



EXPLANATION OF 2008  
**LIMITATION OF LIABILITY LAW**  
ON AGRITOURISM OPERATIONS  
IN LOUISIANA  
**La. R.S. 9: 2795.5**

Louisiana law makes a person responsible for injuries that occur as a result of that person's negligence, imprudence, lack of skill, total disregard for the safety of others and for intentionally harming another person. The law also makes a person responsible for any defect or condition in his or her property that causes injury if the defect or condition was known and the injury could have been prevented by the exercise of reasonable care. These standards are not new. They date back to the days of the Roman Empire.

These rules of law mean that each day business owners carrying out the day-to-day operations of their businesses risk getting sued by customers or visitors for injuries that occur on the business premises or as a result of the business operations. Owners of agritourism businesses face the same risks, but at a higher level.

Agritourism involves hosting curious visitors, many of whom are new to a farm, ranch or forestry setting and the unique equipment and facilities associated with a working agricultural or forestry operation. This unfamiliarity with uneven terrain, animals that are not kept as pets and the operation of large equipment substantially increases the risk of injury and, of course, lawsuits.

In response to the vulnerability for lawsuits and the problem with obtaining liability insurance, the Louisiana legislature passed House Bill 633 by Representative Anders as Act 591 of 2008; thereby enacting the **Agritourism Limited Liability Law** (R.S. 9:2795.4). This law is intended to limit the liability of agritourism professional for injuries that occur through no fault of the agritourism professional. A copy of the complete law is found at the end of this explanation.

The law defines agritourism, who is an agritourism professional, who is a participant in an agritourism activity, and what constitutes an inherent risk of an agritourism activity. Examples of integral conditions, dangers, or hazards are rough terrain, vines and other vegetation that someone may trip on, the behavior of wild or domestic animals, and risks associated with the normal and proper use of machinery and equipment.

The decision as to what type of activities are "agritourism activities" is left to the commissioner of agriculture and forestry to make by regulation. Those regulations may be found in the Louisiana Administrative Code at (LAC 7:XLV.101, 103,105). The current text of the regulations may be found at the end of this explanation.

In order to be eligible for coverage under this law, an agritourism professional engaging in one or more agritourism activity as defined by the commissioner, must submit a plan of operation for each agritourism activity to the director of the extension service of the Louisiana State University Agricultural Center and the director must approve the plan.

Upon approval of the plan, the agritourism professional will be eligible for coverage under the law so long as: (1) the law is in effect, (2) the particular activity or type of activity is included in the regulations as an agritourism activity, and (3) the agritourism professional is conducting business in accordance with the plan.

To invoke the limitation of liability provided by this law, an agritourism professional must post and maintain a sign or signs that contain a warning notice in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice must be in black letters, with each letter a minimum of one inch in height. The warning must also be in any contract signed by the agritourism professional for the providing of professional services, instructions, or the rental of equipment and the warning must be in clearly readable print. The warning sign and the warning on the contract must read as follows:

#### **WARNING**

**Under Louisiana law, R.S. 9:2795.5, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you 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.**

HOWEVER, additional warning signs at the entrance and the site of the agritourism activity may be needed. If there is a particularly dangerous condition or an animal with known dangerous propensities the agritourism profession must eliminate the danger, keep the participants away, or post conspicuous signs warning of the particular danger. For example, if the agritourism professional has a creek or stream on the property, knows that there is a deep hole in the streambed that is hard to see, and knows that participants walk down the streambed then the agritourism must either fill up the hole, or take steps to prevent participants from walking that portion of the streambed, or post a warning at the hole. Another example, if the agritourism activity involves hiking or walking through woods or fields and wild hogs are known to be in the vicinity the agritourism professional must, at a minimum, post warning signs about the danger posed by the wild hogs.

Even under the law, an agritourism professional may still be liable for injuries caused by his or her willful or wanton disregard for the safety of the participants, intentionally injuring a participant, or failing to protect against a particularly known danger. Another risk that an agritourism professional may be liable for is injury caused to a participant by another participant, especially if the use of equipment is involved.

In summary, the Louisiana Agritourism Law is intended to protect an agritourism professional from liability because of an injury suffered by a participant if the injury is solely the result of a condition, danger, or hazard that is an integral part of the agritourism activity.

HOWEVER, THERE IS NO ABSOLUTE FREEDOM FROM LIABILITY. Failure to post the warning signs and to place the warning in contracts prevents the law from being used to avoid liability. Further, as stated above, there are several situations where an agritourism professional may still be liable for injuries suffered by a participant.

REMEMBER, there is no way to prevent lawsuits, but the posting of warning signs; making participants aware of the inherent dangers; explaining safe ways of participating; stopping unsafe participation; correcting, eliminating, isolating, or warning of especially dangerous conditions or animals, and having regard for the safety of participants can shield an agritourism professional from liability under the Agritourism Law.

