



PennState Law

Center for Agricultural
and Shale Law





PennState Law

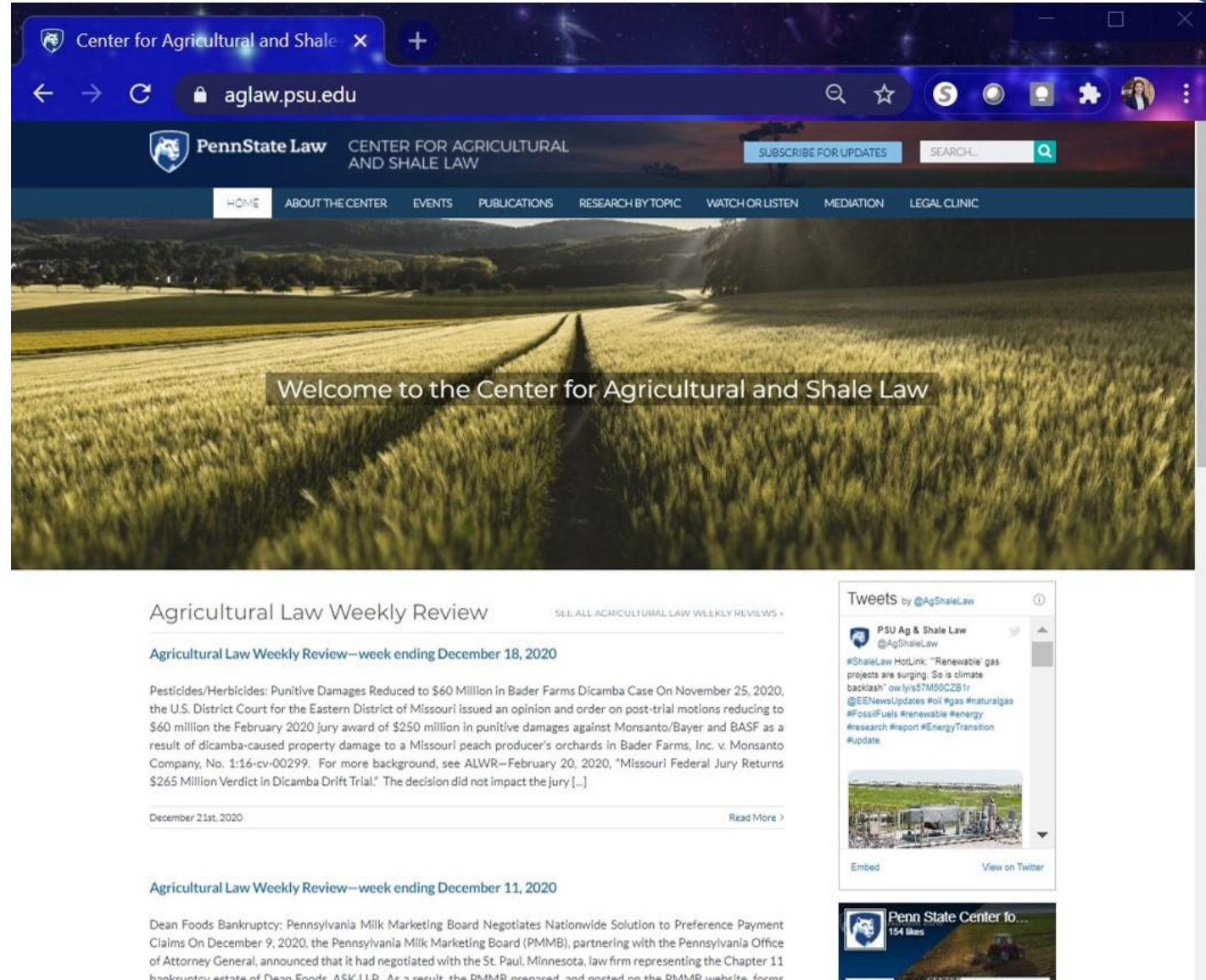
Center for Agricultural
and Shale Law

Legal Considerations for Agritourism

2021 Mid-Atlantic Fruit and Vegetable Convention
Wednesday, February 10, 2021
12:00pm-12:30pm



Our Website



The screenshot shows a web browser window displaying the website for the Center for Agricultural and Shale Law. The browser's address bar shows the URL `aglaw.psu.edu`. The website header includes the PennState Law logo and the text "CENTER FOR AGRICULTURAL AND SHALE LAW". A navigation menu contains links for HOME, ABOUT THE CENTER, EVENTS, PUBLICATIONS, RESEARCH BY TOPIC, WATCH OR LISTEN, MEDIATION, and LEGAL CLINIC. A search bar and a "SUBSCRIBE FOR UPDATES" button are also visible. The main content area features a large image of a golden field with a path leading into the distance, overlaid with the text "Welcome to the Center for Agricultural and Shale Law". Below this, there are two sections for "Agricultural Law Weekly Review". The first section is for the week ending December 18, 2020, with a "Read More" link. The second section is for the week ending December 11, 2020. On the right side of the screenshot, there is a "Tweets by @AgShaleLaw" widget showing a tweet from PSU Ag & Shale Law about renewable gas projects and a "Penn State Center fo..." widget with 154 likes.

Center for Agricultural and Shale Law

aglaw.psu.edu

PennState Law CENTER FOR AGRICULTURAL AND SHALE LAW

SUBSCRIBE FOR UPDATES SEARCH

HOME ABOUT THE CENTER EVENTS PUBLICATIONS RESEARCH BY TOPIC WATCH OR LISTEN MEDIATION LEGAL CLINIC

Welcome to the Center for Agricultural and Shale Law

