



Ohio Legislative Service Commission

Final Analysis

Amanda George

Sub. S.B. 75

131st General Assembly
(As Passed by the General Assembly)

- Sens.** Jones and Peterson, Gardner, Beagle, Balderson, LaRose, Manning, Eklund, Patton, Cafaro, Gentile, Coley, Bacon, Brown, Burke, Faber, Hite, Hottinger, Hughes, Jordan, Lehner, Obhof, Schiavoni, Tavares, Thomas
- Reps.** Hill, Burkley, Patterson, Boose, Buchy, Cera, Hagan, Koehler, LaTourette, S. O'Brien, Phillips, Retherford, Rezabek, Ruhl, Schaffer, Anielski, Antani, Antonio, Arndt, Baker, Boccieri, Boggs, Brenner, Celebrezze, Conditt, Derickson, Dovilla, Fedor, Ginter, Grossman, Hall, Hambley, Hayes, T. Johnson, Landis, Lepore-Hagan, Manning, McClain, M. O'Brien, Ramos, Reece, Reineke, Rogers, Ryan, Sears, Sheehy, Slaby, R. Smith, Sprague, Strahorn, Thompson, Young, Rosenberger

Effective date: August 16, 2016

ACT SUMMARY

- Specifies that an agritourism provider is immune from liability in a civil action for any harm a person sustains during an agritourism activity if the person is harmed as a result of a risk inherent in an agritourism activity.
- Provides that an agritourism provider is not immune from civil liability in certain circumstances, including when the provider purposefully causes harm to an agritourism participant.
- Requires an agritourism provider to post and maintain warning signs.
- Generally states that county and township zoning laws confer no authority to prohibit the use of any land for agritourism, but allows a board of county commissioners or a board of township trustees to regulate certain factors pertaining to agritourism such as size of parking areas and egress or ingress.
- Specifies that the existence of agritourism on land does not disqualify that land from valuation under the statutes that govern current agricultural use valuation of real property for property tax purposes.

CONTENT AND OPERATION

Agritourism

Immunity from liability in a civil action

Under the act, an agritourism provider is immune from liability in a civil action for any harm an agritourism participant sustains during an agritourism activity, if the participant is harmed as a result of a risk inherent in the agritourism activity. An agritourism provider is not required to eliminate risks inherent in agritourism activities.¹ However, an agritourism provider is not immune from civil liability for harm sustained by a participant if any of the following applies:

(1) The agritourism provider acts with a willful or wanton disregard for the safety of the participant and proximately causes harm to the participant;

(2) The agritourism provider purposefully causes harm to the participant;

(3) The agritourism provider's actions or inactions constitute criminal conduct and cause harm to the participant;

(4) The agritourism provider fails to post and maintain signs as required by the act (see below); or

(5) The agritourism provider has actual knowledge or should have actual knowledge of an existing dangerous condition on the land or regarding facilities or equipment on the land that is not an inherent risk and does not make the dangerous condition known to the participant, and the dangerous condition proximately causes injury or damage to or the death of the participant.²

The act requires an agritourism provider to post and maintain signs that contain the following warning notice:

WARNING: Under Ohio law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if that injury or death results from the inherent risks of that agritourism activity. Inherent risks of agritourism activities include, but are not limited to, the risk of injury inherent to land, equipment, and

¹ R.C. 901.80(B).

² R.C. 901.80(C).

animals as well as the potential for you as a participant 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.

Each letter of the notice must be in black and be a minimum of one inch in height. The provider must place the sign in a clearly visible location at or near each entrance to the agritourism location or at the site of each agritourism activity.³

Under the act, agritourism is an agriculturally related educational, entertainment, historical, cultural, or recreational activity, including you-pick operations or farm markets, conducted on a farm that allows or invites members of the general public to observe, participate in, or enjoy that activity. An agritourism provider is a person who owns, operates, provides, or sponsors an agritourism activity or an employee of such a person who engages in or provides agritourism activities whether or not for a fee. A participant is an individual, other than an agritourism provider, who observes or participates in an agritourism activity.⁴

A farm is land that is composed of tracts, lots, or parcels totaling not less than ten acres devoted to agricultural production, or totaling less than ten acres devoted to agricultural production if the land produces an average yearly gross income of at least \$2,500 from agricultural production.⁵

Risks inherent in agritourism activities

A risk inherent in an agritourism activity is a danger or condition that is an integral part of an agritourism activity, including all of the following:

- (1) The surface and subsurface conditions of land;
- (2) The behavior or actions of wild animals not kept by or under the control of an agritourism provider;
- (3) The behavior or actions of domestic animals other than vicious or dangerous dogs as defined in continuing law regulating dogs;
- (4) The ordinary dangers associated with structures or equipment ordinarily used in farming or ranching operations;

³ R.C. 901.80(D).

⁴ R.C. 901.80(A)(2), (3), and (5).

⁵ R.C. 901.80(A)(4).



(5) The possibility of contracting illness resulting from physical contact with animals, animal feed, animal waste, or surfaces contaminated by animal waste; and

(6) The possibility that a participant may act in a negligent manner, including by failing to follow instructions given by the agritourism provider or by failing to exercise reasonable caution while engaging in the agritourism activity that may contribute to injury to that participant or another participant.⁶

County and township zoning regarding agritourism

The act states that the laws related to county and township zoning confer no power on a board of county commissioners, county rural zoning commission, board of zoning appeals, township zoning commission, or board of township trustees to prohibit the use of any land for agritourism in a district zoned for agricultural, industrial, residential, or commercial uses. However, the act authorizes a board of county commissioners or a board of township trustees to regulate certain factors pertaining to agritourism. Those factors include the size of a structure used primarily for agritourism, the size of parking areas, setback building lines for structures used primarily for agritourism, and egress or ingress where regulation is necessary to protect public health and safety. The act provides that certain farm markets are exempt from such regulations.

A zoning authority may not do either of the following with respect to agritourism:

(1) Require any parking area to be improved in any manner; or

(2) Prohibit the use of any land or the construction or use of buildings or structures that are used primarily for vinting and selling wine that are located on land any part of which is used for viticulture.⁷

Current agricultural use valuation

The act amends the law governing current agricultural use valuation (CAUV) of real property for real property tax assessment to account for agritourism activities. That law defines "land devoted exclusively to agricultural use" to mean land devoted exclusively to specified agricultural activities or land devoted to and qualified for payments or other compensation under a land retirement or conservation program. The

⁶ R.C. 901.80(A)(6).

⁷ R.C. 303.21(C)(4) and 519.21(C)(4).



act specifies that the existence of agritourism on "land devoted exclusively to agricultural use" does not disqualify the land from valuation for purposes of CAUV.⁸

Other county zoning provisions

With regard to county zoning, the act specifies that a zoning authority does not have the power to prohibit the construction or use of buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is used for viticulture. There is an identical provision in continuing law governing township zoning.⁹

HISTORY

ACTION	DATE
Introduced	02-23-15
Reported, S. Civil Justice	10-22-15
Passed Senate (30-1)	11-17-15
Reported, H. Agriculture & Rural Development	05-03-16
Passed House (92-1)	05-04-16

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⁸ R.C. 5713.30(A).

⁹ R.C. 303.21(A) and 519.21(A).

