

WATCH WHERE YOU'RE STEPPIN' OUT HERE: WHY STATES SHOULD ADOPT LEGISLATION TO PROMOTE THE DIVERSIFIED FARMING PRACTICE OF AGRITOURISM

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I. MIGHTY PLEASED TO MEET YA

Agritourism is a diversified farming practice that has many important purposes beyond providing supplemental income for farmers. Though multiple agritourism statutes have slightly varying definitions, the basic definition is:

[T]he practice of engaging in activities, events, and services that have been provided to consumers for recreational, entertainment, or educational purposes at a farm, ranch, or other agricultural, horticultural, or agribusiness operation in order to allow consumers to experience, learn about, and participate in various facets of agricultural industry, culinary pursuits, natural resources, and heritage.¹

The broad economic, social, and cultural benefits that agritourism provides for consumers, rural residents, and rural communities demonstrate that this farming diversification and rural development measure should be implemented not only through national, uniform-policy initiatives,² but also, and more importantly, by state legislatures.

The first part of this Note will reinforce agritourism's role in national legislation and administrative agendas aimed at preserving small to medium-sized family farms and reinvigorating rural areas.³ Demonstratively, the 2008 Farm Bill enhanced the Farmers' Market Promotion Program, which is about local food and bringing consumers closer to producers in an effort to shorten the food chain.⁴ It "[a]dds an agri-tourism promotion program to categories of farmer-to-consumer direct marketing activities eligible for funding."⁵ Correspondingly, the USDA Administration under Secretary of Agriculture Tom Vilsack is focusing on local solutions to the problems facing rural America,⁶ such as

1. COLO. REV. STAT. § 38-13-116.7(3)(a)(III)(A) (2010).

2. Robert A. Coulthard, *The Changing Landscape of America's Farmland: A Comparative Look at Policies Which Help Determine the Portrait of Our Land—Are There Lessons We Can Learn From the EU?*, 6 DRAKE J. AGRIC. L. 261, 285-86 (2001).

3. See, e.g., Diana Keith et al., *Obstacles in the Agritourism Regulatory Process: Perspectives of Operators and Officials in Ten California Counties*, 22 U.C. DAVIS AIC ISSUES BRIEF, Sept. 2003, at 1, 3 (2003), available at <http://aic.ucdavis.edu/pub/briefs/brief22.pdf> (explaining the benefits of agritourism); Jesse J. Richardson, Jr., *Beyond Fairness: What Really Works to Protect Farmland*, 12 DRAKE J. AGRIC. L. 163, 171 (2007) (describing administrative functions and policy approaches which aid farmland protection).

4. 7 U.S.C. § 3005(a)-(b) (Supp. III 2009).

5. Econ. Research Serv., USDA, 2008 Farm Bill Side-By-Side: Title X: Horticulture & Organic Agriculture (Aug. 20, 2008), <http://www.ers.usda.gov/FarmBill/2008/Titles/TitleX/Horticulture.htm>.

6. See, e.g., Know Your Farmer, Know Your Food, USDA, Our Mission: Introducing the Know Your Farmer, Know Your Food Initiative, <http://www.usda.gov/wps/portal/knowyour>

the “exodus from rural areas, aging farmer populations, remoteness, and weakness of infrastructure and services in rural areas.”⁷ In particular, Know Your Farmer, Know Your Food and the Broadband Technology Opportunities Program [hereinafter Broadband USA] are two programs specifically attuned to the goals agritourism promotes.⁸ Additionally, the Farm Bill has provisions to help young farmers transition into the profession as current farmers retire or pass away.⁹ Though analysis of these provisions is beyond the scope of this Note, the fact that beginning farmers are specifically targeted for additional assistance highlights the importance of sustainable transfer of farmland and ensuring that farming ventures are profitable.

Agritourism has an integral role to play in these national initiatives and programs promoting local agriculture and rural development. While the USDA has made efforts to promote, educate, and assist farmers interested in operating an agritourism enterprise,¹⁰ more should be done on the state and local levels. States have their own unique issues relating to crop types, weather, land use, consumer markets, size of private landholdings, and rural-urban interplay, so formal legislation and regulation of these operations is appropriate for the states to address. One of the foremost reasons why states should consider formally adopting legislation though: agritourism is burgeoning. Even in states where no structure, protection, or assistance has been provided. Thus, the potential risks associated with farmers inviting the public onto their private farms require those legislatures to at least consider providing limited liability protection, as well as analyze health, safety, and zoning issues. Beyond statutory limited liability protection for agritourism owners and operators, states should also provide educational and professional assistance, incentives, and marketing.

farmer?navtype=KYF&navid=KYF_MISSION (last visited Dec. 25, 2010) [hereinafter KYF, KYF, Our Mission] (describing the initiative as “better connecting consumers with local producers”).

7. Coulthard, *supra* note 2, at 285.

8. KYF, KYF, Our Mission, *supra* note 6; Rural Dev., USDA, Broadband & Telecommunications (July 6, 2009), http://www.rurdev.usda.gov/wa/UTLbroadband_program.htm.

9. *See, e.g.*, Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 5005, 122 Stat. 1651, 1906-07 (codified as amended at 7 U.S.C. § 1936(a) (Supp. III 2009)) (providing the federal government’s guarantee of beginning farmer land contract loans financed by private sellers from whom the farmer is buying a farm); *see also* Econ. Research Serv., USDA, 2008 Farm Bill Side-By-Side: Provisions for Traditionally Underserved Groups (Aug. 20, 2008), <http://www.ers.usda.gov/FarmBill/2008/Titles/underserved.htm> (detailing the provisions in the 2008 Farm Bill aimed specifically at helping beginning and socially disadvantaged farmers).

10. *See* Patricia LaCaille John, *Promoting Tourism in Rural America*, 60 RURAL INFO. CTR. (2008), <http://www.nal.usda.gov/ric/ricpubs/tourism.html> (presenting topics for agritourism operators to consider in developing their businesses).

The second part of this Note will present an overview of how different states have structured their agritourism legislation. Agritourism laws are already on the books in twenty-two states.¹¹ This Note will examine the different incentives, protections, and assistance states have provided to agritourism operators through favorable legislation. Some statutes do not distinguish clearly enough, however, between rural activities not operated by a farmer or rancher and those that are actually conducted on farms or ranches as supplemental income for people whose primary occupation is farming.¹² Also, state agritourism legislation needs to be more than just limited liability statutes providing protection for individual farmers who invite the public onto their property. State laws should promote tax incentives, farmer cooperatives, community-supported agriculture programs, farmers' markets on-site at a vendor's farm, regional labeling of local products, traditional foods and handicrafts, and a cohesive approach to promotion and marketing in order to firmly institutionalize agritourism in U.S. agriculture. Finally, the third part of this Note will put forth model legislation drawing on, and altering, existing provisions to reflect agritourism's goals and objectives.

II. "EVERYBODY'S GONE COUNTRY"¹³

Agritourism is a viable and sustainable diversification option for increasing farmer income and saving the family farm.¹⁴ The Jeffersonian view of rural America reveres small, self-sustaining family farmsteads that produce an array of

11. Shannon Mirus, Nat'l Agric. Law Ctr., States' Agritourism Statutes, <http://nationalaglawcenter.org/assets/agritourism/index.html> (last visited Dec. 25, 2010); see COLO. REV. STAT. § 38-13-116.7 (2010); CONN. GEN. STAT. ANN. § 22-38(a) (West 2010); DEL. CODE ANN. tit. 9, § 306(a) (Supp. 2008); FLA. STAT. ANN. § 570.96 (West Supp. 2010); GA. CODE ANN. § 48-5-7.4(p)(7)(A) (West 2009); HAW. REV. STAT. § 205-2(d)(11) (2010); IND. CODE ANN. § 5-29-1-2 (LexisNexis 2006); KAN. STAT. ANN. §§ 74-50,165 to 74-50,173 (Supp. 2009); KY. REV. STAT. ANN. § 247.800 (LexisNexis 2005 & Supp. 2009); LA. REV. STAT. ANN. § 9:2795.5 (2009); MD. CODE ANN., PUB. SAFETY § 12-508 (LexisNexis Supp. 2010); ME. REV. STAT. ANN. tit. 30-A, § 5250-Q(4)(B) (Supp. 2009); N.C. GEN. STAT. § 99E-30(1) (2009); N.H. REV. STAT. ANN. § 21:34-a(VI) (LexisNexis 2008); N.Y. AGRIC. & MKTS. LAW § 301.15 (McKinney Supp. 2010); OKLA. STAT. ANN. tit. 2, § 5-12 (West Supp. 2010); OR. REV. STAT. ANN. § 284.111(3)(d) (West Supp. 2010); S.C. CODE ANN. § 12-43-233 (Supp. 2009); S.D. CODIFIED LAWS § 20-9-12(4) (Supp. 2010); TENN. CODE ANN. § 43-39-101 (Supp. 2010); UTAH CODE ANN. § 78B-4-512 (2008); VA. CODE ANN. § 3.2-6400 (2008).

