



## 2022 South Dakota Legislature

# Senate Bill 135

Introduced by: **Senator Wiik**

1 **An Act to revise provisions regarding agritourism liability.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 20-9-12 be AMENDED:**

4 **20-9-12.** Terms used in §§ 20-9-12 to 20-9-18, inclusive, mean:

5 (1) "Agritourism activity," any activity carried out on a farm, on a ranch, or in a forest  
 6 that allows members of the public, for recreation, entertainment, or education  
 7 purposes, to view or participate in agricultural activities, including farming,  
 8 ranching, historical, cultural, harvest-your-own, or nature-based activities and  
 9 attractions. An activity is not an agritourism activity if the participant is paid to  
 10 participate in the activity;

11 (2) "Charge," the admission price or fee asked in return for an invitation or permission  
 12 to enter on or go upon use the land. Any nonmonetary gift to an owner that is less  
 13 than one hundred dollars in value may not be construed to be a charge;

14 ~~(2)~~(3) "Inherent risk," the conditions, dangers, or hazards that are an integral part of the  
 15 land used for agricultural purposes, including:

16 (a) Surface and subsurface conditions and natural conditions of land,  
 17 vegetation, and waters;

18 (b) The behavior of wild and domestic animals;

19 (c) The ordinary dangers of structures or equipment ordinarily used in farming  
 20 or ranching operations, if the structures or equipment are used for farming  
 21 or ranching purposes;

22 (d) The potential of a participant in an agritourism activity to act in a negligent  
 23 way that may contribute to an injury to the participant or others, whether  
 24 by failing to follow safety procedures or by failing to act with reasonable  
 25 caution while engaging in the agritourism activity;

- 1       (4) "Land," land, trails, water, watercourses, private ways, and ~~agricultural~~ structures,  
 2       and machinery or equipment if attached to the realty;
- 3       ~~(3)~~(5) "Outdoor recreational ~~purpose activity~~," includes any of the following activities, or  
 4       any combination thereof: hunting, fishing, swimming other than in a swimming  
 5       pool, boating, canoeing, camping, picnicking, hiking, biking, off-road driving,  
 6       aviation activity, nature study, water skiing, winter sports, snowmobiling, or  
 7       viewing, or enjoying historical, archaeological, scenic, or scientific sites, or an  
 8       agritourism activity;
- 9       (4) "Agritourism activity," ~~any activity carried out on a farm, on a ranch, in a forest, or~~  
 10       ~~on an agribusiness operation that allows members of the general public, for~~  
 11       ~~recreational, entertainment, or educational purposes, to view or participate in~~  
 12       ~~agricultural activities, including farming, ranching, historical, cultural, harvest-~~  
 13       ~~your own, or nature based activities and attractions. An activity is an agritourism~~  
 14       ~~activity whether or not the participant paid to participate in the activity. An activity~~  
 15       ~~is not an agritourism activity if the participant is paid to participate in the activity;~~
- 16       ~~(5)~~(6) "Owner," the possessor of a fee interest, a tenant, lessee, occupant, or person in  
 17       control of the ~~premises~~ land;
- 18       (7) "Participant," an individual who, for purposes of outdoor recreational activity, enters  
 19       on or uses the land of another but does not include an owner of the land or an  
 20       agent, employee, or contractor of an owner of the land.

21       **Section 2. That § 20-9-13 be AMENDED:**

22               **20-9-13.** Except as provided in § 20-9-16, an owner of land owes no duty of care  
 23       to keep the land safe for entry on or use by ~~others~~ any participant for outdoor recreational  
 24       ~~purposes or agritourism activities~~ activity, or to give any warning of a dangerous condition,  
 25       use, structure, or activity on the owner's land to ~~persons entering for outdoor recreational~~  
 26       ~~purposes~~ any participant entering on or using the land for outdoor recreational activity.

