

Senate Study Bill 1153 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON ZUMBACH)

A BILL FOR

1 An Act limiting civil liability for persons involved in
2 agricultural tourism.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 461C.10 Limitation on liability.

2 The limitation on legal liability provided in this chapter
3 is in addition to any other limitation of legal liability
4 otherwise provided by law, including as provided in chapters
5 673 and 673A.

6 Sec. 2. NEW SECTION. 673.6 Limitation on liability.

7 The limitation on legal liability provided in this chapter
8 is in addition to any other limitation of legal liability
9 otherwise provided by law, including as provided in chapters
10 461C and 673A.

11 Sec. 3. NEW SECTION. 673A.1 Short title.

12 This chapter shall be known and may be cited as the "*Iowa*
13 *Agricultural Tourism Promotion Act*".

14 Sec. 4. NEW SECTION. 673A.2 Purpose.

15 1. The general assembly finds all of the following:

16 a. Agriculture is a vital part of this state's economy,
17 culture, and history.

18 b. An increasing number of Iowans are removed from
19 day-to-day farm life and associated agricultural experiences.

20 c. Agricultural tourism provides a valuable opportunity
21 for the general public to understand farm life and associated
22 agricultural experiences.

23 d. Farming includes a number of hazards which cannot
24 be removed for the benefit of visitors to a farm without
25 detracting from the farm experience visitors receive, including
26 the daily experience of working on a farm.

27 2. The general assembly declares that uncertainty regarding
28 the potential liability associated with places on a farm and
29 the inherent risks of farming have a negative impact upon the
30 establishment and success of agricultural tourism and its
31 benefits to the people of this state.

32 Sec. 5. NEW SECTION. 673A.3 Definitions.

33 As used in this chapter, unless the context otherwise
34 requires:

35 1. "*Agricultural tourism farm*" means a farm to which

1 members of the public are invited to visit by or on behalf
2 of an agricultural tourism farmer or agricultural tourism
3 professional, for the purpose of allowing members of the public
4 to experience places on a farm and participate in farming
5 activities, regardless of whether a member of the public pays
6 for the visit.

7 2. "*Agricultural tourism farmer*" means a farmer who owns or
8 leases an agricultural tourism farm.

9 3. "*Agricultural tourism professional*" means a person who
10 is engaged in managing a visit by a member of the public to an
11 agricultural tourism farm, including any agricultural tourism
12 activity conducted on the premises of an agricultural tourism
13 farm, regardless of whether the person receives compensation.

14 4. a. "*Agricultural tourist*" means a person who enters
15 on to the premises of an agricultural tourism farm as a
16 visitor to experience places on the farm and participate in
17 farming activities pursuant to an invitation by or on behalf
18 of an agricultural tourism farmer or agricultural tourism
19 professional, regardless of whether the person provides
20 compensation in exchange for the visit.

21 b. "*Agricultural tourist*" does not mean any of the
22 following:

23 (1) An employee of, agent of, or person receiving
24 compensation from an agricultural tourism farmer, agricultural
25 tourism professional, or person engaged in farming the
26 agricultural tourism farm.

27 (2) (a) A family member of an agricultural tourism farmer,
28 agricultural tourism professional, or person engaged in farming
29 the agricultural tourism farm.

30 (b) As used in subparagraph division (a), "*family member*"
31 means a spouse, child, grandchild, parent, sibling, niece, or
32 nephew, or the spouse of a child, grandchild, parent, sibling,
33 niece, or nephew.

34 (3) A social guest of an agricultural tourism farmer,
35 agricultural tourism professional, or person engaged in farming

1 the agricultural tourism farm.

2 5. "*Claim*" means a claim, counterclaim, cross-claim,
3 complaint, cross-complaint, or cause of action recognized by
4 the Iowa rules of civil procedure and brought in court on
5 account of allegation of an injury, loss, or death.

6 6. a. "*Farm*" means land, including buildings or other
7 structures, and improvements used to produce or process a farm
8 commodity, if all of the following apply:

9 (1) The land includes at least forty contiguous acres of
10 land used for farming.

11 (2) The land includes a homestead as defined in section
12 425.17.

13 (3) The land is owned or leased by a farmer.

14 (4) At least ten thousand dollars was generated from the
15 production of farm commodities produced on the land in the last
16 year.

17 b. "*Farm*" includes but is not limited to a farm field,
18 orchard, nursery, greenhouse, garden, elevator, seedhouse,
19 barn, warehouse, animal feeding operation structure, winery,
20 brewery, distillery, or any personal property located on the
21 land including machinery or equipment used in the production of
22 a farm commodity.

23 7. "*Farm animal*" means any of the following:

24 a. An animal belonging to the bovine, caprine, ovine,
25 or porcine species; farm deer as defined in section 170.1;
26 ostriches, rheas, or emus; turkeys, chickens, or other poultry;
27 fish or other aquatic organisms confined in private waters for
28 human consumption; or bees.

29 b. A horse, pony, mule, jenny, donkey, or hinny.

30 8. "*Farm commodity*" means a farm crop or farm animal
31 produced or maintained on a farm.

