

Liability and Agritourism

Implications of Tennessee's 2009 Legislation

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Disclaimer

This publication is for educational purposes only and does not constitute legal advice nor is it intended to be a substitute for the services of a competent legal professional.

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Introduction

Agritourism is a growing industry in Tennessee, as farmers seek new enterprises to generate revenue and consumers seek educational and recreational opportunities or farm-fresh products. A combination of agriculture and tourism, agritourism creates opportunities as well as challenges.

Liability is a significant concern for farmers who operate agritourism enterprises. A landowner who opens his or her land to the public faces the risk that he or she could be considered liable if someone is injured while on the property.

Over the last few years, several states have enacted legislation to limit the liability of agritourism operators with regard to the dangers, hazards or conditions inherent to their agritourism activities. In February 2009, House Bill 1931 addressing agritourism liability was introduced into the Tennessee legislature and was quickly followed by Senate Bill 2164. The bills were passed following amendment and were signed into law by Governor Phil Bredesen. The law was enacted on July 1, 2009 and closely resembles the Equine Activity Law¹ previously put in place in Tennessee.

With the new law come new questions about agritourism and liability in Tennessee. This publication includes the text of the new law and discusses some implications of the legislation for agritourism operators in the state.

Common examples of agritourism attractions:

- Choose-and-cut Christmas trees
- Corn mazes
- Educational farm tours
- Farm animal exhibits or petting corrals
- Hay rides
- On-farm bed and breakfasts
- On-farm event hosting (birthday parties, weddings, etc.)
- On-farm retail markets
- Pick-your-own fruits and vegetables
- Pumpkin patches
- Winery tours and wine tasting

[1] Enacted by Public Chapter 974 in 1992 and now located in Tennessee Code Annotated 44-20-105 through 44-20-105.

Text of the Legislation

The following is Public Chapter Number 498 of the state of Tennessee, the text of the act signed into law related to agritourism liability.

STATE OF TENNESSEE
PUBLIC CHAPTER NO. 498

SENATE BILL NO. 2164

By Tracy, Bunch, Burks, Gresham, Overbey, Ford, Crowe, Faulk, Southerland, Black

Substituted for: House Bill No. 1931

By Bone, Ty Cobb, Hawk, Bell, Evans, McDaniel, Harrison, Shipley, Ford, Roach, Carr

AN ACT to amend Tennessee Code Annotated, Title 43 and Title 70, Chapter 7, relative to agritourism.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 43, is amended by adding Sections 2 through 4 as a new, appropriately designated chapter.

SECTION 2. For purposes of this chapter, unless the context otherwise requires:

- (1) "Agritourism activity" means any activity carried out on a farm or ranch, eligible for greenbelt classification under Title 67, Chapter 5, Part 10, that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, or harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not a participant provides compensation in money or other valuable compensation to participate in the activity. Agritourism activity includes an activity involving any animal exhibition at an agricultural fair, regardless of the location of the fair;
- (2) "Agritourism professional" means any person who is engaged in the business of providing one (1) or more agritourism activities, whether or not for compensation;
- (3) "Inherent risks of agritourism activity" means those dangers, conditions, or hazards that are an integral part of an agritourism activity including, but not limited to, surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. Inherent risks of agritourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by an agritourism professional or failing to exercise reasonable caution while engaging in an agritourism activity;
- (4) "Participant" means any person, other than the agritourism professional, who engages in an agritourism activity; and
- (5) "Person" means an individual, fiduciary, firm, association, partnership, limited liability company, corporation, unit of government, or any other group acting as a unit.

SECTION 3. (a) Except as provided in subsection (b):

- (1) No agritourism professional shall be liable for injury to or death of a participant resulting solely from the inherent risks of agritourism activities, as long as the warning contained in Section 4(b) is posted as required; and
- (2) No participant or participant's representative shall maintain an action against or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities.

(b) Nothing in subsection (a) prevents or limits the liability of an agritourism professional if the agritourism professional or any of its agents does any one (1) or more of the following:

- (1) Commits an act or omission that constitutes reckless disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant;
- (2) Has actual knowledge or reasonably should have known of a dangerous condition on the land, facilities, or equipment used in the activity or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant;
- (3) Fails to train, or improperly or inadequately trains, employees who are actively involved in agritourism activities and an act or omission of the employee proximately causes injury, damage, or death to the participant;
- (4) Intentionally injures the participant; or
- (5) Commits any other act, error, or omission that constitutes willful or wanton misconduct, gross negligence, or criminal conduct.

(c) Nothing in subsection (a):

(1) Prevents or limits the liability of an agritourism professional under the product liability provisions in Title 29, Chapter 28; or

(2) Shall be construed so as to negate that assumption of the risk is an affirmative defense.

(d) Any limitation on legal liability afforded by this section to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law.

