

Maine Enacts Agritourism Liability Protection Act

April 19, 2012

- by Roger A. McEowen* and Erika Eckley**

In recent years, a growing number of agricultural producers and rural landowners have begun operating “agritourism” activities on their property. Clearly, the driving reason for engaging in such activities is a desire to increase overall income from the property. But, along with the potential for enhanced income comes the increased potential for liability.

Agritourism typically involves some form of commercial business activity conducted in connection with a farming activity. Examples include “U-pick” activities, corn mazes, hay rides, Christmas tree operations where customers cut their own tree, demonstration farms and bed and breakfasts.

Commonly, a landowner’s comprehensive liability policy will not cover injuries sustained on the premises while engaged in an agritourism activity. That’s especially true with respect to farm comprehensive liability policies that do not provide coverage for non-farm business pursuits of the insured. Because the landowner charges a fee for participation in the agritourism activity, the landowner’s duty can be elevated, and the typical state recreational use statute may not apply. As a result, almost half of the states have enacted an agritourism statute designed to provide liability protection for such “for-pay” activities.

In order to support small farming operations that often rely on agritourism activities, Maine became the most recent state to enact a law limiting liability for persons participating in agritourism activities. Maine Public Law,

Chapter 609 was signed by Governor LePage on April 10, 2012. With its passage, Maine joins twenty-three other states and the District of Columbia that have enacted laws directed at either promoting agritourism activities through tax incentives or favorable zoning rules, or providing liability protection for landowners where agritourism activities are conducted.

In Maine, lawmakers recognized that farm operations can be negatively impacted by the additional liability insurance required to protect the operation from incidents that may occur due to the inherent nature of farm activities and guests who may not be as agriculturally savvy. Maine also has several state-wide celebrations, such as Maine’s Open Farm Day, Maine Maple Sunday and the Great Maine Apple Day, in which many farming operations participate.

The Maine law is a liability protection law providing that an “agritourism professional” (defined as a “person who is engaged in the business of farming or ranching and provides one or more agritourism activities, whether or not for compensation”) is not liable for injuries to participants or spectators of agritourism activities for injuries that are part of the inherent risks associated with being on an active farm operation, including:

1. Hazards from the natural, surface and subsurface conditions of land, vegetation, and waters;
2. the behavior of wild and domestic animals;
3. ordinary dangers of structures and equipment used in farming and ranching; and

4. potential injuries caused by the participant's or others' failure to follow instructions given or in failing to exercise reasonable caution while engaging in activities.

The statute does not provide immunity for professionals who act negligently or in reckless disregard for the safety of others.

Agritourism can provide essential income to many smaller farming operations. Providing limited liability to these entities for these activities will help the industry grow without the concern for increased liability for accidents inherent in the nature of the activity. The state of Minnesota is also considering legislation¹ to provide liability protection for operators providing agritourism in the state.

*Leonard Dolezal Professor in Agricultural Law, Iowa State University, Ames, Iowa, and Director of the ISU Center for Agricultural Law and Taxation. Member of the Iowa and Kansas Bar Associations and licensed to practice in Nebraska.

** Staff Attorney, ISU Center for Agricultural Law and Taxation. Member of the IA Bar.

¹ Minnesota HF2564.