

FIELDS OF OPPORTUNITY: AGRITOURISM AS A GROWING INDUSTRY AND IMPETUS FOR LEGISLATION PROTECTING FARMERS AND LANDOWNERS

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I. INTRODUCTION

This Note will provide a detailed explanation of agritourism with examples of qualifying activities, as well as briefly discuss the history of agricultural tourism. Surveying state agritourism laws and comparing their similarities and differences, this Note will specifically focus on state legislation limiting liability for the agritourism industry. Finally, there will be analysis of the recently enacted Iowa Agricultural Tourism Promotion Act, its purpose, comparison to other similar state statutes, and potential effects of the new law.

II. WHAT IS “AGRITOURISM?”

Merriam-Webster defines agritourism as “the practice of touring agricultural areas to see farms and often to participate in farm activities.”¹ This definition applies to some, but certainly not all activities which are included in the domain of agritourism.² More broadly, agritourism may be thought to include any business venture or attraction that involves the intersection of tourism and agri-

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1. *Agritourism*, MERRIAM-WEBSTER (Feb. 6, 2023, 2:55 PM), <https://www.merriam-webster.com/dictionary/agritourism> [https://perma.cc/3788-RVWL].

2. *Compare id.*, with *Agritourism – An Overview*, NAT’L AGRIC. LAW CTR. (Sept. 16, 2022, 10:05 AM), <https://nationalaglawcenter.org/overview/agritourism/> [https://perma.cc/YXU7-GG64].

culture.³ The National Agricultural Law Center provides a more technical definition of agritourism as “a form of commercial enterprise that links agricultural production and/or processing with tourism in order to attract visitors onto a farm, ranch, or other agricultural business for the purpose of entertaining and/or educating the visitors and generating income for the farm, ranch, or business owner.”⁴

Other terms which overlap or are interchangeable with agritourism are agritainment, farm-based tourism, and rural recreation, among others.⁵ While these characterizations all describe the same broad category of activities, they may vary slightly in their application. To determine whether an activity constitutes agritourism in a given jurisdiction, it is most helpful to examine applicable state laws.⁶ Statutory definitions of agritourism differ among states, but often share certain elements, which include the following: a connection to agriculture through location or nature of the activity, consideration paid for the activity, and the purpose of the activity being educational, recreational, entertainment, historic, or cultural.⁷ Some states also include exhaustive lists of specific activities which fit within the category of agritourism, and others provide specific exceptions.⁸

Louisiana’s agritourism law is unique in enumerating specific activities that constitute agricultural tourism.⁹ A detailed list of those qualifying activities is to be prepared by the State Commissioner of Agriculture and Forestry each year.¹⁰ In most other jurisdictions, statutory definitions of agritourism are vague enough to allow for liberal interpretations.¹¹ Examples of commonly recognized agritourism operations include apple orchards, on-site farmers markets, corn mazes, farm

3. *Agritourism – An Overview*, *supra* note 2.

4. *Id.*

5. *Id.*

6. *Id.*

7. *See generally* VT. L. SCH. CTR. FOR AGRIC. AND FOOD SYS., *DEFINING AND REGULATING AGRITOURISM: TRENDS IN STATE AGRITOURISM LEGISLATION 2019-2020* (2022), <https://www.vermontlaw.edu/sites/default/files/2021-04/Defining-and-Regulating-Agritourism.pdf> [<https://perma.cc/FF8V-ZATA>] [*hereinafter* *DEFINING AND REGULATING AGRITOURISM*].

8. *See generally id.*

9. Peggy Hall & Evin Bachelor, *Agritourism Immunity Laws in the United States*, NAT’L AGRIC. L. CTR. 3 (Jan. 9, 2019), <https://nationalaglawcenter.org/wp-content/uploads/assets/articles/Agritourism-series-Immunity-laws.pdf> [<https://perma.cc/K7LW-7CRE>]; LA. STAT. ANN. § 9:2795.5 (2008).

10. Hall & Bachelor, *supra* note 9; § 9:2795.5(A)(2).

11. *See generally* *DEFINING AND REGULATING AGRITOURISM*, *supra* note 7, at 4.

tours, wineries, petting zoos, hayrides, pumpkin patches, horseback riding, and cut your own Christmas tree farms.¹²

Agricultural tourism has emerged in recent years as a growing industry in the United States, one which has unique expansion potential, especially in the aftermath of a global pandemic.¹³ According to the United States Census of Agriculture, which only began including data on agritourism in 2002, revenue from agritourism more than tripled from 2002 to 2017.¹⁴ In just a five year span, from 2012 to 2017, total agritourism revenue adjusted for inflation grew from \$704 million to \$950 million.¹⁵ Moreover, the number of farms supporting and earning income from agritourism increased by nearly 10,000 from 2007 to 2012.¹⁶

