

# Liability and Agritourism

## Implications of Tennessee's 2009 Legislation

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## Disclaimer

This publication is for educational purposes only and does not constitute legal advice nor is it intended to be a substitute for the services of a competent legal professional.



*Photo credit: Granddaddy's Farm in Estill Springs, TN*

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## Introduction

Agritourism is a growing industry in Tennessee, as farmers seek new enterprises to generate revenue and consumers seek educational and recreational opportunities or farm-fresh products. A combination of agriculture and tourism, agritourism creates opportunities as well as challenges.

Liability is a significant concern for farmers who operate agritourism enterprises. A landowner who opens his or her land to the public faces the risk that he or she could be considered liable if someone is injured while on the property.

Several states have enacted legislation to limit the liability of agritourism operators with regard to the dangers, hazards or conditions inherent to their agritourism activities. In February 2009, House Bill 1931 addressing agritourism liability was introduced into the Tennessee legislature and was quickly followed by Senate Bill 2164. The bills were passed following amendment and were signed into law as T.C.A. § 43-39 by Governor Phil Bredesen. The law was enacted on July 1, 2009.

As farmers explore agritourism for their farms, liability is of major concern. This publication includes the text of the Tennessee agritourism liability law and discusses some implications of the legislation for agritourism operators in the state.

## Text of T.C.A. § 43-39

The following is the text of T.C.A. § 43-39 current through the 2020 Regular and Second Extraordinary Legislative Sessions as found on LexisNexis.

### 43-39-101. Chapter Definitions.

For purposes of this chapter, unless the context otherwise requires:

- (1) “Agritourism activity” means any activity carried out on a farm or ranch, eligible for greenbelt classification under title 67, chapter 5, part 10, that allows members of the general public, for recreational, entertainment or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities or natural activities and attractions. An activity is an “agritourism activity” whether or not a participant provides compensation in money or other valuable compensation to participate in the activity. “Agritourism activity” includes an activity involving any animal exhibition at an agricultural fair, regardless of the location of the fair;
- (2) “Agritourism professional” means any person who is engaged in the business of providing one (1) or more agritourism activities, whether or not for compensation;
- (3)
  - (A) “Inherent risks of agritourism activity” means those dangers, conditions or hazards that are an integral part of an agritourism activity, including, but not limited to:
    - (i) Surface and subsurface conditions;
    - (ii) Natural conditions of land, vegetation and waters;
    - (iii) The behavior of wild or domestic animals; and
    - (iv) Ordinary dangers of structures or equipment ordinarily used in farming and ranching operations.
  - (B) “Inherent risks of agritourism activity” also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by an agritourism professional or failing to exercise reasonable caution while engaging in an agritourism activity;



- (4) “Participant” means any person, other than the agritourism professional, who engages in an agritourism activity; and
- (5) “Person” means an individual, fiduciary, firm, association, partnership, limited liability company, corporation, unit of government or any other group acting as a unit.

#### 43-39-102. Immunity from liability for injury or death.

(a) Except as provided in subsection (b):

- (1) No agritourism professional is liable for injury to or death of a participant, or damage to a participant’s property, resulting solely from the inherent risks of agritourism activities, as long as the warning contained in § 43-39-103(b) is posted as required; and
- (2) A participant or participant’s representative shall not maintain an action against or recover from an agritourism professional for injury, loss, damage, including, but not limited to property damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities.

(b) Nothing in subsection (a) prevents or limits the liability of an agritourism professional if the agritourism professional or any of its agents does any one (1) or more of the following:

- (1) Commits an act or omission that constitutes reckless disregard for the safety of the participant or the participant’s property, and that act or omission proximately causes injury, damage, or death to the participant, or damage to the participant’s property;
- (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 the activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant, or damage to the participant’s property;
- (3) 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, or damage to the participant’s property;
- (4) Intentionally injures the participant, or damages the participant’s property; or



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- (5) Commits any other act, error, or omission that constitutes willful or wanton misconduct, gross negligence, or criminal conduct.
- (c) Nothing in subsection (a):
  - (1) Prevents or limits the liability of an agritourism professional under the product liability provisions in title 29, chapter 28; or
  - (2) Shall be construed so as to negate that assumption of the risk is an affirmative defense.
- (d) Any limitation on legal liability afforded by this section to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law.

#### 43-39-103. Warning notice.

(a)

(1) Every agritourism professional shall post and maintain a sign that contains the warning notice specified in subsection (b). The sign shall be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice shall consist of a sign in black letters, with each letter to be a minimum of one inch (1") in height.