12. E.g., KAN. STAT. ANN. § 74-50,166 (including "owners or operators of farms, ranches, and rural attractions" to be covered by the statute (emphasis added)).

13. ALAN JACKSON, *Gone Country, on WHO I AM* (Arista Records 1994).

14. See Carlos E. Carpio et al., *The Demand for Agritourism in the United States*, 33 J. AGRIC. & RESOURCE ECON. 254, 255 (2008), available at <http://www.ces.ncsu.edu/depts/agecon/pubs/demandtourism.pdf>.

diverse products.¹⁵ Farmland has gradually transferred from 40% of the rural population living on farms in 1950 to less than 10% today.¹⁶ As fewer have become involved with agriculture, production operations have grown and moved away from subsistence farming toward homogenous, mass-produced commodity crops.¹⁷ They have also become “more industrialized, [so] fewer farms account for a larger percentage of the gross food sale receipts.”¹⁸

The nostalgic, idolized role of the farmer, as the steward of the land and grower of the food we eat, is showing revived appeal to consumers while simultaneously occupying the legislative and administrative agenda.¹⁹ Agritourism provides an opportunity for consumers to visit, learn about, experience hands-on, and appreciate these revered farming processes in their natural settings.²⁰ Reconnecting consumers to a fundamental understanding of where their food comes from will bolster agriculture’s reorientation toward more local, sustainable approaches, which are welcome alternatives in our environmentally and economically shortsighted global food system.²¹

The 2008 Farm Bill amended the Farmers’ Market Promotion Program to include agritourism as one of the direct producer-to-consumer marketing objectives.²² The program’s focus is to increase the amount of agricultural produce consumed domestically by increasing its accessibility through the development of local marketing options.²³ Small to medium-sized family farms can capitalize

15. Coulthard, *supra* note 2, at 271.

16. USDA, 2007 FARM BILL THEME PAPERS: RURAL DEVELOPMENT 3 (2006), available at <http://www.usda.gov/documents/Farmbill07ruraldevelopment.pdf>.

17. Coulthard, *supra* note 2, at 272.

18. *Id.*

19. *See generally* Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 10106, 122 Stat. 1651, 2098-99 (2008) (codified as amended at 7 U.S.C. § 3005 (Supp. III 2009)) (amending prior legislation about direct marketing to include agritourism); Press Release, Farm to Family Connection, New Toolkit Invites Direct Marketers to “Make the Connection” (Dec. 2008), available at http://www.farmtofamily.net/press_room.shtml (heightening awareness about local food campaigns and accessibility for interested farmers); KYF, KYF, Our Mission, *supra* note 6 (creating an administrative program for increasing local direct-sale purchasing by consumers).

20. *E.g.*, Jacob R. Lofgren, Note, *I Miss Mayberry: Revitalizing America’s Rural Downtowns*, 13 Drake J. Agric. L. 419, 431-32 (2008) (providing the example of a local dairy farm open for tourists to witness its “inner workings and everyday operation”).

21. *See generally* Jennifer Clapp & Doris Fuchs, Conceptualizing Corporate Influence in Global Food Governance (Feb. 28, 2007) (unpublished manuscript, paper presented at the Int’l Studies Ass’n 48th Annual Convention), http://www.allacademic.com/meta/p180397_index.html (click on “Click here to view the document” under View Document as HTML) (describing the globalization of the “production, trade and marketing of food and agricultural products” in the last fifty years).

22. Food, Conservation, and Energy Act of 2008 § 10106.

23. 7 U.S.C. § 3005(b) (2006 & Supp. III 2009).

on this renewed focus of local food systems by taking as little as two to five acres out of mass commodity production. Agritourism activities conducted on that land would garner premium prices; for example, planting a grocery garden from which to make on-farm direct sales, opening a U-Pick operation, creating Community-Supported Agriculture memberships (CSAs),²⁴ or for farms close to urban centers—leasing plots in the garden for a growing season.²⁵ All of these efforts result in more income flowing directly to small or medium-sized farmers, alleviating the difficulty of competing with large industrial farms in the commodities market where “small farms will lack competitive advantage to remain viable in the marketplace.”²⁶ Small to medium-sized family farms need to be able to demand value-added or premium prices for their products, either tangible or recreational, so that they can avoid having to get out of farming altogether.²⁷

Thus, USDA Rural Development has followed suit with a program promoting agritourism-type activities—the newly developed initiative Know Your Farmer, Know Your Food.²⁸ The program espouses goals virtually identical to agritourism’s, aimed at “successfully restoring the link between consumers and local producers [so] there can be new income opportunities for farmers and generate wealth that will stay in rural communities; a greater focus on sustainable agricultural practices; and families can [have] better access [to] healthy, fresh, locally grown food.”²⁹ Know Your Farmer, Know Your Food also aims to reverse widespread problems plaguing rural communities, such as declining rural populations, low employment opportunities, and poor and outdated infrastructures.³⁰ Thus, rural communities stand to benefit from agritourism’s development on small to medium-sized farms through an increased tax base, retained popula-

24. Lofgren, *supra* note 20, at 431-32.

25. See, e.g., Kristin Kaye, *A City Sows Its Seeds: Urban Agriculture in Portland? Why here? Why now?*, OR. HUMAN., Spring/Summer 2006, available at <http://kristinkaye.com/2007/10/21/a-city-sows-its-seeds/>.

26. Coulthard, *supra* note 2, at 277.

27. Cf. *id.* (noting that low income-producing farms risk failure because farmer incomes cannot match non-farmers’ and more have to seek off-farm supplemental income).

28. See KYF, KYF, Our Mission, *supra* note 6.

29. Press Release, Agric. Mktg. Serv., Agriculture Secretary Vilsack Announces 86 Grants Under the Farmers Market Promotion Program: Additional \$4.5 Million in Funding for ‘Know Your Farmer, Know Your Food’ Initiative (Sept. 17, 2009), available at <http://www.usda.gov/wps/portal/usdahome?contentidonly=true&contentid=2009/09/0451.xml>.

30. See Know Your Farmer, Know Your Food, USDA, Strengthen Rural Communities, http://www.usda.gov/wps/portal/knowyourfarmer?navtype=KYF&navid=KYF_COMMUNITIES (last visited Dec. 25, 2010) [hereinafter KYF, KYF, Strengthen Rural Communities]; see also Leslie A. Whitener & Tim Parker, *Policy Options for a Changing Rural America*, AMBER WAVES (SPECIAL ISSUE), May 2007, available at <http://www.ers.usda.gov/AmberWaves/May07SpecialIssue/Features/Policy.htm> (addressing policy shifts that should happen in response to farms becoming bigger yet with less of the rural population dependent upon them for employment).

tions to invest in schools and local businesses, enhanced environmental stewardship, and healthier, sustainable fruit and vegetable options.³¹

The declining rural populations, resulting in part from low job availability in rural communities,³² indicates the need for diversified employment opportunities. “[Y]oung and educated residents . . . move away or fail to return home after college,”³³ possibly because there are not as many high-paying or skilled jobs within rural communities. As Professor Neil Hamilton of Drake University Law School has pointed out, the quality and kinds of jobs being created need to have a sustainable focus to really make long-lasting impacts upon a community’s economic well-being.³⁴ This “‘places’ approach [to] development . . . requires citizens to consider what it takes to make an area or region an attractive place for people to live and employers to seek.”³⁵

Agritourism offers the promise of sustainable business and job creation, such as land and operation management, recreational activity workers or guides, revived downtown business entrepreneurship, as well as increased local planning and community coalition efforts to ensure cohesive development.³⁶ Most importantly with locally developed and locally run economic ventures, “[m]uch of the money flowing through these businesses works its way back into and through rural communities.”³⁷ The local farmers and rural community business owners are also residents, so the money gained through agritourism will stay with local banks, businesses, and schools. In addition, a key focus of Know Your Farmer, Know Your Food and the Farmers’ Market Promotion Program, under the Agricultural Marketing Service, is for communities to begin organized marketing and selling of local farmers’ products.³⁸ Coupled with agritourism, this would provide farmers not only with premium income from those direct sales, but also a

31. See KYF, KYF, Strengthen Rural Communities, *supra* note 30. See generally Whitenner & Parker, *supra* note 30 (discussing rural economies that suffer from limited tax bases and decreasing population).

