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# COUNTY ADVISORY BULLETIN

**CAB**

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**Bulletin 2016-10**

**November, 2016**

## **AGRITOURISM**

**APPLICABLE LEGISLATION:** Sub. SB 75 (131<sup>st</sup> General Assembly)

**REVISED CODE SECTIONS:** Amends ORC 303.21, 519.21 and 5713.30. Enacts ORC Section 901.80.

**LEAD SPONSOR:** Senator Shannon Jones and Senator Bob Peterson

**SENATE COSPONSORS:** Gardner, Beagle, Balderson, LaRose, Manning, Eklund, Patton, Cafaro, Gentile, Coley, Bacon, Brown, Burke, Faber, Hite, Hottinger, Hughes, Jordan, Lehner, Obhof, Schiavoni, Tavares, Thomas

**HOUSE COSPONSORS:** Hill, Burkley, Patterson, Boose, Buchy, Cera, Hagan, Koehler, LaTourette, S. O'Brien, Phillips, Retherford, Rezabek, Ruhl, Schaffer, Anielski, Antani, Antonio, Arndt, Baker, Boccieri, Boggs, Brenner, Celebrezze, Conditt, Derickson, Dovilla, Fedor, Ginter, Grossman, Hall, Hambley, Hayes, T. Johnson, Landis, Lepore-Hagan, Manning, McClain, M. O'Brien, Ramos, Reece, Reineke, Rogers, Ryan, Sears, Sheehy, Slaby, R. Smith, Sprague, Strahorn, Thompson, Young, Rosenberger

**EFFECTIVE DATE:** August 16, 2016

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### **BULLETIN SUMMARY**

For the past few years the agriculture industry has been working with the legislature to provide protection to farmers who offer agritourism activities on their farm. Senate Bill 75 (SB 75) and its companion, House Bill 80 (HB 80), helps to provide protection in the areas of civil liability risk, property taxation as well as local zoning authority for these farms. The new law also defines agritourism.

This County Advisory Bulletin (CAB) will summarize the new agritourism laws as well as the permanent changes to the county and township zoning laws as they pertain to

agritourism providers. The applicable Ohio Revised Code Sections amended or enacted are provided at the end of this CAB in Exhibit A.

## **BACKGROUND**

Agritourism has grown in Ohio over the past 40 years. It started as an extension of the family farm. We have seen it grow from the traditional farmer's market and you-pick operations to now large operations that provide hayrides, corn mazes, zip-lines and even some that provide wedding and concert facilities. This increased activity in rural areas led the legislature to pass legislation encouraging the continued growth of agritourism, as well as provide limited guidelines for the regulation of these operations.

The Ohio Farm Bureau Federation sought to help their members capitalize on the emerging industry as they advocated that Ohio law should recognize "agritourism" and provide protection from local governments banning or highly regulating this business through zoning. Specifically, the Farm Bureau contended that agritourism is an extension of agriculture and should be regulated in a very limited manner. In addition, the Farm Bureau sought immunity from liability in a civil action for any harm a person sustains during an agritourism activity if the person is harmed as a result of a risk inherent in an agritourism activity. Because of this new liability protection, the Farm Bureau thought the insurance market would begin to offer liability coverage to their members who conduct agritourism activities on their farms.

On the other hand, local government associations, including the County Commissioners Association of Ohio (CCAO) and the Ohio Township Association (OTA), contended that agritourism is more similar to farm markets rather than the broad nature of agriculture, and therefore, regulations should be applied similar to the regulations for farm markets. Regulations should address adequate parking, setback of buildings and size of buildings, and entrance areas for the property. The associations wanted to make sure there were land use, traffic, and safety measures provided in the legislation necessary to protect the public health and safety, while balancing the support for a growing industry.

The resulting legislation, SB 75, was a compromise of limiting local government regulation on agritourism and the need to provide liability coverage. Some individuals may still question how the broad definition of "agritourism" should be applied, as it leaves room for interpretation.

## **County Zoning Basics**

The power to enact zoning is commonly referred to as a police power authority, which is an action taken by a government to protect the health and safety of its citizens. In 1947 the General Assembly gave authority to counties to enact zoning regulations in the unincorporated area. Unlike most other county regulations like building codes, zoning only becomes effective in the unincorporated area of the township after a vote of the residents.

