

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

228R0499

## SENATE ENGROSSED NO. **SB 75** - 2/23/2010

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Maher, Bartling, Bradford, Garnos, Hanson (Gary), Novstrup (Al), Peterson, Rhoden, and Vehle and Representatives Hoffman, Brunner, Carson, Frerichs, Hamiel, Jensen, McLaughlin, Olson (Betty), Russell, Schrempp, Sly, Sorenson, Street, Verchio, and Wink

1 FOR AN ACT ENTITLED, An Act to define certain terms related to liability for agritourism  
2 activities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 20-9-12 be amended to read as follows:

5 20-9-12. Terms used in §§ 20-9-12 to 20-9-18, inclusive, mean:

- 6 (1) "Charge," the admission price or fee asked in return for invitation or permission to  
7 enter or go upon the land. Any nonmonetary gift to an owner that is less than one  
8 hundred dollars in value may not be construed to be a charge;
- 9 (2) "Land," land, trails, water, watercourses, private ways and agricultural structures, and  
10 machinery or equipment if attached to the realty;
- 11 (3) "Outdoor recreational purpose," includes, but is not limited to, any of the following  
12 activities, or any combination thereof: hunting, fishing, swimming other than in a  
13 swimming pool, boating, canoeing, camping, picnicking, hiking, biking, off-road



1 driving, nature study, water skiing, winter sports, snowmobiling, viewing, or  
2 enjoying historical, archaeological, scenic, or scientific sites;

3 (4) "Agritourism activity," any activity that allows members of the general public, for  
4 recreational, entertainment, or educational purposes, to view or participate in  
5 agriculture activities, including pumpkin picking patches, corn mazes, U-Pick  
6 operations, petting and feeding zoos, hay rides, cut-your-own Christmas tree farms,  
7 dude ranches, demonstration farms, agricultural museums, living history farms,  
8 farmers' markets, winery tours and wine tasting, rural bed and breakfasts, or garden  
9 tours;

10 (5) "Owner," the possessor of a fee interest, a tenant, lessee, occupant, or person in  
11 control of the premises.

12 Section 2. That § 20-9-13 be amended to read as follows:

13 20-9-13. Except as provided in § 20-9-16, an owner of land owes no duty of care to keep the  
14 land safe for entry or use by others for outdoor recreational purposes or agritourism activities,  
15 or to give any warning of a dangerous condition, use, structure, or activity on ~~his~~ the owner's  
16 land to persons entering for outdoor recreational purposes.

17 Section 3. That § 20-9-14 be amended to read as follows:

18 20-9-14. Except as provided in § 20-9-16, an owner of land who either directly or indirectly  
19 invites or permits with or without charge any person to use ~~his~~ the owner's property for outdoor  
20 recreational purposes or agritourism activities, including any person who is on the property  
21 pursuant to § 41-9-8, does not thereby:

- 22 (1) Extend any assurance that the land is safe for any purpose;
- 23 (2) Confer upon any person the legal status of an invitee or licensee to whom a duty of  
24 care is owed; or

1 (3) Assume responsibility for, or incur liability for, any injury to persons or property  
2 caused by an act of omission of the owner as to maintenance of the land.

3 Section 4. That § 20-9-15 be amended to read as follows:

4 20-9-15. Unless otherwise agreed in writing, the provisions of §§ 20-9-13 and 20-9-14 apply  
5 to the duties and liability of an owner of land leased to the state or any political subdivision  
6 ~~thereof of the state~~ for outdoor recreational purposes or agritourism activities.

7 Section 5. That § 20-9-16 be amended to read as follows:

8 20-9-16. Nothing in §§ 20-9-12 to 20-9-18, inclusive, limits in any way any liability which  
9 otherwise exists:

- 10 (1) For gross negligence or willful or wanton misconduct of the owner;
- 11 (2) For injury suffered in any case where the owner of land charges any person who  
12 enters or goes on the land for the outdoor recreational use ~~thereof of the land~~ or for  
13 agritourism activity, except that in the case of land leased to the state or a political  
14 subdivision ~~thereof of the state~~, any consideration received by the owner for ~~such the~~  
15 lease may not be deemed a charge within the meaning of this section nor may any  
16 incentive payment paid to the owner by the state or federal government to promote  
17 public access for outdoor recreational purposes or agritourism activities be  
18 considered a charge; or
- 19 (3) For injury suffered in any case where the owner has violated a county or municipal  
20 ordinance or state law which violation is a proximate cause of the injury.

21 Section 6. That § 20-9-17 be amended to read as follows:

22 20-9-17. Sections 20-9-12 to 20-9-18, inclusive, may not be construed to create a duty of  
23 care or ground of liability for injury to persons or property, or relieve any person using the land  
24 of another for outdoor recreational purposes or agritourism activities from any obligation which

1 ~~he~~ the person may have in the absence of §§ 20-9-12 to 20-9-18, inclusive, to exercise care in  
2 his or her use of ~~such~~ the land and in his or her activities ~~thereon~~ on the land, or from the legal  
3 consequences of failure to employ such care.