

2015 Nebraska Agritourism Liability Statute

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This publication is provided for informational purposes only—it does not constitute legal advice. You need to visit with your legal advisor and insurance advisor before beginning or continuing a commercial agritourism enterprise on your farm or ranch.

A 2015 statute gives rural landowners reduced legal liability for agritourism activities. This handout describes the general liability that property owners have for injuries that occur on their property, the 1965 statute that reduced liability for unpaid outdoor recreational activities on open land, the 1997 statute that reduced liability for paid horse rides and other equine activities, and the 2015 statute providing reduced liability for a wide range of paid agritourism activities.

Premises liability. In Nebraska, and in most states, property owners may be liable for damages resulting from injuries occurring on their property. A common example would be a slip and fall lawsuit against a retail store. This premises liability is not limited to business premises however—it basically extends to all property, including private residential property. This is a significant liability issue that many property owners may not be aware of. If a visitor is injured on your premises, the owner may be liable for damages if the owner was negligent and the negligence contributed to the injury. Liability and negligence depends on whether the person and the injury were reasonably foreseeable. The legal defenses of contributory negligence (i.e. the injured party's own behavior was a significant factor in the injury) and assumption of risk (injured party knowingly engaged in risky behavior leading to injury) are available in premises liability cases.

1965 recreational liability statute. This 1965 statute (NRS §37-729 to -736) relieved landowners of premises liability where the unpaid visitor is recreating on the property. The purpose of the 1965 recreational liability statute is to encourage landowners (public and private) to make available their open lands to the public for outdoor recreation (hiking, fishing, hunting, etc.). Recreational purposes are defined in the 1965 act to include but not be limited to: "hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, waterskiing, winter sports, and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites." NRS §37-729(3). If the recreational use of private land is unpaid, then the owner is liable only if the owner deliberately failed to warn or guard against known dangerous conditions.

Assumption of risk rationale. Virtually all states have recreational liability statutes similar to the 1965 Nebraska statute. The statutes all build on the concept of assumption of risk: if people are going to be engaged in outdoor recreation out in nature, that activity inherently entails some risk. So if you are hunting or fishing or hiking on private property with permission, you assume the risk of hunting, fishing or hiking in a natural outdoors setting. If you turn your ankle, accidentally shoot yourself or a fellow hunter, or hook yourself when casting, you assumed the inherent risk of hiking, hunting or fishing, so the responsibility for the injury is on you, not on the owner of the land where the accident occurred.

Litigation under the 1965 Nebraska recreational liability act illustrate that statute's scope. Viewing livestock exhibits at a county fair is not a recreational purpose (so there is no recreational liability exemption); neither is swimming in an indoor swimming pool (not outdoor recreation). City parks with outdoor recreation facilities qualify for recreational limited liability.

Picnicking on the courthouse lawn is a recreational purpose, meaning the county is entitled to limited recreational liability.

The 1965 recreational liability exemption does not apply when the outdoor recreational use is paid, e.g. fee hunting. However legislative bills have been introduced in recent years to extend limited liability to paid horse rides (enacted in 1997) and to paid agritourism activities (enacted in 2015).

1997 equine liability statute. A 1997 statute provides limited liability for paid equine activities (i.e. paid horse rides). NRS §25-21,249 to -21,253. The act establishes that any person is not liable for injuries or death resulting from the inherent risk of participating in equine activities (broadly defined), and cannot be sued in that regard. NRS §25-21,251. However, any person is liable (1) for not providing adequate and adequately maintained tack and equipment, (2) for not determining the ability of the participant to engage in equine activities and not matching the horse to the participant; or (3) if the equine professional is willfully negligent. NRS §25-21,252(2). Equine professionals seeking this liability protection must post signs stating

WARNING Under Nebraska Law, an equine professional is not liable for an injury to or the death of a participant in equine activities resulting from the inherent risks of equine activities, pursuant to sections 25-21,249 to 25-21,253.

NRS §25-21,253(1). Equine professionals must also include this warning in any written contracts. NRS §25-21,253(2). Equine activities include rodeos, horse rides, riding in a horse-drawn vehicle, horse shows, and parades. NRS §25-21,250(3). *Bottom line:* equine professionals don't automatically qualify for liability protection--they must post the warning and meet all the other equine professional requirements. If they do--they get limited liability. If they don't follow all the rules they have full liability exposure for paying equine customers.

2015 agritourism liability statute. In 2015 LB329, sponsored by Senator Ken Schilz (Ogallala), extended the premises liability exemption of the 1965 recreational liability act to a wide range of paid agritourism activities if the land is properly posted and additional requirements are met. Under LB329, agritourism activities include "hunting, fishing, swimming, boating, canoeing, kayaking, tubing, water sports, camping, picnicking, hiking, backpacking, bicycling, horseback riding, nature study, birding, farm, ranch, and vineyard tours and activities, harvest-your-own [i.e. "pick your own"] activities, waterskiing, snow-shoeing, cross-country skiing, visiting and viewing historical, ecological, archaeological, scenic, or scientific sites, and similar activities." NRS §82-603(1). Property owners seeking agritourism liability protection are required to post signs saying

WARNING – Under Nebraska law, an owner of property, including lands and waters, is not liable for the injury to or death of the participant in agritourism activities or damage to the participant's property resulting from the inherent risks of such activities. Inherent risks include, without limitation, the risk of animals and land and water conditions, the ordinary dangers of structures or equipment ordinarily used in farming or ranching operations, and the potential for you or another participant to act in a negligent manner that may contribute to your own injury or death. You are assuming the risk of participating in the agritourism activities for which you are entering the owner's premises.

The warning must also be contained in any agritourism activity contract. NRS §82-606.

Agritourism limited liability may be lost (1) if the land is not properly posted or the required warning is not contained in any agritourism activity contract, (2) if the owner fails to exercise reasonable care to guard against unusual dangers associated with the property, (3) if the owner fails to maintain the property, facilities and equipment, (4) if the owner fails to train or properly supervise employees, (5) deliberate misbehavior, or (6) violation of any related state or local legal requirement (e.g. failing to cap an abandoned well). NRS §82-605.

LB329 is a major victory for agricultural and rural interests. Proponents hope that LB329 will lower agritourism liability insurance costs for property owners or operators, and encourage more property owners or operators to make their property available for agritourism activities. *Bottom line:* farmers and ranchers do not *automatically* qualify for agritourism limited liability protection. Like the equine liability statute, farmers and ranchers must post the signs and meet all the other agritourism liability requirements (train employees, properly maintain property and equipment etc.). If they do all that, they do qualify for agritourism limited liability. If they don't, they have full legal liability exposure for paying agritourism customers.

LB329 takes legal effect August 30, 2015. If you have questions about how LB329 might apply to you or your operation, contact your legal advisor and your insurance advisor.

Common questions about insuring agritourism activities

Do I need insurance?

Yes. Adding an agritourism enterprise to a ranch does add additional risk, even with Nebraska's new agritourism liability statute.

Is insurance available?

Yes. Insurance is available to help manage the risk associated with agritourism activities.

How much does it cost?

The cost depends on the type of activity and the number of people exposed to the activity. You need to know exactly what you will offer clients, and how many clients you will have before an insurance agent can give you a quote.

Tips regarding insurance

Make your business plan, and then talk to insurance agents.

If you are leasing your land to an agritourism operator, you may or may not need additional insurance. Even if you are sure you are covered under your current policy, you should let your insurance agent know. Make sure you have proof of insurance from the lessee for at least one million dollars with you listed as an insured party.

Make sure you build the cost of insurance into the amount you charge. Don't assume people aren't willing to pay the price you need to cover your costs.

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