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Agritourism Statutes

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Welcome
contains a
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Congressi
overview a
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added and

- Administrative Law
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Animal Welfare

Aquaculture

Overview

Laws governing the treatment of animals were first passed in 1867 and spearheaded by the ASPCA, followed by other states into the 1900s. The laws, while similar, vary by state.

Note: Recently added resources are posted in red.

- **Overview**
- **Major Statutes**
- **Regulations**
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Major Statutes

Animal Health and Disease

Animal Welfare Act, 7 U.S.C. §§ 2131-2159

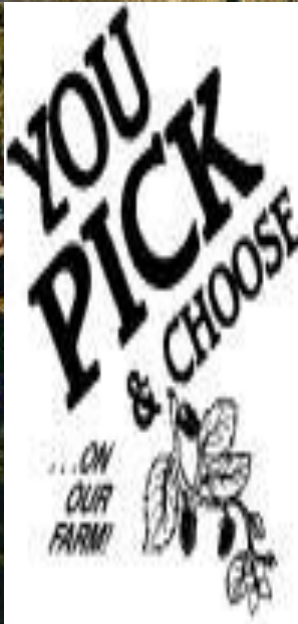
Fishery Conservation and Management, 16 U.S.C. §§ 1801-1891

Endangered Species Act, 16 U.S.C. §§ 1531-4

Fish and Wildlife Conservation Act, 16 U.S.C. §§ 2901-2912

Horse Protection Act, 15 U.S.C. §§ 1821-1831





Outline



- Landowner Liability for Business Invitees
- Agritourism Statutes
- Proposed Agritourism Statutes

Landowner Liability for Business Invitees



Liability Issues



- 3 Categories of People on Your Premises
 - Trespasser (2 types)
 - ✦ Lowest duty of care – No wanton harm
 - Licensee
 - ✦ Higher duty of care than trespasser, but less than invitee
 - **Invitee**
 - ✦ Highest duty of care

Liability Issues: Invitee



- Invitee

- Person who is invited upon the premises in order to conduct business with the possessor
- Came on the land for *your* benefit
 - ✦ Customers on farm or at your stand
 - ✦ **Employees**
 - ✦ Students
 - ✦ Business visitor

Liability Issues: Invitee



- Your duty:
 - Highest duty of care
 - A general duty to use ordinary care to keep the premises reasonably safe for the benefit of the invitee.

- But what about employees?
 - What kind of concern are they typically shown?
What kind of jobs do they typically perform?
 - This means making sure your employees have safe equipment, facilities, proper training, etc.

Agritourism Statutes



Agritourism Statutes



- The purpose behind the agritourism statutes is to address the #1 concern many of people wishing to start an agritourism operation...liability protection.
- Because negligence is the main cause of action that they face the agritourism statutes typically work by codifying the “assumption of risk” doctrine.
 - This is a possible to defense to the tort of negligence
 - ✦ Football vs. Agriculture – What is the difference?

By the numbers...



- Deaths in Agriculture in 2015 – 401 reported by CDC
 - The FBI reported 86 law enforcement officers killed in the line of duty during that same time period.
 - What do you think was the most dangerous occupation?
 - ✦ Truck drivers
- Why does this matter for agritourism?
 - How well do their customers understand agriculture?
 - “Chocolate milk” example

Agritourism Statutes



- Limit landowner liability for those engaging in “agritourism” activity
 - Typically exempts “inherent risks” from liability
- Usually very broadly written
- Not always well liked by the legal system...why?
- Can apply to:
 - Corn mazes, Hay rides, U-Pick, Etc...



Agritourism Statute Politics



- These statutes can actually be fairly contentious...
- The existence and/or “strength” of the statutes often come down to political interests at the state level
 - Care to take a guess at the typical lobbying groups on each side?
- Some states have liability statutes, but may be of limited use because of the wording of the statutes
 - We will look at examples later

Agritourism Statutes - Maine



- In Maine:
 - [A] participant...may not make any claim or recover from an agritourism professional for property damage or damages for personal injury resulting from the inherent risks of agritourism activities.
 - So long as:
 - ✦ The injury or death results from an inherent risk; and
 - ✦ The warning contained in § 252(3) is posted or a statement is signed.
- This type of liability statute is fairly common

What does the Act do? - Maine



- It prevents liability for “inherent risks” so long as the warning is posted properly
- “Inherent risks of agritourism activity” means those dangers or conditions that are an integral part of an agritourism activity, including but not limited to:
 - Certain hazards including surface and subsurface conditions and natural conditions of land, vegetation and waters;
 - The behavior of wild and domestic animals, including but not limited to the ***depositing of manure***;
 - Ordinary dangers of structures or equipment ordinarily used in farming and ranching; and
 - The potential for injury to a participant or others if the participant acts in a negligent manner, including failing to follow instructions given by an agritourism professional or failing to exercise reasonable caution while engaging in an agritourism activity.