32 9. "*Farm crop*" means a plant used for food, animal feed,
33 fiber, or oil, including any of the following:

34 a. A forage or cereal plant, including but not limited to
35 alfalfa, barley, buckwheat, corn, flax, forage, millet, oats,

1 popcorn, rye, sorghum, soybeans, sunflowers, wheat, and grasses
2 used for forage or silage.

3 *b.* A fruit, including but not limited to apples, peaches, or
4 grapes, a berry, a tuber, or a vegetable.

5 10. "*Farmer*" means a person who holds any of the following:

6 *a.* An ownership or leasehold interest in land used for
7 farming.

8 *b.* An equity interest in a business entity that holds land
9 for use in farming as any of the following:

10 (1) A family farm corporation, authorized farm corporation,
11 family farm limited partnership, limited partnership, family
12 farm limited liability company, authorized limited liability
13 company, family trust, or authorized trust, all as defined in
14 section 9H.1.

15 (2) A limited liability partnership as defined in section
16 486A.101.

17 11. "*Farming*" means to do any of the following:

18 *a.* Produce a farm commodity, including by doing any of the
19 following:

20 (1) Planting, nurturing, maintaining, inspecting,
21 exhibiting, harvesting, handling, storing, or moving a farm
22 crop.

23 (2) Producing, breeding, maintaining, handling, confining,
24 moving, inspecting, or exhibiting a farm animal.

25 *b.* Engage in an on-farm processing operation in which
26 the form or condition of a farm commodity originating from
27 the farm is changed and prepared or packaged for human use,
28 including but not limited to a dairy, creamery, winery,
29 brewery, distillery, cannery, bakery, butcher shop, smokehouse,
30 or tannery.

31 12. *a.* "*Inherent risk of farming*" means a danger or hazard
32 that is an integral part of being in a particular place on a
33 farm or participating in a specific farming activity, if the
34 danger or hazard would be reasonably foreseeable by a person
35 generally familiar with that type of farm or farming activity.

1 *b.* "*Inherent risk of farming*" includes but is not limited
2 to a condition or use of the land, including improvements, and
3 any machinery, equipment, or tack, employed in the production
4 or maintenance of farm commodities on the land, the processing
5 of commodities on the same land as they were produced, and the
6 behavior of farm animals or other domestic or wild animals
7 which are present on the land.

8 13. "*Person engaged in farming*" means an individual
9 contributing physical labor or making management decisions
10 related to any of the following:

11 *a.* The production or maintenance of a farm commodity on a
12 farm.

13 *b.* The on-farm processing of a farm commodity produced or
14 maintained on that same farm.

15 Sec. 6. NEW SECTION. **673A.4 Limitation on liability —**
16 **inherent risk of farming.**

17 1. Subject to the conditions of this chapter, an
18 agricultural tourism farmer, an agricultural tourism
19 professional, or a person engaged in farming the agricultural
20 tourism farm is not liable for any act or omission causing
21 injury, loss, or death suffered by an agricultural tourist if
22 all of the following apply:

23 *a.* The injury, loss, or death was caused while the
24 agricultural tourist was visiting the agricultural tourism
25 farm.

26 *b.* The act or omission that caused the injury, loss, or
27 death was associated with an inherent risk of farming.

28 2. Subject to the conditions of this chapter, an
29 agricultural tourism farmer, an agricultural tourism
30 professional, or a person engaged in farming on the
31 agricultural tourism farm is not liable for any injury, loss,
32 or death suffered by an agricultural tourist, if any of the
33 following apply:

34 *a.* The agricultural tourist contributed to the injury,
35 loss, or death of that agricultural tourist or to another

1 agricultural tourist.

2 *b.* The agricultural tourist failed to comply with reasonable
3 verbal or written instructions or warnings provided by
4 the agricultural tourism farmer, the agricultural tourism
5 professional, or a person engaged in farming.

6 *c.* The injury, loss, or death occurred at a place where a
7 reasonable person would not enter as part of a visit to the
8 agricultural tourism farm. A legible and conspicuous notice
9 that the place is not part of a visit is sufficient to satisfy
10 this requirement.

11 Sec. 7. NEW SECTION. 673A.5 Limitation on liability —
12 **affirmative defense.**

13 1. In any claim alleging an act or omission causing
14 injury, loss, or death suffered by an agricultural tourist on
15 an agricultural tourism farm, it is an affirmative defense
16 that an agricultural tourism farmer, an agricultural tourism
17 professional, or a person engaged in farming the agricultural
18 tourism farm is not liable pursuant to section 673A.4.

19 2. The affirmative defense described in subsection 1 is in
20 addition to any other limitation of legal liability otherwise
21 provided by law, including as provided in chapters 461C and
22 673.

23 Sec. 8. NEW SECTION. 673A.6 Limitation on liability —
24 **notice required.**

25 1. As a condition of being able to plead an affirmative
26 defense as provided in section 673A.5, a notice of the inherent
27 risk of farming must have been provided to an agricultural
28 tourist prior to an alleged injury, loss, or death caused
29 by the agricultural tourism farmer, agricultural tourism
30 professional, or person engaged in farming the agricultural
31 tourism farm.

