

Pennsylvania Veteran Farming Network

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Class Is For Informational Purposes
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Participants Should Consult With
Their Attorney And Responsible
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This Presentation

Agritourism

- Zoning - Zoning regulates land uses. Zoning ordinances may include parking, hours of operation, traffic, noise, lighting, structures. Due to the unique nature of agritourism, zoning laws may not specifically address certain aspects of all activities.
- Building Codes – Permit required for changing use of building. Ag exemption does not apply.
- Accommodating visitors with disabilities - American with Disabilities Act (ADA).
- Animals - Keeping animals and having visitors interact with them.
 - Animal Welfare Act – Federal Law – Nine or more domesticated farm type animals for exhibition may require licensing.
 - Zoonotic Diseases - Salmonella, Cryptosporidia, Listeria, and E. coli .
- Food and concessions – May require license by PDA. May require nationally recognized food manager certification.
- Insurance
- Liability
- Agritourism Activity Protection Act - Joe Montenegro Pennsylvania Farm Bureau



What does the law do?

- Provides limited civil liability protection to agritourism operators from injuries or damages suffered by agritourism activity participants.

Be more specific?

- An agritourism operator is not civilly liable for certain negligent acts if person injured when participating in a protected activity on agricultural land if proper warning methods were posted and executed.

Mnemonic (3 Ps)

- Protected activity and operation
- Protected act
- Proper warnings

I. Protected Activity

Agritourism Activity -- A farm-related tourism or farm-related entertainment activity that takes place on agricultural land and allows members of the general public, whether or not for a fee, to tour, explore, observe, learn about, participate in or be entertained by an aspect of agricultural production, harvesting, husbandry or rural lifestyle that occurs on the farm.

***Specific Blanket Activity Liability Exclusions** -- (1) Overnight accommodation, (2) wedding, (3) concert, (4) food and beverage services.

***Agricultural Land** -- Land used for a normal agricultural operation:
Commercial agricultural endeavor that's either over 10 acres or has anticipated yearly gross income of at least \$10,000.

II. Protected Act

Even if protected activity, civil immunity does not apply if provider:

- (1) Performs an act in a grossly negligent manner.
- (2) Purposefully cause the injury or damages to participant.
- (3) Action or inaction constitutes criminal conduct.
- (4) Recklessly fails to warn or guard against a dangerous condition that causes injury or damages to a participant.

Dangerous condition: Condition that creates an imminent and substantial risk of injury or damages to participant.

Negligence, Gross Negligence, and Recklessness

Negligence:

“[A]bsence of ordinary care that a reasonably prudent person would exercise in the same or similar circumstances.” *Walters v. UPMC Presbyterian Shadyside*, 187 A.3d 214, 221 (Pa. 2018) → Duty - Breach - Causation - Damages

Gross Negligence:

“In essence, gross negligence is merely negligence with a vituperative epithet.” 2 Summ. Pa. Jur. 2d Torts § 20:5

“[A]lthough we have not previously settled on a definitive meaning of the term ‘gross negligence’ as compared to ‘ordinary negligence’ in the civil context, ... there is a difference ... and they are distinguished by the degree of deviation from the standard of care.” *Feleccia v. Lackawanna College*, 215 A.3d 3, 19 (Pa. 2019)

“Gross negligence has thus been consistently recognized as involving something more than ordinary negligence and is generally described as ‘want of even scant care’ and an ‘extreme departure’ from ordinary care.” *Id.* at 20.

“[D]oes not rise to the level of the intentional indifference or ‘conscious disregard’ of risks that defines recklessness....” *Id.*

Recklessness:

“This conceptualization of recklessness as requiring conscious action or inaction not only distinguishes recklessness from ordinary negligence, but aligns it more closely with intentional conduct.” *Tayar v. Camelback Ski Corp., Inc.*, 47 A.3d 1190, 1201 (Pa. 2012)

III. Proper Warnings

1. Signs

and

**2. Waiver Agreement or Ticket
Disclaimer**

WARNING

Read your written agreement or the back of your ticket. Under Pennsylvania law, except for limited circumstances, an agritourism activity provider is not liable for any injury to or death of a participant resulting from an agritourism activity. Do not participate in the activity if you do not wish to waive liability.



Signs:

Three feet by two feet signs must be posted in clearly visible location at or near each entrance to farm or site of each agritourism activity.

