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Factsheet

Series: 2019



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Agriculture
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This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture.

Agritourism Immunity Laws in the United States

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Agritourism offers a growing business opportunity for farmers and ranchers. According to the 2012 U.S. Census of Agriculture, the number of farms and ranches receiving income from agritourism grew from 23,350 in 2007 to 33,161 in 2012 and more than 4,500 of those operations had gross receipts of over \$25,000 from agritourism.¹ Entertaining visitors is an increasingly popular source of revenue for farms and ranches today.

Running an agritourism business is not without its challenges, however. One primary concern is the possibility that a visitor will be hurt while on the farm. The types of experiences that guests desire from a farm or ranch are inherently risky, such as picking produce, feeding livestock, climbing on straw bales, engaging in recreational activities, and riding on wagons, tractors and horses. If a visitor suffers harm while voluntarily engaging in risky agritourism activities, should the farmer or rancher be liable for that harm?

State legislatures have addressed this liability question by enacting agritourism immunity laws that protect agritourism businesses from liability in certain situations. While it is always imperative for farmers and ranchers to use best management practices to reduce the risk that a participant will be injured, these laws can manage the risk of financial

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responsibility for harm to visitors who choose to engage in agritourism activities. Before venturing into the business of agritourism, it's important for a farmer or rancher to know whether a state has an agritourism immunity law and if so, how to ensure compliance with the statute. In this fact sheet, we review agritourism immunity laws in the U.S. and explain different approaches and key provisions in the laws.

States with immunity laws for agritourism

In 2004, Kansas became the first state to enact a liability protection law for farmers and ranchers that offer agritourism activities on their land. Many states followed suit, and the 31 states listed below now have an immunity law that can shield an agritourism business from liability for visitor injuries in certain circumstances. To read a state's specific law, visit our compilation of States' Agritourism Statutes at <http://nationalaglawcenter.org/state-compilations/agritourism/>.

| States with agritourism immunity laws for agritourism businesses | | |
|---|----------------|----------------|
| Alabama | Maine | Oregon |
| Alaska | Minnesota | South Carolina |
| Arkansas | Mississippi | Tennessee |
| Colorado | Missouri | Texas |
| Florida | Montana | Utah |
| Georgia | Nebraska | Virginia |
| Idaho | New York | Washington |
| Indiana | North Carolina | West Virginia |
| Kansas | North Dakota | Wisconsin |
| Kentucky | Ohio | |
| Louisiana | Oklahoma | |

Who is protected? Defining "agritourism"

Each state law provides a definition for "agritourism," or "agritourism activities" that clarifies who the law aims to safeguard from liability for visitor injuries. An agritourism operator will not receive the statute's benefits unless it meets the definitions. Common elements in the definitions of "agritourism" or "agritourism activity" include:

- The agritourism activity takes place on a "farm" or "ranch" that is "working," "commercial," or engaged in "agricultural production."
- The producer may or may not receive compensation for an agritourism activity.
- The agritourism activity is for educational, recreational or entertainment purposes, with some states also including historic or cultural purposes.
- A handful of states provide examples of agritourism such as educational programs, hospitality services, guided and self-guided tours, bed and breakfast accommodations, petting

EXCLUDES

COVERAGE FOR
NEGLECT CONDUCT

Exceptions to immunity

Each agritourism immunity statute also lays out exceptions to its grant of immunity. If a visitor's harm arises from one of the exceptions, the agritourism operator loses the law's protection and could be liable for the harm. Types of exceptions vary from state-to-state. Most common are those found in the Oklahoma Agritourism Activities Liability Limitations Act:

Nothing in [this law] prevents or limits the liability of an agritourism professional if the agritourism professional does any one or more of the following: 1. Commits an act or omission that constitutes negligence or willful or wanton 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.⁸

A number of states include additional exceptions to immunity. Alabama will not prevent liability if the agritourism operator "fails to properly train or improperly or inadequately trains an employee who is actively involved in the agritourism activity and an act or omission of the employee proximately causes injury, sickness, damage, or death of the participant"⁹ or "fails to vaccinate, or quarantine sick domestic or domesticated animals in accordance with applicable animal health statutes and regulations."¹⁰ In Washington, an agritourism provider is not protected by the statute if the provider "permits minor participants to use facilities or engage in agritourism activities that are not reasonably appropriate for their age."¹¹ Oregon will not grant immunity if an operator "provides equipment to the participant and fails to make reasonable inspection of the equipment, and that failure is a cause of the injury to the participant"¹² or "fails to make reasonable inspection of the property on which the agritourism activity occurs, and that failure is a cause of the injury to the participant."¹³ Many states also remove immunity if the agritourism provider did meet the law's affirmative requirements, as explained below.

Affirmative requirements for the agritourism operator

A majority of the states establish affirmative actions the provider must take to qualify for immunity. An agritourism operator who fails to complete a state's affirmative requirements will lose the liability protection afforded by the immunity law. Most common is the requirement for operators to provide notices to agritourism visitors or include notices in agritourism contracts. In several states, agritourism operations must register or have an approved operation plan. We review these requirements below.