Agricultural Law Weekly Review

SEE ALL AGRICULTURAL LAW WEEKLY REVIEWS +

Agricultural Law Weekly Review—week ending December 18, 2020

Pesticides/Herbicides: Punitive Damages Reduced to \$60 Million in Bader Farms Dicamba Case On November 25, 2020, the U.S. District Court for the Eastern District of Missouri issued an opinion and order on post-trial motions reducing to \$60 million the February 2020 jury award of \$250 million in punitive damages against Monsanto/Bayer and BASF as a result of dicamba-caused property damage to a Missouri peach producer's orchards in Bader Farms, Inc. v. Monsanto Company, No. 1:16-cv-00299. For more background, see ALWR—February 20, 2020, "Missouri Federal Jury Returns \$265 Million Verdict in Dicamba Drift Trial." The decision did not impact the jury [...]

December 21st, 2020 [Read More >](#)

Agricultural Law Weekly Review—week ending December 11, 2020

Dean Foods Bankruptcy: Pennsylvania Milk Marketing Board Negotiates Nationwide Solution to Preference Payment Claims On December 9, 2020, the Pennsylvania Milk Marketing Board (PMMB), partnering with the Pennsylvania Office of Attorney General, announced that it had negotiated with the St. Paul, Minnesota, law firm representing the Chapter 11 bankruptcy estate of Dean Foods. ASK LLP. As a result, the PMMB created, and posted on the PMMB website, forms

Tweets by @AgShaleLaw

PSU Ag & Shale Law @AgShaleLaw

#ShaleLaw HotLink: "Renewable" gas projects are surging. So is climate backlash" [ow.ly/s57M50C2B1r](#)

@EENewsUpdates #oil #gas #naturalgas #FossilFuels #Renewable #energy #research #report #EnergyTransition #update

Embed [View on Twitter](#)

