



**House  
Legislative  
Analysis  
Section**

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**"U-PICK" BUSINESS: LIMIT LIABILITY**

House Bill 4202 (Substitute H-3)  
First Analysis (5-14-87)

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Sponsor: Rep. Carl F. Gnodtke  
Committee: Agriculture and Forestry

Mich. State Law Library

**THE APPARENT PROBLEM:**

The popular "u-pick" orchard or berry patch and the familiar farmer's roadside stand are part of the developing "ag/tourism" industry in Michigan. One definition of the ag/tourism industry describes it as those businesses and activities (such as agricultural festivals, horse shows, wineries, farm markets, u-pick operations, fish retailers, and Christmas tree farms) that engage partly or wholly in the direct sales of agricultural products to tourists and other non-local customer groups. This budding new industry provides new sources of revenue to Michigan farm families seeking ways to survive in today's difficult agricultural situation and, moreover, has the potential for contributing significantly to Michigan's economy. Not every traditional agricultural producer will find the combination of agriculture and tourism either attractive or feasible, but for many this combination may provide the added income that will enable them to continue in the agricultural industry.

Increasingly, however, businesses involving both agriculture and tourism, such as u-pick operations, have been experiencing the chilling effects of rapidly escalating liability insurance costs. Producers have asked for legislative relief from the worst abuses of the present system of liability.

**THE CONTENT OF THE BILL:**

Under Public Act 201 of 1953, people who are hurt while using someone else's land for outdoor recreation (including fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, and snowmobiling) cannot sue the landowner unless the injured person had paid the owner to use the land or unless the injuries were the result of "the gross negligence or willful and wanton misconduct" of the owner.

More specifically, the owners, tenants, or lessees of land that is used to allow others to buy, pick, or glean agricultural or farm products ("or in conjunction with other related activities") could not be sued for injuries unless the injuries were the result of "gross negligence or willful and wanton misconduct" on the owner's part. (Employees of and contractors for the owner would not be bound by this section.)

MCL 300.201

**FISCAL IMPLICATIONS:**

Fiscal information is not available.

**ARGUMENTS:**

**For:**

Owners and operators of u-pick operations work hard to provide their customers with safe, enjoyable experiences and quality products. Many have instituted detailed safety procedures to ensure that the safety of their customers is maximized. Nevertheless, and despite good safety

records, in recent years u-pick owners have been faced with a rash of basically frivolous lawsuits and consequent increases in their liability premiums. For example, in one case, an orchard owner, who used to let hikers and cross-country skiers use his orchards for free, was sued for what seem to be particularly outrageous reasons. The owner, who had finally fenced his land in an attempt to protect his young trees from damage by off-road vehicles, experienced repeated instances of having his fences cut down by illegal trespassers. He repeatedly repaired his fences, but in December of one year he decided not to repair his fence once again until spring. A high school student skipped school and, driving a four-wheeled vehicle, illegally trespassed on the orchard lands. He cut his forehead (which required three stitches) on a strand of barbed wire and the owner was sued for damages, including a suit by the boy's mother for "deprivation of companionship". The insurance company settled out of court for \$2,000, and the owner's insurance premiums were subsequently raised. Another case involved a lawsuit months after the alleged incident took place and there was considerable question whether the allegedly injured person had ever actually been on the owner's land.

Many owners of u-pick operations and farm markets used to offer other kinds of recreation on their land such as hiking, cross-country skiing, hay rides, mushroom hunting, and horseback riding. They have had to discontinue such activities because they cannot get insurance coverage or because the available coverage makes offering such activities economically unfeasible. (For example, one owner who discontinued allowing cross-country skiing on her operation would have had to pay three times as much money in liability premiums as she would have made from allowing skiers to use her property.) Other owners have had to discontinue the practice of allowing groups of schoolchildren to visit the farm or u-pick operation, depriving thousands of children of enjoyable and vital educational experiences.

Frivolous lawsuits are depriving Michigan agricultural producers of income (the Michigan Blueberry Growers Association, for example, estimates that the sale of blueberries in Michigan through u-pick operations or farm markets represents an income of \$3-4 million) and citizens of enjoyable recreation and educational experiences. What is more, some of the u-pick operations bring money into the state that otherwise would go elsewhere (one operator in southwest Michigan estimates that 40 percent of his business is from the greater Chicago area). Even though the present costs of liability insurance for, say, basic u-pick operations (and excluding other, more "risky" activities such as hiking or cross-country skiing) still constitute a small percentage of operating costs, the rates at which the premiums are rising are alarming. One operator reported that her premiums rose by 100 percent in 1986 and had risen by another 50 percent in 1987.

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As one operator commented, the definition of successful farmer has come to be one who can stay out of court. This nonsense must stop. The present legislation would provide a measure of protection to owners of u-pick operations and farm markets by limiting their liability to cases of "gross negligence or willful and wanton misconduct", while continuing to afford injured parties reasonable recourse to legal redress.

***POSITIONS:***

The Department of Agriculture supports the bill. (5-13-87)

The Department of Commerce has no position on the bill. (5-13-87)

The Michigan Farm Bureau supports the bill. (5-13-87)

The Michigan Blueberry Growers Association supports the bill. (5-13-87)