Agritourism Statute, Definitions



“Agritourism activity” means any agricultural activity carried out on a farm or ranch that members of the general public are allowed to view or participate in, including farming, ranching, historical and cultural activities, harvest-your-own activities and attractions related to farming or ranching. An activity is an agritourism activity whether or not the participant pays to view or participate in the activity.

- One question that often comes up is how broad is this definition?
 - Wedding Venues at old barns
 - Wineries
 - Farm Stands
 - Shooting Ranges
 - Outdoor Concerts

Recent Cases



- Bradstreet Farm, MA – Barn used for wedding runs afoul of local zoning board
- Meadowbrook Farms, PA – Wedding venue

One big question is whether agritourism falls under the definition of agriculture?

- Most states have more than 1 definition of agriculture

Agritourism Statute, Definition Examples



- *Henry v Bd. of Appeals*, 641 NE.2d 1334 (Mass. 1994) – Christmas tree farm (even “cut your own”) constituted “agriculture” and “horticulture” under the zoning statutes
- *Kimball v Blanchard*, 7 A2d 394 (N.H. 1939) – unless the ordinance states otherwise, farmers can sell manufactured products such as cider, maple syrup, butter, and cheese and still be “agricultural”
- *Rivendell Winery, LLC v. Donovan*, 74 A.D.3d 1594 (N.Y. App. Div. 2010) (farm winery did not fit under the definition of “agriculture” since it was not at least 7 acres and would contain retail and commercial features)
- *Marzullo v. Kahl*, 733 A.2d 169 (Md. 2001) – selling snakes was not “commercial agriculture” within scope of zoning regulation's definition of “farm.” “Courts do not set aside common experience and common sense when construing statutes.”
- *Columbia Twp. Bd. of Zoning v Otis*, 663 NE2d 377 (Ohio Ct. App. 1995) - Haunted hayrides on farm property did not constitute use of land for agricultural purpose (even though normal hayrides may be considered “agricultural”) because the “addition of Halloween theme with shrieks and flashing lights was completely inconsistent with traditional agricultural activity”

Agritourism Statutes- Exceptions



Arkansas Exemptions

- In Arkansas, no protection is offered if the agritourism operator:
 - Commits gross negligence in terms of safety;
 - Has actual knowledge of a dangerous condition but fails to make the danger known;
 - Intentionally injures a participant; or
 - Commits other acts, errors, or omissions that constitute willful or wanton misconduct, gross negligence, or criminal conduct that proximately causes injury, damage, or death.

Maine Exemptions

- Nothing in subsection 1 prevents or limits the liability of an agritourism professional if the agritourism professional:
 - A. Commits an act or omission that constitutes negligence or reckless disregard for the safety of others, and that act or omission causes an injury. For purposes of this section, “reckless” has the same meaning as “recklessly,” as defined in Title 17-A, section 35, subsection 3, paragraph A;
 - B. ...

Warning Signs...Do they Work?



1. Does posting a sign saying “***Not responsible for any injuries that occur on my land from an inherent risk***” protect you from a lawsuit?
2. Answer – Typically not, but this can be modified by statute...
 1. Many of the agritourism statutes (including ME) **require** the posting of a warning before the statute’s protections may be used

Agritourism Act - § 252

i.e. “sometimes signs do help”



The Maine agritourism statute may protect operators that display this warning sign in certain cases (and in contracts).

- The warning must be in black letters that are at least 1 inch tall for the sign

- **WARNING** -- Under Maine law, there is no liability for injury to a participant in an agritourism activity conducted at this agritourism location if such injury results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment and animals, as well as the potential for injury if you act in a negligent manner. You are assuming the risk of participating in this agritourism activity.”

Proposed Agritourism Statutes



Proposed Agritourism Statutes in the NE



- Massachusetts – H.B. 2715 – bill to establish an Agricultural Tourism Study Committee
- Rhode Island – S.B. 2598 (2016 bill) – was a bill to establish an agritourism liability statute
- New Jersey – S.B. 2893 (2017 bill) - was a bill to establish an agritourism liability statute

New Statute

- New York - N.Y. Gen. Oblig. Law § 18-303 – Liability statute with warning sign requirement

Summary



- Agritourism statutes are an important tool, but they are not the only one!
- No statute will be perfect and protect against everything, because operators tend to be creative
 - Pumpkin Farm Example
- Good agritourism operators have a strong mix of the different protections
 - Agritourism statutes (where available)
 - Insurance
 - Business Structure
 - Proper Planning



**Contact
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