32. See, e.g., Patrick J. Carr & Maria J. Kefalas, *The Rural Brain Drain*, CHRON. HIGHER EDUC. (Wash., D.C.), Sept. 21, 2009, available at <http://chronicle.com/article/The-Rural-Brain-Drain/48425/>.

33. Neil D. Hamilton, *Rural Lands and Rural Livelihoods: Using Land and Natural Resources to Revitalize Rural America*, 13 DRAKE J. AGRIC. L. 179, 196 (2008).

34. *Id.* at 190-91.

35. *Id.* at 191.

36. See *id.* at 196-97.

37. *Id.* at 192.

38. Know Your Farmer, Know Your Food, USDA, Grants, Loans & Support, http://www.usda.gov/wps/portal/usda/knowyourfarmer?navtype=KYF&navid=KYF_GRANTS (last visited Dec. 25, 2010); Know Your Farmer, Know Your Food, USDA, Support Local Farmers, http://www.usda.gov/wps/portal/knowyourfarmer?navtype=KYF&navid=KYF_LOCALFARMER (last visited Dec. 25, 2010).

way to educate urban residents about the values of rural living and foster pride and appreciation within rural communities.³⁹

Infrastructure improvement is another concern agritourism and the increased attention on local farmers and food products positively influence.⁴⁰ In particular, the lack of broadband access in remote rural areas of the United States is still so pervasive that Broadband USA was implemented under the American Recovery and Reinvestment Act of 2009.⁴¹ It supports broadband expansion through “financing and grants to projects that provide access to high speed service and facilitate economic development in locations without sufficient access to such service.”⁴² Agritourism demonstrates the need to increase rural Internet access, because marketing and promotion of one’s rural business is severely limited and inadequate due to a lack of Internet access. Whether developed by a community, individual, or cooperative, agritourism websites should be convenient and accessed frequently by operators to answer questions and dialogue with potential customers. This is especially important if the agritourism operator wants to attract out-of-state and international visitors. This Administration’s policy initiative to connect all of America through broadband provides the perfect opportunity for agritourism to expand because it offers remote regions of the country networking and promotional opportunities through the Internet.⁴³

The 2008 Farm Bill’s support provisions for young and beginning farmers are in response to farming’s aging population and the need for young farmers to enter the profession.⁴⁴ Beginning and young farmers could use agritourism as additional income to help alleviate some of the economic burdens associated with entering farming.⁴⁵ It would provide a source of income independent of fluctuat-

39. *E.g.*, David Mace, Factors Motivating Agritourism Entrepreneurs 8 (Aug. 12, 2005) (unpublished manuscript, paper presented at the 2005 Kan. State Univ. Risk & Profit Conference & Trade Show), http://www.agmanager.info/events/risk_profit/2005/Mace.pdf.

40. *See, e.g.*, KYF, KYF, Strengthen Rural Communities, *supra* note 30.

41. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, §§ 6000-6001, 123 Stat. 115, 512-16 (to be codified at 47 U.S.C. § 1305); *see* Press Release, Nat’l Telecommunications & Info. Admin., Commerce and Agriculture Announce Strong Demand for First Round of Funding to Bring Broadband, Jobs to More Americans (Aug. 27, 2009), *available at* http://www.ntia.doc.gov/press/2009/BTOP_BIP_090827.html.

42. Rural Dev., USDA, American Recovery and Reinvestment Act of 2009, <http://www.rurdev.usda.gov/arra/recovery-program.htm> (last visited Dec. 25, 2010).

43. *See id.*

44. *See, e.g.*, Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 5301, 122 Stat. 1651, 1908-1912 (2008) (codified as amended at 7 U.S.C. § 1983(b) (Supp. III 2009)); *see also* Coulthard, *supra* note 2, at 277 (noting that “the average age of farmers is increasing, i.e., fewer young people are entering farming”).

45. *Cf.* Food, Conservation, and Energy Act of 2008 §5301 (introducing the “Beginning Farmer and Rancher Individual Development Accounts Pilot Program” that basically provides savings accounts for beginning farmers for which the government will provide matching funds).

ing markets and could potentially help young farmers secure financing by factoring agritourism revenue into their business plans.⁴⁶ Increasing pride in rural heritage and providing viable options for young farmers to earn a living will help retain that segment of rural populations. The generational gap between the large percentage of farm owners and operators over fifty-five years old and the disproportionately low number of farmers below the age of thirty-five is going to present ever-growing problems if we do not provide mechanisms to transfer new producers into the shoes of retiring producers.⁴⁷ Agritourism as a diversification tool can aid such transfers.

III. THE GRASS AIN'T ALWAYS GREENER

Agritourism is a rural development method that states should formally promote by codifying incentives, protections, and standards to help farmers diversify into agritourism. It would benefit rural economies and infrastructure; keep agricultural lands locally owned and operated by retaining farm operators on small to medium-sized farms; and reinvigorate cultural, historical, traditional, and recreational interest and pride in rural areas.⁴⁸ The different state statutes on agritourism affirm these objectives, but some only cover certain goals and fail to address others. This section of the Note will analyze a portion of the state statutes, which cover pertinent issues facing agritourism development. It will also provide criticisms and recommendations for further agritourism legislation development.

A. *Kansas*

The Kansas Agritourism Promotion Act asserts that its purpose is “to promote rural tourism and rural economic development” through owners and operators of farms, ranches, and rural attractions conducting agritourism activities.⁴⁹ The statute requires the Secretary of Commerce to maintain a list of registered agritourism activities, locations, and operators, which is the Secretary’s duty to promote and publicize.⁵⁰ Registration is not mandatory, but it is free and

46. Keith et al., *supra* note 3, at 1.

47. See NAT’L AGRIC. STATISTICS SERV., USDA, 2007 CENSUS OF AGRICULTURE (2007), available at http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Fact_Sheets/demographics.pdf.

48. See Nat’l Agric. Law Ctr., Agritourism—An Overview (May 13, 2009), <http://www.nationalaglawcenter.org/assets/overviews/agritourism.html>.

49. KAN. STAT. ANN. § 74-50,166 (Supp. 2009).

50. *Id.* § 74-50,168(b).

lasts for five years before operators must renew.⁵¹ This type of state promotion and documentation of the operations provides a recognizable and trustworthy resource for potential visitors, as long as some verification method is established to ensure farmers operate the agritourisms, the advertised activities are actually being provided, and health and sanitary codes are being met.

Similar to many other states, the Kansas statute also offers limited liability protection to agritourism operators and contains a specific warning notice that operators must post and include in all contracts in order to receive protection.⁵² The limited liability warning includes the inherent risks of agritourism activities. It protects the operator against a participant's potential to act in a negligent manner and failure to follow instructions, as well as against injury to the participant due to another participant's negligence.⁵³ Alternatively, Kansas' limited liability does not extend to the operator if injury resulted from his wanton or willful conduct, or if the operator failed to alert participants about known dangers that could cause death or injury.⁵⁴

The unique provision that rounds out Kansas' agritourism statutes is the five-year tax credit for 20% of the liability insurance paid by the operator.⁵⁵ This incentive provision is very highly recommended because the investment to diversify into agritourism may be prohibitive to the farmers that need supplemental income from that activity. Thus, offering state tax credits for insurance, construction or renovation of buildings, processing, and marketing are all useful possibilities to alleviate the burden for farmers to diversify their operations.

The Kansas statute is the most comprehensive in terms of incentive, operator protection, and official state support through the Secretary of Commerce's registered agritourism list. However, the inclusion of "rural attractions" in the opening "Purpose" provision may lead to non-farming or ranching activities qualifying as agritourisms.⁵⁶ For example, a rural, non-farmer landowner could open an old country schoolhouse for tours. As a "rural attraction," the operator could possibly call it agritourism even though it does not directly promote education, appreciation, or knowledge of agriculture. States should limit the scope of rural agritourism operations to those agricultural activities conducted on a farm or ranch by a farmer or rancher in order to further the intent and purpose of supplementing farm income.

51. *Id.* § 74-50,168.

52. *Id.* § 74-50,169(a)-(c).