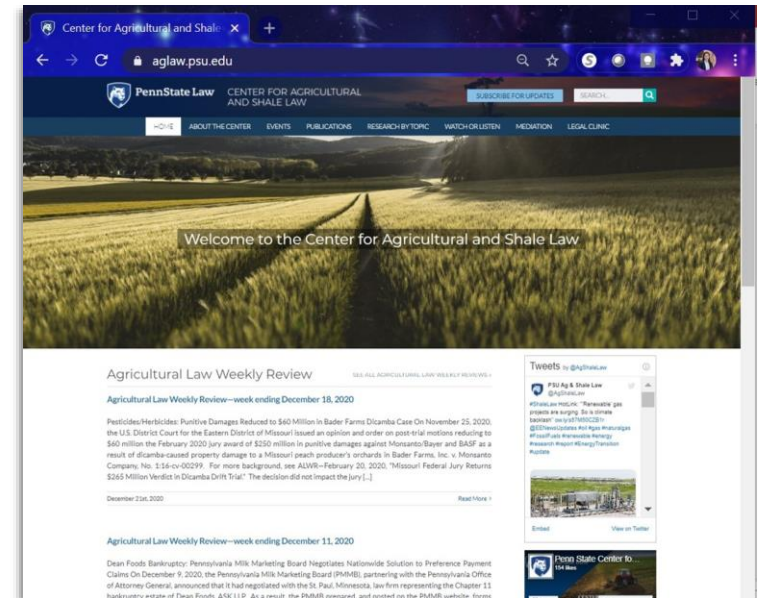
Penn State Center fo... 154 likes



Center for Agricultural and Shale Law

<https://aglaw.psu.edu>

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





What is Agritourism?

- Types of Agritourism:
 - On farm farmers' markets
 - You-Pick (fruits/vegetables)
 - Hay rides
 - Pumpkin patches
 - Corn mazes
 - Christmas tree farms
 - Wineries
 - Barn weddings
 - On farm petting zoos
 - Goat Yoga



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beacon85apts #Goats + #Yoga = A Really Good Time! Get a good #stretch and #snuggle up to some cute goats this #weekend 🐐❤️ - For upcoming classes check out their page at @rockymountaingoatyoga! 📷: @rockymountaingoatyoga

beacon85apts #goatyoga #babygoat #goats #yoga #namaste #yogainspiration #yogalife #ColoradoFitness #MondayMood #InstaGood #InstaFit



22 likes

19 HOURS AGO

Add a comment...





Why Agritourism?

- Education
- Affordable family getaways
- Builds relationship between agricultural community and locals
- Direct marketing
- Farm revenue





Topics

Data Products

Publications

Newsroom

Calendar

Amber Waves Magazine

ERS Info

Home > Data Products > Chart Gallery > Chart Detail

Gallery

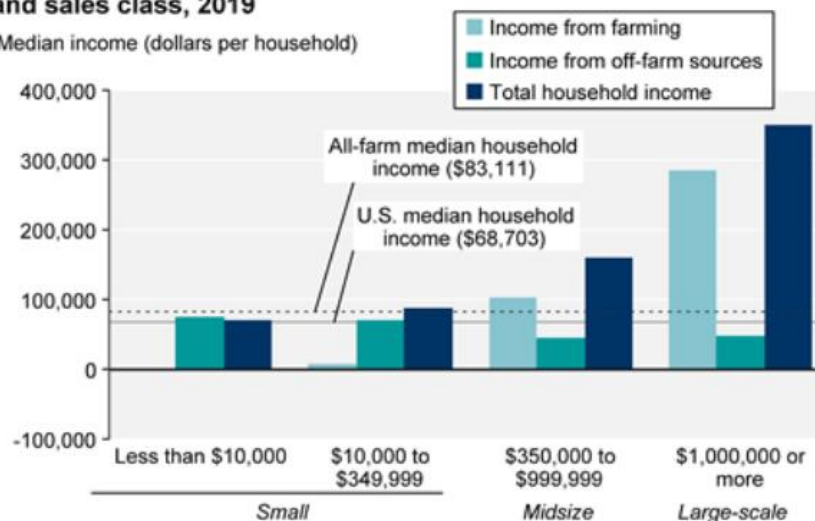
Related Topics

[Farm Household Well-being](#)

Most farmers receive off-farm income, but small-scale operators depend on it

Median household income of principal farm operators by source and sales class, 2019

Median income (dollars per household)