32 2. A notice required by this section must have been posted
33 on the premises of an agricultural tourism farm. The notice
34 must have been posted in a conspicuous location where the
35 agricultural tourist was first allowed to enter the premises of

1 an agricultural tourism farm. The notice must have appeared in
2 black letters a minimum of one inch high and in the following
3 form:

4 IOWA AGRICULTURAL TOURISM PROMOTION ACT
5 IOWA CODE CHAPTER 673A

6 You are visiting a working farm as a participant who is
7 either observing or contributing to the success of farming
8 activities. Under Iowa law you are assuming liability for any
9 hazard that you may encounter. A hazard includes inherent risk
10 of participating in a farming activity or disregarding written
11 or verbal instructions. Farming includes dangerous conditions
12 present on land and in structures, unpredictable behavior
13 of farm animals, dangers associated with the operation of
14 equipment and machinery, and potential wrongful acts of another
15 visitor. Be careful.

16 3. A notice required by this section must have been included
17 in any written contract entered into by the agricultural
18 tourist and either the agricultural tourism farmer or
19 agricultural tourism professional. A notice required by
20 this section must have been included in any written waiver
21 which must be signed and dated by an agricultural tourist.
22 The notice must have included the same language provided in
23 subsection 2 and printed in twelve point boldface type.

24 **Sec. 9. NEW SECTION. 673A.7 Limitation on liability —**
25 **exceptions.**

26 The limitation on liability provided in section 673A.4 and
27 the affirmative defense authorized under section 673A.5 do not
28 apply to the extent that all of the following conditions are
29 met:

30 1. An injury, loss, or death suffered by an agricultural
31 tourist was caused by the act or omission of an agricultural
32 tourism farmer, an agricultural tourism professional, or a
33 person engaged in farming on the agricultural tourism farm.

34 2. The act or omission described in subsection 1 was any of
35 the following:

1 *a.* Illegal.

2 *b.* Intentional.

3 *c.* The result of willful misconduct, gross negligence or
4 incompetence amounting to such lack of care as to amount to
5 wanton neglect for the safety of another, or recklessness.

6 *d.* Due to intoxication by alcohol, a drug, or a combination
7 of such substances.

8 *e.* The result of a failure to notify an agricultural
9 tourist of a dangerous latent condition on the farm, including
10 a building or other structure, or equipment or machinery
11 regardless of whether it was operational, if the dangerous
12 latent condition was known or should have been known by
13 the agricultural tourism farmer or agricultural tourism
14 professional.

15 *f.* A condition or event existing at the agricultural
16 tourism farm that was not reasonably foreseeable by a person
17 generally familiar with farming, even though such condition or
18 farming activity would have been foreseeable at another type
19 of agricultural tourism farm.

20 EXPLANATION

21 The inclusion of this explanation does not constitute agreement with
22 the explanation's substance by the members of the general assembly.

23 This bill creates a new Code chapter 673A referred to as the
24 "Iowa Agricultural Tourism Promotion Act" (new Code section
25 673A.1). The bill limits the liability of certain persons
26 involved in agricultural tourism on a farm (agricultural
27 tourism farm) when a cause of action by a visitor to the farm
28 (agricultural tourist) alleges an injury, loss, or death due
29 to any of the following: (1) an inherent risk of farming
30 associated with a farming activity, (2) the failure of the
31 agricultural tourist to comply with an instruction while
32 visiting the farm, or (3) the injury, loss, or death occurred
33 at a place a reasonable person would not enter, which may be
34 based on a posted notice (new Code section 673A.4).

35 The bill provides that a farming activity includes both the

1 production or maintenance of a farm commodity (farm animals
2 and crops) on the agricultural tourism farm and the on-farm
3 processing of a farm commodity produced or maintained on that
4 farm. The persons shielded from liability include a person
5 who owns or leases the agricultural tourism farm (agricultural
6 tourism farmer), a person engaged in managing the visit
7 (agricultural tourism professional), and a person contributing
8 labor or managerial decision making to the farm's operation
9 (person engaged in farming) (new Code sections 673A.3 and
10 673A.4). As a condition of being able to plead an affirmative
11 defense to liability, a notice must be posted in a conspicuous
12 location where the agricultural tourist is first allowed to
13 enter the premises. The notice must also be placed in any
14 associated contract or waiver executed by the agricultural
15 tourist (new Code section 673A.6).

16 The bill provides for several exceptions to the shield
17 from liability, including if an act or omission was illegal;
18 intentional; the result of willful misconduct, gross negligence
19 or incompetence, or recklessness; due to intoxication; due to a
20 failure to notify an agricultural tourist of a dangerous latent
21 condition on the farm; or due to a condition or event existing
22 at the agricultural tourism farm that was not reasonably
23 foreseeable (new Code section 673A.7).

24 The bill provides that other statutes that shield liability
25 for an act or omission may be asserted in addition to the
26 shield created in the bill. This includes Code chapter 461C,
27 which limits liability of landholders who make land available
28 for recreational purposes and deer control, and Code chapter
29 673, which limits liability of persons involved in sponsoring
30 domestic animal events (e.g., fairs, rodeos, and expositions).