

Florida's Agritourism Laws¹

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Agritourism marries Florida's two largest industries, tourism and agriculture, to provide an on-farm recreational experience for consumers. Florida has experienced record tourism in recent years, with 105 million visitors spending more than \$85 billion in 2015, according to VISIT Florida (Visit Florida Marketing Plan, 2017). According to USDA Census of Agriculture data, although Florida trails many other states in the number of agritourism operations, the number of Florida farms offering recreational experiences more than doubled from 281 in 2007 to 724 in 2012 (USDA, 2012). This document describes laws governing Florida agritourism operations for operators, including the original 2013 definition (F.S. 570.96) and clarifications passed in 2016 (F.S. 570.85-89).

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2013 Agritourism Law Limitations on Liability

Florida has recently passed important new laws, key to developing agritourism. In 2013, a change in the Florida Statutes (F.S. 570.96) reduced the liability for bona fide farms engaging in agritourism, so long as a warning sign containing specific language is posted at the farm. The required sign warns participants that agritourism activities involve inherent risks and notifies them that, by choosing to participate in the agritourism activity, they are accepting

these risks. The sign must be posted at the entrance to the agritourism operation and at the site of the activity. The warning language must also be used on written contracts.

Please see below the inherent risk warning language for agritourism contracts and signs required under Florida Statute 570.89, as of the 2020 statutes.

WARNING

Under Florida law, an agritourism operator is not liable for injury or death of, or damage or loss to, a participant in an agritourism activity conducted at this agritourism location if such injury, death, damage, or loss 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, death, damage, or loss. You are assuming the risk of participating in this agritourism activity.

The law does not protect the operator in the case of gross negligence or malice but provides some assurance for those hesitant to embark upon an agritourism venture because of concerns about the liabilities associated with opening a farm to the public. The legal language used to craft this law was similar to that of other states, among them North Carolina, which passed similar liability protections for agritourism operations beginning in 2005 (North Carolina General Assembly, 2016). Note that the law is not

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a substitution for farm liability insurance and should not be construed to replace the protections that insurance may provide an agritourism operator.

For more details on posting and notification, see Florida Statute 570.89 at http://www.leg.state.fl.us/STATUTES/index.cfm?App_mode=Display_Statute&Search_String=&URL=0500-0599/0570/Sections/0570.89.html.

Limits on Local Regulations and 2016 Revisions

Also included in the 2013 law was language prohibiting local authorities from imposing regulations to prevent agricultural operations from engaging in agritourism; however, many questions arose soon after the law became final. The law prohibited a city or county from enacting regulations to restrict operations on lands classified as agricultural from engaging in agritourism. It did not, however, specifically reference enforcement of existing local regulations. The definition of agritourism itself was also a point of confusion, especially where the on-farm activities were not clearly related to agriculture, such as on-farm weddings.

The 2016 edition clarified these questions with specific language addressing enforcement of existing regulations and a widened definition of an agritourism activity. Local governments are prohibited not only from enacting new regulations to limit agritourism on lands classified as agricultural but also from enforcing existing regulations that may restrict agritourism. The concerns of local governments were also addressed. Language was added that allows local governments power to address “substantial off-site impacts” of agritourism activities. Language to describe an agritourism activity was expanded and specifically includes civic and ceremonial activities, such as weddings. See the updated definition of agritourism below.

570.86 Definitions.—As used in ss. 570.85-570.89, the term:

(1) “Agritourism activity” means any agricultural related activity consistent with a bona fide farm, livestock operation, or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, civic, ceremonial, training and exhibition, or harvest-your-own activities and attractions. An agritourism activity does not include the construction of new or additional structures or facilities intended primarily to house, shelter, transport, or otherwise accommodate members of the general public. An activity is

an agritourism activity regardless of whether the participant paid to participate in the activity.

Bona Fide Agriculture

Note that the definition of an agritourism activity cited above is contingent upon agricultural activities consistent with a “bona fide farm.” Bona fide farm is a term used to describe commercial agricultural production and has legal significance in terms of agritourism protections and other business purposes. Florida Statute 193.461 lays out factors used to determine whether the use of land meets the standard for “bona fide” agriculture, as quoted below.