In addition, townships were granted similar zoning authority for the unincorporated area. Township zoning generally takes precedent over county zoning, unless voters of the township approve its replacement with county zoning. Township zoning authority is contained in [ORC Chapter 519](#), and county authority is provided in [ORC Chapter 303](#).

Zoning is often controversial as it places restrictions on the use of land and the location, height, bulk and size of buildings, the percentage of lot coverage, set back requirements, and purposes for which building and land may be used. On the other hand, zoning allows local governments to protect the health and safety of its residents.

## **Exemptions From and Limitations on County Zoning for Agriculture and Farm Markets**

Under existing state law counties are specifically limited or prohibited from regulating a variety of uses under the zoning power. Some of these limitations and prohibitions as it pertains to the agriculture industry include:

1. **AGRICULTURE** - Generally, zoning may not prohibit the use of land for agricultural purposes or for the construction or use of buildings or structures related to agricultural purposes and no zoning permit can be required.<sup>1</sup>

Zoning may, however, regulate agriculture in a platted subdivision approved under subdivision regulations adopted pursuant to ORC Sections 711.05, 711.09 or 711.10. Agriculture may also be regulated in any area that contains 15 or more lots, approved as lot splits pursuant to ORC Section 711.131, if the lots are contiguous or across the street from other lots.<sup>2</sup>

In situations where agriculture or agricultural buildings and structures may be regulated, the following guidelines provide guidance:

- a. Agriculture may be regulated on lots of one acre or less.
- b. Agricultural buildings or structures incidental to the use for agricultural purposes may be controlled on lots greater than one acre, but not larger than five acres, by requiring regulations for setbacks, height, and size.
- c. Dairying and animal and poultry husbandry may be regulated on lots larger than one acre and not greater than five acres if at least 35 percent of the lots in the "subdivision" are developed with at least one structure subject to real property taxation or the manufactured or mobile home tax. In the event that dairying and animal and poultry husbandry were being conducted prior to the time the subdivision was 35 percent developed, when the 35 percent threshold is reached, the prior uses become legitimate non-conforming uses (ORC 303.21(A)(B)). No authority is granted to regulate agriculture, buildings or structures, and dairying and animal and poultry husbandry on lots greater than five acres in size.

[ORC Section 303.01](#) includes a very specific definition of agriculture for the purposes of county zoning. Under this definition, agriculture includes:

“farming; ranching; aquaculture; apiculture; horticulture; viticulture; animal husbandry, including, but not limited to, the care and raising of livestock, equine, and fur-bearing animals; poultry husbandry and the production of poultry and

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<sup>1</sup> R.C. 303.21 (A)

<sup>2</sup> R.C. 303.21 (B)

poultry products; dairy production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of the foregoing; the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production.”

- 2. FARM MARKETS** - Zoning may not prohibit farm markets in agricultural, industrial, residential or commercial zones. This limitation applies to farm markets where 50 percent or more of the gross income comes from produce raised on farms owned or operated by the market operator during a normal year. Regulations pertaining to size of structure, size of parking areas, setback lines, and egress or ingress are, however, specifically authorized if such regulations are necessary to protect the public health and safety (ORC 303.21(C)).

For more information on county zoning, please see *CCAO County Commissioners Handbook* [Chapter 86 - County Zoning](#).

## **SYNOPSIS**

### **What is Agritourism?**

The new law defines “agritourism” in [ORC Section 901.80 \(A\)\(2\)](#) as:

“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.”

This definition is very broad and provides only a few specific examples of agritourism. Clearly, a traditional farm market and you-pick operation fits under this definition, as well as large operations that provide hayrides, corn mazes, and other related activities. There may be room for interpretation as to whether simply providing wedding facilities or concert facilities in a barn or certain setting will meet this new standard since the activity is conducted on a farm. The new law defines “farm” in [ORC Section 901.80 \(A\)\(4\)](#) as:

“land that is composed of tracts, lots, or parcels totaling not less than ten acres devoted to agricultural production or totaling less than ten acres devoted to agricultural production if the land produces an average yearly gross income of at least twenty-five hundred dollars from agricultural production.”