While the concept of agritourism is relatively new in the United States, it is far more prevalent in Europe and other parts of the world.¹⁷ This strain of tourism first gained widespread support in Italy, where the term *agriturismo* was coined.¹⁸ In the decades following World War II (WWII), there was a period of major rural-to-urban migration in Italy.¹⁹ Small farms struggled to remain profitable and as a result, farmers sought employment in larger cities.²⁰ In 1985, the Italian gov-

12. See Hall & Bachelor, *supra* note 9, at 2–3; *Agritourism – An Overview*, *supra* note 2.

13. Peggy Kirk Hall & Ellen Essman, *Recent Agritourism Litigation in the United States*, NAT'L AGRIC. L. CTR. 1 (Sept. 16, 2022, 10:08 AM), <https://nationalaglawcenter.org/wp-content/uploads/assets/articles/AgritourismLitigationHallFinal.pdf> [<https://perma.cc/BDA3-SS4C>]; DENNIS M. BROWN & RICHARD J. REEDER, U.S. DEP'T OF AGRIC. ECON. RSCH. SERV., *FARM-BASED RECREATION: A STATISTICAL PROFILE 13* (2007), https://www.ers.usda.gov/webdocs/publications/45941/12871_err53.pdf?v=0 [<https://perma.cc/SDX5-MM6E>].

14. Christine Whitt et al., *Agritourism Allows Farms to Diversify and Has Potential Benefits for Rural Communities*, U.S. DEP'T OF AGRIC. ECON. RSCH. SERV. (Nov. 4, 2019), <https://www.ers.usda.gov/amber-waves/2019/november/agritourism-allows-farms-to-diversify-and-has-potential-benefits-for-rural-communities/> [<https://perma.cc/5TXJ-2QV7>].

15. *Id.*

16. Hall & Bachelor, *supra* note 9, at 1.

17. BROWN & REEDER, *supra* note 13, at 1.

18. Lisa Chase, *Agritourism: What is it and Why Does it Matter?*, MORNING AG CLIPS (May 14, 2018), <https://www.morningagclips.com/agritourism-what-is-it-and-why-does-it-matter/> [<https://perma.cc/M3S6-P4FR>].

19. Svetlana Kovalyova, *Agritourism Throws Lifeline to Italian Farmers*, REUTERS (Sept. 2, 2007, 6:16 PM), <https://www.reuters.com/article/us-italy-agritourism/agritourism-throws-lifeline-to-italian-farmers-idUSL2831511120070903> [<https://perma.cc/JWN3-P7LA>].

20. JUDY WALDEN ET AL., WALDEN MILLS GROUP, CULTURAL, HERITAGE & AGRITOURISM STRATEGIC PLAN: A THREE-YEAR ACTION PLAN FOR THE PROMOTION OF AGRITOURISM IN THE STATE OF COLORADO 5 (2013), <https://doczz.net/doc/4781100/a-three-year-action-plan-for-the-promotion-of-agritourism> [<https://perma.cc/ZU52-VLA8>].

ernment passed the first national legislation regarding agritourism.²¹ The law focused on encouraging farm stays, a form of agritourism, with the purpose of preserving vital agricultural practices.²² Today, Italy and France maintain the highest percentage of farms providing agritourism attractions in Europe.²³

III. WHY AGRITOURISM?

Agricultural tourism provides a variety of benefits beyond pure entertainment value. From the perspective of farm owners, agritourism presents an opportunity to generate additional revenue, diversify their business, and reduce dependence on agriculture.²⁴ The extent to which farmers are influenced by these incentives has increased as small farms have become less profitable.²⁵ This has been an ongoing issue as farming technology advanced and corporate farms make up a larger portion of the overall market, pushing small family farms out.²⁶ Small farms continue to exist, in large part, by undervaluing their farm labor and through income from off farm jobs.²⁷ An agritourism venture not only offers a new income stream but may also supply safe and productive alternatives for family labor and eliminate the need for jobs off the farm.²⁸

Just as individual agritourism operations benefit small farms and landowners, the industry as a whole offers societal utility.²⁹ Agritourism serves to promote and educate the public about agriculture and food production in a time when it is greatly needed.³⁰ A century ago, most people had some connection to farming—commonly a friend or relative lived on a farm or was engaged in farm

21. R. David Lamie et al., *Agritourism Around the Globe: Definitions, Authenticity, and Potential Controversy*, 10(2) J. OF AGRIC., FOOD SYS. & CMTY. DEV. 573, 574 (2021).

22. *Id.*

23. See BROWN & REEDER, *supra* note 13, at 1.

24. *Id.*

25. See *id.* at 1, 3; *Agritourism – An Overview*, *supra* note 2.

26. See Lindsay Quella et al., *Visitors and Values: A Qualitative Analysis of Agritourism Operator Motivations Across the U.S.*, 10(3) J. OF AGRIC., FOOD SYS., & CMTY. DEV. 287, 290–91 (2021).

