

SENATE BILL REPORT

ESSB 5808

As Passed Senate, March 8, 2017

Title: An act relating to agritourism.

Brief Description: Concerning agritourism.

Sponsors: Senate Committee on Agriculture, Water, Trade & Economic Development (originally sponsored by Senators Warnick, Chase, Walsh, Brown, Becker, Short and Bailey).

Brief History:

Committee Activity: Agriculture, Water, Trade & Economic Development: 2/16/17 [DPS, DNP, w/oRec].

Floor Activity:

Passed Senate: 3/08/17, 42-6.

Brief Summary of Engrossed First Substitute Bill

- Establishes that an agritourism professional is not liable for unintentional injuries, loss, damage, or death suffered by a participant resulting exclusively from any of the inherent risks in agritourism activities.
- Requires an agritourism professional to post and maintain signs that contain a warning notice in order to invoke the privilege of immunity.
- Provides that the liability of an agritourism professional is not limited under certain circumstances.

SENATE COMMITTEE ON AGRICULTURE, WATER, TRADE & ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5808 be substituted therefor, and the substitute bill do pass.

Signed by Senators Warnick, Chair; Brown, Honeyford, Pearson, Short and Takko.

Minority Report: Do not pass.

Signed by Senators Chase, Ranking Minority Member; Wellman, Assistant Ranking Minority Member; Van De Wege.

Minority Report: That it be referred without recommendation.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senator McCoy.

Staff: Karen Epps (786-7424)

Background: Landowner Duty to Invitees Generally. Under Washington tort law, landowners generally owe persons invited to enter their land a duty to use ordinary care to keep that land in a reasonably safe condition. This includes an affirmative duty to inspect the premises and discover dangerous conditions.

Recreational Use Immunity Statute. Originally enacted in 1967, the Recreational Use Immunity Statute prescribes an alternative framework for determining landowner liability in certain cases. The Legislature's intent was to encourage landowners to make land and water areas available to the public for recreational purposes by limiting landowner liability. A landowner who allows the public to use their land for certain recreational purposes will be immune from liability for unintentional injuries suffered by a recreational user. Immunity extends to landowners allowing the following non-exhaustive list of activities:

- cutting, gathering, and removing firewood;
- hunting, fishing, and clam digging;
- camping and picnicking;
- swimming, hiking, rock climbing, and horseback riding;
- bicycling, skateboarding, and other non-motorized wheel-based activities;
- driving off-road vehicles, snowmobiles, and other vehicles;
- boating, kayaking, canoeing, rafting, and other water sports;
- viewing historical, archeological, or scenic sites;
- winter sports; and
- aviation activities.

The statute generally provides protection from tort liability for landowners who allow public use of their lands and do not charge a fee. However, landowners may extract a \$25 administrative fee for the cutting, gathering, and removing of firewood; landowners may charge up to \$20 per person per day for access to public off-road vehicle facilities; and certain passes and permits required by state agencies do not qualify as fees.

Limitations on the Protection Offered by the Statute. The liability protection offered under the statute is not absolute. The statute does not protect landowners from certain dangerous conditions for which warning signs have not been conspicuously posted. Additionally, landowners who intentionally injure recreational users receive no protection.

Summary of Engrossed First Substitute Bill: An agritourism professional is not liable for injury, loss, damage, or death of a participant resulting exclusively from any of the inherent risks of agritourism activities, under certain circumstances. No participant or participant's representative may pursue an action or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities. In any action for damages against an agritourism professional for agritourism activity, the agritourism professional must plead the affirmative defense of assumption of the risk of agritourism activity by the participant.

The liability of an agritourism professional is not limited if they do any one or more of the following:

- commit an act or omission that is grossly negligent or constitutes willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant;
- have actual knowledge of or reasonably should have known of an existing dangerous condition on the land, facilities, or equipment used in the activity or the dangerous propensity of a particular animal used in such an activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant;
- permits minor participants to use facilities or engage in agritourism activities that are not reasonably appropriate for their age;
- knowingly permits participants to use facilities or engage in agritourism while under the influence of alcohol or drugs; or
- fails to warn participants by posting and maintaining signs that contain a warning notice.

Every agritourism professional must post and maintain signs that contain the following warning notice:

"WARNING:

Under Washington State law, there is limited liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such an injury or death results exclusively from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. We are required to ensure that in any activity involving minor children, only age-appropriate access to activities, equipment, and animals is permitted. You are assuming the risk of participating in this agritourism activity."

The sign must be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice must consist of a sign in black letters, with each letter to be a minimum of one inch in height.

Every written contract entered into by an agritourism professional must contain in clearly readable print the warning notice. Failure to comply with the requirements concerning warning signs and notices prohibits an agritourism professional from invoking the privilege of immunity and may be introduced as evidence in any claim for damages.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on First Substitute: PRO: More and more urban dwellers want to come out to farms and see what their rural neighbors are doing. Kittitas

County has at least fifteen to twenty agritourism businesses and represent millions of dollars to the local economy. Under the Growth Management Act and the requirements around maintaining rural character, these businesses fit in well to maintain rural character. These businesses also help to preserve agricultural land and maintain that lifestyle in the rural area. About half the states have some sort of agritourism regulations and about twenty have regulations very similar to this bill to help limit liability and require warning signs be posted. There are inherent risks on any farming operation and agritourism operations do everything they can to negate and diminish those risk and post warning signs in numerous places. It is disheartening to know that a farmer's livelihood is at risk from folks who do not heed the warnings. Many other states have adopted bills to protect the family farm from lawsuits and help maintain the security of the family farm. This bill provides another tool for the family farm to stay economically viable. Engaging in agritourism and allowing families to come out the farm to see the animals and where food comes from are teachable moments. The system is not current working because liability insurance costs have gone up 400 percent in the last two years.

CON: Under current law, there is no liability in any situation for an invitee when the public is allowed in without having to pay a fee. This bill will cover people paying a fee to enter, but there are a lot of ways that a landowner can protect themselves, including requiring waivers or posting warnings. If this bill focused on assumption of the risk, it might be possible to give more clarity to these landowners.

Persons Testifying: PRO: Senator Judy Warnick, Prime Sponsor; Paul Jewell, Kittitas County; Hilary Huffman, Huffman Farms; Jeff Schilter, Schilter Family Farm; Darren Carleton, Carleton Farm; Bob Ricci, Bob's Corn and Pumpkin Farm; Rob Rutledge, Rutledge Corn Maze LLC; Tom Davis, WA Farm Bureau.

CON: Larry Shannon, WA State Association for Justice.

Persons Signed In To Testify But Not Testifying: No one.