(2) Every written contract entered into by an agritourism professional for the providing of professional services, instruction or the rental of equipment to a participant for purposes of engaging in or participating in an agritourism activity, whether or not the contract involves agritourism activities on or off the site of the agritourism activity, shall contain in clearly readable print the warning notice specified in subsection (b).

(b) The signs and contracts described in subsection (a) shall contain the following language or substantially similar language:

### **WARNING**

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

Inherent risks of agritourism activities include, among others, risks of injury and damage 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 or to the damaging of your own property. You are assuming the risk of participating in this agritourism activity.

(c) Failure to comply with this section shall prevent an agritourism professional from invoking the privileges of immunity provided by this chapter.



## Interpretation and Implications of the Legislation

Several questions arise when considering what the law means and how it applies to agritourism operations. This section includes discussion on many of those questions including:

- What does the law say?
- To whom does the statute apply?
- What are the requirements of the law?
- Is a sign needed at every attraction?
- Will this law stop people from suing me?
- Do agritourism operators still need liability insurance?
- Does the law impact premiums on liability insurance?
- How do I know if my farm is eligible for greenbelt classification?
- Is there anything agritourism operators can do to reduce their liability risk under the new law?

### What does the law say?

The new statute defines several terms including what qualifies as an agritourism activity, who is an agritourism professional, what is an inherent risk of an agritourism activity and who is a participant. The law is intended to limit the liability of agritourism professionals for injuries that result from inherent risks. The inherent risks are those conditions that are considered beyond the control of the agritourism professional. The statute defines inherent risks as “those dangers, conditions or hazards that are an integral part of an agritourism activity.” These include the natural condition of the land, vegetation or water; behavior of wild or domestic animals; ordinary dangers of equipment or structures used in farming and ranching; and the potential for a participant to act negligently. According to the statute, if a participant is injured by any of these “inherent conditions” then the agritourism professional is not liable for related injuries. This does not mean that an agritourism professional will never be held liable for an injury, just that there is a statutory limit on liability in certain circumstances.

## **To whom does the statute apply?**

This law applies to agritourism activities and agritourism professionals as defined in the statute. This means that the law covers farms or ranches eligible for greenbelt certification providing one or more agritourism activities. It also covers animal exhibitions at agricultural fairs.

## **What are the requirements of the law?**

For the liability protections to apply, a landowner or operator must first qualify as an agritourism professional and provide an agritourism activity. Additionally, the agritourism professional must post and maintain warning signs at the entrance of the agritourism location and at every agritourism activity. The warning sign must be printed in black letters at least one inch tall. The warning must also be included in any contracts entered into by the agritourism professional for rental of equipment, instruction, or other professional services offered by the agritourism professional. The warning required on signs and contracts 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.

## **Is a sign needed at every attraction?**

The law says, “The sign shall be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity.” While it may seem excessive to put a sign at every activity, it may be one of those times to consider being safe rather than sorry. Something as minor as not having a sign at an activity may make the law ineffective. The law says, “Failure to comply with this section (sign

requirement) shall prevent an agritourism professional from invoking the privileges of immunity provided by this chapter.”

Some states have found it reasonable for operators to post signs at the entrance(s) to specific activity areas such as the “Animal Barnyard” instead of having a sign at each separate animal pen or exhibit. For operators where activities are grouped into special activity areas, this may be a viable option.



## Will this law stop people from suing me?

No, the law will probably not prevent people from filing a suit against you. It may help you in several other ways, however. First, the law prevents an agritourism professional from being held liable for injury to or death of a participant caused by inherent risks of agritourism activities. This does not stop someone from filing a suit against you if they are injured, but it does require them to prove their injury was caused by something other than an inherent risk of the activity to be able to recover damages from you.

You may still be liable for any injuries to participants. The limitation on liability does not apply in five specific situations: (1) The agritourism professional or employee acts with reckless disregard, or without concern, for the safety of the participant. (2) The agritourism professional or employee has knowledge of or should have known about



a dangerous condition and does not share that information with the participants. (3) The agritourism professional fails to train, or improperly or inadequately trains employees. (4) The agritourism professional or employee intentionally injures the participant. (5) The agritourism professional or employee commits any act, error or omission that is considered willful or wanton misconduct, gross negligence or criminal conduct. These are generally situations that are within the control of the agritourism professional compared to inherent risks, which are not.

## **Do agritourism operators still need liability insurance?**

Yes, operators should purchase liability insurance as part of their risk management strategy. The law is not a replacement for insurance. The law only provides protection in limited circumstances and does not stop an injured participant from filing suit in an attempt to recover from an agritourism professional. Most insurance policies include “duty to defend” clauses, which means that the insurance company will pay to defend an agritourism professional if a suit is filed against them.

