

# Agritourism Immunity Laws in the United States

Factsheet

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Agritourism offers a growing business opportunity for farmers and ranchers. According to the 2012 U.S. Census of Agriculture, the number of farms and ranches receiving income from agritourism grew from 23,350 in 2007 to 33,161 in 2012 and more than 4,500 of those operations had gross receipts of over \$25,000 from agritourism.<sup>1</sup> Entertaining visitors is an increasingly popular source of revenue for farms and ranches today.

Running an agritourism business is not without its challenges, however. One primary concern is the possibility that a visitor will be hurt while on the farm. The types of experiences that guests desire from a farm or ranch are inherently risky, such as picking produce, feeding livestock, climbing on straw bales, engaging in recreational activities, and riding on wagons, tractors and horses. If a visitor suffers harm while voluntarily engaging in risky agritourism activities, should the farmer or rancher be liable for that harm?

State legislatures have addressed this liability question by enacting agritourism immunity laws that protect agritourism businesses from liability in certain situations. While it is always imperative for farmers and ranchers to use best management practices to reduce the risk that a participant will be injured, these laws can manage the risk of financial

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responsibility for harm to visitors who choose to engage in agritourism activities. Before venturing into the business of agritourism, it's important for a farmer or rancher to know whether a state has an agritourism immunity law and if so, how to ensure compliance with the statute. In this fact sheet, we review agritourism immunity laws in the U.S. and explain different approaches and key provisions in the laws.

States with immunity laws for agritourism

In 2004, Kansas became the first state to enact a liability protection law for farmers and ranchers that offer agritourism activities on their land. Many states followed suit, and the 31 states listed below now have an immunity law that can shield an agritourism business from liability for visitor injuries in certain circumstances. To read a state's specific law, visit our compilation of States' Agritourism Statutes at <http://nationalaglawcenter.org/state-compilations/agritourism/>.

<b>States with agritourism immunity laws for agritourism businesses</b>		
Alabama	Maine	Oregon
Alaska	Minnesota	South Carolina
Arkansas	Mississippi	Tennessee
Colorado	Missouri	Texas
Florida	Montana	Utah
Georgia	Nebraska	Virginia
Idaho	New York	Washington
Indiana	North Carolina	West Virginia
Kansas	North Dakota	Wisconsin
Kentucky	Ohio	
Louisiana	Oklahoma	

Who is protected? Defining “agritourism”

Each state law provides a definition for “agritourism,” or “agritourism activities” that clarifies who the law aims to safeguard from liability for visitor injuries. An agritourism operator will not receive the statute’s benefits unless it meets the definitions. Common elements in the definitions of “agritourism” or “agritourism activity” include:

- The agritourism activity takes place on a “farm” or “ranch” that is “working,” “commercial,” or engaged in “agricultural production.”
- The producer may or may not receive compensation for an agritourism activity.
- The agritourism activity is for educational, recreational or entertainment purposes, with some states also including historic or cultural purposes.
- A handful of states provide examples of agritourism such as educational programs, hospitality services, guided and self-guided tours, bed and breakfast accommodations, petting

zoos, farm festivals, corn mazes, harvest-your-own operations, hayrides, barn parties, horseback riding, fee fishing and camping.

Missouri's Agritourism Promotion Act presents a typical example of a definition of an "agritourism activity:"

(1) "Agritourism activity", 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. An activity may be an agritourism activity whether or not the participant pays to participate in the activity. An activity is not an agritourism activity if the participant is paid to participate in the activity.<sup>2</sup>

Louisiana takes a unique approach to defining agritourism activities. The State Commissioner of Agriculture and Forestry publishes an annual list of activities that the commissioner has defined as agritourism activities when the activities are conducted on an agricultural operation. The current list contains 32 types of activities.<sup>3</sup>

#### Immunity applies to "inherent risks" of agritourism

Most of the state laws extend immunity if a visitor's harm results from an "inherent risk" of an agritourism activity. The purpose of the "inherent risk" approach is to relieve an operator from liability for the naturally occurring risks of an activity over which an operator has little or no control. The laws are fairly consistent in presenting a list of "inherent risks" that addresses land surfaces, vegetation, animals, equipment, and the visitor's own behavior, as illustrated by Kansas's Agritourism Promotion Act:

"Inherent risks..." means those dangers or conditions which are an integral part of such agritourism activity including, but not limited to, certain hazards such as surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of structures or equipment ordinarily used in farming or ranching operations. "Inherent risks of a registered agritourism activity" also includes the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to follow instructions given by the registered agritourism operator or failing to exercise reasonable caution while engaging in the registered agritourism activity.<sup>4</sup>

