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Recreational Liability Bill Killed

Years of low commodity prices have encouraged farmers to consider adding alternative enterprises to their operation in order to improve farm income. Some farmers and ranchers have turned to community agriculture or “pick your own” operations (including organic agricultural production), and encourage customers to tour the farm when purchasing produce. Other operators have started a fee hunting enterprise. Still others have started a “pumpkin patch” type operation where visitors enjoy a variety of farm and outdoor amusements for a fee. While Nebraska law exempts landowners from recreational liability where no use fee is charged, landowners may be liable for injuries associated with paid recreational farm visits. LB1094 would have provided an income tax credit to offset part of the liability insurance premium for agri-tourism businesses, but was killed by the Revenue Committee.

Premises liability. A landowner (or tenant in possession of leased land) may be liable for injuries to others occurring on the owner’s land resulting from the operator’s negligence. Owners (or tenants in possession) may also be liable for injuries to paid hunters, i.e. customers, even in the absence of negligence.

General paid recreational liability. Traditionally, a higher duty of care applies when you hold your premises out to the public, such as in fee hunting. In that situation, the owner (or tenant in possession) may be liable if the risk to the injured party was foreseeable and the owner or tenant in possession failed to protect against this foreseeable risk. This risk clearly should be insured against. Most farm and ranch liability policies

Market Report	Yr Ago	4 Wks Ago	1/27/06
<u>Livestock and Products,</u>			
<u>Weekly Average</u>			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight	\$86.68	\$93.38	\$93.74
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb	126.16	138.50	140.88
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb	104.82	116.27	116.73
Choice Boxed Beef, 600-750 lb. Carcass	148.11	158.19	155.95
Western Corn Belt Base Hog Price Carcass, Negotiated	73.79	57.41	52.31
Feeder Pigs, National Direct 45 lbs, FOB	65.62	57.52	56.68
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean	73.78	64.11	59.65
Slaughter Lambs, Ch. & Pr., 90-160 lbs., Shorn, Midwest	110.00	79.00	78.25
National Carcass Lamb Cutout, FOB	249.33	241.32	224.01
<u>Crops,</u>			
<u>Daily Spot Prices</u>			
Wheat, No. 1, H.W. Imperial, bu	3.26	*	3.59
Corn, No. 2, Yellow Omaha, bu	1.77	1.94	1.94
Soybeans, No. 1, Yellow Omaha, bu	5.18	5.75	5.54
Grain Sorghum, No. 2, Yellow Columbus, cwt	2.45	2.79	3.02
Oats, No. 2, Heavy Minneapolis, MN , bu	1.91	2.19	2.04
<u>Hay</u>			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton	115.00	130.00	130.00
Alfalfa, Large Rounds, Good Platte Valley, ton	62.50	65.00	65.00
Grass Hay, Large Rounds, Good Northeast Nebraska, ton	57.50	52.50	52.50
* No market.			



will not cover this liability, so check with your insurance agent to determine whether you need to purchase additional coverage.

Recreational liability exemption. Nebraska statutes make landowners not liable for persons entering private land for recreational purposes except (1) for the willful or malicious (i.e. deliberate) failure to guard or warn against a dangerous condition, use, structure or activity, or (2) where the landowner charges a fee for the recreational use. NRS §§37-1002, -1005. This statute was adopted to encourage agricultural landowners and operators to open their land to unpaid hunting. The liability exemption is lost if the landowner or operators charge a fee for hunting or other outdoor recreational activity. Recreational liability has been limited for equine activities in Nebraska where the required statutory notice has been prominently posted. NRS §25-21,249.

LB1094. Ag producers engaging in paid recreational activities and even those encouraging unpaid farm visits by customers purchasing farm produce worry that they could be liable for injuries sustained by the farm visitors, and that such injuries would not be covered by the farmer's general farm liability insurance policy. These producers have suggested that the existing recreational liability exemption be extended to agri-tourism operations. LB1094 would not have done that. However, it would have authorized a non-refundable income tax credit up to \$2000 per year for liability insurance paid by an agri-tourism operator registered with the Department of Economic Development (DED). The DED agri-tourism operation registration would have been established by LB1094. Agri-tourism is defined in LB1094 as "any activity which allows members of the general public, for recreational, entertainment or educational purposes, to view or enjoy rural activities, including, but not limited to, farming activities, ranching activities, or historic, cultural or natural attractions."

LB1094, introduced by Sen. Stuhr (Bradshaw), was killed by a unanimous vote of the Revenue Committee. The issue is likely to return to the Unicameral, however, as more farmers become interested in alternative agricultural activities. Several states have adopted agri-tourism liability statutes. The Texas approach is promising, establishing a liability cap or limit for agri-tourism operators who have liability insurance up to the liability cap amount. A similar approach could receive a more receptive legislative response in Nebraska in the future.

Legislative updates. LB934, reviewed in the January 18, 2006 *Cornhusker Economics*, was advanced to General File by the Agriculture Committee. LB934, which would make major revisions to the current fence viewer process, received the support of several agricultural groups at the bill's public hearing.

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