## **Does the law impact premiums on liability insurance?**

When the law was passed, there was some thought that the number of claims and funds paid out by insurance companies may be reduced and, therefore, insurance premiums may eventually decrease. Insurance premium rates are based in large part on prior loss history. The insurance industry has not seen a significant reduction in the number of claims or pay outs overall to date, so thus far, insurance premiums have not been impacted by the law.

## **How do I know if my farm is eligible for greenbelt classification?**

The law defines an agritourism activity for the purpose of the law, in part, as a farm or ranch that is eligible for greenbelt classification. Greenbelt refers to a classification system related to property tax assessment in Tennessee made possible through the Agricultural, Forest and Open Space Land Act of 1976. It allows for eligible agricultural, forest and open space land to be taxed based on use value rather than on fair market value.<sup>1</sup>

<sup>1</sup> Learn more about the Agricultural, Forest and Open Space Land Act of 1976, commonly known as “greenbelt” on the Tennessee Comptroller of the Treasury website: <https://comptroller.tn.gov/boards/state-board-of-equalization/sboe-services/greenbelt0.html>.

The greenbelt law requires that “agricultural” land be part of a farm unit of at least 15 acres including woodlands and waste-lands that is “engaged in the production of growing crops, plants, animals, nursery, or floral products.” The statute also allows a 10-acre tract to qualify if the same owner has already qualified a 15-acre tract and both tracts constitute a farm unit being used for the production or growing of agricultural products. To qualify, the property should produce a minimum average annual gross farm income of \$1,500 including farm sales, farm rent or federal farm support payments over any three consecutive years. The property may not be eligible if there is evidence that the property is not being farmed, regardless of the actual or claimed income. If the land has been farmed for at least 25 years by the owner or the owner’s parents or spouse, the land may be eligible for greenbelt classification as long as the owner lives on the property and the property is not used for a non-farming purpose.

The agritourism liability law only requires the property to be eligible for greenbelt classification and not actually enrolled. For those who would like to obtain greenbelt classification, landowners must submit an application with the county property assessor. If the application is approved, it must be recorded in the county register’s office. There is typically no application fee; however, there may be a recording fee. The application must be filed by March 1 of the year for which the classification is sought. Owners must seek greenbelt approval in each county in which the property is located. Once approved, the owner need not apply each year. New owners of property under greenbelt classification must reapply if they wish to continue an agricultural classification.

### **Is there anything agritourism operators can do to reduce their liability risk under the new law?**

Agritourism operations should be sure signs meeting the requirements are posted and check frequently to make sure the signs remain visible and in good repair. Agritourism operators should develop and implement safety precautions and procedures to reduce the risk of injury to employees and customers. Agritourism operations may consider implementing a record keeping program to track and record efforts to create a safe environment. Records of employee training, safety planning, safety inspections, incident reports, equipment and facilities maintenance, rules given to customers, etc. may be helpful in preventing legal action or losses.

## **Additional Resources**

Agritourism operators can find additional resources related to agritourism law, risk management and other topics from the Center for Profitable Agriculture and National Agricultural Law Center.

### **The Center for Profitable Agriculture**

The Center for Profitable Agriculture helps farmers develop value-added enterprises, including agritourism operations, through individual enterprise analysis, educational workshops and conferences, and educational publications and planning tools. The Center has developed a directory of resources for agritourism operators including information about risk, liability and safety issues. Learn more about the Center and access agritourism resources at <https://cpa.tennessee.edu>.

### **The National Agricultural Law Center**

The National Agricultural Law Center is the nation's leading national and international resource for agricultural and food law research and information. The National Agricultural Law Center conducts legal research into the most critical issues facing agriculture and food today, including agritourism issues. Based on this research, the Center publishes online articles, notes, case summaries and other publications by leading agricultural law scholars and attorneys from across the country and the world. Learn more and access the Center's resources at <https://nationalaglawcenter.org/>.





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## Summary

Liability issues continue to be of concern to agritourism operators. The enactment of a law in Tennessee effective on July 1, 2009 limits the liability of agritourism operators due to the inherent risks of agritourism activities. While the law provides some new protections, it does not eliminate all liability risk. To be eligible for these protections, agritourism professionals need to verify greenbelt classification eligibility for their operations and follow instructions on how to utilize the warning on signs and in contracts. Operators should also continue to develop and implement comprehensive risk management plans, which may include liability insurance, employee training, safety measures and record keeping systems.



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