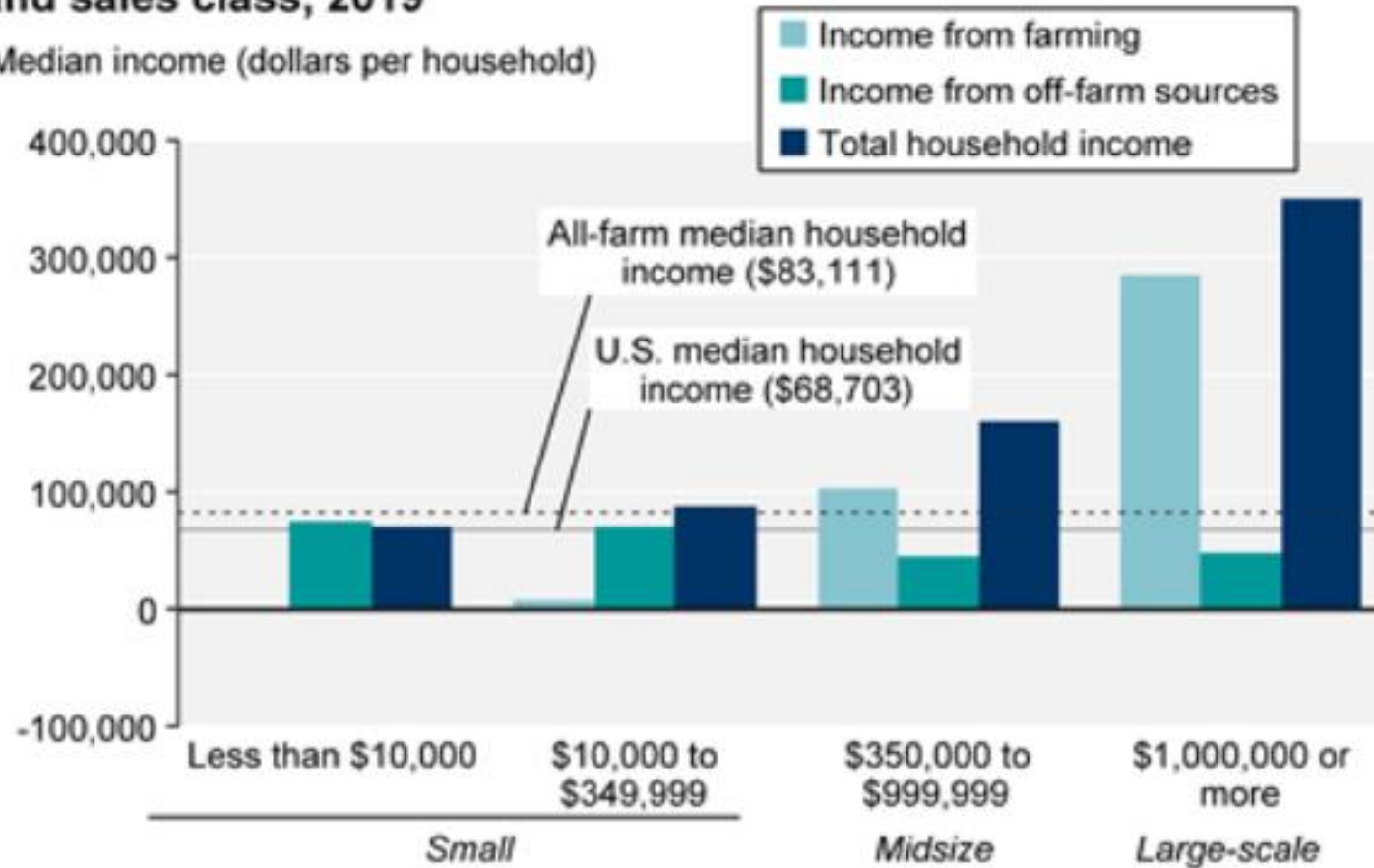
Note: Sales class reflects annual gross cash farm income before expenses (the sum of the farm's crop and livestock sales, Government payments, and other cash farm-related income).
Source: USDA, Economic Research Service and National Agricultural Statistics Service, Agricultural Resource Management Survey and U.S. Department of Commerce, Bureau of the Census, *Current Population Reports*. Data as of December 2, 2020.

