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Texas Agritourism Act:
Frequently Asked Questions

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A new statute offers limited liability to landowners if a visitor is injured on their property while hunting or engaging in other recreational and educational activities.

Passed in 2015, the Texas Agritourism Act (the Act), states that an agritourism entity is not liable to any person for injuries or damages to an agritourism participant injured on agricultural land if, before the activity, the landowner posts required signs or obtains from the participant a signed, written agreement containing required language. The broad definitions included in the Act allow this protection to apply to many agricultural enterprises.

Does the Act apply to my operation?

The Act (*see* Texas Civil Practice and Remedies Code Chapter 75A) applies to owners of "agricultural land" considered to be "agritourism entities" if an "agritourism participant" is injured during an "agritourism activity."

- **What is agricultural land?**
  Agricultural land is land suitable for "use in production of plants and fruits grown for human or animal consumption, or plants grown for the production of fibers, floriculture, viticulture, horticulture, or planting seed" or "domestic or native farm or ranch animals kept for use or profit." This definition does not require these activities to be ongoing on the property at the time the participant is injured. For example, if a person has pasture suitable for running cattle, but is not running cattle at the time of the injury, the land still meets the definition of agricultural land. Unlike other landowner liability statutes, the definition of agricultural land under the Act does not include land suitable for forestry and growing trees.

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- **What is an agritourism entity?**

  The statutory definition requires only that a person be "in the business of providing an agritourism activity."

- **What is an agritourism participant?**

  An agritourism participant is anyone other than an employee of the agritourism entity engaged in an agritourism activity.

- **What is an agritourism activity?**

  The statute defines an agritourism activity as activity occurring on agricultural land for recreational or educational purposes. An act is "recreational" based on the definition in the Recreational Use Statute, which expressly includes activities such as biking, fishing, hiking, hunting, nature walks, picnicking, riding ATVs, swimming, and "any other activity associated with enjoying nature or the outdoors."

How does a landowner comply with the protections of the Act?

Assuming that the above definitions apply, a landowner's agritourism entity is not liable to a person for damages or injuries as long as one of the following options are met: 1) posting required signage, or 2) obtaining a signed release that includes required language. A landowner is not required to comply with both of these provisions, but it is prudent to do so.

- **Posting required signage**

  Under the statute, warning signs must be clearly visible on or near any premises where an agritourism activity occurs and must contain the following language:

  > **Warning: Under Texas law (Chapter 75A, Civil Practice and Remedies Code), an agritourism entity is not liable for any injury to or death of an agritourism participant resulting from an agritourism activity.**

  Once the signs are posted in the proper place, the landowner's work is done. He or she is not required to obtain signatures on releases before people enter the property for a recreational or educational activity (although doing so is wise and may offer additional protection). If a person brings an unexpected guest, the sign will likely be sufficient warning to that person of limited liability, regardless of the lack of a signed waiver or agreement.

- **Obtaining a signed, written release**

  The agreement must be

  - Signed before participation in an agritourism activity,
  - Signed by the participant or the participant's guardian if he or she is a minor,
  - Separate from any other agreement between the participant and entity except for a different warning, consent, or assumption of risk,

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- Printed in at least 10-point bold type, and
- Contain the following language:

> **Agreement and warning: I understand and acknowledge that an agritourism entity is not liable for any injury to or death of an agritourism participant resulting from agritourism activities. I understand that I have accepted all risk of injury, death, property damage, and other loss that may result from agritourism activities.**

Although this option requires more paperwork for the agritourism entity, it may provide significant protection if minor children are injured on the property. The Texas Supreme Court has not ruled on whether a liability release signed by a parent on behalf of a minor child is enforceable. At least one Texas appellate court has held that they are not. The rationale behind this decision is that Texas law seeks to be especially protective of children and that parents should not be able to waive a child's personal injury claims. Given this unsettled legal question, the fact that the Agritourism Act expressly states that a guardian may release liability on behalf of a minor if using the written release option may prove to be important for the landowner seeking to enforce a release against an injured minor.

Where can a landowner purchase the signs?

The signs can be made anywhere as long as the required language in the Texas Civil Practice and Remedies Code Section 75A.002(1) is printed on them. They are also available for purchase from the Texas Farm Bureau, Texas and Southwestern Cattle Raisers Association, and Texas Wildlife Association.

Are there exceptions to the limited liability protection offered by the Act?

Many exceptions may result in case-by-case determinations as to whether the Act applies. Because the statute is new, courts have not yet interpreted the following exceptions:

The protections do not apply

- If the injury was proximately (or primarily) caused by the entity's "negligence evidencing a disregard for the safety of the agritourism participant,"
- If the injury is proximately caused by a dangerous condition of which the entity had actual knowledge or reasonably should have known on the land, facilities, or equipment used in the activity,
- If the injury is proximately caused by the entity's failure to adequately train an employee actively involved in an agritourism activity,
- If the injury is proximately caused by the dangerous propensity of a particular animal used in the activity not disclosed to the participant of which the entity has actual knowledge or reasonably should have known, and
- If the injuries are intentionally caused by the agritourism entity.

Does the Act apply to an outdoor wedding venue?

A Texas appellate court has not yet addressed this issue. However, in *Sullivan v. City of Ft. Worth,* the court decided against the landowner under the Recreational Use Statute, finding that an outdoor wedding and reception was not considered to be "recreation" for purposes of the statute. The defi-

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nition of recreation under the Agritourism Act is the same as under the Recreational Use Statute, which offers a persuasive argument that the Act protections would not apply to someone injured at an outdoor wedding.

Since it remains unknown how a Texas appellate court might answer this question, owners of outdoor wedding venues should comply with the Act requirements in case a court were to hold that it does apply to outdoor weddings. They should also take additional precautions such as making dangerous conditions safe, warning guests of dangerous conditions, and maintaining adequate liability insurance in case a court finds that the Act does not apply.

Does the Agritourism Act mean I no longer need to carry liability insurance?

Absolutely not. The Act is not a substitute for insurance. A person would still want to rely on liability insurance and should have an adequate policy in place covering all activities conducted on the land. Two key reasons for having liability insurance include:

- Even though the Act provides limited liability and may allow a landowner to successfully defend against a personal injury case, it does not prevent the landowner from being sued and needing to retain an attorney to handle the litigation. A liability insurance policy would likely provide representation for the landowner.
- There are many exceptions to the Act, meaning that there are many instances where the limited liability it offers would not apply to the landowner. In that case, the landowner could look to his or her liability insurance policy to satisfy a judgment. It is strongly recommended that landowners carry a liability insurance policy to protect their operation, work closely with their insurance agent, and carefully read policies to ensure that all activities conducted on the property are adequately covered.

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