27. Robert A. Hoppe, *Profit Margin Increases with Farm Size*, U.S. DEP'T OF AGRIC. ECON. RSCH. SERV. (Feb. 2, 2015), <https://www.ers.usda.gov/amber-waves/2015/januaryfebruary/profit-margin-increases-with-farm-size/> [<https://perma.cc/W475-F7AK>].

28. See Quella et al., *supra* note 26, at 290–91, 294.

29. Carla Barbieri, *A Comparison of Agritourism and Other Farm Entrepreneurs: Implications for Future Tourism and Sociological Research on Agritourism*, PROC. 2008 NE. RECREATION RSCH. SYMP. 343, 347 (2009).

30. *Id.* at 343.

labor.³¹ Today, as a result of decades of urbanization and a steady decline in the number of farms, most people are removed from farming and have little to no agricultural experience.³² As one writer noted, “the agritourism movement is fueled by city dwellers who want to understand where their food comes from or who feel an urge to embrace the country life.”³³ Agricultural tourism attractions supply hands-on opportunities for people to fulfill those desires.³⁴ It gives visitors a chance to connect with their local food systems and has the potential to influence consumer behavior in favor of local food consumption.³⁵ In this way, agritourism benefits rural farming communities by stimulating their local economies.³⁶ Visitors not only purchase goods and services from the agritourism enterprise itself, but from the surrounding community as well.³⁷ Research also suggests that this type of tourism incentivizes land preservation, which enhances the local quality of life and ultimately raises land values.³⁸ In turn, local tax revenues increase, providing greater funding to local public schools and other public services.³⁹ Thus, the potential social and economic benefits of agritourism are likely to strengthen surrounding rural communities.⁴⁰ This may prove to be particularly true in a post-COVID world, where socially distanced outdoor activities will continue to be in high demand.⁴¹

IV. LIABILITY CHALLENGES

Despite the myriad of opportunities and benefits agritourism offers, it also presents challenges.⁴² For those who operate agritourism enterprises, liability is a

31. Chase, *supra* note 18.

32. *See id.*; Lisa C. Chase et al., *Agritourism: Toward a Conceptual Framework for Industry Analysis*, 8(1) J. OF AGRIC., FOOD SYS., & CMTY. DEV. 13, 14–15 (2018); IOWA CODE § 673A.2 (2021).

33. William Neuman, *Small U.S. Farms Find Profit in Tourism*, N.Y. TIMES (June 9, 2011), <https://www.nytimes.com/2011/06/10/business/10tourism.html> [<https://perma.cc/BL7C-RX56>].

34. *See* BROWN & REEDER, *supra* note 13, at 1.

35. Sarah Brune et al., *The Influence of Agritourism Experiences on Consumer Behavior toward Local Food*, 60(6) J. OF TRAVEL RSCH. 1381, 1381 (2020).

36. BROWN & REEDER, *supra* note 13, at 1.

37. *Id.*

38. *Id.*

39. *Id.*

40. Chadley Hollas & Lisa Chase, *Agritourism: Challenges and Opportunities for the Rural Future*, TRAVEL & TOURISM RSCH. ASS’N (2021).

41. *Id.*

42. *Agritourism – An Overview*, *supra* note 2.

major concern.⁴³ When a landowner opens their land to the public, they also open themselves up to the risk that they could be held liable for any injuries sustained on their property.⁴⁴ This is especially worrisome for agritourism operators, given the inherent dangers of farming and agricultural processes.⁴⁵ In recent years, many states have enacted laws to address those worries and provide liability protections to agritourism businesses.⁴⁶ However, agritourism laws are not the first statutory mechanism to offer protection to this class of landowners.⁴⁷

Recreational use statutes were a precursor-of-sorts to agritourism legislation, and were prompted by the same historical background that gave rise to agricultural tourism ventures.⁴⁸ Following WWII, the amount of land available for recreational use was in decline while the demand for access to such land increased.⁴⁹ Coupled with growing rates of obesity in the United States, public health experts sought to expand Americans' access to recreational opportunities.⁵⁰ One method to achieve this was to encourage private landowners to open up their property to the public for recreational use.⁵¹ To promote this practice, legislatures across the country implemented measures to reduce landowners' exposure to liability, and thus, recreational use statutes were born.⁵²

Prior to recreational use statutes, this kind of landowner liability was governed by principles of premises liability as developed under the common law.⁵³ Under the common law approach, a landowner's duty to entrants generally depended on the entrant's status as a trespasser, licensee, or invitee.⁵⁴ A landowner was subject to varying degrees of liability for injuries sustained on his property

43. *Id.*

44. Erika Eckley & Roger McEowen, *Iowa's Recreational Use Immunity – Now You See It, Now You Don't*, IOWA STATE UNIV. CTR. FOR AGRIC. L. & TAX'N 1 (Jan. 17, 2014), https://www.calt.iastate.edu/system/files/calt_legal_brief_-_iowa_recreational_use_immunity.pdf [<https://perma.cc/WVK5-M2U5>].