- **Agreement must be printed in document separate from any other non-waiver agreement and in at least 10-point bold type.**
- **Must be signed before participating in activity and signed by parent or guardian if participant is minor or care-dependent person.**

“AGREEMENT AND WARNING: I understand and acknowledge that, except for limited circumstances listed below, an agritourism activity provider is not liable for any injury to or death of a participant resulting from an agritourism activity. I understand that I have accepted all risk of injury, death, property damage and other loss that may result from an agritourism activity. I understand that an agritourism activity provider is not protected from liability if the provider:

- (1) Performs an act in a grossly negligent manner and causes injury or damages to a participant.
- (2) Purposefully causes a participant's injury.
- (3) Acts or fails to act in a way that constitutes criminal conduct.
- (4) Recklessly fails to warn or guard against a dangerous condition that causes injury or damages to a participant. A dangerous condition is a condition that creates an imminent and substantial risk of injury or damages to a participant.”

Written Agreement



Order signs or wristbands:

Ginny Keever

717-731-3540

vkkeever@pfb.com

<https://pfb.com/agritourism-liability/>



Growing Communities
Many Voices
United Vision

Hay Rides

- Hay Rides have officially been designated as “Amusement Ride”
- ASTM International technical standards for hayrides, designated as F3168-19, Standard Practice for Hayride Attractions (“Practice F3168-19”).
- Pennsylvania Department of Agriculture regulate Amusement Rides
- Department has issued a variance from the regulation hayride attractions
- Variance removes the requirement to submit written verification from a Pennsylvania licensed professional engineer with respect to the registration of a hayride attraction
- Prior to operation, the owner of a hayride attraction shall obtain Department approval of the wagon/trailer and tow vehicle
- The Department has forms to obtain the waiver

Landowner Liability

- **Recreational Use of Land and Water Act (RULWA)**
 - Protects public and private landowners as well as tenants, lease holders (such as hunt clubs), and other persons or organizations in control of the premises.
 - Includes, but is not limited to: hunting, fishing, swimming, boating, recreational noncommercial aircraft operations or recreational noncommercial ultralight operations on private airstrips, camping, picnicking, hiking, pleasure driving, snowmobiling, all-terrain vehicle and motorcycle riding, nature study, water skiing, water sports, cave exploration and viewing or enjoying historical, archaeological, scenic, or scientific sites.
 - Does not include swimming pools, basketball courts, and playgrounds
 - Mixed signals regarding ballfields—covering a softball field but not baseball, lacrosse, and football fields.
 - Artificial lake but not the lake's dam structure.

- Artificial lake but not the lake's dam structure.
- Protection generally not available if owners charge for admission.
- Compensation permitted:
 - ❖ Voluntary contributions by recreational users
 - ❖ In-kind contributions (e.g., receiving the meat of deer hunted on the property)
 - ❖ Contributions made to an owner that are not retained by the owner and are used by the owner exclusively for: conserving or maintaining the land, paying taxes on the land, or paying for liability insurance on the land.
- Landowners remain liable for willful or malicious failure to guard or warn recreational users of a dangerous condition.

- **U-Pick Statute**

- Provides immunity from liability for farmers who operate a U-Pick business.
- Any farming operation that allows the general public to enter onto private farmland for the purpose of self-picking berries, Christmas trees, fruits, vegetables, pumpkins and any other agricultural products for a fee.

- **Pennsylvania Equine Activity Immunity Act**

- Provides immunity to individuals, groups, clubs and business entities that sponsor, organize, conduct or provide facilities for defined equine activities.
- Includes daily activities, such as boarding horses, as well as occasional activities, such as fairs and horse shows.
- MUST install signs warning individuals that they are assuming a risk by participating in equine activities.
- Signs must be conspicuously posted on the premises in two or more locations.
- Must be at least three feet by two feet in size and state, “You assume the risk of equine activities pursuant to Pennsylvania law.”
- Even with posting of required signs, a knowing and voluntary assumption of the risk still must be established to acquire the Act’s protections.
- Does not provide immunity against negligence claims asserted by children who suffer injuries resulting from equine activities
- May not provide protection for injuries suffered as a result of defective equipment as the use of such equipment is not normally part of a knowing and voluntary assumption of the risk.

- Signs may be ordered from:
Pennsylvania Equine Council
Post Office Box 303
Windsor, PA 17366-0303
1-888-304-0281
info@pennsylvaniaequinecouncil.org

- **Liability Insurance**

- The typical farm liability insurance policy does not provide coverage for recreational use of a farmer's land.
- Anyone can be sued anything. These laws do not prevent landowners from being sued; it provides them with an immunity defense to claims that their negligence caused the plaintiff's injury.
- A comprehensive farmowners or agribusiness insurance policy provides protection in an event of property damage to home or agricultural buildings from a fire, windstorm, vandalism, snow and ice, theft, and collision while also providing liability insurance coverage both, personally and for the farming operations, and other business ventures.
- Coverage is needed to protect investments in equipment, crops, livestock and any other pursuits.