Since the definition of “farm” refers to land that is devoted to agricultural production, it is important to also refer to the definition of “agricultural production,” which is defined in [ORC Section 929.01](#) as:

“Commercial aquaculture, algaculture meaning the farming of algae, apiculture, animal husbandry, or poultry husbandry; the production for a commercial purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, or sod; the growth of timber for a noncommercial purpose if the land on which the timber is grown is contiguous to

or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use; or any combination of such husbandry, production, or growth; and includes the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with such husbandry, production, or growth.”

“Agricultural production” includes conservation practices, provided that the tracts, lots, or parcels of land or portions thereof that are used for conservation practices comprise not more than twenty-five per cent of tracts, lots, or parcels of land that are otherwise devoted exclusively to agricultural use and for which an application is filed under section [929.02](#) of the Revised Code.

Therefore, determining whether a situation meets the definition of agricultural tourism will be open to interpretation and the setting and conditions need to be evaluated on a case-by-case basis. Thus, county officials with questions should consult with their legal counsel/county prosecutor for guidance.

### **County and township zoning regarding agritourism**

The new law restricts county and township zoning from prohibiting the use of any land for agritourism in a district zoned for agricultural, industrial, residential or commercial uses. Yet, it authorizes a board of county commissioners or township trustees to regulate the following:

1. Size of the structure used primarily for agritourism.
2. Size of the parking areas.
3. Setback building lines for structures used primarily for agritourism.
4. Egress or ingress where regulation is necessary to protect public health and safety.

The new law further provides that a zoning authority may not do the following:

1. Require any parking area to be improved in any manner.
2. Prohibit the use of any land or the construction or use of buildings or structures that are used primarily for vinting and selling wine that are located on land any part of which is used for viticulture.

Finally, the new law also provides consistency between the county and township zoning statues relating to agriculture exemptions by including the reference to viticulture in the county statute - [ORC Section 303.21](#).

### **Current agricultural use valuation for agritourism**

The law clarifies that the existence of agritourism on a tract, lot or parcel of land that otherwise meets the definition of “land devoted exclusively to agricultural use” as defined in [ORC Section 5713.30](#) does not disqualify that land from valuation purposes of current agricultural use valuations (CAUV).

## **Immunity from liability in a civil action**

The new law provides that a person who owns, operates, provides or sponsors an agritourism activity is immune from liability in a civil action for any harm an agritourism participant sustains during an agritourism activity, if the participant is harmed as a result of a risk inherent in the agritourism activity. The statute outlines risks inherent to an agricultural tourism activity in [ORC Section 901.80 \(B\)](#).

However, an agritourism provider is not immune from civil liability for harm sustained by a participant if any of the following applies:

1. The agritourism provider acts with a willful or wanton disregard for the safety of the participant and proximately causes harm to the participant.
2. The agritourism provider purposefully causes harm to the participant.
3. The agritourism provider's actions or inactions constitute criminal conduct and cause harm to the participant.
4. The agritourism provider fails to post and maintain signs as required by the law (see below).
5. The agritourism provider has actual knowledge or should have actual knowledge of an existing dangerous condition on the land or regarding facilities or equipment on the land that is not an inherent risk and does not make the dangerous condition known to the participant, and the dangerous condition proximately causes injury or damage to or the death of the participant.<sup>3</sup>

The law requires an agritourism provider to post and maintain signs that contain the following warning notice:

*WARNING: Under Ohio law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if that injury or death results from the inherent risks of that agritourism activity. Inherent risks of agritourism activities include, but are not limited to, the risk of injury inherent to land, equipment, and animals as well as the potential for you as a participant to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity.*

The warning notice must use black lettering that is at least one inch in height. The signs must be placed in a clearly visible location at or near each entrance to the agritourism location or at the site of each agritourism activity.

## **ACKNOWLEDGEMENTS**

This CAB was prepared by CCAO. We would like to thank Heidi Fought, Director of Government Affairs for the Ohio Township Association, and Dr. Peggy Hall with The Ohio State University's Department of Extension who provided constructive comments which improved this bulletin.

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<sup>3</sup> R.C. 901.80(C)

Questions or comments should be directed to Brian Mead, Policy Analyst, at [bmead@ccao.org](mailto:bmead@ccao.org) who was primarily responsible for the preparation of this CAB. A special thanks and appreciation go to CCAO Executive Director Suzanne Dulaney, Managing Director of Policy Cheryl Subler and Managing Director of Research Brad Cole for their support, comments and supervision on this CAB.

