

February 2, 2020

Rick Lunt, Charlotte VT

“Why do we need an Agritourism Limited Liability Statute?”

The answer to this question is not singular, but rather far reaching.

- A limited liability statute will bring confidence to the farmers and mitigate their fears, by showing that the state is a partner in their goals to remain profitable and sustainable.
- It will bring enthusiasm and increased safety, through public education and open awareness, about the working environment while on a farm.
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Based on these two events, as well as our love for Billings Farm and Shelburne Farms, I decided to look into the state of Agritourism in VT and whether Vermont has a limited liability law.

Surprisingly, the answer is: Yes, we have an active Agritourism sector and No, we don't have a definition of Agritourism nor any limited liability laws. The Agritourism sector is led by Lisa Chase at the UVM Extension Vermont Tourism Research Center. However, we are in the minority relative to the rest of the country with our laws: 33 states have Agritourism Limited Liability laws and 40 states have defined Agritourism. Rusty Rumley, staff attorney with the National Agricultural Law Center in Arkansas, leads the national effort to promote the laws and has provided robust information. The Law Center maintains an active national map that the public can track and see the current statues in any state.

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To appreciate these benefits, I’ll start with the path that brought me to this committee and these conclusions.

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Based on these two events, as well as our love for Billings Farm and Shelburne Farms, I decided to look into the state of Agritourism in VT and whether Vermont has a limited liability law.

Surprisingly, the answer is: Yes, we have an active Agritourism sector and No, we don't have a definition of Agritourism nor any limited liability laws. The Agritourism sector is led by Lisa Chase at the UVM Extension Vermont Tourism Research Center. However, we are in the minority relative to the rest of the country with our laws: 33 states have Agritourism Limited Liability laws and 40 states have defined Agritourism. Rusty Rumley, staff attorney with the National Agricultural Law Center in Arkansas, leads the national effort to promote the laws and has provided robust information. The Law Center maintains an active national map that the public can track and see the current statues in any state.

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The next stop on my journey was to ask, “Do we need a Limited Liability Law?” I spoke to two very large insurance agents that cover the North East and North West sectors of Vermont. Both echoed the same message: Farmers are scared of ‘Loosing the Farm’ over just one small incident. They are paralyzed when considering any on-farm business due to the start up costs and the liability insurance costs. Both agents indicated they insure their clients for the full value of the farm, as the starting point. One agent owns a Tree Farm in East Burke, and despite being an insurance agent, expressed the same apprehensions about insurance costs when considering opening his tree farm for any activity. Just last Thursday, Lisa Chase, while presenting to the House Commerce committee on bill H.705, identified one of the limiting factors towards growing the Agritourism industry as: “Concerns about liability and safety discourage some farms from allowing visitors on their property.”

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I have had discussions with farmers, nationally acclaimed insurance lawyers, insurance agents, land owners and many others. Everyone concluded that we need a limited liability law for Agritourism activities; just as we passed a limited liability law for any and all sports in 1978 (12.1037), for the Ski Industry in 1994 (12.1038), for the Equine Industry in 1995 (12.1039), and for recreational use in 1997 (12.5791-12.5795).

As an example, the Ski Industry Limited Liability statutes were passed in 1994, at the height of economic challenges for the VT Ski Industry; The number of ski areas had fallen from 81 in 1966 to 39 in 1987, and Ski areas were facing steep insurance premiums due to skiers like myself, who skied on closed trails, skied in the glades, and made jumps everywhere. The limited liability statutes, combined with the 'Skiers Responsibility Code,' changed the financial pressures from the insurance industry and moved the responsibility for safe conduct to the participants.

The simple act of posting signs at the ticket booths and including the 'Skiers Responsibility Code' on every ticket, began to educate the public about the inherent risks associated with skiing down a mountain at 30 mph, traversing across sheets of ice, dodging trees and snowmaking equipment, and doing this in concert with other skiers. Today skiers take responsibility for getting on and off the chair lift. They don't play on the snow cats when they are parked next to the base lodge. If they choose to ski in the glades, they know that there might be hidden rocks and the obvious tree is something they have to avoid --- it is not the fault of the ski area should they hit the tree.

The Ski Industry in Vermont has maintained a steady ~ 4m rider visits since 1994 (Ski Vermont). Yet during this period the skiers have increased indirect sales between 1% and 4% annually (Sustainable Vermont 11.16.2017) and direct skier spending is over \$700m annually (2013 - Mountaintimes.info). The Ski Industry is a strong economic engine in Vermont. Agritourism can be a strong economic engine with the same limited liability support.

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When trying to assess the level of incidents within Vermont, as a metric for ‘need’, my research was limited by the available data. The Vermont Department of Financial Regulations does not collect claim data and my requests to several insurance carriers went unanswered. Rusty Rumley and other lawyers I spoke to, indicated that public trial data is limited due to disclosure restrictions. However, one can find significant events in the news and on the internet.

As of today, Vermont has not faced a catastrophic event from a tourist accident on a farm. Many in the industry have indicated that it is not a matter of whether we will have such an event, it is just a matter of time. Here an example of such an incident:

In 2013, at Dehn’s Pumpkins, a pick-your-own pumpkins and Corn Maze in Minnesota, a 7-year old child, guided by her grandmother and aunt, got sick from E. coli. The farmer ‘lost the farm’ because they did not have wash stations, even though this was not a requirement by any state or local regulation.

I have personally experienced the following events while visiting farms:

- A mother videoing her child playing in the cow manure as the cow defecates.
- People wearing flip flops and patten leather shoes to walk up a wooded rocky path to Lone Tree Point – complaining the entire way that the trail should be paved and have railings.
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Unlike the ski industry, the public has not been educated to the inherent risks of farm activities. As such, the behavior and expectations of visitors are placing a burden on the farmer to over insure and to guess about unknown random events that might occur.

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In conclusion, a limited liability law will forge an economic partnership between the state and the farmers, thus mitigating one of the challenges inhibiting the creation of additional Agritourism businesses: fear. The current growth of participating agritourism business in Vermont is 3%; this is down from 20% just 10 years ago. The posting of inherent risks and responsibilities while on a farm, will promote awareness and education, leading to a safer experience; just as it did in the Ski and Equine Industries. The estimated growth of the national Agritourism industry is project at 12% annually for the next 5 years. Vermont can participate in this growth and foster the next clean green sustainable economic engine. To do so, we will need to grow the number of farms participating in Agritourism substantially.

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“Why do we need an Agritourism Limited Liability Statute?”

The answer to this question is not singular, but rather far reaching.

- A limited liability statute will bring confidence to the farmers and mitigate their fears, by showing that the state is a partner in their goals to remain profitable and sustainable.
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