

## Agritourism: A Legal Update

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    - Sustainable Ag
      - Water Law

And more....



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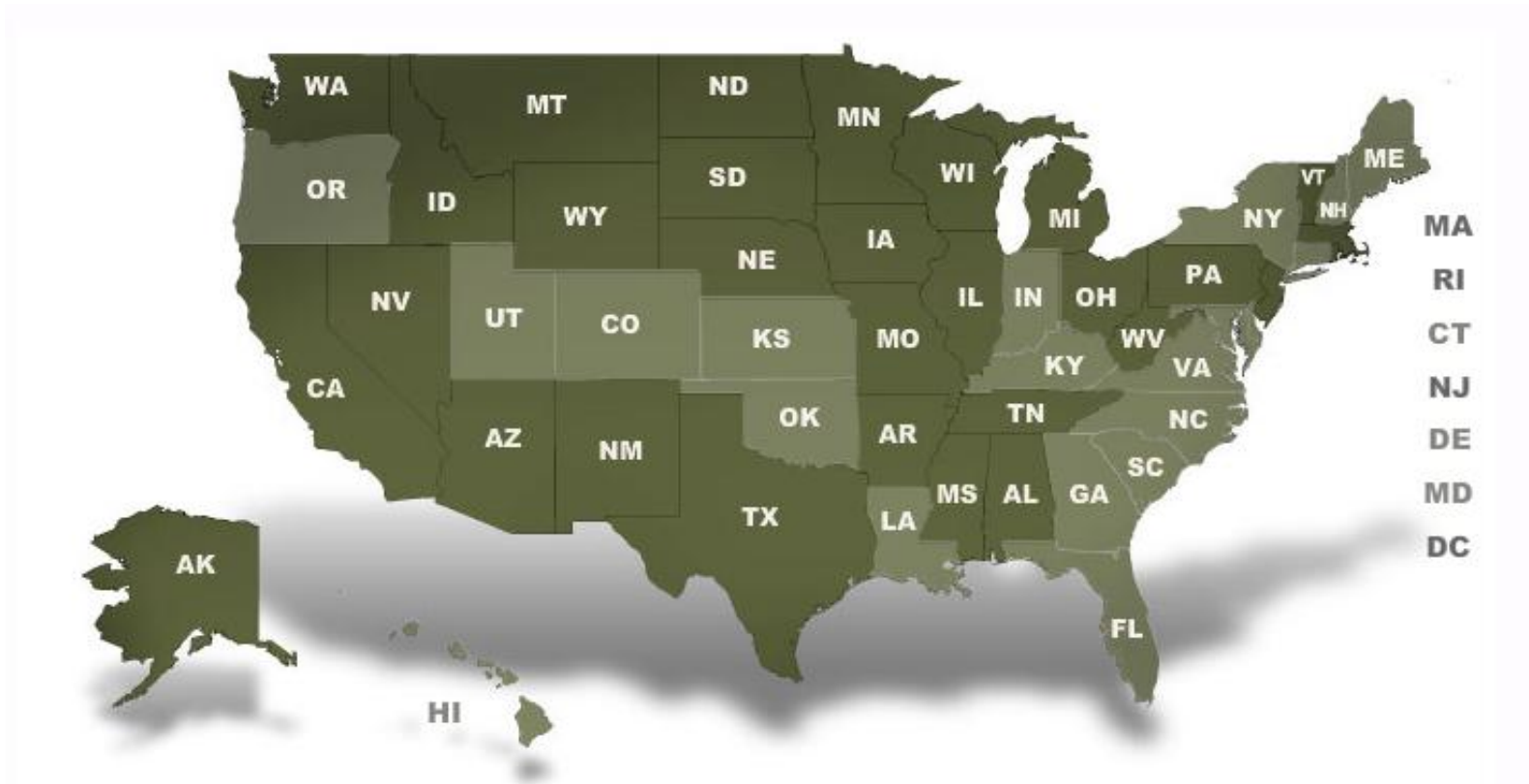
What actions have states taken?

- Defining “agritourism” – at least 12 States
- Promotional Activities – 10 States
  - Recognition of Agritourism Industry
  - Creation of Marketing Authority
  - Funding for Agritourism Efforts
- Tax Incentives – 6 States
- Zoning & Building Regulations – 4 States
- Liability Protections – 5 States



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States with Agritourism Statutes





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## What is Agritourism?