Only a handful of states define "inherent risks" more broadly than Kansas. Florida's law applies to "any of the inherent risks of agritourism activities,"<sup>5</sup> Ohio includes "the possibility of contracting illness resulting from physical contact with animals, animal feed, animal waste, or surfaces contaminated by animal waste"<sup>6</sup> and Maine includes "the depositing of manure."<sup>7</sup>

## Exceptions to immunity

Each agritourism immunity statute also lays out exceptions to its grant of immunity. If a visitor's harm arises from one of the exceptions, the agritourism operator loses the law's protection and could be liable for the harm. Types of exceptions vary from state-to-state. Most common are those found in the Oklahoma Agritourism Activities Liability Limitations Act:

Nothing in [this law] prevents or limits the liability of an agritourism professional if the agritourism professional does any one or more of the following: 1. Commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant; 2. Has actual knowledge or reasonably should have known of a dangerous condition on the land, facilities, or equipment used in the activity or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant.<sup>8</sup>

A number of states include additional exceptions to immunity. Alabama will not prevent liability if the agritourism operator "fails to properly train or improperly or inadequately trains an employee who is actively involved in the agritourism activity and an act or omission of the employee proximately causes injury, sickness, damage, or death of the participant"<sup>9</sup> or "fails to vaccinate, or quarantine sick domestic or domesticated animals in accordance with applicable animal health statutes and regulations."<sup>10</sup> In Washington, an agritourism provider is not protected by the statute if the provider "permits minor participants to use facilities or engage in agritourism activities that are not reasonably appropriate for their age."<sup>11</sup> Oregon will not grant immunity if an operator "provides equipment to the participant and fails to make reasonable inspection of the equipment, and that failure is a cause of the injury to the participant"<sup>12</sup> or "fails to make reasonable inspection of the property on which the agritourism activity occurs, and that failure is a cause of the injury to the participant."<sup>13</sup> Many states also remove immunity if the agritourism provider did meet the law's affirmative requirements, as explained below.

## Affirmative requirements for the agritourism operator

A majority of the states establish affirmative actions the provider must take to qualify for immunity. An agritourism operator who fails to complete a state's affirmative requirements will lose the liability protection afforded by the immunity law. Most common is the requirement for operators to provide notices to agritourism visitors or include notices in agritourism contracts. In several states, agritourism operations must register or have an approved operation plan. We review these requirements below.

*Requirements for notices on signs and in contracts*

The 28 states listed below require operators to post and maintain warning signs that notify visitors of the agritourism immunity law’s liability protection and/or the inherent risks of agritourism activities. A dozen states also direct agritourism operators to include the notice in written contracts or agreements. Most statutes provide the exact language the sign or contract must contain as well as specifications for the size of font and locations of signs, although the level of detail for the notice varies among the states.

<b>Laws that require business to provide notices</b>		
	<i>On posted signs</i>	<i>In contracts</i>
Alabama	✓	
Arkansas	✓	✓*
Colorado	✓	
Florida	✓	✓
Georgia	✓	
Idaho	✓	✓
Indiana	✓	✓
Kansas	✓	✓
Kentucky	✓**	✓
Louisiana	✓	
Maine	✓**	
Minnesota	✓	
Mississippi	✓	✓
Missouri	✓	✓
Nebraska	✓	
New York	✓	
North Carolina	✓	✓
North Dakota	✓	✓
Ohio	✓	
Oklahoma	✓	✓
Oregon	✓	✓
South Carolina	✓	✓
Tennessee	✓	✓
Texas	✓	✓
Utah	✓	
Virginia	✓	
Washington	✓	✓
West Virginia	✓	✓
Wisconsin	✓	
* In contracts with agritourism participant only. Arkansas 2-11-107.		
** May post a sign or obtain a signed release indicating that participant has received written notice. K.S.A. 247-809(a) and 7 M.R.S.A § 253.		

