



Defining the Bounds of Booming Agritourism

Jessica Guarino, Renata Endres, Tyler Swanson, and Bryan Endres

Department of Agricultural and Consumer Economics
Bock Agricultural Law & Policy Program
University of Illinois

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Traditions of seasonally visiting pumpkin patches, harvest-your-own operations, and other on-farm activities are well worn into our cultural practices. Beyond the communal and educational elements these operations evoke by providing the public a hands-on connection to food and agriculture, the agritourism industry has grown substantially over the past decade in response to economic pressures on both farmer and consumer as well as growing interest in locally produced food.¹ Agritourism operations offer income diversification opportunities to farmers while simultaneously providing community members with recreational, educational, and entertainment prospects. Because the nexus between agriculture and tourism presents the public with unique opportunities, many states have or are considering efforts to encourage the industry’s development via various types of legislation. Legislation limiting liability for certain activities intrinsic to agritourism is among the most common. To provide liability exemptions to agritourism operations, though, scoping and defining the bounds of agritourism is necessary.

The USDA does not have a formal, regulatory definition for agritourism, but describes it as “a form of commercial enterprise that links agricultural production and/or processing with tourism in order to attract visitors onto a farm, ranch, or other agricultural business for the purposes of entertaining and/or educating the visitors and generating income for the farm, ranch, or business owner.”² The first national law defining agritourism was passed in Italy in 1985 and “focused on overnight stays that support the restoration of farm buildings and the diversification of income sources for the working farms in rural areas.”³ Since then,

¹ Defining and Regulating Agritourism, Trends in State Agritourism Legislation 2019-2020, Center for Agriculture and Food Systems, University of Vermont, <https://www.vermontlaw.edu/sites/default/files/2021-04/Defining-and-Regulating-Agritourism.pdf>.

² National Agricultural Library, *Agritourism and Farm Tours*, U.S. DEPARTMENT OF AGRICULTURE, <https://www.nal.usda.gov/legacy/afsic/agritourism-and-farm-tours> (last visited Feb. 8, 2022).

³ R. David Lamie et al., *Agritourism Around the Globe: Definitions, Authenticity, and Potential Controversy*, J. OF AG, FOOD SYSTEMS, AND COMMUNITY DEVELOPMENT (2021).

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both agritourism as a practice and its definition have greatly expanded, encompassing many elements of both tourism and agriculture.

Several studies across disciplines and continents have attempted to synthesize a definition of agritourism, and while many definitions of agritourism remain, the literature reveals some core components. Tourism studies literature provides one of the broadest agritourism definitions, describing it as “an entrepreneurial endeavor with the purpose of attracting visitors to the farm,” and allows for a five-class theoretical typology of agritourism operations: “nonworking farm agritourism; working farm, passive contact agritourism (e.g. bed and breakfast on a current farm); working farm, indirect contact agritourism (on-farm dining); working farm, direct contact, staged agritourism (e.g. appreciation of farm demonstrations; and working farm, direct contact, authentic agritourism (e.g. participation in farm chores).”¹ Unfortunately, these wide-ranging definitions make developing a legal definition allocating liability exemptions challenging.

In addition to the widely recognized economic benefits agritourism operations bring farmers and surrounding communities, recent research defining agritourism highlights the environmental and cultural resiliency aspects available through agritourism, including “fostering wildlife habitat improvement and water conservation, preservation of rural heritage and reconnection with agrarian culture, and increasing employment of family and non-family.”² Much of the literature on defining agritourism highlights its fluid nature, highly dependent upon the “type of setting . . . type of activity or interaction . . . and level of authenticity: the means of presenting or experiencing the agricultural reality.”³ Despite considerable research devoted to delineating the distinction between agricultural tourism and other rural/countryside tourism, many definitions of agritourism functionally encompass elements of both.⁴ Accordingly, a legal definition of agritourism would not want to exclude or unduly limit these critical environmental and cultural resiliency characteristics.