**EXHIBIT A**

**SB 75 OHIO'S AGRITOURISM LAW**

**OHIO REVISED CODE SECTIONS 303.21, 519.21, 901.80 and 5713.30**

**AS ENACTED BY AMENDED BY SUB. SB 75 OF THE 131<sup>ST</sup> GENERAL ASSEMBLY**

**EFFECTIVE AUGUST 16, 2016**

**Sec. 303.21.** (A) Except as otherwise provided in division (B) of this section, sections 303.01 to 303.25 of the Revised Code do not confer any power on any county rural zoning commission, board of county commissioners, or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, including buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is used for viticulture, and no zoning certificate shall be required for any such building or structure.

(B) A county zoning resolution, or an amendment to such resolution, may in any platted subdivision approved under section 711.05, 711.09, or 711.10 of the Revised Code, or in any area consisting of fifteen or more lots approved under section 711.131 of the Revised Code that are contiguous to one another, or some of which are contiguous to one another and adjacent to one side of a dedicated public road, and the balance of which are contiguous to one another and adjacent to the opposite side of the same dedicated public road regulate:

(1) Agriculture on lots of one acre or less;

(2) Buildings or structures incident to the use of land for agricultural purposes on lots greater than one acre but not greater than five acres by: set back building lines; height; and size;

(3) Dairying and animal and poultry husbandry on lots greater than one acre but not greater than five acres when at least thirty-five per cent of the lots in the subdivision are developed with at least one building, structure, or improvement that is subject to real property taxation or that is subject to the tax on manufactured and mobile homes under section 4503.06 of the Revised Code. After thirty-five per cent of the lots are so developed, dairying and animal and poultry husbandry shall be considered nonconforming use of land and buildings or structures pursuant to section 303.19 of the Revised Code.

Division (B) of this section confers no power on any county rural zoning commission, board of county commissioners, or board of zoning appeals to regulate agriculture, buildings or structures, and dairying and animal and poultry husbandry on lots greater than five acres.

(C) Such sections confer no power on any board of county commissioners, county rural zoning commission, or board of zoning appeals to prohibit in a district zoned for agricultural, industrial, residential, or commercial uses, the use of any land for:

(1) A farm market where fifty per cent or more of the gross income received from the market is derived from produce raised on farms owned or operated by the market operator in a normal crop year. However, a board of county commissioners, as provided in section 303.02 of the Revised Code, may regulate such factors pertaining to farm markets as size of the structure, size of parking areas that may be required, set back building lines, and egress or ingress, where such regulation is necessary to protect the public health and safety.

(2) Biodiesel production, biomass energy production, or electric or heat energy production if the land on which the production facility is located qualifies as land devoted



exclusively to agricultural use under sections 5713.30 to 5713.37 of the Revised Code for real property tax purposes. As used in division (C)(2) of this section, "biodiesel," "biomass energy," and "electric or heat energy" have the same meanings as in section 5713.30 of the Revised Code.

(3) Biologically derived methane gas production if the land on which the production facility is located qualifies as land devoted exclusively to agricultural use under sections 5713.30 to 5713.37 of the Revised Code for real property tax purposes and if the facility that produces the biologically derived methane gas does not produce more than seventeen million sixty thousand seven hundred ten British thermal units, five megawatts, or both.

(4) Agritourism. However, a board of county commissioners, as provided in section 303.02 of the Revised Code, may regulate such factors pertaining to agritourism, except farm markets as described in division (C)(1) of this section, as size of a structure used primarily for agritourism, size of parking areas that may be required, setback building lines for structures used primarily for agritourism, and egress or ingress where such regulation is necessary to protect public health and safety.

Nothing in division (C)(4) of this section confers power on a county zoning commission, board of county commissioners, or board of zoning appeals to require any parking area to be improved in any manner, including requirements governing drainage, parking area base, parking area paving, or any other improvement.

Nothing in division (C)(4) of this section confers power on a county zoning commission, board of county commissioners, or board of zoning appeals to prohibit the use of any land or the construction or use of buildings or structures that are used primarily for vinting and selling wine that are located on land any part of which is used for viticulture as provided in division (A) of this section.

