

Ohio Legislature Passes Agritourism Legislation

An agritourism bill first introduced over a year ago has finally received approval from the Ohio General Assembly. The Senate passed SB 75 last November, but the bill did not pass the House of Representatives until May 4, 2016. The House had passed a similar bill last May, but the Senate failed to act on that bill. If signed by Governor Kasich, SB 75 will be in effect in time for the fall agritourism season.

The legislation addresses civil liability risk, property taxation and local zoning authority for “farms” that provide “agritourism” activities. It’s important to understand several definitions in the law.

- A “farm” is land that is devoted to commercial agricultural production, either at least 10 acres in size or grossing an average income of \$2500 from such production.
- "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.
- “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.”
- An “agritourism provider” is anyone who owns, operates, provides, or sponsors an agritourism activity, whether or not for a fee, including employees at agritourism activities.

For agritourism providers on farms, the legislation offers the following protections:

Civil liability immunity

The new law protects an agritourism provider from liability for injuries to agritourism participants in certain situations. The law states that a provider does not have a legal duty to remove risks that are “inherent” in agritourism activities and will not be liable for any harm a participant suffers because of 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 for vicious or dangerous dogs; the possibility of contracting illness from physical contact with animals, animal feed, animal waste, or surfaces contaminated by animal waste; and a participant’s failure to follow instructions or exercise reasonable caution while engaging in the agritourism activity.

Warning sign requirement. An agritourism provider must post and maintain warning signs on the farm to receive the law’s civil liability protection, and a provider who fails to post or maintain these signs can be liable for a participant’s harm. At or near each entrance to the agritourism location or at each

agritourism activity, a provider must post and maintain a sign that states: "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." This warning must be printed in black letters that are at least one inch in height.

Exceptions to immunity. An agritourism provider will not be immune for harm caused by the provider's willful or wanton disregard for a participant's safety; if the provider purposefully caused harm to the participant; if the provider's actions or inactions constituted criminal conduct and caused harm to the participant; or if 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 make the dangerous condition known to the participant.

Property taxation

The new legislation ensures that agritourism parcels are eligible for Ohio's Current Agricultural Use Valuation (CAUV) program, which provides reduced property taxation on qualifying agricultural lands. According to the new law, the existence of agritourism on a tract, lot, or parcel of land does not disqualify land that otherwise qualifies for the CAUV program.

Local zoning authority

The new legislation expands Ohio's "agricultural exemption" from local zoning to include agritourism activities. The "agricultural exemption" limits the ability of townships and counties to use zoning to prohibit or regulate certain agricultural land uses in any zoning district. Under the new law, agritourism becomes part of the agricultural exemption and is an agricultural land use that zoning officials cannot prohibit by way of zoning.

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

The legislation also clarifies that county and township zoning may not prohibit the use or construction of structures for vinting and selling wine if located on land where grapes are grown.

Implications of the new legislation

1. *Not everyone who engages in agritourism will benefit from the new law.* The law is designed to address agritourism activities that diversify an existing farm—where the activities occur on land that is otherwise engaged in agricultural production. For example, a person who purchases 10 acres of vacant land with the intent of creating a corn maze and petting farm will not benefit

from the law because there is no agricultural production already taking place on the land. If the land is first involved in agricultural production, added agritourism activities will fall under the new law.

2. *Visitors to agritourism operations must take more responsibility for their own safety.* The law recognizes that there are inherent dangers on farms that can be beyond the control of agritourism providers. Visitors who wish to participate in an agritourism experience must be aware of these dangers and be prepared to protect themselves by following directions, paying attention to surface conditions, being cautious around animals and equipment, supervising their children and generally exercising reasonable care while on the farm.
3. *Agritourism providers must be prepared to meet the law's signage requirements.* When the law becomes effective, agritourism operators should have proper warning signs posted. Providers who fail to post the right sign in the right place will lose the law's immunity protections.
4. *Local officials must treat free and fee-based agritourism activities equally.* Unlike some agricultural laws, there is no distinction in the new law between commercial agritourism businesses and free agritourism activities like educational farm tours; the law applies in the same way regardless of whether the activity is fee-based or free, as long as it's conducted on a "farm."
5. *Counties and townships must identify public health and safety issues and develop appropriate zoning standards.* Counties and townships must be prepared to recognize agritourism situations that pose health and safety concerns due to the size and location of a structure, ingress and egress on the property or the size of a parking area. If a public health or safety issue is identified and the county or township wants to regulate the issue, it must have enacted zoning standards that address the issue.

Read SB 75 on the Ohio General Assembly's website [here](#).