPLICATIONS

SB 76 carries no appropriation. This bill would have minor fiscal implications for the judiciary associated with the printing and distribution of changes in the law and staffing time with minor case processing changes.

SIGNIFICANT ISSUES

The agritourism industry is growing in New Mexico. According to NMDA analysis:

There are at least 80 agritourism businesses in the state. With a growing 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 multi-generations involved in their family operations.

There are currently no laws to protect most agritourism operators from inherent risks.

AGO analysis points out that SB 76 may conflict with the Liquor Control Act and the Equine Liability Act:

The definition of “agritourism activity” is very broad. It includes “wine tasting and winery tours,” “rural bed-and-breakfast operations,” and “shows, fairs, competitions, rodeos, performance or parades that involve agritourism activities.”

The State of New Mexico has a number of laws involving serving and selling alcohol, see Liquor Control Act (Sections 60-3A-1 to 12, NMSA 1978) and tort liability for alcohol vendors (see Section 41-11-1, NMSA 1978). Section 57-6-1 NMSA 1978 provides liability for “hotelkeepers” which may conflict with liability limitations provided in SB 76 regarding “bed-and-breakfast operations.”

The Equine Liability Act provides liability limitations for equine activities, which although Senate Bill 76 does not specifically cover equine activities, the broad liability covered under the Equine Liability Act and the expansive definition of “agritourism activity” likely creates a conflict over the applicable standard or liability.

The Equine Liability Act states that it does not limit liability when the operator, owner, trainer or promoter of an equine activity “provided the equine and failed to make reasonable and prudent efforts to determine the ability of the rider to: (a) engage safely in the equine activity; or (b) safely manage the particular equine based on the rider’s representations of his ability” (Section 42-13-4(C)(2) NMSA 1978).

Additionally, the Equine Liability Act provides that liability is not limited when an operator, owner, trainer or promoter of an equine activity has “committed an act or omission that constitutes conscious or reckless disregard for the safety of a rider and an injury was the proximate result of that act or omission” (Section 42-13-4(C)(4) NMSA 1978)

SB 76 does not provide a limitation on liability for an agritourism professional who does not “take prudent efforts to determine the ability” of a participant, and the language in SB 76 is for an agritourism professional who “commits an act or omission that constitutes gross negligence or reckless or intentional disregard.”

Because SB 76 covers “an activity carried out on a farm or ranch that allows participants to observe or participate in farm- and ranch-related activities,” there is a potential conflict with the standards and language from the Equine Liability Act which covers equine activities, “including but not limited to stables, clubhouses, pony ride strings, fairs and arenas, and persons engaged in instructing or renting equine animals” (Section 42-13-3(B)(1) NMSA 1978).

AOC analysis suggests that the broad definition of inherent risk, defined to include “dangers or conditions that are an integral part of an agritourism....” may be problematic.

While the bill goes to some length in expanding on what might be inherent dangers or conditions, the courts may come to divergent conclusions about what is included in the language. This uncertainty may affect the value of a case for settlement or alternative dispute resolution purposes.

TD analysis points out that “Agritourism is a burgeoning industry that has the potential to positively, and significantly, increase tourism in New Mexico. In order to encourage the growth of this industry it is critical that agritourism professionals, many being small businesses, view their ventures as protected from unreasonable claims.”

OTHER SUBSTANTIVE ISSUES

The activities defined as “agritourism activities” do not contain further explanations, so it might be difficult to determine when Senate Bill 76 would apply. Additionally, the breadth of “agritourism activity” combined with the “Warning Signs” provision might be impractical, such as posting warning signs for a parade or garden tour.

SB 76 requires certain actions of the parties in the context of litigation in Section 3C. A litigant intending to use the protections of the bill is required to present the defense in a certain kind of way. This sort of procedural prescription is generally left to the authority of the Supreme Court in establishing pleading procedures.

AMENDMENTS

NMDA proposes to amend Section 2 B to the bill to broaden the definition of “agritourism activity” as follows: “an activity carried out on a farm or ranch or other agricultural operation that allows participants to observe or participate in farm- and ranch- related activities, regardless of whether a fee to observe or participate is paid, including but not limited to...”

NMDA also proposes to amend Section 4 C, to read “Inherent risks of agritourism activities include: risks of injury inherent to land, equipment, facilities, and animals, as well as the potential for you to act in a negligent manner that might contribute to your injury or death. You are assuming the risk of participating in this agritourism activity.” This would also broaden the immunity from liability to include the facilities agritourism professionals own or use.

ALTERNATIVES

In 2013, the State of Kansas made available a tax credit equal to 20 percent of the cost of liability insurance paid by registered agritourism operators. The credit is available only to corporations subject to Kansas corporate income tax.

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