27       **Section 3. That § 20-9-14 be AMENDED:**

28               **20-9-14.** Except as provided in § 20-9-16, an owner of land who either directly or  
 29       indirectly invites or permits without charge ~~any person to use the owner's property for~~  
 30       ~~outdoor recreational purposes or agritourism activities, including any person who is on the~~  
 31       ~~property~~ participant to enter on or use the owner's land for outdoor recreational activity,  
 32       or an owner upon whose land an individual has entered pursuant to § 41-9-8, does not  
 33       thereby:

- 1 (1) Extend any assurance that the land is safe for any purpose;  
 2 (2) Confer upon any person the legal status of an invitee or licensee to whom a duty of  
 3 care is owed; or  
 4 (3) Assume responsibility for, or incur liability for, any injury to persons or property  
 5 caused by an act of omission of the owner as to the maintenance of the land.

6 **Section 4. That § 20-9-15 be AMENDED:**

7 **20-9-15.** Unless otherwise agreed in writing, the provisions of §§ 20-9-13 and 20-  
 8 9-14 apply to the duties and liability of an owner of land leased to the state or any political  
 9 subdivision of the state for outdoor recreational ~~purposes or agritourism activities~~ activity.

10 **Section 5. That § 20-9-16 be AMENDED:**

11 **20-9-16.** Nothing in §§ 20-9-12 to 20-9-18, inclusive, limits in any way any  
 12 liability which otherwise exists:

- 13 (1) For gross negligence or willful or wanton misconduct of the owner;  
 14 (2) For injury suffered in any case where the owner of land charges any ~~person who~~  
 15 ~~enters or goes on the land for the outdoor recreational use of the land or for~~  
 16 ~~agritourism activity, except participant, except as provided in section 7 of this Act~~  
 17 or except that in the case of land leased to the state or a political subdivision of  
 18 the state, any consideration received by the owner for the lease may not be  
 19 deemed a charge within the meaning of this section nor may any incentive payment  
 20 paid to the owner by the state or federal government to promote public access for  
 21 outdoor recreational ~~purposes or agritourism activities~~ be considered a charge; or  
 22 (3) For injury suffered in any case where the owner has violated a county or municipal  
 23 ordinance or state law which violation is a proximate cause of the injury.

24 **Section 6. That § 20-9-17 be AMENDED:**

25 **20-9-17.** Sections 20-9-12 to 20-9-18, inclusive, may not be construed to create  
 26 a duty of care or ground of liability for injury to persons or property, or relieve any person  
 27 entering on or using the land of another for outdoor recreational ~~purposes or agritourism~~  
 28 ~~activities activity~~ from any obligation which the person may have in the absence of §§ 20-  
 29 9-12 to 20-9-18, inclusive, to exercise care in ~~his or her~~ the person's entry on or use of  
 30 the land ~~and in his or her activities on the land~~, or from the legal consequences of failure  
 31 to employ such care.

1 **Section 7. That chapter 20-9 be amended with a NEW SECTION:**

2 The provisions of subdivision 20-9-16(2) do not apply to injury to an individual or  
3 property resulting from inherent risk of an agritourism activity if the owner charges a  
4 participant for entry on or use of the land for the agritourism activity and the owner:

5 (1) Posts and maintains signage containing the warning, described in this section, in a  
6 clearly visible and conspicuous location at or near the entrance to the land used  
7 for the agritourism activity; and

8 (2) Includes the warning, described in this section, in a written contract between the  
9 owner and any participant who is charged to enter on or use the land for the  
10 agritourism activity.

11 The warning shall include the following: WARNING-Under South Dakota law, an  
12 owner of property, including lands and waters, who charges individuals an admission price  
13 or fee to participate in an agritourism activity on the owner's property, is not liable for  
14 injury to or death of a participant in the agritourism activity or damage to the participant's  
15 property of the injury or damage resulted from an inherent risk of the agritourism activity.  
16 Inherent risks are conditions, dangers, or hazards that are an integral part of the land  
17 used for agritourism activity, including surface and subsurface conditions and natural  
18 conditions of the land, vegetation, and waters; the behavior of wild or domestic animals;  
19 the ordinary dangers of structures or equipment ordinarily used in farming or ranching  
20 operations when such structures or equipment are used for farming or ranching purposes;  
21 and the potential for you or another participant to act in a negligent way that may  
22 contribute to your injury, death or damages. You are assuming the risk of participating in  
23 the agritourism activity for which you are entering on or using the owner's land.