



PennState Law

Center for Agricultural
and Shale Law

PENNSYLVANIA DEPARTMENT OF AGRICULTURE  AGRICULTURAL BUSINESS DEVELOPMENT CENTER

Understanding Agricultural Law Webinar Series

Understanding Agricultural Law

Webinar Series

Understanding the Basics of

Landowner Immunity Statutes

May 19, 2023





Ag Law Center Website Resources

aglaw.psu.edu

- Agricultural Law Weekly Review
- Agricultural Law Virtual Resource Rooms
- Agricultural Law Tracker
- Shale Law Tracker
- Agricultural Law Podcast
- Social Media
 - Twitter, Facebook, LinkedIn
- Videos/Presentations
- PA Ag Mediation Program



Agricultural Law Weekly Review

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Agricultural Law Weekly Review—Week Ending November 11, 2022

Agricultural Antitrust: Federal Court Denies Tyson's Motion to Dismiss Poultry Renderers' Antitrust Suit 🌟 On November 8, 2022, the U.S. District Court for the Northern District of Georgia issued an order denying a motion to dismiss filed by River Valley Ingredients, LLC; Tyson Poultry, Inc.; and Tyson Farms, Inc.—the defendants in an antitrust case filed by three southeast poultry rendering companies. *American Proteins, Inc. v. River Valley Ingredients, LLC*, No.

Tweets from @AgShaleLaw

PSU Ag & Shale ...
@AgShaleLaw · 2h

Today at noon (ET):
"Understanding the Basics of Licensing & Regulation of Direct Agricultural Product Sales" 🍷
1 CLE credit available for PA attorneys
[Learn more and register:](#)



Pennsylvania Agricultural Mediation Program

Who can request mediation?

USDA-related issues:

- Agricultural Loans
- Wetlands determinations
- Compliance with farm programs, including conservation programs
- National organic program established under the Organic Foods Production Act of 1990
- Agricultural Credit
- Rural water loan programs
- Grazing on National Forest System land
- Pesticides

Non-USDA issues:

- Land and Equipment Lease issues.
- Family farm transition.
- Farmer-neighbor disputes.
- As approved by PA Secretary of Agriculture



Contact us:

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Understanding Agricultural Law

**A Legal Educational Series for General Practice Attorneys and
Business Advisors Representing Agricultural and Rural Clients**

This webinar series is specifically tailored to create subject matter literacy and competence on fundamental issues of agricultural law for attorneys, advisors, and service providers to agricultural producers and agri-businesses.





Understanding Agricultural Law Series:

Past Topics:

- Agricultural Labor Laws
- Leasing Farmland for Energy Development
- Local Land Use Regulation of Agriculture
- Statutory Protections for Ag Operations
- Agricultural Cooperatives
- Livestock Market Regulation
- Crop Insurance
- Federal & State Conservation Programs
- Licensing & Regulation of Direct Agricultural Product Sales
- Agricultural Finance
- PA's "Clean & Green" Tax Assessment Program
- Animal Confinement Laws
- Conservation Easements



Understanding Agricultural Law Webinar Series

Upcoming Topics:

Friday, June 23, 2023, noon–1:00 ET

*Understanding the Basics of **the Farm Credit System** with Douglas Durkin, association counsel, Horizon Farm Credit—**Registration available!***

Friday, July 28, 2023, noon–1:00 ET

*Understanding the Basics of **Pesticides** (registration available soon)*



Housekeeping

- This webinar is being recorded.
- Please Use the Q&A feature for questions.
- Please fill out surveys.
- CLE credits:
 - Link to CLE form will be posted in the chat
 - Please fill out form ASAP
 - Listen for code word, enter code word in form



Understanding the Basics of **Landowner Immunity Statutes**

Presented by
Jackie Schweichler

While owning property provides many benefits, landownership also exposes owners to potential liabilities for activities on their land, such as nuisance and tort lawsuits. However, Pennsylvania has enacted several laws to shield landowners from liability, but to receive protection, landowners are required to take certain actions required by those laws.

This webinar will provide an overview of **Pennsylvania's landowner liability statutes**—including **Pennsylvania's Recreational Use of Land and Water Act (RULWA)**, **Equine Activity Immunity Act**, and **Agritourism Activity Protection Act**—and discuss what protections they provide and what landowners must do to maintain liability protection under Pennsylvania law.