45. *See* Hall & Bachelor, *supra* note 9, at 3.

46. *See id.* at 1.

47. Eckley & McEowen, *supra* note 44, at 2.

48. Michael J. Lunn, *Class Dismissed: Forty-Nine Years Later Recreational Use Statutes Finally Align with Legislation's Original Intent*, 20 DRAKE J. AGRIC. L. 137, 155–56 (2015); *see generally* Sallee v. Stewart, 827 N.W.2d 128 (Iowa 2013).

49. Sallee, 827 N.W.2d at 133.

50. *Id.*

51. *Id.*; *see* Eckley & McEowen, *supra* note 44, at 4.

52. *See* Sallee, 827 N.W.2d at 133–34; Eckley & McEowen, *supra* note 44, at 1.

53. Sallee, 827 N.W.2d at 133; Lunn, *supra* note 48, at 142–43.

54. 62 AM. JUR. 2D *Premises Liability* § 158 (2021); Eckley & McEowen, *supra* note 44, at 2.

based upon the entrant's status.⁵⁵ The potential for liability acted as a substantial disincentive for landowners to avail the public of recreational use of their private land.⁵⁶

In effect, recreational use statutes remove the common law duties owed by landowners to entrants and treat recreational users as trespassers.⁵⁷ Even if the users are directly invited onto the land for recreational purposes, their legal status does not change to require a higher degree of care by the landowner.⁵⁸ In this manner, landowners are shielded from liability for any harm or injuries sustained by recreational users while on their property.⁵⁹ However, this protection will not apply where a holder of land "willfully or maliciously fails to guard or warn against a dangerous condition, use, structure, or activity."⁶⁰

Additionally, a landowner will not benefit from the statute's protections if they charge a fee or have any expectation of compensation in exchange for recreational use of their land.⁶¹ The rationale for this so-called "consideration exception" is that recreational use statutes are intended to remove the disincentive of liability in order to encourage landowners to open their land to the public.⁶² If a landowner already expects to receive an economic benefit for public use of their land, it is unlikely that they need any further stimulus to motivate them.⁶³

Today, every state has a statute addressing recreational use and providing some form of protection to landowners.⁶⁴ Iowa's recreational use statute was enacted in 1967, closely aligning with other state statutes of the like.⁶⁵ However, some 50 years later in 2012, the specific qualifications and protections of Iowa's recreational use statute were heavily scrutinized in the case of *Sallee v. Stewart*.⁶⁶

The case arose from injuries sustained by a mother who accompanied her daughter's kindergarten class field trip to a dairy farm as a chaperone.⁶⁷ While at

55. Lunn, *supra* note 48, at 142–43.

56. See Eckley & McEowen, *supra* note 44, at 1.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* at 2.

61. *Id.*

62. *Id.*

63. *Id.*

64. Lunn, *supra* note 48, at 147.

65. *Id.* at 149.

66. *Id.* at 149–52; see generally *Sallee v. Stewart*, 827 N.W.2d 128 (Iowa 2013).

67. *Sallee*, 827 N.W.2d at 130.

the farm, the mother fell through a hole in the floor of a hayloft, resulting in a broken wrist and ankle.⁶⁸ She subsequently filed a negligence suit against the dairy farm owners.⁶⁹ The defendant farm owners asserted Iowa Code chapter 461C as an affirmative defense, claiming the recreational use statute shielded them from liability.⁷⁰ On that issue, the case was eventually appealed to the Iowa Supreme Court for review.⁷¹

The Court delivered a rather lengthy, 75-page opinion in which it narrowly interpreted the scope of Iowa's recreational use statute, thereby limiting the applicability of the statute's protections.⁷² Ultimately, the Court ruled that the defendant dairy farm owners were not immune from liability for the injuries the plaintiff sustained on their property.⁷³

The effect of the *Sallee* ruling was significant in that it eliminated statutory protections for many farm-based activities which were previously assumed to be covered.⁷⁴ Those who followed the case believed the decision would deter farmers and landowners from continuing to allow public recreational use of their lands.⁷⁵ A piece published by the Iowa State University Center for Agricultural Law and Taxation critiqued the *Sallee* decision, flatly stating “[t]he protections of the recreational use statute no longer apply” as a result of the ruling.⁷⁶ The authors went on to opine that “[w]ithout legislative involvement, it will be a rare set of circumstances in which any landowner will ever again have any liability protection under Iowa's recreational use statute as it now stands.”⁷⁷

Just a few months after the *Sallee* ruling, the Iowa legislature responded with a bill addressing the liability concerns raised by the decision.⁷⁸ HF 649 was signed into law by Governor Terry Branstad on June 17, 2013.⁷⁹ The bill offered

68. *Id.* at 132.

