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Alert

Agriculture Practice Group

The New York Safety in Agriculture Tourism Act Finally Enacted

Syracuse, New York

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Background

On October 23, 2017, New York State enacted the Safety in Agriculture Tourism Act, which is an inherent risk statute intended to insulate equine and agricultural tourism businesses from liability for the risks incurred by inviting the public onto farm property. The Act was enacted due to the advocacy by the New York State Horse Council, the New York Farm Bureau, their members and a few dedicated politicians. The protection made available by the Act is designed in part to address the difficulties stemming from rising insurance costs in New York. Absent such protection, relatively few insurance carriers have offered liability insurance for equine and agricultural tourism businesses in the State and the cost of such coverage has been a barrier keeping many farmers from engaging in agricultural tourism. The Act applies to farms engaged in certain types of indoor and outdoor equine activities, u-pick farms, wineries, and maple sugar farms.

Definitions and Responsibilities Under The Act

Section 18-302 of the Act defines "agricultural tourism" as "activities, including the production of maple sap and pure maple products made therefrom, farm and winery tours, equine activities both outdoors and indoors ... u-pick Christmas trees, hiking, hunting and other forms of outdoor recreation offered to farm visitors, conducted by a farmer on-farm for the enjoyment and/or education of the public, which primarily promote the sale, marketing, production, harvesting or use of the products of the farm and enhance the public's understanding and awareness of farming and farm life."

Sections 18-303 (1)(a)-(e) identify the specific responsibilities of the operators of equine and agricultural tourism businesses required by the Act. Operators have the following responsibilities:

- a. To post and maintain way finding signage to delineate the paths, areas and buildings that are open to the public;
- b. To adequately train employees who are actively involved in agricultural tourism activities;
- c. To post at every point of sale or distribution of tickets, whether on or off the premises of the agricultural tourism area, a conspicuous "Warning to Visitors" relative to the inherent risks of participating in activities on working farms and to provide written information having such text and graphics as the commissioner of agriculture and markets shall specify, which shall conspicuously direct the attention of all visitors to the required "Warning to Visitors";
- d. To post at every point of sale or distribution of tickets at an agricultural tourism area a conspicuous notice to visitors that pursuant to this article such visitors have a responsibility to exercise reasonable care regarding the disclosed risks of the agricultural activity, and reasonably comply with posted way finding signs, reasonably remain in areas designated for the agricultural tourism activity, reasonably follow any and all written and conspicuously posted rules of conduct provided by such operator to visitors or verbal or other communication for persons with disabilities, and not to willfully remove, deface, alter or otherwise damage signage, warning devices or implements, or other safety devices;
- e. To take reasonable care to prevent reasonably foreseeable risks to visitors, consistent with the responsibility of a landowner to keep his or her premises reasonably safe for intended and reasonably foreseeable uses and users, and to post conspicuous notice to visitors of the right to a refund to the purchaser in the amount paid in the initial sale of any tickets returned to the operator of the agricultural tourism area, intact and unused, upon declaration by such purchaser that he or she believes that he or she is unprepared or that he or she is unwilling to participate in the agricultural tourism activity due to the risks inherent in the activities or the duties imposed upon him or her by this section.

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Sections 18-303(2)(a)-(c) identify the duties of visitors to agricultural tourism areas, who are charged with responsibility for exercising reasonable care regarding the disclosed risks of the agricultural activity. Visitors are also required:

- a. to reasonably comply with posted way finding signs and reasonably remain in areas designated for the agricultural tourism activity;
- b. to reasonably follow any and all written information or conspicuously posted rules of conduct provided by such operator to visitors, or verbal or other form of communication of rules of conduct where needed for effective communication for people with disabilities; and
- c. not to willfully remove, deface, alter or otherwise damage signage, warning devices or implements or other safety devices.

Limitations of the Act

While the Act most provides protection to equine and agricultural tourism businesses against injuries to and the death of visitors, its protection is conditioned upon compliance with Sections 18-303 (a)-(e). Specifically, the Act states that "[o]wners and operators of agricultural tourism areas shall not be liable for an injury to or death of a visitor if the provisions of this subdivision are complied with." Section 18-303 (f)(Emphasis added.) As such, owners and operators must comply with the responsibilities described in Sections 18-303(a)-(e)(above).

Furthermore, even compliance with the requirements of Sections 18-303 (a)-(e) may not provide complete insulation from lawsuits or liability. Specifically, Sections 18-303(b) & (e) require owners and operators to "adequately train" employees and take "reasonable care." While this language may seem innocuous, terms like "adequately trained" and "reasonable care" are grist for the proverbial litigation mill – meaning that there may still be considerable litigation over whether owners have complied with the requirements of Section 18-303 and are entitled to the protection of the Act. The Act also provides little direct guidance regarding compliance and does not even provide the actual language to be used for the required signage.

The Act also does not provide protection to all types of equine businesses. Although the definition of agricultural tourism includes "equine activities," it specifically excludes the term "equine therapy," which is itself defined as "equine activities for children or adults with physical or mental disabilities, post-traumatic stress disorder or other condition for which equine therapy is sought for therapeutic purposes or treatment." Section 18-302. As such, equine therapy activities do not appear to be protected by the Act.

Nonetheless, the Act is a considerable step toward protecting equine and agricultural tourism businesses and expanding business opportunities in the State. It also brings New York in line with the majority of States (now 48) that have adopted similar statutory protections.



Bousquet Holstein Agriculture Practice Group

How may we be of service?

If you would like more information regarding the Act, or if we can provide counsel for your equine or agricultural business, please feel free to contact **L. Micha Ordway, Jr. Esq., at lordway@blawpllc.com or 315.701.6441** or any of the attorneys in the Bousquet Holstein Agriculture Practice Group.