53. *Id.* § 74-50,169(c).

54. *Id.* § 74-50,171.

55. *Id.* § 74-50,173.

56. *Id.* § 74-50,166.

B. Delaware

The Delaware agritourism statute defines agritourism as allowing “members of the general public to view or enjoy rural activities.”⁵⁷ By far one of the most inclusive statutes, Delaware’s approved agritourism activities are: “planting, cultivation, irrigation or harvesting of crops; acceptable practices of animal husbandry; barn parties or farm festivals; livestock activities, not to include rodeos; hunting; fishing; swimming; boating, canoeing or kayaking; temporary camping; picnicking; hiking; diving; water skiing or tubing; paintball; and non-motorized freestyle, mountain or off-road bicycling.”⁵⁸ Interestingly, Delaware specifically excludes on-farm rodeos while endorsing activities such as paintballing.⁵⁹ When determining what activities will qualify as agritourism, states will need to determine their primary goal in exposing consumers to farms. If the goal is to bring urban residents out into a rural setting and simply have them see growing crops or be on a farm regardless of what they are doing, then approving activities that seem very non-farming-oriented is to be expected. However, if the state aims to further food consumers’ understanding of how farms operate or where their food comes from through farming-oriented activities only, the statutory definition of agritourism will need to be much narrower.

No limited liability provision exists in Delaware’s agritourism statute. As is common amongst the states, Delaware’s Recreational Use statute also will not offer limited liability protection if the participant paid a fee to use the operator’s land for a recreational purpose.⁶⁰ Thus, normal liability for injury to business invitees attaches to agritourism operators,⁶¹ which would be a real concern for a farmer deciding whether to diversify and risk the possibility, however rare, of a huge judgment exacted against him.

Delaware’s law also sets the minimum size of farms on which agritourism activities may be conducted at ten or more acres.⁶² This provision appears to be trying to narrow agritourism to just those rural residents who are most likely farmers and have large landholdings. However, exceptions may need to be made due to the potential for legitimate urban farms of three and a half or more acres,⁶³

57. DEL. CODE ANN. tit. 9, § 306(a) (Supp. 2008).

58. *Id.*

59. *Id.*

60. DEL. CODE ANN. tit. 7, § 5904 (2001).

61. *Id.* § 5906.

62. Tit. 9, § 306(b).

63. Jason Grimm, Food Urbanism: A Sustainable Design Option for Urban Communities 47 (Spring 2009) (unpublished B.L.A. thesis, Iowa State University), available at http://johnsonlinn-localfood.webs.com/Planning%20Resources/Food%20Urbanism_Grimm.pdf.

which are extremely close to consumers and offer a sustainable, green tourism option for cities.

There is also a provision restricting agritourism on farms subject to the Agricultural Lands Preservation and Forestland Preservation programs.⁶⁴ Though exceptions are made,⁶⁵ this introduces the important point that agritourism should not heighten the amount of stress farms place upon the land. Rather, agritourism should encourage environmentally sustainable farming practices with an increased focus on local food systems and smaller-scale methods of production for an increasingly concerned, informed consumer market.

Finally, Delaware's different county councils have authority over buildings' height, placement, size, percentage of the lot that can be occupied and so forth; but those regulations do not apply to agritourisms because agricultural uses are exempt.⁶⁶ However, some form of local approval or a county zoning regulation to retain the landscape and cultural heritage through traditional structures would be advisable for agritourism legislation. A suggested provision would require all agritourism facilities to be housed in a renovated, preexisting farm building or to replicate a predominant local, rural edifice, such as a traditional barn, chicken coop, or hog house. Agritourism is meant to foster consumer appreciation and knowledge of rural communities and rural residents' pride in their heritage, not to fuel the homogenizing bulldozer of development.

C. *Maine*

Maine does not have a statute specifically defining and promoting agritourism. The statute that mentions it is more of a rural development statute.⁶⁷ It focuses on increasing recreational tourism in the central and northern regions of the state by offering benefits to eligible business projects.⁶⁸ The "sustainable recreational or agricultural tourism activities" must represent 50% of the location's business, but that includes recreational activities that should arguably be excluded when defining agritourism.⁶⁹ For example, the statute approves "[t]he sale or rental of equipment for use in canoeing, kayaking, hunting, fishing, sail-

64. Tit. 9, § 306(b).

65. *Id.* "[E]xcept for the 'related uses' specified in [section] 909 of Title 3," agritourism activities are not allowed on these designated preservation lands. *Id.* Some "related uses" include farm markets and roadside stands with food from that land, hayrides, horseback riding, petting zoos, etc. DEL. CODE ANN. tit. 3, § 909(a)(5) (2001).

66. *E.g.*, tit. 9, § 2601 (delegating power to the County Council of New Castle County, Delaware).

67. *See* ME. REV. STAT. ANN. tit. 30-A, § 5250-Q(4)(B) (Supp. 2009).

68. *Id.* § 5250-Q(2)-(4).

69. *Id.* § 5250-Q(4)(B).

ing, whitewater rafting, hiking, wildlife photography, snowmobiling, dog sledging, snowshoeing, downhill or cross-country skiing, camping activities or other similar nature-based tourism activities.⁷⁰ Again, the purpose for which the state wants to promote agritourism will dictate the scope of qualifying activities. Maine appears to focus more on nature-based tourism than on agriculturally-related activities. Maine's legislation authorizes the Commissioner of Economic and Community Development to administer and set rules for the grant and loan application processes which provide necessary funding streams to ease the capital investment for farmers starting these types of agritourisms.⁷¹

D. *South Carolina*

The South Carolina agritourism statute highlights an important facet of agritourism: it is a supplemental activity for farmers to diversify their production.⁷² The agritourism law is broadly inclusive of many different types of agricultural, ecological, and recreational activities.⁷³ They are only "deemed an agricultural use of the property to the extent agritourism is not the primary reason any tract is classified as agricultural real property but is *supplemental* and *incidental* to the primary purposes."⁷⁴ This type of provision will additionally prevent non-farmers from capitalizing on this popular niche market and preserve the quality of a state-promoted agritourism industry.

South Carolina's statute has a long, non-exhaustive list of agritourism uses, which mentions one in particular that would be an excellent benefit of agritourism's development in the United States—"on-farm heirloom plants and animals."⁷⁵ Preserving biodiversity and increasing focus on sustainable practices not only benefits the agricultural production system, but farmers can benefit from the direct sales and specialty retail sales of those value-added products.⁷⁶

70. *Id.* § 5250-Q(4)(B)(3).

71. *Id.* § 5250-Q(5).

72. S.C. CODE ANN. § 12-43-233(A) (Supp. 2009).

73. *Id.*

74. *Id.* (emphasis added).

75. *Id.*

76. *See generally* MARLENE FRITZ & ROB MYERS, SUSTAINABLE AGRIC. NETWORK, OPPORTUNITIES IN AGRICULTURE: DIVERSIFYING CROPPING SYSTEMS 2-4 (2004), available at <http://www.sare.org/publications/diversify/diversify.pdf> (describing the benefits of diversifying production for the soil, pests, farmers' income and economy).

E. *Utah*

Utah's general agritourism definition is straightforward and comprehensive. It is "an activity that allows members of the general public to view or enjoy agricultural related activities, including farming, ranching, or historic, cultural, or natural attractions, for recreational, entertainment, or educational purposes."⁷⁷ There is no list of eligible activities, but there is a provision prohibiting an activity in which a participant is paid from agritourism.⁷⁸ This is likely targeting on-farm rodeos as non-agritourism activities. On-farm rodeos could be designated as an agritourism activity by the legislature of any state, however, if they are specifically conditioned on furthering agritourism's goals. The public's general exposure to livestock by sitting in the stands and watching would not likely be a strong enough justification. If there was a pre-rodeo petting zoo, and the food sold was cooked on-site with local products, states' departments of agriculture could assuredly certify those as agritourism activities.

The Utah statute additionally does not contain a formal warning requirement like Kansas' statute for the operator to receive limited liability protection.⁷⁹ Alternatively, it establishes an affirmative defense for operators in liability suits if posted signs, verbal warnings, and other safety warnings were deliberately disregarded by the injured person, or the injured person used equipment, animals, or appliances in an unreasonable manner.⁸⁰ This provides some protection for operators, but under this statutory scheme, the producer has the burden of proving the participant acted deliberately or unreasonably (which are tough standards to prove) as a defense after the plaintiff has established a breach of the business invitee duty of care, or he or she faces liability. A more equitable approach would be to place the burden of overcoming a limited liability presumption on the willing, paying customer rather than the small producer. Thus, the Kansas limited liability provision is recommended.⁸¹

F. *Colorado*

The Colorado Unclaimed Property Act creates an unclaimed property tourism promotion trust fund from which 10% of the interest earned shall be used

77. UTAH CODE ANN. § 78B-4-512(1) (2008).

78. *Id.* § 78B-4-512(1)(b).