Liability: Risks

- Equipment
- Terrain
- Paths & walkways
- Weather
- Zoonotic diseases
- Animal tendencies
- Driving and parking





Liability: Duty of Care

- Trespasser
 - Duty not to engage in willful, wanton, or reckless conduct that could harm
- Licensees (social calls)
 - Duty to warn of known dangers
- Invitee (business related)
 - Duty of inspection (must warn of danger, remedy dangerous conditions)



Types of Torts (civil liability)

- Negligence
- Intentional Tort
- Strict Liability



Negligence

- Failure to act as a reasonable person would act under similar circumstances
 - Carelessness, thoughtlessness, oversight



Intentional Tort

- A voluntary act that constitutes a tort
 - Battery
 - Assault
 - False imprisonment
 - Intentional infliction of emotional distress
 - Defamation
 - Invasion of privacy
 - **Nuisance** & Trespass



Intentional Tort– Nuisance

- Nuisance
 - Interference or disruption of a person’s private use and enjoyment of their land.



Strict Liability

- Does not depend on negligence or intent
- Three types of strict liability:
 - Animals known to be harmful
 - Abnormally dangerous activities
 - Products liability
 - Design defect
 - Manufacturing defect
 - Labeling issues



Protections

- Liability Insurance
- Entity Formation
- Notice of Risk & Waivers
- **State Immunity (or Liability) Legislation**



Protections: State Liability Laws

- Pennsylvania's Agritourism Activity Protection Act
- PA Equine Activity Immunity Act
- Recreational Use of Land and Water Act
- Right to Farm



Pennsylvania's Agritourism Activity Protection Act



Protections: Agritourism Liability Statutes

- What does a liability protection statute do?
 - Limits the liability of an agritourism operator
 - Participants “cannot” sue the agritourism operator for injuries sustained from an inherent risk of an activity
 - Ex: What would be an inherent risk at an animal petting zoo?



PA's Agritourism Activity Protection Act

- Agritourism Activity Protection Act
 - (Act 27 of 2021)
 - Effective August 29, 2021
- Provides agritourism providers liability protection from civil liability for injury or damages sustained by a third-party participant in agritourism activity.





PA's Agritourism Activity Protection Act

- Important Exclusions:
 - No liability protection for weddings or concerts
 - No liability protection for overnight stays
 - No liability protection for food and beverage service





PA's Agritourism Activity Protection Act

- In order to receive liability protection, an operator must meet the key elements of the statute:
 - Agritourism definition
 - Farm must be “normal agricultural operation”
 - Written Agreement or Tickets
 - Signage



PA's Agritourism Activity Protection Act

- Agritourism definition:
 - “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.”



PA's Agritourism Activity Protection Act

- Normal Agricultural Operation (as defined by PA's Right to Farm)
 - "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..."
 - 10 acres
 - (if less than 10 acres) Income of \$10,000 or more



PA's Agritourism Activity Protection Act

Written Agreement or Tickets

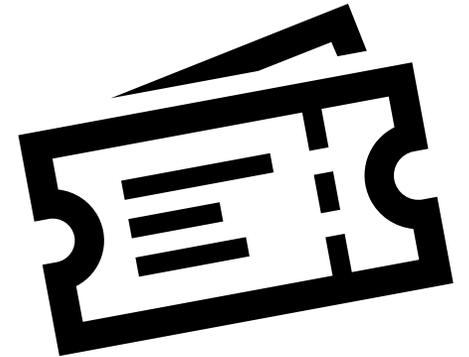
"AGREEMENT AND WARNING: I understand and acknowledge that, except for limited circumstances listed below, an agritourism activity provider is not liable for any injury to or death of a participant resulting from an agritourism activity. I understand that I have accepted all risk of injury, death, property 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."