69. *Id.*

70. *Id.*

71. *Id.*

72. *See id.*; Lunn, *supra* note 48, 157–58.

73. *See Sallee*, 827 N.W.2d at 154.

74. *See generally id.*; Lunn, *supra* note 48, at 152.

75. *See Eckley & McEowen, supra* note 44, at 2.

76. *Id.* at 7.

77. *Id.*

78. *Id.*; Lunn, *supra* note 48, at 155–56.

79. Letter from Terry Branstad, Governor, State of Iowa, to Matt Schultz, Sec'y of State, Iowa (June 17, 2013), <https://www.legis.iowa.gov/legislation/BillBook?ga=85&ba=HF%20649> [<https://www.legis.iowa.gov/perma/031120228531>].

amended language which clarified the requirements of the recreational use statute and effectually renounced many of the Court's findings from *Sallee*.⁸⁰

While the legislature's corrective action post-*Sallee* appropriately broadened the scope of recreational use immunity to the statute's original intent, it was still not enough. Without statutory protections, farms and landowners who monetized public use of their land were left behind.⁸¹ This included many agritourism businesses created as supplemental sources of income for family farms. Without the same liability protections as recreational use landholders, those Iowa agritourism operations were left uniquely vulnerable to potential liability.⁸²

This gap in policy was a direct result of the consideration exception inherent in most recreational use statutes.⁸³ Under that exception, tort liability is retained for landowners who charge a fee or are otherwise compensated for public use of their land.⁸⁴ As an increasing number of farms and ranches seek to generate additional income through commercial use of their property, new policies are necessary to supplement the protection provided by recreational use laws.⁸⁵

V. STATE AGRITOURISM LAWS

Legislatures across the country have begun to address this need through agritourism immunity laws.⁸⁶ Two decades ago, there was no legislation in the United States specifically addressing agritourism.⁸⁷ Today, well over half of the states have enacted statutes regulating agricultural or farm-based tourism.⁸⁸ The contents and provisions of those laws vary from state to state, but share commonalities, including definitions or qualifications of agritourism activities, zoning specifications, affirmative requirements for operators, tax credits, and liability protections.⁸⁹

In 2004, Kansas became the first state to enact an agritourism-specific law

80. Lunn, *supra* note 48, at 137.

81. *Id.* at 154–55.

82. Eckley & McEowen, *supra* note 44, at 8.

83. *See id.* at 2.

84. *Id.*

85. *See id.* at 7; Lunn, *supra* note 48, at 161–62.

86. Lunn, *supra* note 48, at 155.

87. *See States' Agritourism Statutes*, NAT'L AGRIC. L. CTR. (Sept. 16, 2022, 10:11 AM), <https://nationalaglawcenter.org/state-compilations/agritourism/> [<https://perma.cc/E95T-9E82>].

88. DEFINING AND REGULATING AGRITOURISM, *supra* note 7, at 3.

89. *Id.* at 5.

providing liability limitations.⁹⁰ Since then, many state legislatures have followed Kansas' example and implemented their own agritourism liability statutes.⁹¹ Currently, 35 states have laws in place shielding agritourism businesses from liability.⁹² In 2021 alone, state legislatures in Pennsylvania, Vermont, and Iowa all enacted agritourism legislation.⁹³ To date, the District of Columbia, California, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, New Mexico, Rhode Island, Wyoming, and Arizona are all without legislation limiting agritourism liability.⁹⁴

To alleviate liability concerns, many state laws confer limitations to tort liability or total immunity. Application of those safeguards is conditioned upon situational factors dictated by each statute.⁹⁵ Generally, the protections only apply where the injury or harm at issue was caused by an inherent risk of the activity.⁹⁶ Inherent risks include dangers or conditions which are an integral part of such agricultural processes and experiences.⁹⁷ Many state agritourism statutes provide lists of such inherent risks relating to natural conditions of the land, vegetation or water, behavior of wild or domestic animals, ordinary dangers of structures or equipment used in farming or ranching operations, and the visitor's own behavior.⁹⁸ The "inherent risk" approach restricts the scope of immunity, and is intended to "relieve an operator from liability for the naturally occurring risks of an activity over which an operator has little or no control."⁹⁹ This approach may also serve to protect the authenticity of agricultural tourism against the ever-present threat of litigation.¹⁰⁰

However, it is important to note that these laws do not automatically preclude liability for negligence of the landowner.¹⁰¹ Rather, they place an assump-

90. Hall & Bachelor, *supra* note 9, at 2; see KAN. STAT. ANN. § 32-1436 (2021).

91. *Id.*

92. *Id.*

93. See 3 PA. CONS. STAT. ANN. § 2603 (2021); VT. STAT. ANN. tit. 12, § 5872 (2021); IOWA CODE § 673A.1 (2021).

94. See Hall & Bachelor, *supra* note 9, at 2; DEFINING AND REGULATING AGRITOURISM, *supra* note 7, at 3.

95. Hall & Bachelor, *supra* note 9, at 3.

96. *Id.* at 1.