SECTION 4. (a)(1) Every agritourism professional shall post and maintain a sign that contains the warning notice specified in subsection (b). The sign shall be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice shall consist of a sign in black letters, with each letter to be a minimum of one inch (1") in height.

(2) Every written contract entered into by an agritourism professional for the providing of professional services, instruction, or the rental of equipment to a participant for purposes of engaging in or participating in an agritourism activity, whether or not the contract involves agritourism activities on or off the site of the agritourism activity, shall contain in clearly readable print the warning notice specified in subsection (b).

(b) The signs and contracts described in subsection (a) shall contain the following language or substantially similar language:

WARNING

Under Tennessee law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location or by this agritourism professional if such injury or death 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 you 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.

(c) Failure to comply with this section shall prevent an agritourism professional from invoking the privileges of immunity provided by this chapter.

SECTION 5. This act shall take effect July 1, 2009, the public welfare requiring it.

PASSED: June 2, 2009

Signed by Ron Ramsey, Speaker of the Senate; Kent Williams, Speaker of the House of Representatives; and Phil Bredesen, Governor

APPROVED this 23rd day of June 2009

Interpretation and Implications of the Legislation

What does the law say?

The new statute defines several terms including what qualifies as an agritourism activity, who is an agritourism professional, what is an inherent risk of an agritourism activity and who is a participant.

The law is intended to limit the liability of agritourism professionals for injuries that result from inherent risks. The inherent risks are those conditions that are considered beyond the control of the agritourism professional. The statute defines inherent risks as "those dangers, conditions or hazards that are an integral part of an agritourism activity." These include the natural condition of the land, vegetation or water; behavior of wild or domestic animals; ordinary dangers of equipment or structures used in farming and ranching; and the potential for a participant to act negligently. According to the statute, if a participant is injured by any of these "inherent conditions" then the agritourism professional is not liable for related injuries. This does not mean that an agritourism professional will never be held liable for an injury, just that there is a statutory limit on liability in certain circumstances.

To whom does the statute apply?

This law applies to agritourism activities and agritourism professionals as defined in the statute. This means that the law covers farms or ranches eligible for greenbelt certification providing one or more agritourism activities. It also covers animal exhibitions at agricultural fairs.



What are the requirements of the law?

For the liability protections to apply, a landowner or operator must first qualify as an agritourism professional and provide an agritourism activity. Additionally, the agritourism professional must post and maintain warning signs at the entrance of the agritourism location and at every agritourism activity. The warning sign must be printed in black letters at least one inch tall. The warning must also be included in any contracts entered into by the agritourism professional for rental of equipment, instruction, or other professional services offered by the agritourism professional.

The warning required on signs and contracts is as follows:

WARNING

UNDER TENNESSEE LAW,

THERE IS NO LIABILITY FOR AN INJURY TO OR DEATH OF A PARTICIPANT
IN AN AGRITOURISM ACTIVITY CONDUCTED AT THIS AGRITOURISM
LOCATION OR BY THIS AGRITOURISM PROFESSIONAL IF SUCH INJURY OR
DEATH 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 YOU
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.

WARNING

Under Tennessee law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location or by this agritourism professional if such injury or death 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 you 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.

If the warning signs are not posted or the required language is not included in contracts, the agritourism professional will not be protected by the limited liability law.

Is a sign needed at every attraction?

The law says, "The sign shall be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity." While it may seem excessive to put a sign at every activity, it may be one of those times to consider being safe rather than sorry. Something as minor as not having a sign at an activity may make the law ineffective. The law says, "Failure to comply with this section (sign requirement) shall prevent an agritourism professional from invoking the privileges of immunity provided by this chapter."

Some states have found it reasonable for operators to post signs at the entrance(s) to specific activity areas such as the "Animal Barnyard" instead of having a sign at each separate animal pen or exhibit. For operators where activities are grouped into special activity areas, this may be a viable option.

Will this law stop people from suing me?

No, the law will probably not prevent people from filing a suit against you. It may help you in several other ways, however. First, the law prevents an agritourism professional from being held liable for injury to or death of a participant caused by inherent risks of agritourism activities. This does not stop someone from filing a suit against you if they are injured, but it does require them to prove their injury was caused by something other than an inherent risk of the activity to be able to recover damages from you.

You may still be liable for any injuries to participants. The limitation on liability does not apply in five specific situations:

- (1) The agritourism professional or employee acts with reckless disregard, or without concern, for the safety of the participant.
- (2) The agritourism professional or employee has knowledge of or should have known about a dangerous condition and does not share that information with the participants.
- (3) The agritourism professional fails to train, or improperly or inadequately trains employees.
- (4) The agritourism professional or employee intentionally injures the participant.
- (5) The agritourism professional or employee commits any act, error or omission that is considered willful or wanton misconduct, gross negligence or criminal conduct.

These are generally situations that are within the control of the agritourism professional compared to inherent risks, which are not.