79. Compare KAN. STAT. ANN. § 74-50,169 (Supp. 2009), with UTAH CODE ANN. § 78B-4-512(2).

80. UTAH CODE ANN. § 78B-4-512(2).

81. *E.g.*, KAN. STAT. ANN. §§ 74-50,169 to 74-50,172.

to promote agritourism.⁸² As introduced previously, the statute defines agritourism as:

[E]ngaging in activities, events, and services that have been provided to consumers for recreational, entertainment, or educational purposes at a farm, ranch, or other agricultural, horticultural, or agribusiness operation in order to allow consumers to experience, learn about, and participate in various facets of agricultural industry, culinary pursuits, natural resources, and heritage.⁸³

One could interpret the use of agribusiness in this description of agritourism as including large corporate businesses not located in rural areas or even occupying agricultural land, such as a meatpacking plant. Overall, these businesses do not reflect the interests agritourism promotes, such as increasing farmer income, rural pride, and cultural heritage. They may meet the goal of increasing consumer knowledge of current food systems, but highly processed, preservatives-ridden manufactured food products should not be agritourism's focus. Businesses selling locally produced, processed, and marketed food products, such as a farmer cooperative-owned dairy that produces grass-fed dairy milk and cheese and sells its products from an on-site shop, are better examples of how "agribusiness" would fit into the scheme of agritourism.

The inclusion of operations offering culinary pursuits in Colorado's agritourism statute reflects the increasing consumer focus on local foods that are sustainably produced, organic, and chemical-free.⁸⁴ Inviting guests to sample foods produced, processed, and prepared on-site through direct sale, as a bed and breakfast, or in an on-farm restaurant furthers agritourism's goals of increasing farmer income, consumer appreciation of rural areas, local patronage and consumption of farmers' fresh products, and possibly promotion of regional foods with local historical heritage. Culinary school retreats to a farm whose products are used to prepare regional dishes or specialties may be excellent promoters of rural pride and cultural heritage.

G. Georgia

Georgia's definition of agritourism is put forth to clarify that such activities will not breach an owner or operator's covenant for "Bona Fide Conservation Use Property and Bona Fide Residential Transitional Property."⁸⁵ Legitimate

82. COLO. REV. STAT. § 38-13-116.7(3)(a)(III)(A) (2010).

83. *Id.*

84. See Laura Bly, *Savvy Farmers Open the Gate to Agritourism*, USA TODAY, Apr. 18, 2008, available at http://www.usatoday.com/travel/destinations/2008-04-17-agritourism-local-food_N.htm.

85. GA. CODE ANN. § 48-5-7.4 (West 2009).

agritourism operations include those where tourists can “visit, view, or *participate* in the operation.”⁸⁶ Having guests participate in farming activities is a great way to further agritourism’s goals. Some short-term farm holidays or bed-and-breakfasts have offered participation both as an attraction and an opportunity to reduce the accommodations fee for the night.⁸⁷ An example of this type of participatory discount would be milking a cow or weeding the garden for seven dollars each hour.⁸⁸

Georgia’s limited liability statute includes the typical warning notice for agritourism activities, but it is unique in its separate warning notice that owners and operators who charge for hunting and fishing must post.⁸⁹ Participants must also sign a waiver that includes the warning notice in full for the limited liability protection to attach to either agritourism activities, hunting, or fishing.⁹⁰ Though the state may maintain the viewpoint that hunting and fishing are separate from agritourism, farmers should still be allowed to charge for those activities on their land and receive protections if they are supplemental to their primary farming operations.⁹¹ Overall, experiencing wildlife on a farm or ranch similar to how the farmer uses a stocked pond or wooded habitat area for pheasant hunting fits with agritourism’s goals of providing rural, cultural activities. However, large land-owners who are not farmers, such as corporate-leisure hunting resorts, should not receive such protections. In a circumstance where the land is rented to a tenant farmer who charges for hunting admission and negligently fails to post signage, the property owner should receive protection even though the tenant has breached the statutory requirements.

H. Louisiana

Louisiana’s agritourism statute defines an agritourism as “a working farm, ranch, or other commercial agricultural, aquacultural, horticultural or *forestry* operation.”⁹² The addition of forestry operations as a tourist attraction is recommended due to the increased need for carbon sequestration and more sustainable soil and land management practices.⁹³ The farmer could specifically

86. *Id.* § 48-5-7.4(p)(7)(B) (emphasis added).

87. *E.g.*, Bly, *supra* note 84.

88. *Id.*

89. GA. CODE ANN. § 51-3-31(b) (West Supp. 2009).

90. *Id.* § 51-3-31(b)(3).

91. *See* S.C. CODE ANN. § 12-43-233(A) (Supp. 2009).

92. LA. REV. STAT. ANN. § 9:2795.5(A)(1) (2009) (emphasis added).

93. *See generally* Yi Jun Xu & Fugui Wang, *The Role of Louisiana’s Forest Ecosystems in Carbon Sequestration*, LA. AGRIC., Spring 2006, at 22-23, available at <http://www.lsuagcenter.com/NR/rdonlyres/80F90A88-15AF-400A-8A5B-64ADBE19AD94/27045/LouisianaAgriculture>

market their operation as maintaining such practices to tourists, which would increase the economic return and value of soil management practices in addition to the inherent stewardship value. The statute gives authority to the Commissioner of Agriculture and Forestry to set the rules and regulations defining agritourism activities.⁹⁴ Also, the agritourism activity must be submitted in a plan of operation to the Director of the Louisiana Cooperative Extension Service of Louisiana State University's Agricultural Center for approval.⁹⁵ Providing this kind of local oversight, and an established framework to ensure an agritourism's quality, is very necessary to create a sustainable statewide agritourism industry.

Louisiana's statute includes an interesting provision in the limited liability section. It restricts liability for the owner as in the Kansas statute, unless there was *intentional, willful or wanton disregard of safety*, or inadequate warning signs.⁹⁶ Additionally, there is no liability limitation for an agritourism professional who "[o]wns, leases, rents, or otherwise is in lawful possession and control of the land or facility upon which the participant sustained injuries because of a dangerous latent condition . . . which was known or should have been known."⁹⁷ This addresses the possibility that tenant farmers could be the agritourism operator, making it imperative that contracts explicitly assign which party assumes the risk and liability for injuries on the property and under what conditions and exceptions.

I. *North Carolina*

The North Carolina statute limits agritourism activities to those "carried out on a farm or ranch."⁹⁸ This language specifically reflects the state's primary intention that agritourism should increase farmers' and ranchers' income as opposed to rural residents or agriculturally related businesses. North Carolina provides the limited liability protection through an affirmative defense, provided the operator posts adequate signage and does not act or fail to act in a way that proximately causes injury, damage, or death.⁹⁹ The statute also addresses consumer awareness through the mandate that "Department of Agriculture and Consumer Services shall provide directional signs on major highways . . . leading to an agricultural facility that promotes tourism by providing tours and on-site sales or

MagazineSpring2006.pdf (stressing the role Louisiana's forests could have in carbon sequestration efforts).

94. LA. REV. STAT. ANN. § 9:2795.5(A)(2).

95. *Id.*

96. *Id.* § 9:2795.5(B); see KAN. STAT. ANN. § 74-50,169 (Supp. 2009).

97. LA. REV. STAT. ANN. § 9:2795.5(B)(2)(c).

98. N.C. GEN. STAT. § 99E-30(1) (2009).

99. *Id.* §§ 99E-31 to 99E-32.

samples of North Carolina agricultural products to area tourists.¹⁰⁰ The facility has to be “open for business at least four days a week, 10 months of the year in order to qualify” for signs to be installed by the Department.¹⁰¹ These promotional provisions are vital for states to build their industries upon qualified agritourisms that meet specific standards and to use their marketing resources prudently.