- Additional insurance may be required to protect from claims arising from worker injury, consumer illness related to eating or processing farm produce, or injury to visitors on farm premises.
- Because many farms are also residences, the line between farm operations and residential insurance needs are often blurred.

• **Business Plan**

- A failure to plan is a plan to fail.
- Developing a business plan will provide direction to your business in the future and may assist in seeking funding.
- The plan will focus on all aspects of the business and plan for future expansion and transition from the business.
- Budgeting, marketing and a risk management are important components of the plan.
- Penn State Extension has a website for those starting a new business that includes many links that will be of assistance.
- The Pennsylvania Small Business Development Center (PASBDC) has several sites that provide assistance for beginning farm businesses.

• Business Structures

- Provide liability protection for non-business assets
- Offer funding opportunities.
- Protection from owner personal liabilities.
- Ease in increasing or transfer of ownership.
- Employer Identification Number (EIN) (Federal Tax Number) must be obtained if not sole proprietor.

➤ Sole Proprietorships

- ❖ Most agricultural businesses begin as sole proprietorships.
- ❖ You are the business and the business is you.
- ❖ This means that whatever happens to or within the business, you are responsible.
- ❖ No protection of personal assets.
- ❖ Fictitious Name.
- ❖ If the business contains your surname, for example, Davidson's Farm, you do not need to file for a fictitious name.
- ❖ If you do business as Greenwood Stock Farm, you will need to file for the fictitious name

➤ Partnership

- ❖ Two or more parties.
- ❖ No formal documents to be filed (unless using a fictitious name).
- ❖ Written partnership agreement strongly recommended.
- ❖ Eliminate the parties remembering agreements differently.

➤ Limited Liability Company (LLC)

- ❖ One or more people can form an LLC.
- ❖ Must file formal registration with Pennsylvania Department of State
- ❖ The owners of the LLC are called members.
- ❖ An operating agreement which governs daily operations must be adopted.

➤ Limited Partnership

- ❖ Requires General Partner which is typically LLC.
- ❖ Limited partners have ownership but no power to direct the business operations.

➤ Corporation

❖ S-Corp

- Small business corporation.
- Formal requirements of annual meeting and minutes to maintain protection.
- Not public.

❖ C-Corp

- Typical public company structure.

➤ Pesticide Applicator Certification

- ❖ Private Pesticide Applicator Certification is required to purchase and/or apply restricted use pesticides for the purpose of producing an agricultural commodity on land which is owned or rented by that person or their employer.
- ❖ All applicators must complete 6 credits of core training each certification cycle in addition to category specific credit requirements.
- ❖ Private Pesticide Applicator Certification is 3 year cycle.
- ❖ Pennsylvania Department of Agriculture Licensing Contact Information
Phone: (717) 772-5231
Email: pesticides@pa.gov

➤ Manure/Nutrient Management

- ❖ All facilities or properties that have animals that produce manure or apply manure to crop fields and pastures must have a written Manure Management Plan. This includes livestock and poultry operations, small hobby farms, and horse owners.

- ❖ All farming operations that land apply manure or agricultural process wastewater, whether they generate the manure or import it from another operation, must have a written Manure Management Plan.
- ❖ All farming operations that include an Animal Concentration Area (ACA) or pasture must have a written Manure Management Plan.
- ❖ For farms not defined as Concentrated Animal Feeding Operations (CAFOs) or Concentrated Animal Operations (CAOs), Manure Management Plans can be prepared by the farmer.
- ❖ Manure Management Plans do not have to be submitted for approval but must be kept on the farm and made available upon request.
- ❖ Farms defined as CAFOs or as CAOs are required to develop more detailed written Nutrient Management Plans.
- ❖ These plans must be developed by a Certified Nutrient Management Specialist and submitted to the local county conservation district for review and approval.

- Conservation Plans are a written record, developed with and for the operator and/or owner, of the management decisions and conservation practices currently in use or planned for the operation.
- All farming operations in Pennsylvania that include tilling and plowing activities are required by Pennsylvania law to develop and implement conservation plans.
 - ❖ Ag E&S plan satisfies the Chapter 102 Erosion and Sediment Control under the Clean Streams Law.
 - ❖ Required for operations where agricultural plowing and/or tilling activities (including no-till) and Animal Heavy Use Areas disturb more than 5,000 sq. ft.
 - ❖ Any person can develop their own Ag E&S plan.
 - ❖ No legal requirement for Ag E&S plans to be reviewed or approved, unless construction activities are proposed.
 - ❖ Ag E&S plans must be available on the farming operation at all times to be provided to regulatory agencies upon request.