Liability Statutes - Pennsylvania

- Tickets (alternative to written agreement)
 - Must have “substantially the same language”
 - Must require the tickets for entry to the activity





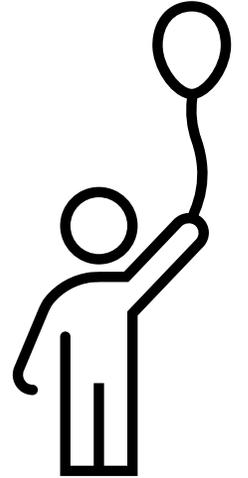
Liability Statutes - Pennsylvania

- Signage
 - "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."
 - Every entrance or all locations
 - 3ft by 2ft



Liability Statutes - Pennsylvania

- Application of the law to minors
 - Parent or guardian must sign on behalf of minor
 - Guardian must sign on behalf of care-dependent person





Liability Statutes - Pennsylvania

- PA Agritourism Immunity Act
 - <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2021&sessInd=0&act=27>
- Right to Farm Act:
 - https://pennstatelaw.libguides.com/ld.php?content_id=19902751
- PA Farm Bureau resources
 - <https://pfb.com/agritourism-liability/>



PA Equine Activity Immunity Act



PA Equine Activity Immunity Act

- 4 P.S. §§ 601-606
- Also referred to as Pennsylvania Equine Liability Law
- Act 93 or 2005
 - Enacted: December 22, 2005
 - Effective: February 21, 2006





PA Equine Activity Immunity Act

- Provides immunity from negligence liability for certain entities engaged in equine activities if specific requirements are satisfied
 - Assumption of risk
 - Signage
 - Does not provide immunity from claims presented by children
 - One does not assume risk for faulty equipment



PA Equine Activity Immunity Act

- Signage requirements:
 - Must be conspicuously posted on property
 - In at least 2 locations
 - On signs at least three feet by two feet
 - “You assume the risk of equine activities pursuant to Pennsylvania law”



PA Equine Activity Immunity Act



- What are equine activities?
 - Equine training, teaching, riding, instruction, show, fairs, parades, competitions, or performances
 - Clinics, seminars, and demonstrations
 - Boarding
 - Breeding



PA Equine Activity Immunity Act

-does not apply to faulty equipment-

- *Melendez v. Happy Trails and Riding Center*
 - September 26, 2016, U.S. District Court for the Middle District of Pennsylvania
 - The participant signed a waiver assuming the risk of all activities of horseback riding.
 - Signs were posted at the facility
 - While horseback riding, a stirrup broke & participant was injured
 - Melendez argued that the Equine Activity Immunity Act did not apply because he was not aware that the stirrup could be defective.
 - Court agreed: “this was not a case where the risk is so obvious that the knowledge could be inferred”



Recreational Use of Land and Water Act



RULWA

- Recreational Use of Land and Water Act
- 68 P.S. §§ 477-1 to 477-8
- In effect since 1966
- Applies to landowners who allow the public to enter their land for recreational use
- <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2018&sessInd=0&act=98>



RULWA

- Limits liability to landowners who make their land and water areas available for public recreational use
- Landowners do not owe a duty to keep the premises safe for public recreational users
- Landowners do not owe duty to warn of dangerous conditions
 - Duty of Care: Trespasser



RULWA

- Recent Update: Oct. 24, 2018
 - Expands list of examples of “recreational purpose”
 - Landowners may accept payment in some situations



RULWA

- **“"Recreational purpose" means any activity undertaken or viewed for exercise, sport, education, recreation, relaxation or pleasure and includes, but is not limited to, any of the following, or any combination thereof: 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.”**