As is often the case in the American legal system when there not a standard definition, several states offer an array of interpretations. According to the University of Vermont’s Center for Agriculture and Food Systems, most states have enacted “some form” of agritourism law, whether that be a standalone law such as Arkansas⁵ or regulation “through secondary laws addressing agriculture, civil liability, land use, zoning, tourism, state culture and history, wildlife, parks and recreation, property, sports and amusement, and taxation.”⁶ While some core activities are nearly always included in legislation, like pick-your-own operations, lack of consistent definitions complicates the task of articulating agritourism’s scope. A

¹ Carla Barbieri, *Assessing the Sustainability of Agritourism in the U.S.: A Comparison Between Agritourism and Other Farm Entrepreneurial Ventures*, J. OF SUSTAINABLE TOURISM (2012); Sharon Philip et al., *A Typology for Defining Agritourism*, TOURISM MANAGEMENT (2010).

² Sara Brune et al., *The Influence of Agritourism Experiences on Consumer Behavior Toward Local Food*, J. OF TRAVEL RESEARCH (2021), <https://journals.sagepub.com/doi/pdf/10.1177/0047287520938869>.

³ Thomas Streifeneder, *Agriculture First: Assessing European Policies and Scientific Typologies to Define Authentic Agritourism and Differentiate it from Countryside Tourism*, TOURISM MANAGEMENT PERSPECTIVES (2016).

⁴ See, e.g., *Id.*

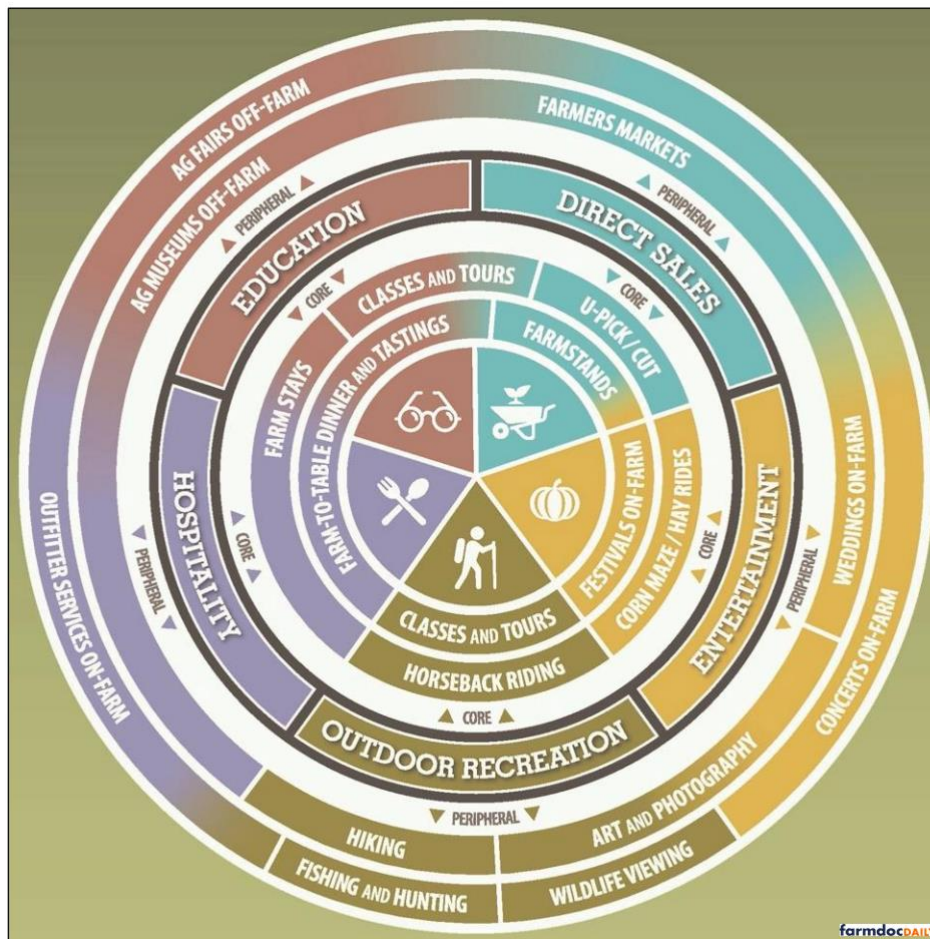
⁵ Ark. Code Ann. 2-11-103. Defines Agritourism as “an interactive or passive activity carried out with

