

SHARE-A-WARBLER PROGRAM



What it is:

In order to meet the needs of both my Bird Survey clients and my Guided Birding clients, I have launched the Share-a-Warbler program as an optional, opt-in program. Since I am a one-man business, and the Migration Period is also limited, it has become difficult for me to serve the needs of everyone.

In conducting both activities, I am basically doing the same thing.... looking for birds.

So if a landowner will allow a pre-designated number of birders to join me while I do a Bird Survey on their land, and if birders will agree to join me on private property while I do a Survey, then I can “kill two birds with one stone”. (Sorry, couldn't resist that!) One Golden-cheeked warbler, etc. found, can make both landowner and guided birder happy.

When I find the need to schedule a Survey & a guided birding trip on the same day, I will contact both parties and request permission at that time. The landowner will receive a \$50 discount off of their Survey, and the birder will pay me a reduced \$150 guiding fee.

As far as any liability on the part of the landowner, that is covered by:

The Texas Recreational Use Statute, Agritourism Act, and Farm Animal Liability Act codified at Tex. Civ. Practice and Remedies Code Chapter 75

Texas landowners are frequently concerned about potential liability they might incur if someone is injured on their land. In order to protect landowners and to encourage private property to be opened for public use and recreation, the Texas Legislature has passed three important statutes offering limited liability to landowners in certain situations.

Recreational Use Statute:

The definition of recreation includes “...nature study, bird watching, any other activity associated with enjoying nature or the outdoors.”

Landowners who intend to open their property to allow recreational activities need only ensure they meet one of the three monetary requirements listed in the statute.

The monetary requirement satisfied for the Share-a-Warbler program is: No fee is charged. This first option is the simplest. For landowners allowing persons to enter their agricultural

land for recreational purposes free of charge, the Recreational Use Statute protections apply. See id. 75.003(c)(1).

Also, this statute, unlike the Agritourism Act or Farm Animal Liability Act, requires no signage or signed documents.

Additional protection is provided by the

Agritourism Act:

Any activity occurring on agricultural land for the purpose of recreational or educational purposes meets the definition of an “agritourism activity.”

As noted in the Recreational Use Statute, if an agritourism participant suffers an agritourism injury on agricultural land, an agritourism entity is not liable to any person for damages if one of the following two options are met: (1) required signage is posted; or (2) a release including required language is obtained. See Texas Civ. Practice & Remedies Code 75A.002.

The required release will be provided by Huth Avian Services and signed by birding participants prior to entering any property:

“AGREEMENT AND WARNING: I UNDERSTAND AND ACKNOWLEDGE THAT AN AGRITOURISM ENTITY IS NOT LIABLE FOR ANY INJURY TO OR DEATH OF AN AGRITOURISM PARTICIPANT RESULTING FROM AGRITOURISM ACTIVITIES. I UNDERSTAND THAT I HAVE ACCEPTED ALL RISK OF INJURY, DEATH, PROPERTY DAMAGE, AND OTHER LOSS THAT MAY RESULT FROM AGRITOURISM ACTIVITIES.” Texas Civ. Practice & Remedies Code 75A.004.

Landowners are often looking for ways to limit their potential liability to persons injured on their property. The Texas Agritourism Act offers free limited liability if its requirements are followed. The broad definition of “agritourism activity” and “agricultural land” appear to indicate these protections will extend well beyond those activities typically thought of as constituting agritourism. Importantly, the Agritourism Act expressly states that it is in **addition** to all other limitations of liability. This means that other limited liability statutes such as the Recreational Use Statute and Farm Animal Liability Act, could also apply to protect a landowner. Further, valid liability releases may still be enforceable as well.

If you think you may be interested in participating and need more details or have questions, please contact me and let's talk!!!

Jesse

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