Do agritourism operators still need liability insurance?

Yes. The new law is not a replacement for insurance. The law only provides protection in limited circumstances and does not stop an injured participant from filing suit in an attempt to recover from an agritourism professional. Most insurance policies include "duty to defend" clauses, which means that the insurance company will pay to defend an agritourism professional if a suit is filed against them.

Will the law impact premiums on liability insurance?

In the short run, insurance premiums will likely remain unchanged. Rates are based in large part on prior loss history, the amount of funds insurance companies pay out on similar policies. Exactly how this law will impact actual losses is not yet known. It will take time for the law to be tested in court and for case law to develop. If losses decline over time, premiums could decrease as well.

How do I know if my farm is eligible for greenbelt classification?

The law defines an agritourism activity for the purpose of the law, in part, as a farm or ranch that is eligible for greenbelt classification. Greenbelt refers to a classification system related to property tax assessment in Tennessee made possible through the Agricultural, Forest and Open Space Land Act of 1976. It allows for eligible agricultural, forest and open space land to be taxed based on use value rather than on fair market value.

The greenbelt law requires that "agricultural" land be part of a farm unit of at least 15 acres including woodlands and wastelands that is "engaged in the production of growing crops, plants, animals, nursery, or floral products." The statute also allows a 10-acre tract to qualify if the same owner has already qualified a 15-acre tract and both tracts constitute a farm unit being used for the production or growing of agricultural products. To qualify, the property should produce a minimum average annual gross farm income of \$1,500 including farm sales, farm rent or federal farm support payments over any three consecutive years. The property may not be eligible if there is evidence that the property is not being farmed, regardless of the actual or claimed income. If the land has been farmed for at least 25 years by the owner or the owner's parents or spouse, the land may be eligible for greenbelt classification as long as the owner lives on the property and the property is not used for a non-farming purpose.





The agritourism liability law only requires the property to be eligible for greenbelt classification and not actually enrolled. For those who would like to obtain greenbelt classification, landowners must submit an application with the county property assessor. If the application is approved, it must be recorded in the county register's office. There is typically no application fee; however, there may be a recording fee. The application must be filed by March 1 of the year for which the classification is sought. Owners must seek greenbelt approval in each county in which the property is located. Once approved, the owner need not apply each year. New owners of property under greenbelt classification must reapply if they wish to continue an agricultural classification.

Is there anything agritourism operators can do to reduce their liability risk under the new law?

Agritourism operations should be sure signs meeting the requirements are posted and check frequently to make sure the signs remain visible and in good repair.

Agritourism operators should develop and implement safety precautions and procedures to reduce the risk of injury to employees and customers. Agritourism operations may consider implementing a record keeping program to track and record efforts to create a safe environment. Records of employee training, safety planning, safety inspections, incident reports, equipment and facilities maintenance, rules given to customers, etc. may be helpful in preventing legal action or losses.

Additional Resources

Warning Signs

The Tennessee Agritourism Association is assisting in making warning signs available to agritourism operators in the state. Contact association leadership for more information. Contact information can be found on the association Web site at www.VisitTnFarms.com.

The Center for Profitable Agriculture

The Center for Profitable Agriculture helps farmers develop value-added enterprises, including agritourism operations, through individual enterprise analysis, educational workshops and conferences, and educational publications and planning tools. The center has developed a directory of resources for agritourism operators including information about risk, liability and safety issues. Links to additional agritourism resources are available at <http://valueaddedag.tennessee.edu/resources/agritourism.htm>. Learn more about the Center at <http://cpa.utk.edu>.

The National Agricultural Law Center

The National Agricultural Law Center is the nation's leading national and international resource for agricultural and food law research and information. The National Agricultural Law Center conducts legal research into the most critical issues facing agriculture and food today, including agritourism issues. Based on this research, the Center publishes online articles, notes, case summaries and other publications by leading agricultural law scholars and attorneys from across the country and the world. These publications are also included in online Reading Rooms organized by agricultural and food law topics. Learn more and access the Center's resources at www.nationalaglawcenter.org/readingrooms/agritourism/.

Summary

Liability issues continue to be of concern to agritourism operators. The enactment of a new law in Tennessee effective on July 1, 2009 limits the liability of agritourism operators due to the inherent risks of agritourism activities. While the new law provides some new protections, it does not eliminate all liability risk. To be eligible for these protections, agritourism professions need to verify greenbelt classification eligibility for their operations and follow instructions on how to utilize the warning on signs and in contracts. Operators should also continue to develop and implement comprehensive risk management plans, which may include liability insurance, employee training, safety measures and record keeping systems.

Source

Tennessee Comptroller of the Treasury. "Greenbelt: A Taxpayer's Guide." Revised December 2001. Accessed online August 24, 2009 at <http://www.tn.gov/comptroller/sb/pdf/GreenbeltBrochure1-25-06.pdf>.





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