North Carolina also has a proactive statutory approach to reclaiming and preserving farmland that compliments and benefits from agritourism operation. The state has created a trust fund to purchase agricultural conservation easements, “[fund] programs that promote the development and sustainability of farming and assist in the transition of existing farms to new farm families.”¹⁰² One of the specific funding aims for the Commissioner is to assist farmers in developing and implementing plans for diversifying into agritourism with public and private programs that “promote profitable and sustainable family farms.”¹⁰³ This organized approach to rural development and farmland preservation should be complimented by management, marketing, and financial planning resources so that a farm’s agritourism activity is implemented as part of a coherent business plan.

J. Oklahoma

Oklahoma’s agritourism statute establishes an effective program under the Department of Agriculture, Food, and Forestry that aims to “[stimulate] economic growth and viability in rural communities by promoting and fostering agritourism ventures within Oklahoma.”¹⁰⁴ The Department must have conferences, publish reports, and streamline promotional efforts with other departments and within itself for available resources and related programs.¹⁰⁵ It is also statutorily authorized to facilitate an independent agritourism organization.¹⁰⁶ An Agritourism Revolving Fund was created which distributes funds for approved projects under the State Board of Agriculture’s direction.¹⁰⁷ These formal state structures will help institutionalize the term and concept of agritourism into the farming economy by raising awareness and assisting farmers in making the initial diversification investment.

100. *Id.* § 106-22.5(a).

101. *Id.* § 106-22.5(b).

102. *Id.* § 106-744(c).

103. *Id.* § 106-744(c)(2).

104. OKLA. STAT. ANN. tit. 2, § 5-12 (West Supp. 2010).

105. *Id.*

106. *Id.*

107. *Id.* § 5-13.

K. Kentucky

Kentucky has one of the most developed agritourism laws in the country. A Division of Agritourism was established under the Department of Agriculture's Office for Agricultural Marketing and Product Promotion.¹⁰⁸ The stated purpose of the Office of Agritourism is to “[p]romote agritourism in Kentucky to potential visitors, both national and international; and [a]ssist in sustaining the viability and growth of the agritourism industry in Kentucky.”¹⁰⁹ The statute mandated that the Office of Agritourism develop a “statewide master plan” to report to the Agritourism Advisory Council within one year of its creation.¹¹⁰ The state was broken down into nine tourism regions for which the Office had to develop regional agritourism development plans.¹¹¹ It also had to develop a “unified Kentucky agritourism marketing strategy,” including a website and advertisements for different media outlets.¹¹² Formal support, education, and resource materials are available through the Office of Agritourism for any farmer interested in developing an agritourism.¹¹³ They guide potential operators through existing grower networks and business management information, funding opportunities, and “[i]nsurance and infrastructure concerns,”¹¹⁴ likely referring to food safety, health, and sanitary code provisions for on-site production, processing, and sales.

The Department of Agriculture has included a very interesting administrative regulation under the Marketing and Product Promotion chapter. It provides for a “[t]emporary agritourism site” application and approval for “a seasonal, agricultural-related tourism activity held on a working farm.”¹¹⁵ This would cover activities such as summer farm festivals, barn dances, or on-farm concerts. There are specific requirements for farms to be approved, but owners and operators of temporary agritourism sites must have and provide proof of “a general liability insurance policy that provides coverage for the temporary agritourism event.”¹¹⁶ This is important to note because many farming insurance policies only cover claims from activities relating to farm operations, not supplemental,

108. KY. REV. STAT. ANN. § 246.030 (LexisNexis 2005).

109. *Id.* § 247.800.

110. *Id.* § 247.802(1).

111. *Id.* § 247.802(4).

112. *Id.* § 247.802(2).

113. *Id.* § 247.802(5).

114. *Id.* § 247.802(5)(a)-(c).

115. 302 Ky. Admin. Regs. 39:010(1) (2010).

116. *Id.* at 39:010(2).

alternative activities even though they occurred on the farm.¹¹⁷ It is especially significant to Kentucky's agritourism farmers because the state does not offer limited liability protection in its statute. Thus, general insurance policies, endorsements to an existing comprehensive liability policy for farming activities, and express consent waivers signed by participants are necessary means for owners and operators to protect themselves from liability.

L. Virginia

Virginia's limited liability provision has a clause that could prove quite controversial. Most states only deny protection to owners or operators who willfully or wantonly disregard participants' safety, but Virginia also eliminates limited liability protection if an act or omission was *negligent* and "proximately causes injury, damage, or death to the participant."¹¹⁸ Negligence is a relatively low burden for civil plaintiffs to meet,¹¹⁹ and setting this as the actionable breach of a duty of care will likely expose many more owners and operators to liability even with the appropriate warnings posted and stated in all contracts. States should avoid denying limited liability to owners or operators for simple negligence, and instead, the owners or operators should need to be found to have exhibited gross negligence or reckless disregard for the safety of the participants.

M. Tennessee

Tennessee's agritourism legislation consists solely of agritourism definitions and limited liability provisions.¹²⁰ A distinct exception to Tennessee's limited liability protection is if an owner or operator "[f]ails 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."¹²¹ This codification of an employer's vicarious liability for his employees' acts or omissions speaks to the resounding need for

117. Roger A. McEowen, *Recreational Use of Private Lands: Associated Legal Issues and Concerns*, NAT'L AGRIC. LAW CTR., April 2003, at 4-5, http://www.nationalaglawcenter.org/assets/articles/mceowen_recreationaluse.pdf.

118. VA. CODE ANN. § 3.2-6401 (2008).

119. See *Hancock-Underwood v. Knight*, 670 S.E.2d 720, 724 (Va. 2009) (jury instructions regarding the elements of the plaintiff's burden to prove negligence). But see *Fultz v. Delhaize America, Inc.*, 677 S.E.2d 272, 275 (Va. 2009) (plaintiff carries the burden of refuting a contributory negligence defense by the operator if the cause of the injury was an open and obvious dangerous condition).

120. See TENN. CODE ANN. §§ 43-39-101 to 43-39-103 (Supp. 2010).

121. *Id.* § 43-39-102(b)(3).

proper training of not just employees, but the owners and operators of agritourism activities as well. Continuing education classes for agritourism farmers are highly recommended to increase professionalism, hospitality, management and marketing strategy, and technical expertise.¹²² States could include a statutory provision requiring agritourism operators to complete a certain number of continuing education hours at local extension offices, non-profit organization workshops, demonstrations, meetings, or conferences. Employee training could require less off-farm educational hours, but documented on-farm instruction, manuals, and demonstrations should be necessary to satisfy the proper training requirement and attach limited liability.

IV. FOOD FOR THOUGHT

Some states may have strategically chosen not to include all of the different provisions referred to in the different state statutes. Assuming a state wants to provide full protection to owners and operators of agritourisms to encourage their creation, aid in rural development, and promote local, healthy food systems, below is an example of model legislation that states can use in codifying agritourism. Pieces of states' statutes have been combined to create a comprehensive statute with some minor changes.

A. *Definition*

(1) Agritourism activities are activities, events, and services “carried out [by a farmer or rancher] on a farm or ranch that allow[] members of the general public, for recreational, entertainment, or educational purposes,” to visit, view, experience, learn about, and participate in various rural activities.¹²³ Agritourism activities include farming, ranching, forestry, horticultural, aquacultural, or other agricultural production and processing demonstrations; on-farm heirloom plants and animals; wineries; bed and breakfast accommodations, farm vacations, farm tours; on-farm historical reenactments, educational tours, education barns, farm animal exhibits, farm schools, farm stores, living history farms, on-farm collections of old farm machinery; cultural activities, agricultural festivals, on-farm theme playgrounds for children, agricultural regional themes, harvest theme pro-

122. See, e.g., DENNIS M. BROWN & RICHARD J. REEDER, ECON. RESEARCH SERV., FARM-BASED RECREATION: A STATISTICAL PROFILE 2-3 (2007), available at <http://www.ers.usda.gov/publications/err53/err53.pdf>; see also OR. REV. STAT. ANN. § 284.111(7) (West Supp. 2010).

