

AGRICULTURAL TOURISM ACT AIMS TO PROTECT THE AGRITOURISM INDUSTRY

Agriculture Alert
July 25, 2018

Legislation

Effective October 2017, New York's "Safety in Agricultural Tourism Act" places new responsibilities not only upon owners and operators of agricultural tourism areas but upon visitors to those working farm sites.

Recognizing the growing increase in popularity of agritourism, the purpose of the new law is twofold: (1) to provide enhanced protections to farm owners from liabilities that may arise from inviting the public onto their farms for certain types of activities/events; and (2) to educate the public about "inherent risks that come with stepping foot on a farm."

Prior to the enactment of this legislation, no uniform law existed in New York which outlined the standards of care for visitors which farm owners and operators must provide.

This law was passed in response to the situation created when there is a decreasing number of insurance carriers agreeing to cover agritourism business and equine establishments and an attendant increase in the cost of liability coverage.

Definition of "agricultural tourism"

Certain specified activities are covered by the term "agricultural tourism." The statute defines these as "... activities including the production of maple sap and pure maple products made therefrom; farm and winery tours; equine activities both indoors and outdoors but excluding equine therapy, u-pick Christmas trees, hiking, hunting and other forms of outdoor recreation offered to farm visitors, conducted by a farmer on-farm, for the enjoyment and/or education of the public, which primarily promote the sale, marketing, production, harvesting, or use of the products of the farm and enhance the public's understanding and awareness of farming and farm life."

Impact of the new law

Blanket immunity is not extended to owners and operators of agritourism areas; however, this new law affords such owners and operators some protection from lawsuits by a visitor to a farm area who is taking no responsibility for his or her own

Attorneys

Patrick Fitzsimmons
John Godwin
Michael O'Neill
Daniel Spitzer
Melissa Subjeck

Practices & Industries

Agriculture
Equine

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actions while on the visit to the farm.

Owners and operators of agricultural tourism areas who comply with the new statute will not be held liable for injury to or death of a visitor if they comply with the notice, signage, employee training and other requirements contained in the new law.

Duties of owners and operators

Notice, signage, and training responsibilities are placed upon operators of agricultural tourism areas. Operators of agricultural tourism areas are required to:

- post and maintain way finding signage to delineate the paths, areas and buildings that are open to the public;
- post at every point of sale or distribution of tickets at an agricultural tourism area, whether on or off the premises of the agricultural tourism area, a conspicuous “warning to visitors” relevant to the inherent risks of participating in activities on working farms;
- provide written information having such text and graphics as the commissioner of agriculture and markets shall specify, which shall conspicuously direct the attention of all visitors to the required “warning to visitors”;
- post at every point of sale or distribution of tickets at an agricultural tourism area a conspicuous notice to visitors that such visitors have a responsibility to exercise reasonable care regarding the disclosed risks of the agricultural activity” and comply with their other visitor responsibilities so specified; and
- post conspicuous notice to visitors of the right to a refund to the purchaser in the amount paid in the initial sale of any tickets returned to the operator of the agricultural tourism area, intact and unused, upon a declaration that the purchaser is either unwilling or unprepared to participate in the agricultural tourism activity due to the risks inherent in the activities or the duties imposed upon visitors.

Operators must “take reasonable care to prevent reasonably foreseeable risks to visitors, consistent with the responsibility of a landowner to keep his or her premises reasonably safe for intended and reasonably foreseeable uses and users.” Further, operators are required “to adequately train employees who are actively involved in agricultural tourism activities.”

Duties of visitors

Visitors to agricultural tourism areas are required to:

- exercise reasonable care regarding the disclosed risks of the agricultural activity;
- reasonably comply with posted way finding signs;
- reasonably remain in areas designated for the agricultural tourism activity; and
- reasonably follow any and all written and conspicuously posted rules of conduct provided by the farm operator to visitors or other verbal or written communications for persons with disabilities.

AGRICULTURAL TOURISM ACT AIMS TO PROTECT THE AGRITOURISM INDUSTRY

Members of the visiting public are not allowed to “willfully remove deface, alter or otherwise damage signage, warning devices or implements, or other safety devices.”

As a practical matter, farm owners and operators would be well served to periodically review and assess their compliance with the notice, signage, employee training and operations requirements which the statute places on them. The statute’s protection is only afforded to those in compliance with its requirements.

Please contact one of the members of Hodgson Russ’ Agriculture Practice for more information.

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