Idaho provides an example of a simple notice requirement, which must state “WARNING Under Idaho law, there are risks associated with agritourism, which could lead to injury or death. You are assuming these risks. Section 6-3004, Idaho Code.”<sup>14</sup> A more detailed notice requirement is in Wisconsin’s statute, which states that a sign must contain the following notice in black lettering, each letter a minimum of one inch in height, on a white background:

Notice: A person who observes or participates in an agricultural tourism activity on this property assumes the risks inherent in the agricultural tourism activity. Risks inherent in the agricultural tourism activity may include conditions on the land, the unpredictable behavior of farm animals, the ordinary dangers associated with equipment used in farming operations, and the potential that a participant in the agricultural tourism activity may act in a negligent way that may contribute to injury or death. The agricultural tourism provider is not liable for the injury or death of a person involved in an agricultural tourism activity resulting from those inherent risks.<sup>15</sup>

#### *Requirements for registration and operation plans*

As the first state to enact an agritourism immunity law, Kansas included a registration process for agritourism operations within its statute. While registration is permissive, only those agritourism locations that have registered can receive the law’s liability protection. The Kansas statute provides the following:

Any person who is engaged in the business of providing one or more agritourism activities may register with the secretary of wildlife, parks and tourism. The registration shall contain all of the following: (1) Information describing the agritourism activity which the person conducts or intends to conduct. (2) Information describing the location where the person conducts or intends to conduct such agritourism activity.<sup>16</sup>

Agritourism operators in Kansas that register also benefit from promotion and publicity by the State. Only a handful of states have followed the Kansas registration approach, as indicated in the chart below.

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<b>States with agritourism registration provisions</b>
Georgia
Kansas
Louisiana
Mississippi
Missouri
North Dakota
Oklahoma

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In addition to registration provisions, Louisiana’s law includes a certification process that requires agritourism professionals to submit a plan of operation for agritourism activities if they seek to utilize the law’s immunity provisions. Components of the plan include a listing of agritourism activities,

identification of activity risks and plans for minimizing the risks, and locations of warning signs. Applicants must submit the plan to the Louisiana Extension Service for approval and update the plan every five years or whenever adding a new activity.<sup>17</sup>

### What about waivers?

A written waiver or release of liability form is the traditional tool for addressing liability for voluntary engagement in risk-based activities like those involved in agritourism. The waiver serves as the participant's recognition that he or she is assuming the risk of the activity. It contains a promise by the participant to release the activity provider from any liability if the participant suffers harm due to the provider's ordinary negligence or the inherent risks of the activity.

A state immunity law can negate the need for an agritourism business to require that customers sign a waiver before participating in an agritourism activity. If the state immunity law covers all of an agritourism business's risky activities then the business may not need to utilize written waivers. However, if the business offers additional activities that the immunity law might not include within its liability protections, the agritourism business might need to use a written waiver for those activities that might not be covered by the law. Note, too, that an insurance provider or attorney might encourage an agritourism client to utilize waivers as a risk management tool even if the state has an agritourism immunity law.

Several agritourism immunity laws specifically refer to the immunity law's relationship with waivers. Montana's Recreation Responsibility Act states that the law does not prohibit the use of a written waiver or release, requires that a waiver contain certain language, and allows that a waiver may still be challenged on legal grounds.<sup>18</sup> Texas, Kentucky and Maine grant liability protection to a provider who either posts a warning sign or obtains a signed written agreement stating that the participant received a warning of the inherent risks of an activity.<sup>19</sup>

### Other laws that can provide agritourism immunity

In addition to immunity laws that specifically target agritourism businesses, other laws could address an agritourism liability situation. A farmer or rancher may be able to receive liability protection through these other types of immunity statutes, which can be especially important if the farmer or rancher's state does not have an agritourism immunity statute. In those situations, agritourism businesses should assess how other liability protection laws in the State might apply to its activities.

#### *Recreational user immunity statutes*

All fifty states have a recreational user statute that provides landowners with immunity from liability for harm that happens to people who are on the property for recreational purposes. States adopted these laws to encourage property owners to open up their lands to others for recreational activities. In

exchange for opening their lands, property owners are shielded from liability for injuries that recreational entrants incur while on the property. Recreational pursuits often include activities like hiking, fishing, swimming, camping, snowmobiling, and sometimes hunting; however, what qualifies will depend upon the language of a state's statute. Note, however, that many recreational user statutes do not allow a fee or consideration to be charged for the activity. With this limitation, an agritourism operation will only benefit from the statute if the person was injured while engaging in an agritourism activity that was free of charge.

Michigan's recreational user law provides an example of this type of law:

Except as otherwise provided in this section, a cause of action shall not arise for injuries to a person who is on the land of another without paying to the owner, tenant, or lessee of the land a valuable consideration for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use or trail use, with or without permission, against the owner, tenant, or lessee of the land unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.<sup>20</sup>

Some states have added agritourism activities into a preexisting recreational user law rather than creating a separate agritourism immunity law. Alaska, for example, recently amended its recreational user immunity statute to include "farm touring" as an activity covered by the law. "Farm touring" means "briefly visiting a farm to observe or experience aspects of raising, growing, producing, cultivating, harvesting, or processing an agricultural product as a tourist, without receiving pay."<sup>21</sup> The law applies to all activities, including those conducted for a fee.