Related Data

[ARMS Farm Financial and Crop Production Practices](#)

Median household income of principal farm operators by source and sales class, 2019

Median income (dollars per household)



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Things to know:

- Regulations
- Liability
 - Risks
 - Duty of Care
- Protections
 - Insurance
 - Legislation
 - Entity Formation
 - Written releases or waivers



Regulations

- Zoning
- Food Safety
- Liquor Laws
- Animal Welfare Laws
- Other





Regulations: Zoning

- Article VI Section 617.2 of the Pennsylvania Municipalities Planning Code (GACP, 1968):
 - Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of any zoning ordinance enacted under this act or prior enabling laws shall, upon being found liable therefore in a civil enforcement proceeding commenced by a municipality, pay a judgment of not more than \$500 plus all court costs, including reasonable attorney fees incurred by a municipality as a result thereof. (p.54)



Regulations: Zoning

- Ordinances
 - Traffic
 - Parking
 - Hours of Operation
 - Noise/Lighting
 - Structures



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
 - Duty to warn of known dangers
- Invitee
 - Duty of inspection (must warn of danger, remedy dangerous conditions)



Protections

- Liability Insurance
- State Liability Legislation
- Entity Formation



Protections: Liability Insurance

- Insurance may be required by municipality
- Cost Considerations
- Not all companies may be willing to cover all activities
 - Ex: Pumpkin cannon





Protections: Liability Statutes



- 31 States have liability protection statutes
- Main Factors:
 - Definition of Agritourism
 - Signage
 - Age of participant
 - Fee



Protections: Liability Statutes

- Posting Signs
 - General signage requirements for most states:
 - Signs must be clearly visible
 - Located at agritourism site and entrance (or place of payment)
 - Sometimes laws specify sign size and letter height
 - Sometimes laws specify exact language



Liability Statutes (Ohio)



- § 901.80. Agritourism immunity; warning notice
- (2) “Agritourism” means an agriculturally related educational, entertainment, historical, cultural, or recreational activity, including you-pick operations or farm markets, conducted on a farm that allows or invites members of the general public to observe, participate in, or enjoy that activity



Liability Statutes (New York)



- N.Y. Gen. Oblig. §§ 18-302
 1. **“Agricultural tourism”** means activities, including the production of maple sap and pure maple products made therefrom, farm and winery tours, equine activities both outdoors and indoors but excluding equine therapy, 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.”



