

LFC Requester:	Charlene Cerny
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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 **Amendment**
Correction **Substitute**

Date January 23, 2015
Bill No: SB 76

Sponsor: Sen. Lee S. Cotter **Agency Code:** Attorney General's Office
Short AGRITOURISM LIABILITY **Person Writing** Caroline Manierre, AAG
Title: LIMITATIONS ACT **Phone:** 505-827-6079 **Email** cmanierre@nmag.gov

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)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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:

Senate Bill 76 is an act that provides liability immunity for agritourism professionals. It defines agritourism and creates an affirmative defense to liability for agritourism professionals. Senate Bill 76 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

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.” S.B. 76, 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). NMSA 1978, §57-6-1 (1953) provides liability for “hotelkeepers” which may conflict with liability limitations provided in Senate Bill 76 regarding “bed-and-breakfast operations.”

The Equine Liability Act provides liability limitations for equine activities, which although Senate Bill 76 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). Senate Bill 76 does not provide a limitation on liability for an agritourism professional who does not “take prudent efforts to determine the ability” of a participant, and the language in Senate Bill 76 is for an agritourism professional who “commits an act or omission that constitutes gross negligence or reckless or intentional disregard.” S.B. 76, 52nd Leg. (N.M. 2015). Because Senate Bill 76 covers “an activity carried out on a farm or ranch that allows participants to observe or participate in farm- and ranch-related activities,” *id.*, 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

N/A

TECHNICAL ISSUES

The activities defined as “agritourism activities” do not contain further explanations, so it might be difficult to determine when Senate Bill 76 would apply. Additionally, the breadth of “agritourism activity” combined with the “Warning Signs” provision might be impractical, such as posting warning signs for a parade or garden tour.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A