123. N.C. GEN. STAT. § 99E-30(1) (2009); see COLO. REV. STAT. § 38-116.7(3)(a)(III)(A) (2010); GA. CODE ANN. § 48-5-7.4(p)(7)(B) (West 2009); N.Y. AGRIC. & MKTS. LAW § 99E-30(1) (McKinney Supp. 2010).

ductions, Indian mounds, earthworks art; harvest-your-own, direct sales, roadside stands, on-farm food sales, eating a meal, culinary pursuits; nature-based or ecological-based activities and attractions, on-farm fee fishing and hunting, on-farm pumpkin patches, horseback riding, horseback sporting events and training for horseback sporting events, cross-country trails, hayrides, mazes, crop art, native ecology preservations, on-farm picnic grounds, dude ranches, trail rides, bird-watching, stargazing; and farmer-owned agribusiness operations.¹²⁴

(2) An activity is “an agri-tourism activity whether or not the participant pays to participate in the activity.”¹²⁵

(3) An activity may qualify as an agritourism activity even though some participants are paid to participate through either compensation or cash awards, including but not limited to on-farm rodeos, barn parties, or farm concerts, provided that:

(a) the activity is conducted simultaneously or in conjunction with other agritourism activities, such as selling food produced and prepared on the host farm or farms from the surrounding region; and

(b) the farmer receives advance approval from the [county commission], which if not responded to within 30 days prior to the scheduled event is deemed granted.

(4) Conducting agritourism activities on classified agricultural land shall not alter that designation,¹²⁶ “to the extent agritourism is not the primary reason any tract is classified as agricultural real property but is supplemental and incidental to the primary purposes of the tract’s use for agriculture, grazing, horticulture, forestry, dairying, and mariculture.”¹²⁷

B. *Registration of Agritourisms*

“Any person who is engaged in the business of providing one or more agritourism activities [must] register” with the secretary of agriculture tourism as a registered agritourism.¹²⁸

(1) The registration shall contain information describing the agritourism’s location and the agritourism activity the person intends to conduct.¹²⁹

124. COLO. REV. STAT. § 38-13-116.7(3)(a)(III)(A); LA. REV. STAT. ANN. § 9:2795.5(A)(1) (2009); N.C. GEN. STAT. ANN. § 99E-30(1); N.H. REV. STAT. ANN. § 21:34-a(VI) (Lexis Nexis 2008); N.Y. AGRIC. & MKTS. LAW § 301.15; S.C. CODE ANN. § 12-43-233 (Supp. 2009).

125. UTAH CODE ANN. § 78B-4-512(1)(a) (2008).

126. FLA. STAT. ANN. § 570.962(1) (West Supp. 2010).

127. S.C. CODE ANN. § 12-43-233 (Supp. 2009).

128. KAN. STAT. ANN. § 74-50,168(a) (Supp. 2009).

129. *Id.*

(2) “The secretary shall maintain a list of all registered agritourism operators, the registered agritourism activities conducted by each operator and the registered agritourism location where the operator conducts such activities.”¹³⁰ This information shall be promoted to the public through published materials, advertisement in various media outlets, and a continuously updated agritourism website.¹³¹ This comprehensive list shall include, but is not limited to, U-pick or harvest-your-own farms, roadside and on-farm markets, farm wineries, farm stay bed and breakfasts, on-farm restaurants, and other agritourism events and attractions.¹³²

(3) “Registration pursuant to this section shall be for a period of five years.”¹³³

(4) “No fee shall be charged to persons registering under this section.”¹³⁴

C. *Marketing and Development*

(1) “The Department of Agriculture, in conjunction with the [department of tourism or culture], shall create an interagency Office of Agritourism [to be housed in the Division of Agritourism with the Office for Agricultural Marketing and Product Promotion] in the Department of Agriculture.”¹³⁵ The Office of Agritourism shall: (A) “Promote agritourism in [state] to potential visitors, both national and international;” (B) Assist in sustaining the viability, growth, planning, and development of the agritourism industry in [state];¹³⁶ and (C) “Stimulat[e] economic growth and viability in rural communities by promoting and fostering agritourism ventures within [state].”¹³⁷

(2) “The Office of Agritourism shall perform all duties necessary to carry out the purposes of [statute], including but not limited to: [(A)] Within the first year of its creation, developing a statewide master plan for implementation” of this section.¹³⁸ “The Office of Agritourism shall report on the plan to the Agritourism Advisory Council at the request of the council; [(B)] Developing a unified [state] agritourism marketing strategy” between the departments of agriculture and tourism to promote [state] agritourism.¹³⁹ “The strategy shall include

130. *Id.* § 74-50,168(b).

131. *Id.*; KY. REV. STAT. ANN. § 247.802(2) (LexisNexis 2005 & Supp. 2009).

132. CONN. GEN. STAT. ANN. § 22-38a (West 2010).

133. KAN. STAT. ANN. § 74-50,168(c).

134. *Id.* § 74-50,168(d).

135. KY. REV. STAT. ANN. § 247.800.

136. *Id.*

137. OKLA. STAT. ANN. tit. 2, § 5-12(A) (West Supp. 2010).

138. KY. REV. STAT. ANN. § 247.802(1).

139. *Id.* § 247.802(1)-(2).

but not be limited to [the] promotion of [state] agritourism,” the availability and “advantages of purchasing [state]-grown farm products,” and “interaction and business relationships between farmers” and local consumers through the creation of a website, advertisement through various media outlets, state-wide or regional events promoting [state]-grown products, and promotional brochures in all state rest areas;¹⁴⁰ (C) “Coordinating efforts to educate the general public about the importance of [state’s] agricultural heritage and industry;”¹⁴¹ (D) “Foster[ing] conferences, institutes, and exhibits on agritourism opportunities;”¹⁴² (E) Providing marketing advice, technical expertise, promotional support, and product development related to agritourism; (F) “Publish[ing] reports, surveys, news bulletins, or other materials pertaining to its findings, recommendations, and work;” (G) “Utiliz[ing] existing Department resources and related programs,” such as the [state] University Cooperative Extension Service.¹⁴³

(3) The Office of Agritourism “shall provide directional signs on major highways at or in reasonable proximity to the nearest interchange or within one mile leading to” a registered agritourism that provides agritourism activities and “on-site sales or samples of [state] agricultural products to area tourists.”¹⁴⁴ “An agricultural facility must be open for business at least four days a week, [eight] months of the year [(Mar.-Oct. or Apr.-Nov.)] in order to qualify for the directional signs provided for in this section.”¹⁴⁵ “The [Office] shall assess the facility the actual reasonable costs of the sign and its installation.”¹⁴⁶

D. Agritourism Fund

“There is hereby created in the State Treasury a fund to be known as the ‘Agritourism Revolving Fund.’”¹⁴⁷

(1) All fees and “revenues collected, authorized, or received from any source by the State Board of Agriculture or any division, officer, or employee of the State Department of Agriculture” shall be deposited in the Agritourism Revolving Fund.¹⁴⁸

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140. CONN. GEN. STAT. ANN. § 22-38a (West 2010); KY. REV. STAT. ANN. § 247.802(2).
 141. KY. REV. STAT. ANN. § 247.802(3).
 142. OKLA. STAT. ANN. tit. 2, § 5-12(B)(1).
 143. *Id.* § 5-12(B)(2)-(3).
 144. N.C. GEN. STAT. § 106-22.5(a) (2009).
 145. *Id.* § 106-22.5(b).
 146. *Id.*
 147. OKLA. STAT. ANN. tit. 2, § 5-13(A).
 148. *Id.*

(2) Ten percent of the interest to the [state] unclaimed property tourism promotion trust fund shall be deposited in the Agritourism Revolving Fund.¹⁴⁹

(3) The Agritourism Revolving Fund shall consist of money transferred from counties, private sources, and any other source for the joint “purpose of purchasing agricultural conservation easements or funding programs that promote the development and sustainability of farming and assist in the transition of existing farms to new farm families” using but not limited to agritourism.¹⁵⁰

E. *Agritourism Activities on Farms*

(1) Agritourism activities qualify a farm to be a registered agritourism if conducted on farms of ten or more acres in rural areas.¹⁵¹ In urban and peri-urban areas, agritourism activities may be conducted on farms of 3.5 acres or more.¹⁵²

(2) If approval power is delegated to a county official, “any real property proposed to be used for an agritourism activity” shall be reviewed by the [county council].¹⁵³ Activities proposed on land subject to a conservation or preservation program shall receive expedited review by the county council with a rebuttable presumption against allowing activities on such locations.¹⁵⁴ No activities shall be approved in which buildings would be constructed on land directly subject to conservation or preservation programs.¹⁵⁵

(3) Structures in which agritourism activities are conducted must retain the natural character of the local buildings, farm and landscape.¹⁵⁶ (A) Any construction, renovation, alteration, or modification of agritourism structures shall be described in writing and submitted to the county council for expedited approval.¹⁵⁷ All appealed decisions shall be submitted to the secretary of agriculture within sixty days of notice of the commissioner’s [council’s] decision. (B) “An existing agricultural building used for agritourism is not considered a change of

149. COLO. REV. STAT. § 38-13-116.7(3)(a)(III)(A) (2010).

150. N.C. GEN. STAT. § 106-744(c).

151. DEL. CODE ANN. tit. 9, § 306(b) (Supp. 2008).

152. Grimm, *supra* note 63.

153. DEL. CODE ANN. tit. 9, § 6902(a) (delegating power to the County Council of Sussex County, Delaware); *see, e.g.*, VA. CODE ANN. § 15.2-2288.3 (2008 & Supp. 2010) (allowing the local officials to approve and exempt wineries from local noise ordinances and regulation if “activities and events are usual and customary for farm wineries throughout the Commonwealth”).