HOWEVER, this law is not a guarantee of freedom from lawsuit or liability and it **does not** take the place of liability insurance.

**§2795.5. Limitation of liability; agritourism activities; definitions; exceptions; required warning**

A. As used in this Section, the following terms shall have the following meanings, unless the context requires otherwise:

(1) "Agritourism" means the travel or visit by the general public to, or the practice of inviting the general public to travel to or visit, a working farm, ranch, or other commercial agricultural, aquacultural, horticultural, or forestry operation for the purpose of enjoyment, education, or participation in the activities of the farm, ranch, or other agricultural, aquacultural, horticultural, or forestry operation.

(2) "Agritourism activities" means those activities related to agritourism as defined in rules and regulations adopted by the commissioner of agriculture and forestry in accordance with the Administrative Procedure Act, and which the conduct of any such activity is set forth in a plan of operation approved by the director of the Louisiana Cooperative Extension Service of the Louisiana State University Agricultural Center or his designee.

(3) "Agritourism professional" means any person and his employees or authorized agents who offers or conducts one or more agritourism activities for agritourism purposes.

(4) "Inherent risks of agritourism activity" means those conditions, dangers, or hazards that are an integral part of an agritourism activity, including surface and subsurface conditions of land and water; natural conditions of vegetation; the behavior of wild or domestic animals; those arising from the form or use of structures or equipment ordinarily used on a working farm, ranch, or other commercial agricultural, aquacultural, horticultural, or forestry operation; and the mistakes or negligent acts of a participant that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.

(5) "Participant" means any person, other than an agritourism professional, who engages in an agritourism activity, even if that person did not pay to participate in the agritourism activity.

B.(1) Except as provided in Paragraph (2) of this Subsection, an agritourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism activities, so long as the warning contained in Subsection C of this Section is posted as required and, except as provided in Paragraph (2) of this Subsection, no participant or participant's representative can maintain an action against or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities. In any action for damages arising out of an agritourism activity against an agritourism professional, the agritourism professional shall plead the provisions of this Section as an affirmative defense.

(2) Nothing contained in Paragraph (1) of this Subsection prevents or limits the liability of an agritourism professional, if the agritourism professional does any one or more of the following:

(a) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant and that act or omission caused injury, damage, or death to the participant.

(b) Intentionally injures the participant.

(c) Owns, leases, rents, or otherwise is in lawful possession and control of the land or facility upon which the participant sustained injuries because of a dangerous latent condition, including but not limited to the dangerous propensity of a particular animal used in such activity, which was known or should have been known to the agritourism professional and for which warning signs have not been conspicuously posted.

(d) Any limitation on liability provided in Paragraph (1) of this Subsection to an agritourism professional is in addition to any other limitation of liability otherwise provided by law.

(3) Nothing contained in Paragraph (1) of this Subsection shall prevent or limit the liability of an agritourism professional under liability provisions as set forth in the Louisiana Products Liability Act, R.S. 9:2800.51 through 2800.60.

C.(1) Every agritourism professional shall post and maintain signs that contain the warning notice specified in Paragraph (2) of this Subsection and shall be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice shall consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an agritourism professional for the providing of professional services, instruction, or the rental of equipment to a participant, whether or not the contract involves agritourism activities on or off the location or at the site of the agritourism activity, shall contain in clearly readable print the warning notice specified in Paragraph (2) of this Subsection.

(2) The signs and contracts described in Paragraph (1) of this Subsection shall contain the following notice of warning:

**"WARNING**

Under Louisiana law, R.S. 9:2795.5, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you 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."

(3) Failure to comply with the requirements concerning warning signs and notices provided in this Subsection shall prevent an agritourism professional from invoking the limitation of liability provided by this Section.

## **Part XLV. Agritourism**

### **Chapter 1. Agritourism Activities; Plans of Operation**

#### **§101. Definitions**

- A. The words and terms defined in R.S. 9:2795.5 are applicable to this Chapter.
- B. The following words and terms are defined for the purposes of this Chapter.

*Agricultural Operation*—a working farm, ranch, or other commercial agricultural, aquacultural, horticultural, or forestry operation.

*Agritourism Plan of Operation*—a planning document that will assist agritourism professionals in identifying and addressing possible inherent risks on their operations through recommended best management practices. Components of the plan will include listing of activities, their risks, suggestions for minimizing those risks, and a plan for the location of warning signs.

*Commissioner*—the Commissioner of Agriculture and Forestry for Louisiana.

*Department*—the Louisiana Department of Agriculture and Forestry.