(D)(1) As used in division (C)(3) of this section, "biologically derived methane gas" has the same meaning as in section 5713.30 of the Revised Code.

(2) As used in division (C)(4) of this section, "agritourism" has the same meaning as in section 901.80 of the Revised Code.

**Sec. 519.21.** (A) Except as otherwise provided in division (B) of this section, sections 519.02 to 519.25 of the Revised Code confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, including buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is used for viticulture, and no zoning certificate shall be required for any such building or structure.

(B) A township zoning resolution, or an amendment to such resolution, may in any platted subdivision approved under section 711.05, 711.09, or 711.10 of the Revised Code, or in any area consisting of fifteen or more lots approved under section 711.131 of the Revised Code that are contiguous to one another, or some of which are contiguous to one another and adjacent to one side of a dedicated public road, and the balance of which are contiguous to one another and adjacent to the opposite side of the same dedicated public road regulate:

(1) Agriculture on lots of one acre or less;

(2) Buildings or structures incident to the use of land for agricultural purposes on lots greater than one acre but not greater than five acres by: set back building lines; height; and size;

(3) Dairying and animal and poultry husbandry on lots greater than one acre but not greater than five acres when at least thirty-five per cent of the lots in the subdivision are developed with at least one building, structure, or improvement that is subject to real property

taxation or that is subject to the tax on manufactured and mobile homes under section 4503.06 of the Revised Code. After thirty-five per cent of the lots are so developed, dairying and animal and poultry husbandry shall be considered nonconforming use of land and buildings or structures pursuant to section 519.19 of the Revised Code.

Division (B) of this section confers no power on any township zoning commission, board of township trustees, or board of zoning appeals to regulate agriculture, buildings or structures, and dairying and animal and poultry husbandry on lots greater than five acres.

(C) Such sections confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit in a district zoned for agricultural, industrial, residential, or commercial uses, the use of any land for:

(1) A farm market where fifty per cent or more of the gross income received from the market is derived from produce raised on farms owned or operated by the market operator in a normal crop year. However, a board of township trustees, as provided in section 519.02 of the Revised Code, may regulate such factors pertaining to farm markets as size of the structure, size of parking areas that may be required, set back building lines, and egress or ingress, where such regulation is necessary to protect the public health and safety.

(2) Biodiesel production, biomass energy production, or electric or heat energy production if the land on which the production facility is located qualifies as land devoted exclusively to agricultural use under sections 5713.30 to 5713.37 of the Revised Code for real property tax purposes. As used in division (C)(2) of this section, "biodiesel," "biomass energy," and "electric or heat energy" have the same meanings as in section 5713.30 of the Revised Code.

(3) Biologically derived methane gas production if the land on which the production facility is located qualifies as land devoted exclusively to agricultural use under sections 5713.30 to 5713.37 of the Revised Code for real property tax purposes and if the facility that produces the biologically derived methane gas does not produce more than seventeen million sixty thousand seven hundred ten British thermal units, five megawatts, or both.

(4) Agritourism. However, a board of township trustees, as provided in section 519.02 of the Revised Code, may regulate such factors pertaining to agritourism, except farm markets as described in division (C)(1) of this section, as size of a structure used primarily for agritourism, size of parking areas that may be required, setback building lines for structures used primarily for agritourism, and egress or ingress where such regulation is necessary to protect public health and safety.

Nothing in division (C)(4) of this section confers power on a township zoning commission, board of township trustees, or board of zoning appeals to require any parking area to be improved in any manner, including requirements governing drainage, parking area base, parking area paving, or any other improvement.

Nothing in division (C)(4) of this section confers power on a township zoning commission, board of township trustees, or board of zoning appeals to prohibit the use of any land or the construction or use of buildings or structures that are used primarily for vinting and selling wine that are located on land any part of which is used for viticulture as provided in division (A) of this section.

(D)(1) As used in division (C)(3) of this section, "biologically derived methane gas" has the same meaning as in section 5713.30 of the Revised Code.

(2) As used in division (C)(4) of this section, "agritourism" has the same meaning as in section 901.80 of the Revised Code.

**Sec. 901.80. (A) As used in this section:**

(1) "Agricultural production" has the same meaning as in section 929.01 of the Revised Code.

(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.

