



2022 South Dakota Legislature  
**Senate Bill 135**  
**ENROLLED**

AN ACT

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

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

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

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

- (1) "Agritourism activity," any activity carried out on a farm, on a ranch, or in a forest that allows members of the public, for recreation, entertainment, or education purposes, to view or participate in agricultural activities, including farming, ranching, historical, cultural, harvest-your-own, or nature-based activities and attractions. An activity is not an agritourism activity if the participant is paid to participate in the activity;
- (2) "Charge," the admission price or fee asked in return for an invitation or permission to enter on or use the land. Any nonmonetary gift to an owner that is less than one hundred dollars in value may not be construed to be a charge;
- (3) "Inherent risk," the conditions, dangers, or hazards that are an integral part of the land used for agricultural purposes, including:
  - (a) Surface and subsurface conditions and natural conditions of land, vegetation, and waters;
  - (b) The behavior of wild and domestic animals;
  - (c) The ordinary dangers of structures or equipment ordinarily used in farming or ranching operations, if the structures or equipment are used for farming or ranching purposes;
  - (d) The potential of a participant in an agritourism activity to act in a negligent way that may contribute to an injury to the participant or others, whether by failing to follow safety procedures or by failing to act with reasonable caution while engaging in the agritourism activity;

- (4) "Land," land, trails, water, watercourses, private ways, and structures, and machinery or equipment if attached to the realty;
- (5) "Outdoor recreational activity," includes any of the following activities, or any combination thereof: hunting, fishing, swimming other than in a swimming pool, boating, canoeing, camping, picnicking, hiking, biking, off-road driving, aviation activity, nature study, water skiing, winter sports, snowmobiling, or viewing or enjoying historical, archaeological, scenic, or scientific sites, or an agritourism activity;
- (6) "Owner," the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the land;
- (7) "Participant," an individual who, for purposes of outdoor recreational activity, enters on or uses the land of another but does not include an owner of the land or an agent, employee, or contractor of an owner of the land.

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

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

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

**20-9-14.** Except as provided in § 20-9-16, an owner of land who either directly or indirectly invites or permits without charge any participant to enter on or use the owner's land for outdoor recreational activity, or an owner upon whose land an individual has entered pursuant to § 41-9-8, does not thereby:

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

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

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

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

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

- (1) For gross negligence or willful or wanton misconduct of the owner;
- (2) For injury suffered in any case where the owner of land charges any participant, except as provided in section 7 of this Act or except in the case of land leased to the state or a political subdivision of the state, any consideration received by the owner for the lease may not be deemed a charge within the meaning of this section nor may any incentive payment paid to the owner by the state or federal government to promote public access for outdoor recreational activities be considered a charge; or
- (3) For injury suffered in any case where the owner has violated a county or municipal ordinance or state law which violation is a proximate cause of the injury.

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

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

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

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

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

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

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

An Act to revise provisions regarding agritourism liability.

\_\_\_\_\_  
I certify that the attached Act originated in  
the:  
Senate as Bill No. 135

\_\_\_\_\_  
Received at this Executive Office  
this \_\_\_\_ day of \_\_\_\_\_,  
2022 at \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of the Senate

By \_\_\_\_\_  
for the Governor

\_\_\_\_\_  
President of the Senate

The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 2022

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Governor

**STATE OF SOUTH DAKOTA,**

ss.

Office of the Secretary of State

\_\_\_\_\_  
Speaker of the House

Attest:

Filed \_\_\_\_\_, 2022  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
Secretary of State

Senate Bill No. 135  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

By \_\_\_\_\_  
Asst. Secretary of State