

SESSION OF 2004

**CONFERENCE COMMITTEE REPORT BRIEF ON
SENATE BILL NO. 334**

As Agreed to April 1, 2004

Brief*

SB 334 would create the Agritourism Promotion Act.

Registration of agritourism operators. These provisions would:

- ! provide that any agritourism operator may register with the Secretary of Commerce;
- ! require the registration to contain information describing the agritourism activity the operator conducts or intends to conduct;
- ! require the registration to describe the location where the person conducts or intends to conduct the registered agritourism activity;
- ! require the Secretary to maintain a list of registered agritourism operators, agritourism activities conducted by each operator and the location where the operator conducts the activities;
- ! require the list to be made available to the public;
- ! require the Secretary, in conjunction with other agritourism and rural economic efforts of the Secretary, to promote and publicize registered agritourism operators and activities and locations;
- ! provide that registration would be for a period of five years; and
- ! charge no fee to persons registering as agritourism operators.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. The conference committee summary report may be accessed on the Internet at <http://www.kslegislature.org>

Registered agritourism operator requirements. These provisions would require a registered agritourism operator to post and maintain warning signs at every agritourism location. In addition, the bill would:

- ! require every written contract entered into by a registered agritourism operator who provides a registered agritourism activity to contain the warning notice and language specified on the warning signs;
- ! specify the wording on the warning signs as follows:

Warning

“Under Kansas law, there is no liability for an injury or death of a participant in a registered agritourism activity conducted at this location if such injury or death results from the inherent risks of such registered agritourism activity. Inherent risks of registered agritourism activities include, but shall not be limited to, the potential of you as a participant to act in a negligent manner that may contribute to your injury or death and the potential of another participant to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this registered agritourism activity.”; and

- ! require the operator, upon request, to provide to a participant a written description of the registered agritourism activity which limits the operator’s liability at the registered agritourism location.

Liability related provisions. These provisions would:

- ! provide that, except as noted below, a participant assumes the inherent risks of a registered agritourism activity when the participant engages in a registered agritourism activity;
- ! provide that in any action for damages arising from the operation of an agritourism activity, the operator would plead an affirmative defense of assumption of risk by the participant;

- ! not prevent or limit liability of a registered agritourism operator if:
 - " the operator injures the participant by willful or wanton conduct; or
 - " the operator has actual knowledge of a dangerous condition in the land, facilities, or equipment, or the dangerous propensity of a particular animal used in the registered agritourism activity and does not make the condition known to the participant and the dangerous condition causes the participant to sustain injuries.

- ! provide that any limitation on legal liability afforded to the operator would be in addition to other limitation of legal liability otherwise provided by law;

- ! provide that nothing in the act, nor failure by any person to comply with the provisions of the act, would be construed to limit, restrict or impede the application of the Land and Water Recreational Areas law; and

- ! provide that a registered agritourism operator would still be entitled to the full protections of the Land and Water Recreational Areas statute.

Tax credits for agritourism operators These provisions would provide income tax credits equivalent to 20 percent of liability insurance premiums paid by certain registered agritourism operators annually for five years. The maximum credit that could be claimed would be \$2,000, and unused credits could be carried forward for up to three additional years.

The Secretary of Commerce would be required to adopt rules and regulations establishing criteria for determining those costs which qualify as costs of liability insurance for agritourism activities of a registered agritourism operator. The Secretary of Commerce would be required to submit to the Senate Committee on Commerce and the House Committee on Tourism and Parks a report on the implementation and use of the tax credit provided by the act at the beginning of the 2006 Legislative Session.

Conference Committee Action

In the Conference Committee, the Senate conferees agreed to the House amendments to the bill with the following exceptions:

- ! Changed the definition of agritourism activity to registered agritourism activity means any agritourism activity registered with the Secretary of Commerce.
- ! Changed nothing in this act shall prevent or limit the liability of an agritourism operator has actual knowledge of a dangerous condition in the land or waters or the dangerous propensity of a particular animal or a dangerous condition in the facilities or equipment used in the agritourism activity, etc. to a dangerous condition in the land, facilities, or equipment, or the dangerous propensity of a particular animal.
- ! The tax credit went from 25 percent for five years and 15 percent for an additional five years to 20 percent for five years.

The Conference Committee also agreed to the following additions to the bill:

- ! Agritourism and Agritourism activities become registered agritourism and registered agritourism activities.
- ! The Secretary of Commerce would be required to report on the implementation and use of the tax credit provided by the act to the standing committees of the 2006 Legislature.
- ! The Secretary of Commerce would be required to adopt rules and regulations establishing criteria for determining those costs which qualify as costs of liability insurance for agritourism activities of a registered agritourism operator.

Background

The bill was introduced by Senators Schmidt, Schodorf, Brownlee, and Jordan. Proponents testifying in support of the bill before the Senate Committee on Commerce included representatives of the Travel Industry Association of Kansas, the Kansas Livestock Association, the Kansas Farm Bureau, the Kansas Sampler Foundation, Red Rock Guest Ranch, Senator Schmidt, and Senator

Schodorf. The representative of the Kansas Trial Lawyers Association testified against the bill.

The Senate Committee amendment clarifies that someone who is both an agritourism provider and a provider of land for recreational activities is entitled to the full protections of the recreational use statute. The Committee also added language that if the Secretary of Commerce has not approved or denied the application within 30 days of filing, the application is deemed granted for a period of five years.

The House Committee on Tourism and Parks amendment removes the role of Secretary of Commerce as regulator of the agritourism program. These provisions would be replaced with the registration of agritourism operators. The House Committee also added the provisions concerning tax credits against the cost of liability insurance paid by agritourism operators.

The House Committee of the Whole made the amendments regarding the tax credits to agritourism operations as described in the brief.

No fiscal note was available when the House Committee took action on the bill.