or without payment to an agritourism activity operator on a farm, ranch, or agribusiness operation related to agriculture, food production, historic traditions, or nature watching conducted by an agritourism activity operator for the education, entertainment, or recreation of participants. It includes without limitation a farming or ranching activity, the viewing of historic, cultural, or natural attractions, a harvest-your-own activity, nature-watching,

and an activity involving an animal exhibition at an agricultural fair.” *Id.*

⁶ Defining and Regulating Agritourism, *supra* note 1.

conceptual framework created by agritourism scholars¹ for understanding agritourism in the U.S., included below, exemplifies this landscape.



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Federally, a bill was introduced in the House of Representatives on January 13, 2022, to create a Department of Agritourism.³ This bill, also known as the “Accelerating the Growth of Rural Innovation and Tourism Opportunities to Uphold Rural Industries and Sustainable Marketplaces Act” or “AGRITOURISM Act” defines agritourism by the experiences it provides:

- **Education**, such as school tours, garden and nursery tours, winery tours, historical agricultural exhibits, and hops and micro-brewery tours;
- **Outdoor recreation**, such as river activities, mountain biking, horseback riding, wildlife viewing and photography, fee fishing and hunting, wagon and sleigh rides, cross-country skiing, game preserves, and clay bird shooting;

¹ R. David Lamie et al., *Agritourism Around the Globe: Definitions, Authenticity, and Potential Controversy*, J. OF AG, FOOD SYSTEMS, AND COMMUNITY DEVELOPMENT (2021).

² R. David Lamie et al., *Agritourism Around the Globe: Definitions, Authenticity, and Potential Controversy*, J. OF AG, FOOD SYSTEMS, AND COMMUNITY DEVELOPMENT (2021).

³ H.R. 6408, 117th Congress, 2nd Sess., <https://www.congress.gov/117/bills/hr6408/BILLS-117hr6408ih.pdf>

- **Entertainment**, such as concerts and special events, culinary experiences, festivals, fairs, interaction with farm animals, and weddings;
- **Direct sales**, such as on-farm sales, farm stands, agriculture-related crafts and gifts, u-pick operations, u-cut tree farms, wineries, breweries, cideries, distilleries, and cut flowers;
- **Accommodations**, such as bred-and-breakfast inns, farms and ranch vacations, yurts, sheep wagons, and guest ranches; and
- Dining on a farm.¹

Further, the proposed AGRITOURISM Act explicitly names some of the benefits that agritourism operations offer, including “educational opportunities for children and families”; “supplemental income for owners of agricultural enterprises, which are often small or family-run businesses”; “economic development in rural communities”; “preserve agricultural heritage”; and “help farms diversify.”² The interest in devoting an entire department to the promotion and regulation of agritourism indicates its rising importance.

At the state level, legislation limiting liability for a variety of industries is well-established. Agritourism operations are especially vulnerable in instances where a visitor may be hurt while performing on-farm activities, including “picking produce, feeding livestock, climbing on straw bales, engaging in recreational activities, and riding on wagons, tractors and horses.”³ Lawsuits can be economically devastating for an agritourism enterprise, making legislation providing immunity from liability in certain instances helpful to farmers in managing financial risk.⁴ The results of a 2021 survey conducted by the University of Vermont Tourism Research Center noted that nationally, nearly 80% of respondents listed concerns about agritourism liability issues as a challenge to them as operators; an additional 80% of respondents listed the cost and availability of insurance as another challenge.⁵ Without legislative immunity, lawsuits against agritourism operators turn on more uncertain and amorphous analyses, including whether the operator acted with “reasonable care” or the “open and obvious” doctrine that protects landowners from liability for injuries resulting from clear dangers like aggressive animals at petting zoos or falls off hay rides.⁶

