SFA BILL ANALYSIS

Senate Fiscal Agency • Lansing, Michigan 48909 • (517) 373-5383

House Bill 4202 (Substitute S-4 as reported)
Sponsor: Representative Carl F. Gnodtke
House Committee: Agriculture and Forestry
Senate Committee: Agriculture and Forestry

Date Completed: 6-9-87

RATIONALE

A new entrepreneurial approach to enhancing two of Michigan's largest industries — agriculture and tourism — is fostering a new industry in the State: "ag tourism". Ag tourism involves businesses and activities, such as agricultural festivals, wineries, farm markets, U-pick operations, and Christmas tree farms, that engage in the direct sale of agricultural products while providing a tourism experience for out-of-State and urban dwellers. This new industry provides additional sources of revenue to Michigan farm families, who are seeking ways to survive in today's difficult agricultural economy, as well contributing to the State's economy as a whole. Businesses involving agriculture and tourism increasingly are experiencing escalating costs for liability insurance. Some people believe that this budding industry should be relieved of certain liability costs that could curtail further expansion of ag tourism in the State.

CONTENT

The bill would amend Public Act 201 of 1953, to provide that no cause of action could arise against the owner, tenant, or lessee of land or premises for injuries to a person who was on that land or premises for:

- **Gleaning agricultural or farm products, unless the person's injuries were caused by gross negligence or willful and wanton misconduct by the owner, tenant, or lessee.**
- **Picking or purchasing agricultural or farm products at a farm or "U-pick" operation, unless the person's injuries were caused by a condition involving unreasonable risk of harm and other circumstances outlined in the bill.**
- **Hunting or fishing on a farm used in the production of agricultural goods, unless the person's injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.**

"Agricultural or farm products" would mean the natural products of the farm, nursery, grove, orchard, vineyard, garden, and apiary, including but not limited to, trees and firewood.

No cause of action could arise against the owner, tenant, or lessee of land or premises for injuries to any person, other than an employee or contractor of the owner, tenant, or lessee who was on the land or premises for the purpose of picking and purchasing agricultural or farm products at a farm or "U-pick" operation, unless the person's injuries were caused by a condition that involved an unreasonable risk of harm and all of the following applied:

- The owner, tenant, or lessee knew or had reason to know of the condition or risk.
- The owner, tenant, or lessee failed to exercise reasonable care to make the condition safe, or to warn the person of the condition or risk.
- The person injured did not know or did not have reason to know of the condition or risk.

(The Act currently provides that no cause of action will arise to a person who is injured on the land of another person without paying to the owner, tenant, or lessee of the land for fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use, with or without permission, unless the injuries were caused by gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.)

MCL 300.201

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

Many owners and operators of U-pick operations have worked hard to provide their customers with safe and enjoyable experiences as well as quality products. Despite reportedly good safety records, U-pick owners have been faced in recent years with a rash of lawsuits and consequent increases in their liability premiums. These lawsuits are depriving Michigan agricultural producers of income, as well as citizens and tourists of enjoyable recreation and educational experiences. The Michigan Blueberry Growers Association, for example, estimates that the sale of blueberries in the State through U-pick operations or farm markets represents an income of $3 million to $4 million. Further, some of the U-pick operations bring revenues into the State that otherwise could go elsewhere. An operator in southwest Michigan, for example, estimated that 40% of his business originated from the greater Chicago area. Even though the present costs of liability insurance for basic U-pick operations, exclusive of operations that offer more "risky" activities such as hiking and cross-country skiing, still constitute a small percentage of operating costs, the rates at which premiums are rising are alarming. According to one operator, her premiums rose by 100% in 1986 and by another 50% in 1987. The bill would provide a measure

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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.

Supporting Argument

Some owners of U-pick operations and farm markets have offered other types of recreation on their land, such as hiking, cross-country skiing, hay rides, mushroom hunting, and horseback riding, in addition to agriculture activities. Some owners have had to discontinue these activities because the owners are not able to obtain insurance coverage or because the available coverage is expensive and makes offering these activities economically unfeasible. One owner, for example, reportedly discontinued allowing cross-country skiing on her operation because she would have had to pay three times as much in insurance premiums as she would have earned by allowing skiers to use her property. Other owners reportedly have discontinued the practice of allowing groups of school children to visit the farm or U-pick operation because of liability costs. The threat of lawsuits and the high cost of obtaining liability insurance have prevented owners of U-pick operations and farm markets from expanding their businesses.

Supporting Argument

A presentation during the Governor's Conference on the Future of Agriculture in Michigan, held in February, noted that the diversity of Michigan's agricultural industry offers the opportunity for a variety of tourism experiences and new profit centers for farmers. In addition, a study on the ag tourism potential, conducted by university, agri-business, and government groups, concluded that travel and vacation experiences on the farm would attract tourism dollars. To that end, the Departments of Commerce and Agriculture are working on a campaign to promote ag tourism. These efforts to foster ag tourism in the State could be hampered by the inablility of farm operators to obtain liability insurance at a cost that would not financially burden their operations.

Opposing Argument

The bill would remove the law's ability to adapt to various conditions. Under the common law, there are three types of people who come on a person's land: a licensee — one who has been invited; a business invitee — one who has been invited for the advantage of the landowner; and a trespasser. The landowner's degree of responsibility, differs with the type of person who comes on the owner's land. In the case of a business invitee, there is a high degree of responsibility as opposed the limited duty to trespassers. With the common law, there is flexibility to adapt to circumstances. For example, a hunter coming on a person's land could be considered a licensee or business invitee, depending on whether the hunter paid the owner for coming on the land. By codifying the common law principle, however, and reducing the law's flexibility, the bill would make it more difficult for a person to seek relief for injuries, if a case did not fit exactly into the conditions set forth in the bill. There are better ways of promoting the ag tourism industry in the State without eliminating the legal tradition of the common law, which has served the State well.

Opposing Argument

The bill is just another attempt to peck away at the general liability laws. On top of the significant liability reforms enacted during the last legislative session, Public Act 1 of 1987 amended the Business Corporation Act to allow corporations to limit the personal liability of directors, and to broaden the authority of corporations to indemnify directors and officers for claims and suits against them. In addition to House Bill 4202 (S-4), there are other bills before the Legislature that would reduce the liability various parties. There appears to be an absence of genera policy on the issue. Rather than handle the issue on a case-by-case basis, the State should formulate a public policy on liability.

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