97. *Id.*; KAN. STAT. ANN. § 32-1432 (2021).

98. Hall & Bachelor, *supra* note 9, at 3; KAN. § 32-1432.

99. Hall & Bachelor, *supra* note 9, at 3.

100. See Lunn, *supra* note 48, at 152.

101. Robert Branam, *Liability Defenses for Injury of Farm Visitors: Farm Law for Operators and Landowners*, N.C. STATE EXTENSION (July 31, 2021), <https://content.ces.ncsu.edu/liability-defenses-for-injury-of-farm-visitors>

tion of the risk on visitors, which can only be overcome if an injured visitor demonstrates that their injury was caused by something other than an inherent risk of farming.¹⁰² In this manner, the protection offered by agritourism statutes often comes in the form of an affirmative defense for landowners.¹⁰³

Most, if not all, agritourism immunity statutes also include exceptions to this immunity.¹⁰⁴ An agritourism worker or landowner will not be shielded from liability where a visitor's harm arises from such exceptions.¹⁰⁵ The Oklahoma Agritourism Activities Liability Limitations Act exempts immunity where an agritourism professional's conduct aligns with any of the following:

1. Commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant;
2. Has actual knowledge or reasonably should have known of a dangerous condition on the land, facilities, or equipment used in the activity or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant.¹⁰⁶

A handful of states assign further exceptions to immunity, including failure to properly or adequately train employees, failure to vaccinate, quarantine or otherwise comply with relevant animal health regulations, allowing minors to engage in activities which are inappropriate for their age, and failure to make reasonable inspection of equipment or property used for the activity.¹⁰⁷

In addition, a majority of agritourism statutes set forth "affirmative requirements" as prerequisites to qualify for statutory immunity.¹⁰⁸ Most often, agritourism operators are required to provide formal notice to visitors, warning them of inherent risks of the activities they are to engage in or observe.¹⁰⁹ This notice requirement is typically effectuated through posting visible warning signs

[<https://perma.cc/HG3W-GX3E>].

102. *Id.*

103. *Id.*

104. Hall & Bachelor, *supra* note 9, at 4.

105. *Id.*

106. OKLA. STAT. tit. 2 § 5-16 (2021).

107. Hall & Bachelor, *supra* note 9, at 4.

108. *Id.*

109. *Id.*

at the agritourism attraction.¹¹⁰ Some states also require that agritourism businesses disclose to guests that they may be eligible for statutory immunity from liability.¹¹¹ Generally, statutes provide exact wording for the signage, as well as requirements for size, font, and location of signs.¹¹²

Tennessee law requires the warning signs to be printed in black letters at least one inch tall, and to be posted at the main entrance of the agritourism location and at each individual activity therein.¹¹³ The specific language required for warning signs in Tennessee is as follows:

WARNING

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

Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity. If the warning signs are not posted or the required language is not included in contracts, the agritourism professional will not be protected by the limited liability law.¹¹⁴

A select few states have also implemented registration programs for agritourism businesses.¹¹⁵ Those states generally do not require registration for all agritourism operations but restrict liability protection to only those that are registered.¹¹⁶ As a part of the registration process in Louisiana, agritourism professionals are further required to submit a plan of operation, describing the agritourism activity, identifying risks inherent to the activity and strategies to mitigate

110. *Id.*

111. *Id.*

112. *Id.*

113. MEGAN BRUCH LEFFEW & SHANNON MIRUS, UNIV. TENN. EXTENSION INST. OF AGRIC., LIABILITY AND AGRITOURISM IMPLICATIONS OF TENNESSEE'S 2009 LEGISLATION 5 (2021), <https://extension.tennessee.edu/publications/documents/pb1787.pdf> [<https://perma.cc/8MUJ-YZJA>]; TENN. CODE § 43-39-103 (2020).

114. LEFFEW & MIRUS, *supra* note 113, at 7; TENN. § 43-39-103.

115. Hall & Bachelor, *supra* note 9, at 6.

116. *Id.*

those risks.¹¹⁷ Plans must be submitted and approved by the appropriate state agency to ensure full compliance with the statute.¹¹⁸

The impact of the liability protections provided by agritourism laws can only be fully demonstrated through case law. Notably, there are very few cases which have reached the appellate level as most matters involving farm injuries are settled by the farm's insurer before they ever reach trial.¹¹⁹ However, with the abundance of recent agritourism legislation, there have been a handful of reported cases challenging the limitations of the immunity provided by those statutes.