For more information on state recreational user statutes, see our compilation at <http://nationalaglawcenter.org/state-compilations/recreational-use/>.

#### *"U-pick" immunity laws*

"U-pick" immunity statutes offer liability protection in a few narrow circumstances. The laws, also known as "you-pick," "pick-your-own" and "you-pick-your-own" laws, generally apply only to people entering onto a farmer's land for the purpose of purchasing or picking fresh fruits and vegetables directly from the field. The immunity will protect the landowner from legal liability for any injuries to a customer that occurs while purchasing or picking from the land. Importantly for tenants and lessees, the immunities often apply to whoever is in possession and control of the land, not just the landowner.

Pennsylvania, for example, does not have an agritourism immunity law but does have a "u-pick" law that covers a range of activities, as follows:

(a) No cause of action shall arise against the owner, tenant or lessee of land or premises for injuries to any person, other than an employee or contractor of the owner, tenant or lessee, who is on the land or premises for the purpose of picking and purchasing

agricultural or farm products at a farm or “u-pick” operation, unless the person's injuries were caused by a condition which involved an unreasonable risk of harm and all of the following apply: (1) The owner, tenant or lessee knew or had reason to know of the condition or risk. (2) The owner, tenant or lessee failed to exercise reasonable care to make the condition safe or to warn the person of the condition or risk.

(b) As used in this section, the term “agricultural or farm products” means the natural products of the farm, nursery, grove, orchard, vineyard, garden and apiary, including, but not limited to, trees and firewood.<sup>22</sup>

Many states have exceptions for when the landowner knew about a dangerous condition, failed to adequately warn a customer about the condition, and failed to adequately make the condition safe. Adequacy is tested by a reasonableness standard that looks at the facts of the situation to determine whether an action meets society’s expectations of what a reasonable person in the same situation would do.

### *Equine immunity laws*

For harm sustained while engaging in activities with horses and other equine, an agritourism operator in a state without an agritourism immunity law might be able to utilize the State’s “equine activity” law. The State of Illinois illustrates how this type of law shifts the risk of harm from equine to the participant:

Each participant who engages in an equine activity expressly assumes the risk of and legal responsibility for injury, loss, or damage to the participant or the participant's property that results from participating in an equine activity, except in specific situations as set forth in Section 20, when the equine activity sponsor or equine professional may be held responsible.<sup>23</sup>

As with the Illinois equine activity law, equine activity statutes often contain several exceptions or instances for which the provider will be liable. Exceptions often include providing faulty equipment or tack, failing to assess the participant’s ability to engage in the equine activity, failing to warn of known dangerous conditions of the land, and willfully or intentionally injuring participants. Most of the laws also require the business to post a warning sign that notifies participants of the risks of being around equine and the immunity for harm provided by the law.

Refer to the Animal Legal & Historical Center for a compilation of state equine activity laws at <https://www.animallaw.info/content/map-equine-activity-liability-statutes>.

### Using an agritourism immunity law

The existence of an agritourism immunity law doesn't automatically guarantee an agritourism business of liability protection for visitor injuries. In addition to meeting the definitions, eligibility requirements and affirmative actions that a statute may contain, an agritourism business must raise the immunity statute if an injury situation results in litigation. Many states have specific requirements for using the law's immunity protection. For example, Washington's statute states:

In any action for damages against an agritourism professional for agritourism activity, the agritourism professional must plead the affirmative defense of assumption of the risk of agritourism activity by the participant.<sup>24</sup>

Utah's law directs the court to undergo a comparative negligence analysis to determine if the harmed person disregarded warnings or misused animals or equipment.<sup>25</sup> These laws illustrate the importance of properly using the agritourism immunity statute.

### Agritourism and immunity laws: next steps for agritourism businesses

Learning about agritourism immunity laws in the United States is an important first step for farmers and ranchers pursuing or planning to operate an agritourism business. In the following checklist, we provide considerations to make when examining agritourism liability in a specific state. We also provide several additional resources on agritourism liability. Our hope is that utilizing the checklist and resources will enable farmers and ranchers to continue on a path toward optimal agritourism liability risk management.

*See our other Factsheets in this series for more resources on legal issues in agritourism.*

## Agritourism and Immunity Laws: A Checklist for Agritourism Businesses

Agritourism operators may use this checklist as a tool to understand how a state's immunity laws impact the agritourism business. The checklist is not exclusive, but serves as a starting point in considering liability protection laws. We encourage an agritourism business to confer with its attorney and insurance provider for individual guidance on liability protection.