- ❖ Conservation Plan is a written record, developed with and for the operator and/or owner, of the management decisions and conservation practices currently in use or planned for the operation.
- ❖ Conservation Plan is necessary to qualify for federal programs such as EQIP, CREP, or MILC.
- ❖ Conservation plans are written by trained professionals such as Conservation District staff, NRCS, or private consultants.

➤ Farm Vehicles

- ❖ Must be used for farm use.
- ❖ 4 Types of Unlicensed Farm Trucks in PA
 - Limitations on distance from farm, 50 to 10 miles depending on type.
 - Inspections may be required.
 - Liability insurance coverage must be maintained.

❖ Farm Vehicle operating under a Farm Vehicle Registration

- Restricted to farm use
- No distance limitations
- Inspection required

❖ ATV-UTV

- All ATVs, except ATVs used solely for business or agricultural purposes, need to be registered and titled with DCNR.
- ATVs that are used for both work and recreation must be registered and titled.
- ATVs used exclusively for agricultural purposes are exempt from the sales tax, registration and title requirements of general use all-terrain vehicles.
- ATVs which are used exclusively for agricultural purposes are classified in the Pennsylvania Vehicle Code as a Multipurpose Agricultural Vehicle (MAV) and are exempt from the Pennsylvania ATV law.
- A MAV is defined as “a vehicle which is 60 inches or less in width and 1200 pounds or less in dry weight and which is used exclusively for agricultural operations and only incidentally operated or moved upon the highways”.
- ATVs which fit the definition of a MAV may be operated by the owner of the ATV on roads between parts of the farm and upon roads between farms not located more than two miles apart (Pennsylvania Vehicle Code, Chapter 3).
- An ATV that is used for dual purposes, that is, for both work and recreation, is not considered a MAV and thus would fall under the general ATV law at all times.

➤ Local Zoning and Land Use Regulations

- ❖ Zoning ordinances shall encourage the continuity, development and viability of agricultural operations. Zoning ordinances may not restrict agricultural operations or changes to or expansions of agricultural operations in geographic areas where agriculture has traditionally been present, unless the agricultural operation will have a direct adverse effect on the public health and safety.
- ❖ Nothing in this subsection shall 49 require a municipality to adopt a zoning ordinance that violates or exceeds the provisions of the act of May 20, 1993 (P.L.12, No.6), known as the “Nutrient Management Act,” the act of June 30, 1981 (P.L.128, No.43), known as the “Agricultural Area Security Law,” or the act of June 10, 1982 (P.L.454, No.133), entitled “An Act Protecting Agricultural Operations from Nuisance Suits and Ordinances Under Certain Circumstances.”

➤ Right to Farm Law

- ❖ Every municipality shall encourage the continuity, development and viability of agricultural operations within its jurisdiction. Every municipality that defines or prohibits a public nuisance shall exclude from the definition of such nuisance any agricultural operation conducted in accordance with normal agricultural operations so long as the agricultural operation does not have a direct adverse effect on the public health and safety.

- ❖ Direct commercial sales of agricultural commodities upon property owned and operated by a landowner who produces not less than 50% of the commodities sold shall be authorized, notwithstanding municipal ordinance, public nuisance or zoning prohibitions. Such direct sales shall be authorized without regard to the 50% limitation under circumstances of crop failure due to reasons beyond the control of the landowner.
- ❖ No nuisance action shall be brought against an agricultural operation which has lawfully been in operation for one year or more prior to the date of bringing such action, where the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation and are normal agricultural operations, or if the physical facilities of such agricultural operations are substantially expanded or substantially altered and the expanded or substantially altered facility has either: (1) been in operation for one year or more prior to the date of bringing such action, or (2) been addressed in a nutrient management plan approved prior to the commencement of such expanded or altered operation pursuant to section 6 of the act of May 20, 1993 (P.L. 12, No. 6), known as the Nutrient Management Act, and is otherwise in compliance therewith: Provided, however, That nothing herein shall in any way restrict or impede the authority of this State from protecting the public health, safety and welfare or the authority of a municipality to enforce State law.