Recently, in *Green v. St. George's Episcopal Church*, the Tennessee Court of Appeals considered the interaction between the state's agritourism immunity statute and the law of comparative fault.¹²⁰ The case arose from injuries sustained by Edna Green, plaintiff, while she was a passenger on a bus for a church-sponsored outing to a local farm.¹²¹ The farm had a gravel driveway which contained drainage berms and created a hazard for drivers.¹²² Accordingly, warning signs and speed limit signs were posted to warn visitors of the hazard.¹²³ When their bus drove on the farm's driveway, it crossed over two of the drainage berms, jarring the bus and its passengers.¹²⁴ As a result, Ms. Green was severely injured.¹²⁵

Shortly thereafter, Ms. Green filed a personal injury action against the church.¹²⁶ In its answer, the church alleged the comparative fault of the farm.¹²⁷ Ms. Green moved for summary judgment on the church's comparative fault defense, on the grounds that the Tennessee agritourism statute barred a finding that the farm caused or contributed to her injuries.¹²⁸ Her motion was denied, and the trial court allowed the jury to apportion fault to the farm if it were found.¹²⁹ The jury ultimately returned a verdict for Ms. Green but only assigned 15% fault to

117. *Id.*; See LA. STAT. ANN. § 9:2795.5 (2008).

118. Hall & Bachelor, *supra* note 9, at 6; see LA. § 9:2795.5.

119. See Branan, *supra* note 101.

120. *Green v. St. George's Episcopal Church*, No. M2017-00413-COA-R3-CV, 2018 WL 6015982, at *1 (Tenn. Ct. App. Nov. 16, 2018).

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

the church and the other 85% to the farm.¹³⁰

The case was appealed to the Tennessee Court of Appeals for review, where the court held that the state's agritourism statute made agritourism professionals immune only from liability, not fault.¹³¹ Thus, the trial court correctly allowed the jury to assign fault to the farm, even though it was statutorily immune from liability.¹³² The impact of this ruling was that Ms. Green could only recover 15% of her damages, corresponding with the fault allocated to the church.¹³³

While *Green* illustrates that statutory grants of immunity correspond with consequences for plaintiffs, it also demonstrates how agritourism laws serve to protect landowners.¹³⁴ The farm in *Green*, ironically called Green Door Gourmet, is precisely the kind of agritourism enterprise that ag-immunity laws seek to promote and protect. It is a 350 acre organic farm outside of Nashville, Tennessee, offering culinary classes, educational experiences, pick-your-own produce and an event venue.¹³⁵ The farm often hosts school field trips and is working with local schools to link those field trips with specific lesson plans to maximize their educational benefit.¹³⁶

Had Green Door Gourmet been subject to liability for Ms. Green's injuries, they would have likely incurred a considerable financial burden based on the jury's percentage allocation of fault.¹³⁷ Depending on the significance of that burden, many farms in Green Door Gourmet's situation would have been forced to close their doors to the public for fear of incurring additional financial liability. In this respect, Tennessee's agritourism statute operated in accord with its original intent to protect farms, like Green Door Gourmet, which fill an important societal need to reconnect with agriculture.

130. *Id.*

131. *Id.* at *4.

132. *Id.*

133. *Id.* at *1; John Day, *Comparative Fault and 'Get Out of Jail Free' Cards*, TENN. BAR ASS'N (Dec. 31, 2018), <https://www.tba.org/index.cfm?pg=LawBlog&blAction=showEntry&blogEntry=33164> [<https://perma.cc/6NLN-F3BA>].

134. *See generally* Green, 2018 WL 6015982; Day, *supra* note 133.

135. *Welcome to Green Door Gourmet!*, GREEN DOOR GOURMET (Feb. 6, 2023, 3:02 PM), <https://www.greendoorgourmet.com/> [<https://perma.cc/8NE2-5P5F>]; E.J. Boyer, *Green Door Gourmet Looks to Boost Agritourism in Nashville*, NASHVILLE BUS. J. (Nov. 13, 2014), <https://www.bizjournals.com/nashville/blog/2014/11/green-door-gourmet-looks-to-boost-agritourism-in.html> [<https://perma.cc/YCQ9-G4E9>].

136. Boyer, *supra* note 135.

137. *See* Green, 2018 WL 6015982, at *1.