#### **§103. Agritourism Activities**

- A. Agritourism activities are activities engaged in by a participant for one or more of the purposes of enjoyment of, education about, or participation in, the activities of an agricultural operation.

B. The commissioner has defined certain activities as agritourism activities when such activities are conducted in relation to an agricultural operation. The defining of an activity as an agritourism activity also includes the enjoyment of, education about or participation in closely related activities even though such closely related activities may not be specifically listed in the definition. For example, an agricultural craft tour or visit includes such things as attending on-site lectures, hands on participation in the making of an art or craft article, and purchase of an article.

1. The commissioner may add or remove activities to or from the list of agritourism activities from time to time by publishing a supplemental list of agritourism activities in the Potpourri Section of the *Louisiana Register* and by updating the list of activities on the department's website.

2. Interested persons may request activities to be added or deleted from the list of agritourism activities.

a. All such requests shall be submitted in writing to the department by letter or e-mail. Each request shall provide the name, address, and contact information for the person making the request, a description of the activity, and how it is related to an agricultural operation.

b. The commissioner shall make the determination as to whether the activity will be added or deleted from the list of agritourism activities. The requesting party shall be notified of the commissioner's decision.

C. A list of the agritourism activities shall be published annually in the Potpourri Section of the February issue of the *Louisiana Register* and on the department's website.

D. The initial annual listing of agritourism activities established by the commissioner is listed below.

<b>Annual Listing of Agritourism Activities in Accordance with LAC 7:XLV.101-105</b>	
Notice: The activities listed below are agritourism activities only when conducted in relation to an agricultural operation as defined in LAC 7:XLV.101.	
Agricultural Crafts Tours and Visits	Farm/Ranch Vacations
Agricultural Exhibits Tours and Visits	Farmers Markets/on Farm Sales/Roadside Stands Visits and Participation
Agricultural Fairs and Festivals Visits and Participation	Fishing
Agricultural Operations Planting, Harvesting and Working Activities	Game/Exotic Farm Animal Tours and Visits
Agricultural Operations Tours and Visits	Garden/Nursery Tours and Visits Guided Crop Tours and Visits
Bed and Breakfasts Tours, Visits, and Stays	Hiking/Packing Trips Historical Tours of or Visits to Former Agricultural Operations
Bird Watching	
Boating/Swamp Tours	Horseback/Pony Riding
Camping/Picnicking	Hunting
Christmas Tree Farms Visits and Tree Cutting	Hunting/Working Dog Trials/Training
Corn/Hay Bale/Other Mazes Visits and Participation	Petting Zoos Tours, Visits, and Interaction with Animals
Crop Harvesting at U-Pick Operations	Pumpkin Patch Visits and Participation
Educational Tours and Visits	Skeet Shooting
Equine Activity [as defined in R.S. 9:2795.3(A)(3)] Attendance and Participation	Wagon Rides Attendance and Participation Winery Tours and Visits
Farm Animal Activity [as defined in R.S. 9:2795.1(A)(3)] Attendance and Participation	Youth Camp Stays and Participation

**§105. Procedure for Submission of Plan of Operation**

A. Any agritourism professional who conducts an agritourism activity and seeks to avail himself of R.S. 9:2795.5 shall submit a written and completed agritourism plan of operation for each such activity to the Louisiana Cooperative Extension Service of the Louisiana State University Agricultural Center for approval. Multiple activities may be included in the plan. The agritourism plan of operation may be sent to Dora Ann Hatch, LSU AgCenter, 11959 Highway 9, Homer, LA 71040.

1. An agritourism professional who adds an agritourism activity after his agritourism plan of operation has been approved shall submit an agritourism plan of operation for the new activity to the Louisiana Cooperative Extension Service of the Louisiana State University Agricultural Center for approval.

2. An agritourism plan of operation shall be submitted for each separate agricultural operation where agritourism activities are to be conducted.

B. The agritourism plan of operation shall include:

1. the name, physical address, mailing address, and telephone number of the agritourism professional;

2. the name under which the agritourism professional will operate, the physical address, mailing address and telephone number of the agricultural operation, if different than the information provided for the agritourism professional;

3. the business structure, (sole proprietorship, partnership, corporation, limited liability company, joint venture, or other structure);

4. the physical location of the agricultural operation;

5. the nature of the agritourism activities to be conducted at the location;

6. the known inherent risks to participants in the agritourism activities;

7. the best management practices, including the placement of warning signs, to be used by the agritourism professional for reducing these risks and for warning participants of the risks;

8. any other information requested by the Louisiana Cooperative Extension Service of the Louisiana State University Agricultural Center.

C. An agritourism professional, upon approval and implementation of his agritourism plan of operation, shall be presumed to be conducting an agritourism activity for each activity listed on an approved agritourism plan of operation.