In Illinois, a bill creating an Agritourism Liability Act has been introduced twice to the state legislature, but both times the legislative session ended before the bill was voted on.⁷ Similar to other state-level civil liability laws covering or directly addressing agritourism,⁸ the Illinois Agritourism Liability Act would protect farms by granting immunity from liability for certain activities closely connected to the agritourism

¹ *Id.*

² *Id.*

³ Peggy Kirk Hall and Evin Bachelor, *Agritourism Immunity Laws in the United States*, THE NATIONAL AGRICULTURAL LAW CENTER (2019), <https://nationalaglawcenter.org/wp-content/uploads/assets/articles/Agritourism-series-Immunity-laws.pdf>.

⁴ *Id.*

⁵ Lisa Chase et al., *Agritourism and On-Farm Direct Sales Survey: Results for Vermont*, UNIVERSITY OF VERMONT EXTENSION (2021), https://www.uvm.edu/sites/default/files/Vermont-Agritourism-Collaborative/VT_Survey_Report.pdf.

⁶ Hall, *supra* note 14; Peggy Kirk Hall and Ellen Essman, *Recent Agritourism Litigation in the United States*, THE NATIONAL AGRICULTURAL LAW CENTER (2020), <https://farmoffice.osu.edu/sites/aglaw/files/site-library/AgritourismLitigationHallFinal.pdf>.

⁷ IL SB458, <https://www.ilga.gov/legislation/BillStatus.asp?DocNum=4315&GAID=15&DocTypeID=HB&SessionID=108&GA=101>

⁸ Defining and Regulating Agritourism, *supra* note 1.

operation.¹ The bill defines “agritourism activity” broadly as any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities . . . [including, but not limited to]: farming; ranching; historic, cultural, and on-site educational programs; guided and self-guided tours; animal exhibitions; farm festivals; corn mazes; harvest-your-own operations; hayrides; fishing; and camping.²

Additionally, the bill provides “that an agritourism operator is not liable for injury or death of a participant resulting from the inherent risks of agritourism activities if the agritourism operator posts the required warning notice,” as well as “provides that a participant assumes the inherent risks of an agritourism activity by engaging in the agritourism activity.”³ Despite the lack of action by the state legislature, the Agritourism Liability Act continues to garner support from various stakeholders such as the Illinois Specialty Growers Association and Illinois Farm Bureau.⁴ Though agritourism presently lacks liability immunity for agritourism’s inherent risks, Illinois currently has limited liability acts for similar educational and entertainment experiences like horse riding through the Equine Activity Liability Act.⁵

As agritourism operations continue to expand in Illinois and across the nation, and as legislatures consider liability exemptions, it is important to carefully consider the scope and impact of the law. Legislation and implementing regulations should “clearly articulate which activities are subject to immunity provisions as well as the steps required for operators to secure immunity from liability (e.g., waivers, warning signs).”⁶ Absent this clarity, the law could create more litigation regarding the scope of exemptions rather than providing relief. It is also important to consider what economic benefit, if any, likely accompanies these exemptions. Whether legislation limiting liability for agritourism operations reduces insurance costs (and by how much) and if immunity from liability deters lawsuits has yet to be studied. Further research into the economic impact of liability limitations on agritourism operations, as well as the social and political ramifications (e.g., whether legislation merely signals state support or has an actual impact), will hopefully illuminate this data.

¹ IL SB458, <https://www.ilga.gov/legislation/BillStatus.asp?DocNum=4315&GAID=15&DocTypeID=HB&SessionID=108&GA=101>

² *Id.*

³ IL SB458 <https://www.ilga.gov/legislation/BillStatus.asp?DocNum=4315&GAID=15&DocTypeID=HB&SessionID=108&GA=101>

⁴ See, e.g., <https://www.specialtygrowers.org/agritourism-liability-act>.

⁵ 745 ILCS 47

⁶ Defining and Regulating Agritourism, *supra* note 1.