VI. IOWA AGRICULTURAL TOURISM PROMOTION ACT

Until very recently, agritourism businesses in Iowa would not have been protected as Green Door Gourmet was.¹³⁸ In the time since the *Sallee* decision and subsequent changes to Iowa's recreational use statute, there had been little to no movement on this landowner liability front.¹³⁹ However, in 2021 the Iowa legislature finally sought to extend the protections provided to recreational use landholders to farmers and ranchers supporting agricultural tourism operations.¹⁴⁰ Senate File 356, an act limiting civil liability for persons involved in agricultural tourism, was signed into law by Governor Kim Reynolds on May 19, 2021.¹⁴¹

The bill, short titled the Iowa Agricultural Tourism Promotion Act, grants agritourism operations immunity from liability for injuries caused by inherent risks of farming.¹⁴² Section 4 of the Act provides the following:

1. Subject to the conditions of this chapter, an agricultural tourism farmer, an agricultural tourism professional, or a person engaged in farming the agricultural tourism farm is not liable for any act or omission causing injury, loss, or death suffered by an agricultural tourist if all of the following apply:
 - a. The injury, loss, or death was caused while the agricultural tourist was visiting the agricultural tourism farm.
 - b. The act or omission that caused the injury, loss, or death was associated with an inherent risk of farming.¹⁴³

The Act also provides definitions of those persons who qualify for the Act's protections and provides examples of the inherent risks of farming.¹⁴⁴ The liability limitations provided in the Act serve as an affirmative defense for agritourism farmers, professionals and those engaged in agritourism farming.¹⁴⁵ If an action is brought by an agritourism visitor claiming injury, loss, or death occurred on the agricultural tourism farm, those authorized by the Act may raise

138. *See generally id.*

139. *See generally* *Sallee v. Stewart*, 827 N.W.2d 128 (Iowa 2013).

140. *See* IOWA CODE § 673A.2 (2021).

141. Letter from Kim Reynolds, Iowa Governor, to Paul Pate, Sec'y of State (May 19, 2021), <https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=SF356> [<https://www.legis.iowa.gov/perma/032520216714>].

142. § 673A.1.

143. § 673A.4.

144. *See id.*

145. § 673A.5.

this affirmative defense.¹⁴⁶

Similar to other state agritourism laws, Iowa's agritourism act contains a formal notice requirement.¹⁴⁷ To be eligible for the affirmative defense, proper notice must be provided to visitors prior to any alleged injury, loss, or death.¹⁴⁸ This notice must be posted in a conspicuous location at the entrance of the agritourism farm and must also comply with specific size and font requirements.¹⁴⁹ The notice must read as follows:

Iowa Agricultural Tourism Promotion Act
Iowa Code Chapter 673A

You are visiting a working farm as a participant who is either observing or contributing to the success of farming activities. Under Iowa law you are assuming liability for any hazard that you may encounter. A hazard includes inherent risk of participating in a farming activity or disregarding written or verbal instructions. Farming includes dangerous conditions present on land and in structures, unpredictable behavior of farm animals, dangers associated with the operation of equipment and machinery, and potential wrongful acts of another visitor. Be careful.¹⁵⁰

Lastly, the Act provides exceptions to immunity where an injury, loss, or death is caused by an act or omission which was illegal, intentional, the result of willful misconduct, gross negligence, wanton neglect or recklessness, due to intoxication, or the result of failure to notify visitors of a dangerous latent condition which was known or should have been known by the agricultural tourism farmer or professional.¹⁵¹ The true breadth of these exceptions may not be discerned until the newly enacted law evolves through litigation and court interpretations.

The components of the Iowa Agricultural Tourism Promotion Act largely

146. *Id.*

147. *Id.*

148. § 673A.6.

149. *Id.*

150. *Id.*

151. § 673A.7.

coincide with other state statutes of the like.¹⁵² What's significant about this legislation is the novel protection it provides to Iowa farms, landowners, and operators engaged in agritourism who were previously left wide-open to liability.¹⁵³ Iowa agritourism operators can let out a sigh of relief as their businesses no longer face the same daunting potential for liability. By the same token, those interested in starting new agritourism ventures should be encouraged by this new protective legislation.

The growth of the agritourism industry in recent years is only projected to continue.¹⁵⁴ As demand for locally sourced food increases and farms continue to face economic pressure, the opportunity to create an additional stream of revenue has never been more enticing.¹⁵⁵ Moreover, as COVID-19 remains prevalent it is likely that demand for agricultural and farm-based tourism will increase as people seek outdoor, socially distanced attractions.¹⁵⁶

Agritourism operators should feel encouraged by the projected growth of the industry and the newly enacted legislation. However, farmers and ranchers should be mindful that the immunity they are now afforded does not apply automatically, and they should still take steps to mitigate liability risks and ensure they remain protected.¹⁵⁷ Even with the presence of agritourism immunity laws, the National Agricultural Law Center recommends that operators assess the risks associated with the agritourism activities they provide, conduct emergency planning and training, and maintain agritourism insurance.¹⁵⁸ Lastly, it is essential that operators review their state's agritourism law carefully to understand how, when, and to whom the protections apply.

152. § 673A.1; Hall & Bachelor, *supra* note 9, at 6.

153. See Eckley & McEowen, *supra* note 44, at 7.

154. See DEFINING AND REGULATING AGRITOURISM, *supra* note 7, at 1.

155. *See id.*

156. *See id.* at 12.

157. Hall & Bachelor, *supra* note 9, at 11–12.

158. *Id.* at 11.