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Liability Issues and Agritourism Development

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Introduction

America's farmers and ranchers experience many challenges, including variable prices for agricultural products, fickle markets, changing environmental conditions, and global competition. In order to help meet some of these challenges, some agricultural operators have employed an entrepreneurial approach to diversify operations beyond agricultural production by developing farm and ranch resources for agricultural tourism or agritourism (Burr, 2011). According to the 2007 U.S. Census of Agriculture, 23,350 farm owners provided agritourism and recreation services valued at \$566 million. Of these, 3,637 farms indicated gross farm receipts of \$25,000 or more. There has been a growing interest among tourists in experiencing the activities of the farm or ranch for agritourism (Burr, 2009), and this is growing nationwide as ag-operators in many states offer a variety of activities and experiences to a visiting public as a way to diversify operations and increase profits (Burr et al., 2007).

According to the Utah Farm Bureau, agritourism is "any activity that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy agricultural related activities." Agritourism activities include everything from bed and breakfasts and wine tasting to "pick your own" and roadside stands. There is a great opportunity for farms and ranches to diversify their operations and generate additional income by developing a variety of farm or ranch-based activities for visitors. However, agritourism is not without its risks. One potential challenge in starting an agritourism business, and successfully managing it, is the issue of liability. As a landowner and business operator, what are your legally liabilities and how can you protect yourself?

Liability

It is important to understand your liability, since having visitors on your property increases this. Liability is defined as any legal duty, obligation, or responsibility of a party due to something that puts individuals at a disadvantage. You have a legal responsibility for your acts or omissions that affect other individuals. If you are negligent, you can be held responsible for damages or injuries that happen to your visitors and have a lawsuit brought against you as the business owner-operator. During such incidents, you become the defendant, the party accused of doing harm to another. As an agritourism owner or operator, you are liable, legally responsible, for the safety and well-being of people invited on your property to participate in your activities. If they get injured, die, or have their property damaged,



you can be held liable for their harm. This makes you open to lawsuits and court orders. When you consider all the ways this can potentially happen, it is easy to get “turned off” to starting an agritourism business because of the risks involved. Fortunately, there are laws determining the “ins and outs” of liability, including laws that limit it.

Agritourism liability is a new type of liability first addressed in law in 2004 by the state of Kansas. Recently, Utah passed a law of its own that limits liability for agritourism operators and owners. In March, 2008, House Bill 32 was signed into law creating Title 78B, Chapter 4, Section 512 of the Utah State Code. This section is known as “Affirmative defense for agri-tourism industry” and falls under the “Limitations of Liability” chapter of the Judicial Code. First, it describes when an agritourism owner or operator can be held liable, by defining agritourism as “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.” Added to this definition are two important features of agritourism activities: (1) “An activity may be an agri-tourism activity whether or not the participant pays to participate in the activity;” (2) “An activity is not an agri-tourism activity if the participant is paid to participate in the activity.” What is most important to know about this definition is as an agritourism owner or operator you can be found liable for personal injury, death, or property damage that occurs because of an agritourism activity, regardless if you charged a fee or not. But isn’t this law supposed to limit liability? The second part of law does this by describing legal defenses for liability, which greatly limits the chances you will be held liable.

Protection from Liability

The “Affirmative defense for agri-tourism industry” law states if an agritourism owner or operator is named the defendant in any action seeking damages for personal injury, death, or property damages, there are two defenses that will prevent him or her from being held liable for that harm. First, if “the injured person deliberately disregarded conspicuously posted signs, verbal instructions, or other warnings regarding safety measures during the activity,” this is a defense against liability. Second, if “any equipment, animals, or appliance used by the injured person during the activity were used in a manner or for a purpose other than that for which a reasonable person should have known they were intended,” this is also a defense against liability. One important point to take from this law, as a defense against being liable for another person’s harm, is to make sure your agritourism participants are aware of the hazards and potential dangers they face. This can be done using written materials (such as signs) or verbal messages. However, if you use verbal messages, make sure you have some way of documenting these, such as written standard operating procedures and/or signed waiver/disclaimer release forms. In addition, it is helpful to know your agritourism participants also have a responsibility they must keep before you can be held liable. They must use equipment, animals, and appliances in the same way a reasonable person would be expected to use them. This means if persons intentionally cause harm to themselves or their property, you have a strong defense against being held liable for that harm. You might notice these two defenses can prevent you from being held liable, but certainly do not guarantee it. Unfortunately, guarantees are hard to come by. Even though these can be very rare, there are almost always exceptions. This is why it is very important to identify risk-management



issues, implement safety plans to mitigate identified risks, and develop standard operating procedures for managing visitors (see Checklist for Managing Risk—Risk Management and Liability Fact Sheet, by Burr et al., 2010, under “Agritourism in the U.S.” at <https://extension.usu.edu/iort/html/resources/agricultural>). Wise agritourism entrepreneurs definitely consult their attorneys and insurance agents prior to opening their property to visiting guests.