### ■ Delaware –

- any activity that allows members of the general public to view or enjoy rural activities, including farming; ranching; wineries; historical, cultural or harvest-your-own activities; guided or self-guided tours; bed and breakfast accommodations; or temporary outdoor recreation activities

### ■ Indiana –

- the act of visiting a working farm or any agricultural, horticultural, or agribusiness operation for purposes of enjoyment, education, or active involvement in the activities of the farm or operation.

- Also definitions for agritourism activity, agritourism operator/professional, and sometimes farm

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## Promotional Activities

- Recognition of Agritourism Industry
  - Indiana – statutory definition; representative on Tourism Council
  - Maryland – representative on MD Ag Commission and Board of Directors for MD Ag and Resource-Based Industry Development Corp.
  - New York – 3 annual awards: Direct Farm Marketing Award, Agri-Tourism Award; Specialty Food Product Award



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## New York Legislature Comment



- *Legislative intent.* **Farming in this state is essential** to the economic, social and environmental well-being of all New Yorkers. New York state has led in establishing policies and programs **to promote a strong agricultural economy through the diversification of farm businesses** and products in order to generate farm income, and keep farms economically viable. **Agricultural tourism is being embraced** by an increasing number of farm operators as a way to increase diversity and profitability while also helping to preserve agricultural land and open space. It may also serve the purpose of **educating the public about the importance of agriculture** and its contribution to the local economy, quality of life and nutrition, and may reduce the friction which sometimes exists between farmers and their off-farm neighbors. **Therefore the legislature hereby affirms its support for agricultural tourism and accordingly enacts the provisions of this act.**
- N.Y. LEGISLATIVE COMMENTS c. 600, §1 (2006).



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## Promotional Activities



### ■ Creation of Marketing Authority

#### ■ Connecticut – “Connecticut-Grown” program

- Provides grants to businesses that promote or market farm products grow in CT. Also, Comm. of Ag is required to operate a website that lists agritourism activities and locations.

#### ■ Oregon – Tourism Commission

- Serves an advisory role to Governor, including for the development of marketing plans that should promote agritourism, cultural tourism, and nature-based tourism within the state.



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## Promotional Activities



### ■ Creation of Marketing Authority

#### ■ Florida – Commission on Tourism

- Dept of Ag is to assist with agritourism initiatives of the Commission on Tourism

#### ■ Kentucky – Office of Agritourism

- Interagency office between the Dept of Ag and Tourism Dept.
- Role: promote agritourism in KY to potential visitors and assist in sustaining the viability and growth of agritourism in KY
- Develop a statewide master plan – including website



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## Promotional Activities



### ■ Funding for Agritourism Efforts

- Colorado – 10% of interest from Unclaimed Property Tourism Promotion Trust Fund. Also, CO Tourism Office is to consult with Commissioner of Ag on how money is to be spent and to coordinate promotion efforts
- Oklahoma – Oklahoma Agritourism Program promotes agritourism within the state. Works with Depts of Tourism, Commerce, and Cooperative Extension. Created “Agritourism Revolving Fund” funded by money collected by the State Board of Agriculture.



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## Promotional Activities



### ■ Funding for Agritourism Efforts

- North Carolina – Funds are available for private and public enterprises that promote profitable and sustainable ag. Funds are made available from the NC Ag Development and Farmland Preservation Trust Fund.
- Also provides signs – at your cost – but installed by the Dept of Ag and Consumer Services.



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## Tax Incentives



- Florida, Georgia and South Carolina – property tax differentials
  - Allows land used for agritourism to maintain classification as “agricultural” for tax purposes
- Kansas – tax credit for the purchase of liability insurance for agritourism operation
- Maryland – no admission tax on agritourism activities in certain counties
- Maine – tax incentives and other program benefits for operating agritourism operation (50% of business from agritourism) in a special area of the state.





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## Zoning & Building Regulation



- Delaware – authority for County Councils in some areas, exempting agritourism from some regulation
- Maryland – details building requirements for “agricultural building and other buildings used for agritourism
- Hawaii – most extensive zoning laws for agritourism. Must be located in agricultural district. Cannot be primary use of land. Counties can adopt additional ordinances
- North Carolina – may create agricultural districts. Including provisions for on-farm sales, u-pick, agritourism, etc.