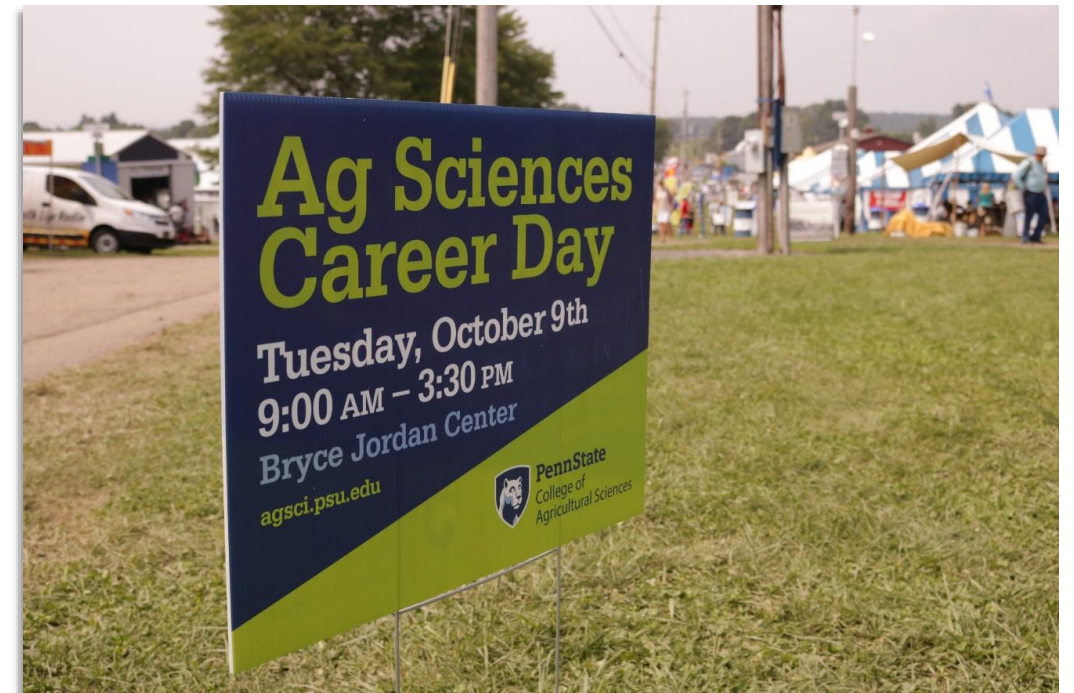
Liability Statutes – New Legislation

- Georgia (2018)
- Kentucky (2018 - update to 2002 law)
- Maryland (2018)
- Massachusetts (2018)
- New Hampshire (2018 - updates to 2016 law)
- West Virginia (2019)
- Washington (2019)



State Legislation Unrelated to Liability

- 6 states have agritourism legislation that does not refer to liability
 - Permit/building requirements
 - Zoning
 - Agricultural promotion





No Agritourism Related Statutes

- Alaska
- Arizona
- California
- District of Columbia
- Illinois
- Iowa
- Michigan
- Nevada
- New Jersey
- New Mexico
- **Pennsylvania**
- Rhode Island
- Vermont
- Wyoming



Protections: Entity Formation

- Examples:
 - Partnership
 - Corporation
 - LLC
 - Non-profit Corporation
 - Sole Proprietorship



Protections: Entity Formation

- Considerations
 - Liability Protection
 - Tax Treatment
 - Simplicity
 - Intergenerational Transfers/ Transfers Generally



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





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



RULWA

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



RULWA

- Recent Update: Oct. 24, 2018
- Act 98: “An act encouraging landowners to make land and water areas available to the public for recreational purposes by limiting liability in connection therewith, and repealing certain acts”
 - Limits liability
 - **Landowners may accept payment in some situations**
 - Expands list of examples of “recreational purpose”
- Duty of Care: Trespasser



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



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.



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

Contact us:

Jackie Schweichler, Program Coordinator

329 Innovation Blvd.

University Park, PA 16802

(814) 746-4619

AgMediation@PennStateLaw.psu.edu

Website: www.PAAgMediation.com



Resources

- National Agricultural Law Center
 - <http://nationalaglawcenter.org/state-compilations/agritourism/>
- Penn State Extension
 - <https://extension.psu.edu/agritourism-and-ag-safety>
- Center for Rural Pennsylvania
 - http://www.rural.palegislature.us/Agritourism_handbook.pdf



Thanks to our Partners

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Thanks to our Partners

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Pennsylvania Specialty Crop Block Grant Program



**Agricultural
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Specialty Crop Block Grant Program

Thanks to Our Partners

The Center for Agricultural and Shale Law is a partner of the National Agricultural Law Center (NALC) at the University of Arkansas System Division of Agriculture, which serves as the nation's leading source of agricultural and food law research and information. This material is provided as part of that partnership and is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture.





PennState Law

Penn State Center for Agricultural and Shale Law

Phone: (814) 865-4290

Website: <https://aglaw.psu.edu>

Twitter: @AgShaleLaw

Facebook: www.facebook.com/AgShaleLaw/



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Center for Agricultural
and Shale Law

Thank you!

Jackie Schweichler

Staff Attorney

Center for Agricultural and Shale Law

Penn State Law

329 Innovation Boulevard, Suite 118

University Park, PA 16802

(814) 746-4619

jks251@psu.edu