It is important for you to protect yourself and your agritourism business by obtaining liability insurance coverage. Liability insurance is any type of insurance policy that protects an individual or business from the risk of being sued and held legally liable. While you probably already have a liability insurance policy for your farm or ranch business, it usually does not extend to other income making activities. This means you need to add agritourism liability insurance to your current policy, or take out a separate policy, when you start or change your agritourism business. When you do this there are two important issues to keep in mind. First, it is vital for your insurance agent to know exactly what your agritourism business is going to be and if you will be charging a fee or not. Second, agritourism liability insurance is a relatively new item, and unfortunately not all insurance companies offer or are even aware of this type of policy. If you run into problems trying to get liability insurance for your agritourism business there are resources to assist. These include utilizing the expertise of your attorney, and seeking assistance from other organizations such as the Rural Landscape Institute, the Utah Farm Bureau Federation, and the North American Farmers’ Direct Marketing Association. In addition, several lists of questions to ask your insurance agent about agritourism



liability insurance have been developed by a number of organizations and individuals. One such list appears in the book *The New Agritourism: Hosting Community and Tourists on Your Farm* (Adams, 2008), and is presented in Table 1.

Ultimately, the best way to protect yourself from being held liable for harm is to learn about liability, and include as many defenses against liability as you can in your agritourism business. With a little work and perseverance, the risks associated with an agritourism business can be successfully managed. You will then be on your way to developing and operating a successful agritourism business, which can lead to a more secure economic future for you and your family.

Table 1: Agritourism Insurance Questions to Ask Your Insurance Agent¹

Is there a deductible? If yes, how much?	Host-liquor liability?
What does the insurance apply to?	Non-owned watercraft liability?
Premises and operations liability?	Is every employee additionally insured?
Contractual liability to others?	Is the premium a set fee?
Personal injury liability to others including libel, slander, invasion of privacy?	Is the premium based on gross sales or on client days?
Advertising injury to others?	Property liability damage to others?
Is association membership required to purchase this insurance?	Does the insurance agent understand your proposed agritourism enterprise?
Incidental medical malpractice liability resulting from your helping an injured person?	Court costs for defense- above limit or included in liability policy limit?

¹ Adopted from Adams (2008)

References

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- Burr, S.W. (2009). The tourism connection: Contributing to sustainable community development in the 21st century. *Rural Connections*, 3(2), 27-29.
- Burr, S.W., Zeitlin, J.M., Chase, L., Ramaswamy, V., Green, G.P., & Dougherty, M. (2010). Resources for agritourism development. *Utah Recreation & Tourism Matters (Fact Sheet compilation)* Logan, UT: Institute for Outdoor Recreation and Tourism. Retrieved from <https://extension.usu.edu/iort/html/resources/agricultural>
- Utah Code 78B-4-512. Affirmative defense for agri-tourism industry.

Additional Resources

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| Rural landscape Institute
http://www.rurallandscapeinstitute.org/
Main Phone: 406-522-7654h | National Institute of Food and Agriculture (USDA)
http://www.csrees.usda.gov/
Main Office: 202-720-4423 |
| Utah Farm Bureau Federation
http://utfb.fb.org/
Main Phone: 801-233-3040 | North American Farmers' Direct Marketing Association
http://www.nafdma.com/
Main Office: 413-529-0386 |
| Utah's Own
http://utahsown.utah.gov/
Seth Winterton, Deputy Director:801-538-7141 | The National Agriculture Law Center
http://nationalaglawcenter.org/ |

Glossary of Terms

Liability: Legal responsibility of the business owner for the well-being of the customer.

Insurance: Used to recover and/or manage the outcomes of business practices and risks.

Waiver/Disclaimer: An agreement to forgo one's right to a legal claim.

Negligence: The failure to exercise the care that a reasonable person would exercise.