

<b>LFC Requester:</b>	<b>Charlene Cerny</b>
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**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**      X   **Amendment**            
**Correction**           **Substitute**          

**Date** February 19, 2015  
**Bill No:** HB488

**Sponsor:** Rep. Candy Spence Ezzell      **Agency Code:** Attorney General's Office  
**Short**      Agritourism Limited Liability      **Person Writing**      Caroline Manierre , AAG  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

**BILL SUMMARY**

Synopsis:

House Bill 488 is an act that provides liability immunity for agritourism professionals. It defines agritourism and creates an affirmative defense to liability for agritourism professionals. House Bill 488 also creates posting requirements for agritourism professionals, with specifics for warning signs designed to put agritourism participants on notice about agritourism liability immunity.

**FISCAL IMPLICATIONS N/A**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

**SIGNIFICANT ISSUES**

The definition of “agritourism activity” is very broad. It includes “wine tasting and winery tours,” “rural bed-and-breakfast operations,” and “shows, fairs, competitions, rodeos, performance or parades that involve agritourism activities.” H.B. 488, 52nd Leg. (N.M. 2015). The State of New Mexico has a number of laws involving serving and selling alcohol, *see* Liquor Control Act, NMSA 1978, §§ 60-3A-1 to -12 (1981, as amended in 2012), and tort liability for alcohol vendors, *see* NMSA 1978, § 41-11-1 (Tort liability for alcoholic liquor sales or service), which may conflict with “winemaking.”

The Equine Liability Act provides liability limitations for equine activities, which although House Bill 488 does not specifically cover equine activities, the broad liability covered under the Equine Liability Act and the expansive definition of “agritourism activity” likely creates a conflict over the applicable standard or liability. The Equine Liability Act states that it does not limit liability when the operator, owner, trainer or promoter of an equine activity “provided the equine and failed to make reasonable and prudent efforts to determine the ability of the rider to: (a) engage safely in the equine activity; or (b) safely manage the particular equine based on the rider’s representations of his ability.” NMSA 1978, § 42-13-4(C)(2) Additionally, the Equine Liability Act provides that liability is not limited when an operator, owner, trainer or promoter

of an equine activity has “committed an act or omission that constitutes conscious or reckless disregard for the safety of a rider and an injury was the proximate result of that act or omission.” NMSA 1978, § 42-13-4(C)(4). House Bill 488 provides liability limitation for an agritourism professional who “commits an act or omission that constitutes negligence or willful or wanton disregard.” H.B. 488, 52nd Leg. (N.M. 2015). Because House Bill 488 covers “any activity carried out on a farm or ranch that allows members of the general public . . . to view or enjoy rural activities,” there is a potential conflict with the standards and language from the Equine Liability Act, NMSA 1978, Sections 42-13-1 to -5 (1993, as amended in 1995), which covers equine activities, “including but not limited to stables, clubhouses, ponyride strings, fairs and arenas, and persons engaged in instructing or renting equine animals.” NMSA 1978, § 42-13-3(B)(1) (1995).

**PERFORMANCE IMPLICATIONS:** N/A

**ADMINISTRATIVE IMPLICATIONS:** N/A

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP:**

House Bill 488 is nearly identical to Senate Bill 76; but for a few modifications it is a duplicate.

**TECHNICAL ISSUES:** N/A

**OTHER SUBSTANTIVE ISSUES:** N/A

**ALTERNATIVES:** N/A

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL:** Status quo

**AMENDMENTS:** N/A