

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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From picking pumpkins and apples to engaging in corn mazes, hayrides, weddings, wineries, and farm markets—“agritourism” has grown tremendously over the last decade in Ohio. While agritourism offers many opportunities for farm owners, it also raises new legal issues and concerns. That’s why Ohio’s legislature enacted an agritourism law in 2016. The law addresses three legal issues for agritourism providers:

1. Protects agritourism operators from legal liability for injuries that are due to the inherent risks of engaging in agritourism activities.
2. Limits county and township zoning authority over agritourism land uses.
3. Clarifies how agritourism activities affect a farm’s eligibility for Current Agricultural Use Valuation (CAUV) property tax assessment.

Before understanding each of these parts of the law, it is important to identify who the law affects. We begin with the law’s definition of “agritourism provider,” because if an operation fits within that definition, the liability, zoning, and CAUV provisions will apply to the operation.

What is as an “agritourism provider”?

The agritourism law applies only to operations that qualify as an “agritourism provider.” Understanding which operations are agritourism providers is not simple, however. An operation must meet several definitions built into the “agritourism provider” term. Below, we bold and explain each of these important terms.

- An **“agritourism provider”** is anyone who owns, operates, provides, or sponsors an **“agritourism”** activity, whether or not for a fee.
- **“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.

To summarize in simpler terms, an operation is an “agritourism provider” if it:

Owns, operates, provides, or sponsors agriculturally related educational, historical, cultural, or recreational activities to the general public on a farm that is engaged in commercial “agricultural production” and is at least 10 acres in size or earns an average gross income of \$2500 from agricultural production.

Liability protection for agritourism providers – Ohio Revised Code § 901.80

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 if the harm is due to “risks inherent in an agritourism activity.” An agritourism provider does not have a legal duty to remove “inherent risks,” which the law defines as dangers or conditions that are an integral part of an agritourism activity. Inherent risks specifically include all of the following:

- 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.

The warning sign requirement. The law requires an agritourism provider to "warn" visitors that agritourism can be dangerous by posting a warning sign. An agritourism provider must post and maintain the warning sign to receive liability protection—no sign, no immunity from liability. A warning 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.

An agritourism provider can contact OSU Extension South Centers Direct Marketing Program or Ohio Farm Bureau for information about obtaining an agritourism sign that meets the requirements of the law.

Exceptions to immunity. The law does not grant immunity for all injuries that might occur on an agritourism operation. There are times when an agritourism provider can be liable for someone's harm. The law states that a 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 taxes for agritourism land – Ohio Revised Code § 5713.30(A)(5)

The growth of agritourism raised confusion in the past over whether adding agritourism activities to a farm would disqualify the land from the CAUV program, which assesses real property taxes for agricultural land based on its agricultural value rather than its fair market value.. The agritourism law clarifies this confusion by stating that the existence of agritourism activities on a property does not disqualify the parcel from the CAUV program. More information on Ohio's CAUV program is at this link: https://www.tax.ohio.gov/real_property/cauv.aspx.

County and township zoning limitations for agritourism – Ohio Revised Code § 303.21(C)(4) and § 519.21(C)(4)

The agritourism law limits county and township zoning authority over agritourism land uses by stating that county and township zoning officials have no power "to prohibit in a district zoned for agricultural, industrial, residential, or commercial uses, the use of any land for agritourism." However, the law does allow counties and townships to regulate some factors related to agritourism if those regulations are necessary to protect public health and safety. The factors a county or township may regulated include:

1. The size of structures used primarily for agritourism,
2. The size of parking areas, but not including parking area improvements such as requirements for drainage, parking area base or paving, or any other improvement.
3. Setback building lines for structures used primarily for agritourism,
4. Egress or ingress for the agritourism parcel.

Wineries also fall within the same zoning limitations. The law states that zoning may not prohibit the use any land or the construction or use of structures that are used primarily for vinting or selling wine if the buildings are located on land that is used for viticulture, which is the growing of grapes.

