



# Ohio Legislative Service Commission

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## Bill Analysis

Amanda George

### **Sub. H.B. 80**

131st General Assembly

(As Reported by H. Agriculture and Rural Development)

**Reps.** Burkley, Blessing, Boose, Brenner, Grossman, Hackett, Hall, Hayes, Hill, LaTourette, Koehler, Maag, Retherford, Ruhl, Scherer, Zeltwanger, Patterson, Cera, Hagan, Kraus, Patmon, Rezabek

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## **BILL SUMMARY**

- States that an agritourism provider generally is immune from liability in a civil action for any harm a participant sustains during an agritourism activity if the participant is harmed as a result of a risk inherent in an agritourism activity, and defines those terms.
- Specifies circumstances when an agritourism provider is not immune from liability in a civil action.
- Requires an agritourism operator to post and maintain signs that contain a specified warning notice.
- 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.
- Revises the definition of "land devoted exclusively to agricultural use" for purposes of the statutes that govern current agricultural use valuation of real property for real property tax assessment to include land devoted exclusively to agritourism under specified circumstances.

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## CONTENT AND OPERATION

### Agritourism

#### Immunity from liability in a civil action

Under the bill, 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.<sup>1</sup> 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.<sup>2</sup> A participant is an individual, other than an agritourism provider, who observes or participates in an agritourism activity.<sup>3</sup>

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.<sup>4</sup> Under the bill, agricultural production has the same meaning as in the Agricultural Districts Law (see "**Agricultural production**" definition," below).<sup>5</sup>

Additionally, 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 the Dogs Law;
- (4) The ordinary dangers associated with structures or equipment ordinarily used in farming or ranching operations;

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<sup>1</sup> R.C. 901.80(A)(2).

<sup>2</sup> R.C. 901.80(A)(3).

<sup>3</sup> R.C. 901.80(A)(5).

<sup>4</sup> R.C. 901.80(A)(4).

<sup>5</sup> R.C. 901.80(A)(1).



(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.<sup>6</sup>

The bill then states that an agritourism provider is immune from liability in a civil action for any harm a participant sustains during an agritourism activity if the participant is harmed as a result of a risk inherent in an agritourism activity. It specifies that nothing in the bill requires an agritourism provider to eliminate risks inherent in agritourism activities.<sup>7</sup> 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 bill; 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.<sup>8</sup>

The bill then requires an agritourism operator 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

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<sup>6</sup> R.C. 901.80(A)(6).

<sup>7</sup> R.C. 901.80(B).

<sup>8</sup> R.C. 901.80(C).



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 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 operator must place a sign in a clearly visible location at or near each entrance to the agritourism location or at the site of each agritourism activity.<sup>9</sup>

### **County and township zoning**

The bill states that the County Rural Zoning and Township Zoning Laws 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, as applicable, to prohibit the use of any land for agritourism in a district zoned for agricultural, industrial, residential, or commercial uses. However, the bill authorizes a board of county commissioners or a board of township trustees, as applicable, to regulate such factors pertaining to agritourism, except certain farm markets, as size of a structure used primarily for agritourism, size of parking areas that may be required, setback building lines for structures used primarily for agritourism, and egress or ingress where such regulation is necessary to protect public health and safety.

It then states that nothing in the above provisions confers power on the applicable zoning authority to do either of the following:

(1) Require any parking area to be improved in any manner, including requirements governing drainage, parking area base, parking area paving, or any other improvement; 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.<sup>10</sup>

The bill also adds to the County Rural Zoning Law a provision identical to an existing provision in the Township Zoning Law stating that the provision in each Law specifying that an applicable zoning authority generally does not have power to

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<sup>9</sup> R.C. 901.80(D).

<sup>10</sup> R.C. 303.21(C)(4) and 519.21(C)(4).



prohibit the use of any land for agricultural purposes or the construction or use of related buildings or structures includes 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.<sup>11</sup>

### **Current agricultural use valuation**

For purposes of the statutes that govern current agricultural use valuation (CAUV) of real property for real property tax assessment, current law defines "land devoted exclusively to agricultural use" to mean land devoted exclusively to specified activities or devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with an agency of the federal government. The bill adds agritourism to the specified activities in the definition if tracts, lots, or parcels of land totaling not less than ten acres were devoted exclusively to agritourism, during the three calendar years prior to the year in which application is filed for CAUV and through the last day of May of that year, if the land on which the agritourism is located is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use.<sup>12</sup>

### **"Agricultural production" definition**

As used in the Agricultural Districts Law, agricultural production is commercial aquaculture, algaculture, apiculture, animal husbandry, or poultry husbandry; the production for a commercial purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, or sod; the growth of timber for a noncommercial purpose if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use; or any combination of such husbandry, production, or growth. It includes the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with such husbandry, production, or growth. It also includes conservation practices, provided that the tracts, lots, or parcels of land or portions thereof that are used for conservation practices comprise not more than 25% of tracts, lots, or parcels of land that are otherwise devoted exclusively to agricultural use and for which an application is filed for the land to be included in an agricultural district.<sup>13</sup>

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<sup>11</sup> R.C. 303.21(A).

<sup>12</sup> R.C. 5713.30(A).

<sup>13</sup> R.C. 929.01, not in the bill.



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## HISTORY

### ACTION

### DATE

Introduced

02-25-15

Reported, H. Agriculture & Rural Development

05-19-15

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