- a. The length of time the land has been so used.
- b. Whether the use has been continuous.
- c. The purchase price paid.
- d. Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment.
- e. Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforestation, and other accepted agricultural practices.
- f. Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease.
- g. Such other factors as may become applicable.

The operation must be engaged in bona fide agricultural production in order to be covered under the liability protections afforded under the law.

Agricultural Land Classification

Designation as a bona fide farm is also important to qualify for protections from local regulations that may restrict agritourism. Florida Statute 580.85 (1) states that:

Except as otherwise provided for in this section, and notwithstanding any other provision of law, a local government may not adopt or enforce a local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity *on land classified as agricultural land under s. 193.461*.

Agricultural land classification is essentially a tax status designation resulting from an evaluation of land use conducted by the local property appraiser. While those involved with agricultural production for some time may already be familiar with the process required in order to achieve this status, new farmers are often unaware of the process and its benefits.

In order to qualify for this designation, the land must be in use for bona fide agriculture as described above. A farm must be engaged in a commercial endeavor with the expectation of profit and be able to provide documentation. Hobby farms are not considered bona fide agriculture. The property appraiser uses evidence like the management and productivity of the property, whether practices in use are consistent with standard agricultural use and production, as well as the income produced, as described in Florida Statute 193.461 (6)(a)(1–7). The process involves submitting an application by required deadlines, providing documentation, and on-site verification by the property appraiser may also be included as part of the process. Counties vary in their interpretations of the factors required for achieving agricultural land classification, however, all include a process for appeals.

To learn more about the process involved in agricultural land classification, contact your local property appraiser. This classification is required for protections from local ordinances that may restrict agritourism, but is also used for a variety of benefits, including a potentially significant reduction in property tax rates and is also referenced in applications for crop insurance and federal programs.

Agricultural classification is governed by Florida Statute 193.461 as of the 2020 statutes, which may be accessed online at <http://www.leg.state.fl.us/STATUTES/>.

Summary: Change = Less Uncertainty

The 2020 changes to Florida Statutes 570.85–89 provided clarity to legal questions that had local governments unsure of how to address regulations pertaining to agritourism. Local governments now have more specific legal guidance, which may reduce regulatory uncertainty for bona fide farms interested in opening their operations to the public. Civic ceremonies, such as weddings, are now specifically included in the definition of agritourism activities, resolving uncertainties surrounding the validity of such events as genuine agritourism. Confirming the removal of enforcement of existing local ordinances that may restrict agritourism may help farms better anticipate regulations, while

local governments maintain their ability to get involved, should substantial off-site effects be identified.

Addressing Off-Site Impacts: Making Friends with Your Neighbors

As governments seek to protect the rights of neighbors as well as agritourism operations, using common courtesy and communicating with neighbors early and often can go a long way in cultivating tolerance for what some may consider nuisance effects, such as increased traffic and noise. Discussions with local zoning officials have suggested that neighboring property owner perceptions and/or complaints most often heavily affect determination of “off-site impacts” (Polk Small Farms Advisory Committee, March 18, 2014). The scale and frequency of agritourism activities can also play a role, as the potential for off-site impacts may increase with the scale and frequency of events.

Full text of the 2020 Florida Statute

2020 Florida Statutes 570.85– 89 begins at (replaces s 570.96) http://www.leg.state.fl.us/STATUTES/index.cfm?App_mode=Display_Statute&Search_String=&URL=0500-0599/0570/Sections/0570.85.html

As of May 24, 2021, the Florida Legislature also amended the Right to Farm Act, Statute 823.14, with portions relating to agritourism. Directly related to agritourism operators is provisions for liability for nuisance complaints. The legislation, Chapter 2021-7, formerly Senate Bill 88. <http://laws.flrules.org/2021/7>. The legislation is set to take effect July 1, 2021.

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