

Law Bulletin

Law you need to know from OSU Extension's Farm Office

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Ohio's Agritourism Law

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Agritourism is a growing industry in Ohio. More and more farmers are bringing people onto the farm to enjoy food, education and entertainment. To encourage this industry, the Ohio legislature enacted a new law in 2016 that grants benefits and protections for Ohio's agritourism providers. The law addresses three areas: liability protection for personal injuries suffered during agritourism activities, property taxation of land with agritourism activities, and county and township zoning authority over agritourism.

Who benefits from the agritourism law?

The law applies only to "agritourism providers" that offer "agritourism" on a "farm" devoted to commercial "agricultural production." The Ohio Revised Code § 901.80 and § 929.01 define each of these very important terms. An agritourism operation that meets each of these definitions can benefit from the law's liability protection, agricultural property tax assessment and zoning protections.

- An "agritourism provider" is anyone who owns, operates, provides, or sponsors an "agritourism" activity, whether or not for a fee, including employees.
- "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 annual income of \$2500.
- "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.

Liability protection for agritourism providers

The 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 a provider 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 activity.

Warning sign requirement. Note that 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 this exact language 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.

Contact OSU Extension South Centers Direct Marketing Program or Ohio Farm Bureau for information about obtaining an agritourism sign.

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

- 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 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 failed to post the required sign.

Property tax assessments for agritourism land

The new law states in Ohio Revised Code § 5713.30(A)(5) that the existence of agritourism activities does not disqualify a parcel from qualifying for Ohio's Current Agricultural Use Valuation (CAUV) program, which assesses real property taxes for agricultural land differently than other lands. More information on CAUV is here: https://www.tax.ohio.gov/real_property/cauv.aspx.

Local zoning limitations on agritourism

The agritourism law also limits local zoning authority over agritourism land uses. Ohio Revised Code § 303.21(C)(4) and § 519.21(C)(4) state that county and township zoning officials have no power to prohibit the use of land for agritourism in any zoning district. The law also clarifies that wineries fall within the agritourism provisions and states that zoning may not prohibit the use or construction of structures for vinting or selling wine if the buildings are located on land where grapes are grown.

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

Implications of the law for agritourism providers

1. *Not everyone who engages in agritourism activities qualifies for the law's protections.* The intent of the law is to benefit a farmer that adds agritourism activities to an existing, commercially producing or "working" farm. The

agritourism law does not apply where a person purchases non-agricultural land just to establish agritourism on land that is not a "farm." If the land is first involved in commercial agricultural production, added agritourism activities will fall under the agritourism law.

2. *Agritourism providers should still have a visitor safety plan and good insurance.* The law does not give "blanket immunity" for all injuries on agritourism operations. An agritourism provider can be liable for harm caused by known dangerous conditions that aren't inherent risks of the activity, unless the provider warned participants about the dangers. Providers should have a visitor safety plan and constantly assess the property for dangerous conditions such as a step in need of repair, defective equipment, and pedestrian/traffic interactions. Obtain insurance coverage that addresses all activities on the agritourism operation.

3. *Agritourism providers lose immunity by failing to post proper signs.* Agritourism providers must have proper warning signs posted either at each entrance to the agritourism location or at each agritourism activity. Providers who fail to post the correct sign in the correct place will lose the law's immunity protections.

4. *Agritourism providers can be subject to building and fire code regulations and some zoning regulations.* The agritourism law did not change Ohio's building code and fire code regulations for agricultural structures—those provisions can still apply to agritourism. And if a county or township has a valid public health concern about sizes or setbacks for agritourism structures, sizes of parking areas, or how people enter and leave the property and amends its zoning resolution to include regulations for those factors, agritourism providers must comply with the provisions.

Where to find the laws

- The Ohio Revised Code is online at <http://codes.ohio.gov>.
- Immunity for agritourism, Ohio Revised Code § 901.80.
- Agritourism property taxation, Ohio Revised Code § 5713.30(A)(5).
- Agritourism exemption from county and township zoning, Ohio Revised Code §§ 303.21(C)(4) and 519.21(C)(4).
- The agritourism law was enacted by Ohio's 131st General Assembly as Senate Bill 75, eff. 8/16/2016.

FOR MORE INFORMATION FROM OSU EXTENSION'S AGRICULTURAL & RESOURCE LAW PROGRAM:

- Visit our website at <http://farmoffice.osu.edu>.
- Sign up at <http://farmoffice.osu.edu/blog> to receive our blog postings on legal issues of importance to Ohio agriculture.
- Contact us by e-mail at aglaw@osu.edu.