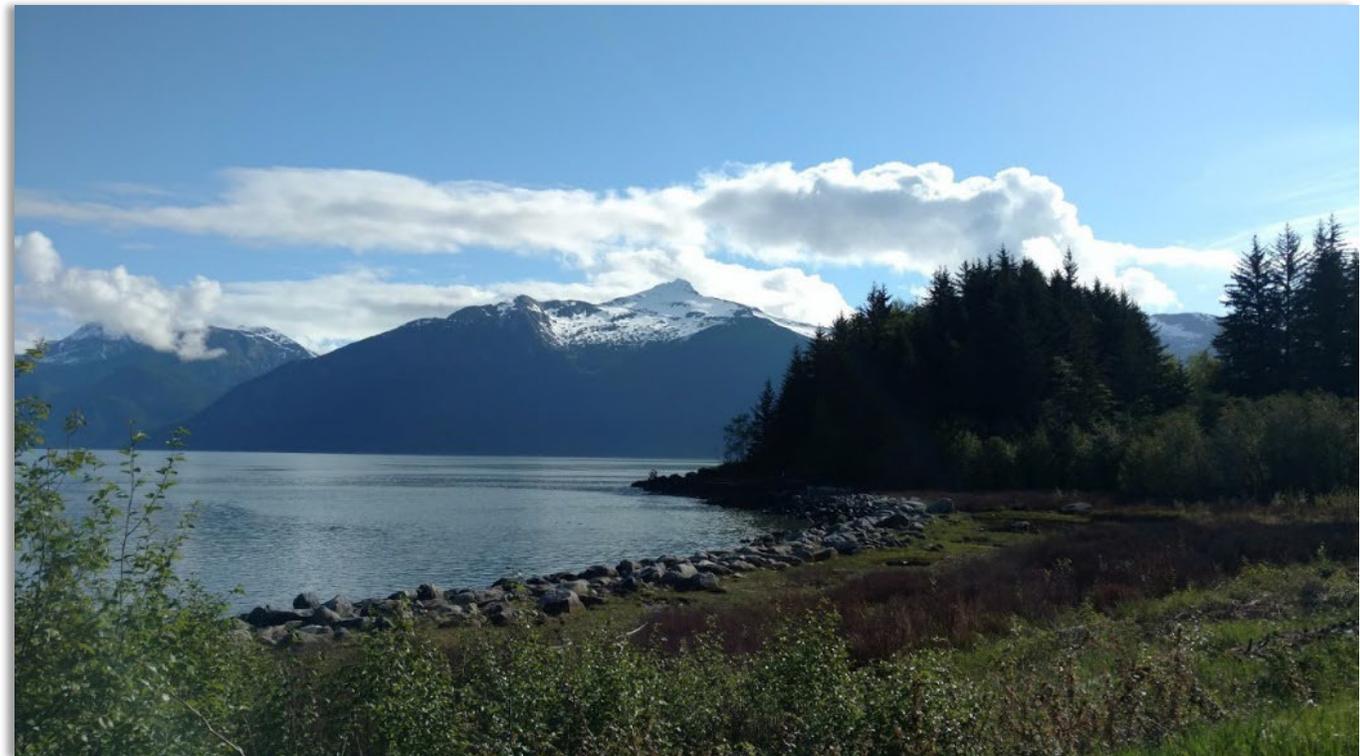
RULWA

- **Charge:** “The term does not include voluntary contributions, in-kind contributions or contributions made to an owner of real property that are not retained by the owner of the real property and are used by the owner of the real property exclusively for one or more of the following purposes:
 - (i) conserving or maintaining the land;
 - (ii) paying taxes on the real property; or
 - (iii) paying for liability insurance on the real property.”



RULWA

- Liability not limited for “willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.”





Right to Farm





Right to Farm

- Enacted in all 50 states
- Attempt to remedy farm – non-farm conflicts
- Focus on nuisance lawsuits against farms





Right to Farm

- Landowners cannot use land in manner that unreasonably interferes with another landowner's use of land
- Determination of nuisance balances benefit of use against harm caused by use



Right to Farm

- Requires municipalities to exclude normal agricultural operations from definition of public nuisance
- Limits nuisance actions against normal agricultural operations
- “Normal Agricultural Operation”
 - Farm has been operating for 1 year
 - Conditions complained of have existed since beginning of operation; and
 - Conditions complained of are normal agricultural operations



Right to Farm



- Direct commercial sales are permitted:
 - On property owned and operated by landowner
 - Who produces at least 50% of agricultural commodities sold



Right to Farm

- Right to Farm Act does not protect farms where:
 - Agricultural operation has direct adverse effect on public health and safety;
 - Zoning ordinance prohibits or limits operations;
 - Agricultural operation is in violation of federal, state, or local statute or regulation;
 - Agricultural operation pollutes water or causes flooding.



Questions?



Pennsylvania Agricultural Mediation Program



- Who can request mediation?
 - USDA-related issues:
 - Agricultural Loans
 - Wetlands determinations
 - Compliance with farm programs, including conservation programs
 - National organic program established under the Organic Foods Production Act of 1990
 - Agricultural Credit
 - Rural water loan programs
 - Grazing on National Forest System land
 - Pesticides
 - Non-USDA issues:
 - Lease issues; including land leases and equipment leases.
 - Family farm transition.
 - Farmer-neighbor disputes



Pennsylvania Agricultural Mediation Program

- Who conducts mediation?
 - Impartial 3rd party mediator
- If an agreement is not reached, the requestor may seek appeals or legal action



Pennsylvania Agricultural Mediation Program

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Thank you!

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Thank You!

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