1. **Determine if your state has an agritourism immunity law.** Refer to our state compilation of laws at <http://nationalaglawcenter.org/state-compilations/agritourism/>. If your state does not have an agritourism immunity law, determine if there a recreational user statute, "U-pick" statute, or equine activity act that could apply to your situation.
2. **Review the law to understand how it applies to your agritourism situation.**
  - Who does the law protect from liability? Identify the eligibility requirements for the type of provider or activity that the law will protect, such as the purpose of the activity and whether the activity must be conducted on a commercial or working farm. You will not receive the law's protections if you or your agritourism activities do not meet these requirements.
  - What types of risks does the law apply to? Understand how the law defines "inherent risks" or the risks that receive liability protection. Determine if there are other risks in your agritourism activities that are not covered, such as the risk of contracting an illness from an animal, and take additional precautions for those risks, such as keeping customers away from animals.
  - What are the exceptions to immunity? Determine whether the law will not give liability protection for certain behaviors or situations, such as failing to properly train employees or failing to make a reasonable inspection of property or equipment. Take additional precautions to ensure that a situation on your business does not become an exception to immunity.
  - What affirmative requirements does the law contain? Does the law require you to post a warning sign, include warnings in your contracts, register with the State, develop an operating plan, or take any other steps? Comply with the requirements and document the actions you have taken for compliance.
3. **Consult with your professionals to confirm your understanding of the law and determine if you should still use a written waiver or release of liability.** Meet with your attorney and insurance provider to review all of the activities that you offer, how the immunity laws apply to your business, and the extent of your insurance coverage. Ask your professional team if you should also use written waivers to further protect you from liability.

## Additional Resources

Centner, Terence, “Liability concerns: agritourism operators seek a defense against damages resulting from inherent risks,” 19 KAN. J.L. & PUB. POL’Y 102 (2009).

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Richardson, Jesse, “Managing Liability: Legal Liability in Agritourism and Direct Marketing Operations,” Virginia Cooperative Extension (2012), <https://vtechworks.lib.vt.edu/bitstream/handle/10919/47470/CV-25-PDF.pdf?sequence=1>.

Smith, Mason, “The Texas Agritourism Act: Why the Texas Legislature Put Farmer Liability out to Pasture,” 2 OIL & GAS, NAT. RESOURCES, AND ENERGY J. 685 (2017).

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<sup>1</sup> U.S. DEPT. OF AGRIC. NAT’L STATISTICS SERVICE, 2012 Census of Agriculture, Rep. No. AC-07-A-51 at 292, [https://www.agcensus.usda.gov/Publications/2012/Full\\_Report/Volume\\_1,\\_Chapter\\_1\\_US/usv1.pdf](https://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf).

<sup>2</sup> V.A.M.S. 537.850(2).

<sup>3</sup> LSA-A.C. 7:XLV.101-105.

<sup>4</sup> K.S.A. 32-1432(b).

<sup>5</sup> West’s F.S.A. § 570.88.

<sup>6</sup> R.C. 901.80(A)(6)(e).

<sup>7</sup> 7 M.R.S.A. §251(5)(B).

<sup>8</sup> 2 Okl. St. § 5-16(B).

<sup>9</sup> Ala. Code 1975 § 6-5-347(c)(2).

<sup>10</sup> Ala. Code 1975 § 6-5-347(c)(4).

<sup>11</sup> West’s RCWA 4.24.832(2)(c).

<sup>12</sup> O.R.S. § 60.673(2)(d).

<sup>13</sup> O.R.S. § 60.673(2)(e).

<sup>14</sup> I.C. § 6-3005(2).

<sup>15</sup> W.S.A. 895.524(2)(a)(2).

<sup>16</sup> K.S.A. 32-1433(a).

<sup>17</sup> LSA R.S. 9:2795.5; LSA A.C. 7:XLV.105.

<sup>18</sup> MCA 27-1-753(3).

<sup>19</sup> V.T.C.A § 75a.004; KRS § 247-809(a); 7 M.R.S.A § 253(3).

<sup>20</sup> MCLS § 324.73301.

<sup>21</sup> AS § 09.65.290(e)(3).

<sup>22</sup> 42 P.S. § 8339.

<sup>23</sup> 745 I.L.C.S. 47/1.

<sup>24</sup> West’s RCWA 4.24.832 (c).

<sup>25</sup> U.C.A. 1953 § 78B-4-512(4).