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 new 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 a corn maze, petting farm, wedding barn, or similar activity since the land is not already 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.* The agritourism law does not give "blanket immunity" for any injuries that occur on agritourism operations. An agritourism provider should still strive to reduce any possibilities of injury by development and implementing a visitor safety plan. Constantly assess the property for dangerous conditions that are not "inherent risks of agritourism," such as a step needing repair, defective equipment, and pedestrian/traffic interactions. The law does not protect an agritourism provider that knows about a dangerous condition and does not remove or warn customers about the condition.

3. *Liability insurance is still a critical necessity for an agritourism provider.* Agritourism providers should be careful not to let the agritourism law make them too comfortable in thinking liability is no longer an issue. Even if the law would eventually shield an operator from liability, it does not prevent an injured party from suing the provider and trying to make the provider liability for harm that occurred at the operation. An insurance policy that has coverage for all agritourism activities on the farm will not only ensure that the insurance provider will defend the operation if there is a legal claim but may also provide insurance coverage if the agritourism immunity provisions do not apply to the situation. Choosing a good insurance provider and reviewing all covered agritourism activities with the provider adds an important layer of additional liability protection for the agritourism operation.

3. *Agritourism providers lose immunity by failing to post the warning sign.* 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. Actual signs or sign templates that meet the requirements of the law are available through OSU Extension and Ohio Farm Bureau Federation.

4. *Agritourism providers can be subject to some zoning regulations.* 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 the county or township amends its zoning resolution to include regulations for those factors, then agritourism providers in the county or township must comply with the zoning provisions. Agritourism operations should check their local zoning provisions to see if the zoning resolution contains provisions for these four factors that the law does allow a county or township to regulate.

5. *Agritourism providers can be subject to building code regulations.* The agritourism law did not change how Ohio's building code applies to agricultural structures—those provisions can still apply in certain situations. The purpose of the building code is to ensure that buildings are safe for people to use, but buildings or structures on land used for agricultural purposes are often exempt from the code provisions because they are not frequently inhabited by many people. There is exception to the Ohio Building Code exemption in Ohio Revised Code § 3781.06, however, that applies if an agricultural building is used for "retail trade," which means that there are sales of products in the building or structure but less than 50% of the gross income from those product sales derive from sources other than products produced or raised by the operator in a normal crop year. In buildings where an agritourism provider is selling "too many" products other than the farm's own products, the building code would apply to the structure.

6. *Agritourism providers can be subject to fire code regulations.*

Additionally, if the fire department determines that there are "distinct hazards to life or property" in an agricultural structure or if the occupancy of an agricultural building changes from an agricultural use to another type of use, the Ohio Fire Code could apply to the structure according to Ohio Admin. Code 1301:7-7-01(B)(1)(b). The State Fire Marshall offers guidance on situations in agritourism structures that can present a "distinct hazard," such as highly flammable materials such as exposed timbers, hay, and straw, candles, flammable drapery and fabrics, storage of chemicals and flammable liquids, fireworks, unapproved cooking devices, and minimal exits. Learn more about safety precautions the State Fire Marshall wants to see in agritourism buildings at <https://com.ohio.gov/divisions-and-programs/state-fire-marshall/code-enforcement/technical-bulletins-and-advisory-documents/fire-safety-at-agritourism-facilities>.

References

Senate Bill 75, 131st Gen. Assembly, effective 8/16/2016, available at <https://www.legislature.ohio.gov>.

Ohio Revised Code, available at <https://codes.ohio.gov/ohio-revised-code>

- Ohio Revised Code § 901.80
- Ohio Revised Code § 5713.30(A)(5)
- Ohio Revised Code § 303.21(C)(4) and §519.21(C)(4)
- Ohio Revised Code § 3781.06(B)(1)

Ohio Administrative Code Chapter 1301:7-7, available at <https://codes.ohio.gov/ohio-administrative-code/chapter-1301:7-7>.



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