- ❖ The provisions of this section shall not affect or defeat the right of any person, firm or corporation to recover damages for any injuries or damages sustained by them on account of any agricultural operation or any portion of an agricultural operation which is conducted in violation of any Federal, State or local statute or governmental regulation which applies to that agricultural operation or portion thereof.
- ❖ Agricultural commodity - Any of the following transported or intended to be transported in commerce:
 - (1) Agricultural, aquacultural, horticultural, floricultural, viticultural or dairy products.
 - (2) Livestock and the products of livestock.
 - (3) Ranch-raised fur-bearing animals and the products of ranch-raised fur-bearing animals.
 - (4) The products of poultry or bee raising.
 - (5) Forestry and forestry products.
 - (6) Any products raised or produced on farms intended for human consumption and the processed or manufactured products of such products intended for human consumption.

- ❖ "Normal agricultural operation." The activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities and is: (1) not less than ten contiguous acres in area;
- ❖ or (2) less than ten contiguous acres in area but has an anticipated yearly gross income of at least \$10,000.

➤ Agricultural Area Security Law

- ❖ Local governments are not permitted to enact local laws or ordinances, which would unreasonably restrict farm structures or farm practices within the area.
- ❖ In Counties that have established Farmland Preservation Programs pursuant to the Agricultural Area Security Law, farms located in an ASA consisting of at least 500 acres are eligible to apply for the purchase of an agricultural conservation easement by the Commonwealth. An ASA designation is a prerequisite for eligibility.
- ❖ Any municipal or political subdivision law or ordinance defining or prohibiting a public nuisance must exclude from the definition of nuisance any agricultural activity or operation conducted using normal farming operations within an agricultural security area.

- ❖ No agency of the Commonwealth, political subdivision, authority, public utility or other body having or exercising powers of eminent domain shall condemn any land within any agricultural security area for any purpose, unless prior approval has been obtained from Agricultural Lands Condemnation Approval Board and from each of the following bodies: the governing bodies of the local government units encompassing the agricultural security area, the county governing body, and the Agricultural Security Area Advisory Committee.
- ❖ The ASA designation does not restrict the use of the property by the farmer. The farmer may sell or subdivide the property. The farmer or any subsequent owners may develop the property in any manor authorized by local zoning, subdivision and land development regulations.
- ❖ The farmer is obligated to maintain the ASA status of the farm for 7 years after the initial application. After the initial seven-year period the farmer may have the ASA designation removed at any time by submitting a written request to the local government.
- ❖ The ASA designation will stay with the property when it is sold or subdivided.
- ❖ The only way a property can be removed from an ASA is through the action of the property owner or through a process hearing formal process conducted by the local government.
- ❖ The Local Government may review ASA every 7 years or during the 7-year period if there has been significant change of use of the properties located within the ASA.
- ❖ The property owners of the ASA designated property must be notified in writing of the local government review. If the local government fails to review the ASA at the 7-year interval, the ASA is automatically renewed for an additional 7-year period.

- ❖ ACRE Law(Agriculture, Communities, and Rural Environment)
- ❖ Ensure that ordinances adopted by local governments to regulate normal agricultural operations are not in violation of state law.
- ❖ Provides a useful, timely and cost-effective means for farmers burdened by ordinances that illegally inhibit farming practices to initiate a process through which the ordinance or action can be challenged and invalidated in court.
- ❖ Farm owner or operator can challenge an ordinance if the local ordinance inhibits current or future normal agricultural operations for his or her farm or other farms within the municipality.
 - Prohibits or limits a normal agricultural operation unless the local government unit has authority under state law to adopt the ordinance and it is not prohibited or preempted under state law.
 - Restricts or limits the ownership structure of a normal agricultural operation.

- ❖ Once the Office of the Attorney General examines all relevant information, the ACRE law directs the Office to notify both the farmer and the local government unit of its decision within 120 days of the farmer's initial request for review is received.
- ❖ The farmer is required to receive a written notice of that decision.
- ❖ If the Office finds the ordinance to be in violation of ACRE, the Office and the local government will work together to bring the ordinance into compliance with state law.
- ❖ The Pennsylvania Department of Agriculture and Penn State's College of Agricultural Sciences are directed under ACRE to provide expert consultation for the Office of the Attorney General regarding the nature of normal farming operations in the Commonwealth.
- ❖ If a resolution cannot be reached, the Office may file a lawsuit in the Commonwealth Court.
- ❖ If the Attorney General decides not to file a lawsuit, the owner or operator may still pursue a lawsuit to challenge the local ordinance or action.
- ❖ The farmer may file his or her lawsuit in the Commonwealth Court, rather than a County Court of Common Pleas. Decisions made by the Commonwealth Court on illegal ordinances inhibiting agricultural operations should establish statewide legal precedent that may be applied to municipalities attempting to implement similar ordinances or actions in other regions of the Commonwealth.

Thank You

Questions?

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