

Law Bulletin



OSU EXTENSION AGRICULTURAL & RESOURCE LAW PROGRAM

September 2016

Ohio's New Agritourism Law

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The Ohio legislature enacted a new law in 2016 that grants agritourism providers protection from civil liability claims, reduced property tax assessments and protection from local zoning. The law applies to agritourism providers who host agritourism activities on a farm. The following definitions are important to understand who is considered an "agritourism provider" that will benefit from the law:

- An "agritourism provider" is anyone who owns, operates, provides, or sponsors an agritourism activity, whether or not for a fee, including employees at agritourism activities.
- "Agritourism" is an agriculturally related educational, entertainment, historical, cultural, or recreational activity, including you-pick operations or farm markets, conducted on a farm that allows or invites members of the general public to observe, participate in, or enjoy that activity.
- A "farm" is land devoted to commercial agricultural production, either at least 10 acres in size or grossing an average income of \$2500 from such production.
- "Agricultural production" means commercial aquaculture, algaculture, apiculture, animal husbandry, poultry husbandry; the production for a commercial purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, or sod; the growth of timber for a noncommercial purpose if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use; or any combination of such husbandry, production, or growth; and includes the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with such husbandry, production, or growth.

For agritourism providers on farms, the legislation offers the following protections:

1. Civil liability immunity—Ohio Revised Code 901.80

The new law protects an agritourism provider from liability for injuries to agritourism participants in certain situations. A provider will not be liable for harm a participant suffers due to "risks inherent in an agritourism activity" and does not have a

legal duty to remove such risks. "Inherent risks" are dangers or conditions that are an integral part of an agritourism activity, including:

- Surface and subsurface conditions of land;
- Ordinary dangers of structures or equipment ordinarily used in farming;
- Behavior or actions of domestic or wild animals, except vicious or dangerous dogs;
- The possibility of contracting illness from physical contact with animals, animal feed, animal waste, or surfaces contaminated by animal waste;
- A participant's failure to follow instructions or exercise reasonable caution while engaging in an agritourism activity.

Warning sign requirement. An agritourism provider must post and maintain warning signs on the farm to receive the law's civil liability protection. A sign must be at or near each entrance to the agritourism location or at each agritourism activity and must state the following in black letters at least one inch in height:

WARNING: Under Ohio law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if that injury or death results from the inherent risks of that agritourism activity. Inherent risks of agritourism activities include, but are not limited to, the risk of injury inherent to land, equipment, and animals as well as the potential for you as a participant to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity.

Exceptions to immunity. The law does not grant immunity for all injuries that occur on an agritourism operation. An agritourism provider will not be immune from liability in several circumstances:

- The provider's careless or reckless disregard for a participant's safety caused the harm;
- The provider purposefully harmed a participant;
- The provider's actions or inactions constituted criminal conduct that harmed a participant;
- The provider had or should have had actual knowledge of an existing dangerous condition that is not an inherent risk and the provider did not warn the participant about the dangerous condition.
- The agritourism provider failed to post the signs required by the law.

2. Reduced property taxes—Ohio Revised Code 5713.30

The new legislation ensures that agritourism parcels are eligible for Ohio's Current Agricultural Use Valuation (CAUV) program, which reduces property taxes on qualifying agricultural lands. Under the new law, the existence of agritourism does not disqualify land that otherwise qualifies for the CAUV program.

3. Local zoning limitations—Ohio Revised Code 303.21 (counties) and 519.21 (townships)

The new legislation expands Ohio's "agricultural exemption" from local zoning to include agritourism activities. The "agricultural exemption" limits the ability of townships and counties to use zoning to prohibit or regulate certain agricultural land uses in any zoning district. Under the new law, agritourism becomes part of the agricultural exemption and is an agricultural land use that zoning officials cannot prohibit by way of zoning.

However, the legislation does allow townships and counties to regulate some factors related to agritourism land uses if the regulations are necessary to protect public health and safety. These factors include the size of structures used primarily for agritourism and setback lines for such structures, egress or ingress into a parcel, and the size of parking areas. This limited authority does not include the power to require improvements such as drainage or paving for agritourism parking areas.

The legislation also clarifies that county and township zoning may not prohibit the use or construction of structures for vinting and selling wine if located on land where grapes are grown.

Implications of the new law for agritourism operators

Not everyone who engages in agritourism will benefit from the new law. The intent of the new law is to benefit agritourism operators who diversify an existing farm that is otherwise engaged in agricultural production. The new laws does not apply to a person who purchases 10 acres of vacant land to create a corn maze and petting farm if agricultural production was not already taking place on the land. If the land is first involved in agricultural production, added agritourism activities will fall under the new law.

Agritourism operators gain some civil liability protection, but should still have a visitor safety plan and insurance. The law grants immunity from liability for inherent dangers on farms that are beyond the control of agritourism providers. But the law does not give "blanket immunity" for injuries that occur on agritourism operations. Agritourism providers should understand the inherent dangers the law addresses as well as the list of exceptions to immunity. For the best liability protection, follow a safety plan that includes warning guests about any dangerous conditions they may encounter and obtain adequate insurance coverage that addresses all activities in the agritourism operation.

Agritourism providers must follow the law's signage requirements. Agritourism operators should have proper warning signs posted either at each entrance to the agritourism location or at each agritourism activity. Providers who fail to post the right sign in the right place will lose the law's immunity protections. The Ohio Farm Bureau Federation sells the signs and OSU Extension provides a template for making the signs.

Agritourism providers may be subject to some zoning regulations. Counties and townships cannot prohibit activities that qualify as agritourism under the new law. But if a county or township has a valid public health and safety reason for doing so, it may create regulations that address access to and from an agritourism operation, the size of the parking area for the operation and size and setback limitations for structures used primarily for agritourism. Agritourism operators must comply with zoning regulations that address these factors.

Implications of the new law for townships and counties

Counties and townships have limited authority over agritourism activities, but may enact some zoning standards to address identified public health and safety concerns. The new law only allows county and township zoning authorities to regulate four aspects of agritourism operations: access to and from the property, size of parking area and size and location of structures used primarily for agritourism. The county or township may regulate these factors after determining that there are valid public health and safety reasons for doing so. The county or township must amend its zoning resolution to include the standards that apply to agritourism.

Local officials must treat free and fee-based agritourism activities equally. Unlike some agricultural laws, there is no distinction in the new law between commercial agritourism businesses and no-charge agritourism activities like educational farm tours. The law applies to both fee-based and free agritourism activities, as long as they are conducted on a "farm."

Counties must allow agritourism land to remain in the CAUV program. The new law clarifies that a parcel where agritourism takes place continues to qualify for reduced property tax assessments under Ohio's CAUV program.

Read Senate Bill 75 in its entirety at:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-75>.

The different parts of the new law are in these sections of the Ohio Revised Code (ORC), available at <http://codes.ohio.gov>:

- Liability: ORC 901.80
- Property taxation: ORC 5713.30
- Zoning: ORC 303.21(C)(4) and (D) for counties and ORC 519.21(C)(4) and (D) for townships.