154. *E.g.*, DEL. CODE ANN. tit. 9, § 306(b).

155. *See, e.g., id.* § 6902(b)(2), (4).

156. *See, e.g., id.* § 2601(a).

157. *E.g., id.* § 6902(a) (providing for the Council’s expedited review of structures proposed to be used for agritourism).

occupancy that requires a building permit if the subordinate use of agritourism is in accordance with . . . [the] regulations adopted by the Department.”¹⁵⁸

(4)(a) The county [official] shall determine reasonable building heights, size, setbacks, density of building populations, and all other guidelines necessary to preserve the traditional agricultural nature of structures proposed for construction or modification on registered agritourism operations.¹⁵⁹

(b) “Notwithstanding subsection (a) of this section, no such regulation or regulations shall apply to any land, building, greenhouse, or other structure proposed to be devoted,” or that is solely devoted, to agricultural use.¹⁶⁰

F. *Limited Liability*

(1) Except as provided in paragraph (2) “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 [paragraph (3)] is posted as required and, except as provided in [paragraph (2)] of this section, 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.”¹⁶¹ In any action for damages arising out of an agritourism activity against an agritourism professional, the agritourism professional shall also “plead the affirmative defense of assumption of the risk of agritourism activity by the participant.”¹⁶²

(2) Nothing contained in paragraph (1) “prevents or limits the liability of an agritourism professional if the agritourism professional does any one or more of the following: [(A)] Commits an act or omission that constitutes . . . willful or wanton disregard” or gross negligence “for the safety of the participant, and that act or omission proximately cause[d] injury, damage, or death to the participant,”¹⁶³ (B) “Intentionally injures the participant,”¹⁶⁴ (C) “Owns, leases, rents, or otherwise is in lawful possession and control of the land or facility upon which the participant sustained injuries because of a dangerous latent condition, including but not limited to the dangerous propensity of a particular animal used in such activity, which was known or should have been known to the agritourism professional” and the agritourism professional did not make the danger known to

158. MD. CODE ANN., PUB. SAFETY § 12-508(d) (LexisNexis Supp. 2010).

159. See DEL. CODE ANN. tit. 9, § 2601(a).

160. *Id.* § 2601(b).

161. N.C. GEN. STAT. § 99E-31(a) (2009).

162. *Id.*

163. *Id.* § 99E-31(b)(1).

164. TENN. CODE ANN. § 43-39-102(b)(4) (Supp. 2010).

the participant,¹⁶⁵ or (D) “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.”¹⁶⁶

(3)(A) “Every agritourism professional shall post and maintain signs that contain the warning notice specified in” subsection (B).¹⁶⁷ The sign must “be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity.”¹⁶⁸ The warning notice must “consist of a sign in black letters, with each letter to be a minimum of one inch in height.”¹⁶⁹ “Every written contract entered into by an agritourism professional for the providing of professional services, instruction, or the rental of equipment to a participant, whether or not the contract involves agritourism activities on or off the location or at the site of the agritourism activity, shall contain in clearly readable print the warning notice specified in” subsection (B).¹⁷⁰ (B) The signs and contracts described in subsection (A) shall contain the following notice of warning: “WARNING—Under [state] 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.”¹⁷¹ “Inherent risks of agritourism activities include, but shall not be limited to,”¹⁷² “risks of injury inherent to land, equipment, and animals,”¹⁷³ “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.”¹⁷⁴ “You are assuming the risk of participating in this registered agritourism activity.”¹⁷⁵

(4) Each agritourism owner or operator shall purchase a general liability insurance policy in addition to this limited liability guarantee.¹⁷⁶

165. LA. REV. STAT. ANN. § 9:2795.5(B)(2)(c) (2009); TENN. CODE ANN. § 43-39-102(b)(2).

166. TENN. CODE ANN. § 43-39-102(b)(3).

167. LA. REV. STAT. ANN. § 9:2795.5(C)(1).

168. *Id.*

169. *Id.*

170. *Id.*

171. KAN. STAT. ANN. § 74-50,169(c) (Supp. 2009).

172. *Id.*

173. LA. REV. STAT. ANN. § 9:2795.5(C)(2).

174. KAN. STAT. ANN. § 74-50,169(c).

175. *Id.*

176. *See* 302 KY. ADMIN. REGS. 39:010 (2010).

G. *Education and Training*

(1) Any agritourism operator must complete at least twenty hours of continuing education credit during the first year in which the agritourism activity operates and ten continuing education hours during every subsequent year of operation. The commissioner [council or department] shall publish listings of the approved locations, subjects, presenting organizations, and all other requirements for agritourism operators to complete such training through the Commission's website, with the County Extension Office, and with non-profit organizations within the state affiliated with agriculture. Any agritourism employee who directly or indirectly may affect the agritourism participants' health, safety, welfare, or ability to participate in the activity through an act or omission must receive at least five hours of off-farm continuing education credit during each year of employment at the agritourism site through the same approved providers set by the commissioner [council or department]. An additional twenty hours of working instruction or demonstration must be provided and documented by the agritourism operator at the agritourism activity site within ninety days of the employee's start date. The agritourism operator will not receive limited liability protection for injuries proximately caused by employee acts or omissions during the ninety-day training period if the employee has not completed the on-site training or cannot demonstrate reasonable progress toward fulfillment of such training.

H. *Tax Credits*

(1) There shall be allowed for five years as a credit against the tax liability of a taxpayer, who is a registered agritourism operator or a taxpayer commencing an agritourism business, "an amount equal to 20% of the cost of liability insurance paid" in the taxable year.¹⁷⁷

(A) "No tax credit claimed pursuant to this subsection shall exceed \$2,000."¹⁷⁸ (B) "If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the amount thereof . . . may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of tax credit has been deducted from tax liability, except that no such tax credit shall be carried forward for deduction after the third taxable year succeeding the taxable year in which the tax credit is claimed."¹⁷⁹ (C) "The secretary of commerce shall adopt rules and regulations

177. KAN. STAT. ANN. § 74-50,173(a).

178. *Id.*

179. *Id.*

establishing criteria for determining those costs which qualify as costs of liability insurance for agritourism activities of a registered agritourism operator.”¹⁸⁰

(2) Admissions and amusement tax shall not be imposed by counties on gross receipts “derived from any admissions and amusement charge for any activities related to agricultural tourism.”¹⁸¹

V. Y’ALL COME BACK NOW YA’HEAR

The movement in food and agriculture to revive more local, sustainable food systems may be attributed to heightening concern for the effect some agricultural methods have on the environment, alarming nutrition statistics that call for a change in the way we feed ourselves and our children, or the fact that giant corporate farms are swallowing up the countryside. Any or all of these reasons explain agritourism’s rising popularity as well. This country needs a renewed vigor and excitement for agriculture, as reflected in New York’s Right to Farm law protecting farmers from nuisance suits.¹⁸² Agritourism should not be met with opposition from neighbors, but instead should be seen as a public benefit for the food and fiber it provides and the opportunities it brings to the local economy. In turn, farmers should increase their commitment to soil and land conservation practices and natural production. Assumedly, people want to visit farms consciously avoiding fouling the public water and concerned with providing fresh, healthy food free from chemicals. Bottom line: Farmers keep food on our plates without much fanfare or recognition. Consequently, consumers today need a renewed look at where their food comes from, and what it takes to get it to their plates. Agritourism is that win-win look for both the consumer and the producer.

180. *Id.* § 74-50,173(c).

181. MD. CODE ANN., TAX-GEN. § 4-103(a)(2)(ii) (LexisNexis 2010).

182. N.Y. AGRIC. & MKTS. LAW § 308 (McKinney Supp. 2010) (exempting sound agricultural practices approved upon request by the commissioner from constituting private nuisances in agricultural districts).