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## Liability Protections

- What are limited liability laws?
  - Laws that reduce or eliminate a person's potential liability in actions based in tort
- What does that *really* mean?
  - Legal background
    - Negligence
    - Duty of Care
    - Reasonable Person Standard

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## Liability Protections

### 5 States Total

- Kansas was the first in 2004
- North Carolina - 2006
- Virginia - 2008
- Louisiana was the most recent in late 2008
- Most of these statutes look very similar to the Kansas Act
- Utah's is less detailed
  - Provides only an affirmative defense

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## Liability Protections

### Basic Sections

- Definitions
  - Agritourism; Agritourism Activity; Agritourism Operator; Inherent Risks
- Warning Sign Requirement
- Assumption of Risk
- Liability of Operator



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## Warning Sign Requirement

- **WARNING -- Under Kansas law, there is no liability for an injury or death of a participant in a registered agritourism activity conducted at this registered agritourism location if such injury or death results from the inherent risks of such agritourism activity. Inherent risks of agritourism activities include, but shall not be limited to, the potential of you as a participant to act in a negligent manner that may contribute to your injury or death and the potential of another participant to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this registered agritourism activity.**





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## Assumption of Risk - Kansas



- any participant is assuming the **inherent risks** of a registered agritourism activity when such participant engages in such agritourism activity. In any action for damages arising from the operation of a registered agritourism activity, the registered agritourism operator ...shall **plead an affirmative defense of assumption of risk** by the participant.



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## Inherent Risks of Agritourism Activities



- means those dangers or conditions which are an integral part of such agritourism activity including, but not limited to, certain hazards such as 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 or ranching operations.
- 'Inherent risks of a registered agritourism activity' also includes **the potential of a participant to act in a negligent manner** that may contribute to injury to the participant or others, such as failing to follow instructions given by the registered agritourism operator or failing to exercise reasonable caution while engaging in the registered agritourism activity.



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## Liability of Operator - Kansas

- Nothing in this act shall prevent or limit the liability of a registered agritourism operator if:
  - (a) The registered agritourism operator injures the participant by **willful or wanton conduct**; or
  - (b) the registered agritourism operator **has actual knowledge** of a dangerous condition in the land, facilities or equipment used in the registered agritourism activity **or** the dangerous propensity of a particular animal used in such activity and does not make such dangerous condition known to the participant and such dangerous condition causes the participant to sustain injuries.







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## Liability of Operator – North Carolina



- an agritourism professional is **not liable for injury** to or death of a participant **resulting from the inherent risks** of agritourism activities, so long as the warning contained in G.S. 99E-32 is posted as required
- and, except as provided in subsection (b), **no participant** or participant's representative **can 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.
- In any action for damages against an agritourism professional for agritourism activity, the agritourism professional must **plead the affirmative defense of assumption of the risk** of agritourism activity by the participant.

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Where does this leave us?

- No cases to interpret these statutes yet
- We don't know what the courts will think about these
- Hard to define both “agritourism” and “inherent risks”
- More states are trying to adopt these statutes
- Very similar to Equine Activity Statutes
- Look to those cases for how the courts will treat the agritourism statutes



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## Equine Activity Statutes - Tennessee



- "Inherent risks of equine activities" means those dangers or conditions, which are an integral part of equine activities, including, but not limited to:
  - (A) The propensity of an equine to behave in ways that may result in injury, harm, or death to persons on or around them;
  - (B) The unpredictability of an equine's reaction to such things as sounds, sudden movements, and unfamiliar objects, persons, or other animals;
  - (C) Certain hazards such as surface and subsurface conditions;
  - (D) Collisions with other equines or objects; and
  - (E) The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within the participant's ability



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How effective are Liability Protection statutes?

- It depends on the FACTS
  - And the arguments made by the attorneys, the evidence, the judge, the exact wording of the law, etc.
- Varies from state to state
- Until a court sees a case, we don't know for sure





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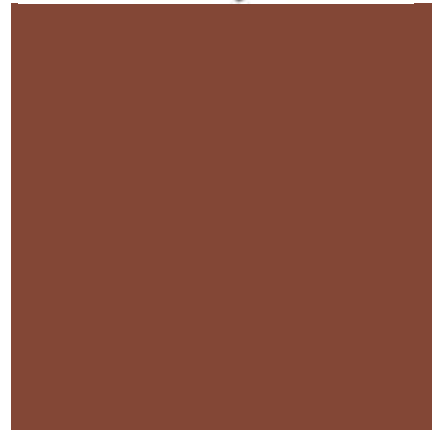
## Risk Management Tools for Agritourism Operations



- Insurance
  - Important part of having people on your property for business purposes
  
- Common Sense
  - Which leads to good business practices
    - Lock away chemicals
    - Have water on hand for hot days
    - Make sure employees know who to call in an emergency
    - Make sure emergency personnel know where you are located
    - Etc.
  
- Document your safety measures



Thank You



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