Ohio’s New Laws for Agritourism

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Who does this new law apply to?

Farms that provide agritourism activities

“Farm”
“Agricultural production”
“Agritourism”
“Agritourism providers”

"Agritourism" means 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.

"Agricultural production" means commercial aquaculture, algaculture meaning the farming of algae, apiculture, animal husbandry, or 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.

"Farm" means land that is composed of tracts, lots, or parcels totaling not less than ten acres devoted to agricultural production or totaling less than ten acres devoted to agricultural production if the land produces an average yearly gross income of at least twenty-five hundred dollars from agricultural production.
“Agritourism provider” means a person who owns, operates, provides, or sponsors an agritourism activity or an employee of such a person who engages in or provides agritourism activities whether or not for a fee.

Immunity from Liability for Agritourism Providers – ORC 901.80

In a civil action, an agritourism provider is immune from liability for any harm a participant sustains during an agritourism activity if the participant is harmed as a result of a risk inherent in an agritourism activity. Nothing in this section requires an agritourism provider to eliminate risks inherent in agritourism activities.

An agritourism provider is not immune from civil liability for harm sustained by a participant if any of the following applies:

1. Liability protection
2. Property taxation
3. Zoning protection

“Risk inherent in an agritourism activity” means a danger or condition that is an integral part of an agritourism activity, including all of the following:

1. The surface and subsurface conditions of land;
2. The behavior or actions of wild animals not kept by or under the control of an agritourism provider;
3. The behavior or actions of domestic animals other than vicious or dangerous dogs as defined in section 955.11 of Revised Code;
4. The ordinary dangers associated with structures or equipment ordinarily used in farming or ranching operations;
5. The possibility of contracting illness resulting from physical contact with animals, animal feed, animal waste, or surfaces contaminated by animal waste;
6. The possibility that a participant may act in a negligent manner, including by failing to follow instructions given by the agritourism provider or by failing to exercise reasonable caution while engaging in the agritourism activity that may contribute to injury to that participant or another participant.

(D) An agritourism provider shall post and maintain signs that contain the warning notice specified in this division. The provider shall place a sign in a clearly visible location at or near each entrance to the agritourism location or at the site of each agritourism activity. The warning notice shall consist of a sign in black letters with each letter to be a minimum of one inch in height. The signs shall contain the following notice of warning:

An agritourism provider acts with a willful or wanton disregard for the safety of the participant and proximately causes harm to the participant.

The agritourism provider purposefully causes harm to the participant.

The agritourism provider’s actions or inactions constitute criminal conduct and cause harm to the participant.

The agritourism provider fails to post and maintain signs as required by division (D) of this section.

The agritourism provider has actual knowledge or should have actual knowledge of an existing dangerous condition on the land or regarding facilities or equipment on the land that is not an inherent risk and does not make the dangerous condition known to the participant, and the dangerous condition proximately causes injury or damage to or the death of the participant.
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.

Questions about liability protection?

Property Taxation
The existence of agritourism on a tract, lot, or parcel of land that otherwise meets the definition of "land devoted exclusively to agricultural use" as defined in this division does not disqualify that tract, lot, or parcel from valuation under sections 5713.30 to 5713.37 and 5715.01 of the Revised Code.

- Agritourism land remains in CAUV program

Protection from Zoning
Amendments to Ohio’s agricultural exemption from zoning

Ohio Revised Code 519.21(C) and 303.21(C)
No power on any township or county ... to prohibit in a district zoned for agricultural, industrial, residential, or commercial uses, the use of any land for:
1. A farm market
2. Biodiesel, biomass or electric or heat energy production
3. Biologically derived methane production
4. Agritourism

R.C. 519.21(C)(4)
However, township may regulate such factors as:
- Size of structure used primarily for agritourism
- Size of parking areas that may be required
- Setback building lines for structures used primarily for agritourism
- Egress or ingress
Where such regulation is necessary to protect public health and safety.
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R.C. 519.21(C)
Nothing in division (C)(4) of this section confers power on a township ... to require any parking area to be improved in any manner, including requirements governing drainage, parking area base, parking area paving, or any other improvement.

R.C. 519.21(C)
Nothing in division (C)(4) of this section confers power on a township ... to prohibit the use of any land or the construction or use of buildings or structures that are used primarily for vinting and selling wine that are located on land any part of which is used for viticulture as provided in division (A) of this section.

1. Which land uses are “agritourism” that zoning can’t prohibit?
   – 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.
   • Farm= ten acres devoted to agricultural production or average $2500 if less than 10 acres.

2. Is it necessary to protect public health and safety in an agritourism situation?
   If yes, then zoning can regulate these factors:
   – Size of structure and setback building lines for structure, if structure is used primarily for agritourism
   – Size of parking areas that may be required
   – Egress or ingress

3. Regulating the “allowable factors”
   – Township or county must have standards addressing the allowable factors in the zoning resolution

Pre-existing Agritourism and Zoning
• “Non-conforming use” is one that was legally permissible prior to a change in the zoning resolution.
Questions about Zoning?

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