(3) "Agritourism provider" means a person who owns, operates, provides, or sponsors an agritourism activity or an employee of such a person who engages in or provides agritourism activities whether or not for a fee.

(4) "Farm" means land that is composed of tracts, lots, or parcels totaling not less than ten acres devoted to agricultural production or totaling less than ten acres devoted to agricultural production if the land produces an average yearly gross income of at least twenty-five hundred dollars from agricultural production.

(5) "Participant" means an individual, other than an agritourism provider, who observes or participates in an agritourism activity.

(6) "Risk inherent in an agritourism activity" means a danger or condition that is an integral part of an agritourism activity, including all of the following:

(a) The surface and subsurface conditions of land;

(b) The behavior or actions of wild animals not kept by or under the control of an agritourism provider;

(c) The behavior or actions of domestic animals other than vicious or dangerous dogs as defined in section 955.11 of the Revised Code;

(d) The ordinary dangers associated with structures or equipment ordinarily used in farming or ranching operations;

(e) The possibility of contracting illness resulting from physical contact with animals, animal feed, animal waste, or surfaces contaminated by animal waste;

(f) The possibility that a participant may act in a negligent manner, including by failing to follow instructions given by the agritourism provider or by failing to exercise reasonable caution while engaging in the agritourism activity that may contribute to injury to that participant or another participant.

(B) In a civil action, an agritourism provider is immune from liability for any harm a participant sustains during an agritourism activity if the participant is harmed as a result of a risk inherent in an agritourism activity. Nothing in this section requires an agritourism provider to eliminate risks inherent in agritourism activities.

(C) An agritourism provider is not immune from civil liability for harm sustained by a participant if any of the following applies:

(1) The agritourism provider acts with a willful or wanton disregard for the safety of the participant and proximately causes harm to the participant.

(2) The agritourism provider purposefully causes harm to the participant.

(3) The agritourism provider's actions or inactions constitute criminal conduct and cause harm to the participant.

(4) The agritourism provider fails to post and maintain signs as required by division (D) of this section.

(5) The agritourism provider has actual knowledge or should have actual knowledge of an existing dangerous condition on the land or regarding facilities or equipment on the land that is not an inherent risk and does not make the dangerous condition known to the participant, and the dangerous condition proximately causes injury or damage to or the death of the participant.

(D) An agritourism provider shall post and maintain signs that contain the warning notice specified in this division. The provider shall place a sign in a clearly visible location at or near each entrance to the agritourism location or at the site of each agritourism activity.

The warning notice shall consist of a sign in black letters with each letter to be a minimum of one inch in height. The signs shall contain the following notice of warning: "WARNING: Under Ohio law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if that injury or death results from the inherent risks of that agritourism activity. Inherent risks of agritourism activities include, but are not limited to, the risk of injury inherent to land, equipment, and animals as well as the potential for you as a participant to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity."

**Sec. 5713.30.** As used in sections 5713.31 to 5713.37 and 5715.01 of the Revised Code:

(A) "Land devoted exclusively to agricultural use" means:

(1) Tracts, lots, or parcels of land totaling not less than ten acres to which, during the three calendar years prior to the year in which application is filed under section 5713.31 of the Revised Code, and through the last day of May of such year, one or more of the following apply:

(a) The tracts, lots, or parcels of land were devoted exclusively to commercial animal or poultry husbandry, aquaculture, algaculture meaning the farming of algae, apiculture, the production for a commercial purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental trees, sod, or flowers, or the growth of timber for a noncommercial purpose, if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use.

(b) The tracts, lots, or parcels of land were devoted exclusively to biodiesel production, biomass energy production, electric or heat energy production, or biologically derived methane gas production if the land on which the production facility is located is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use, provided that at least fifty per cent of the feedstock used in the production was derived from parcels of land under common ownership or leasehold.

(c) The tracts, lots, or parcels of land were devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with an agency of the federal government.

(2) Tracts, lots, or parcels of land totaling less than ten acres that, during the three calendar years prior to the year in which application is filed under section 5713.31 of the Revised Code and through the last day of May of such year, were devoted exclusively to commercial animal or poultry husbandry, aquaculture, algaculture meaning the farming of algae, apiculture, the production for a commercial purpose of field crops, tobacco, fruits, vegetables, timber, nursery stock, ornamental trees, sod, or flowers where such activities produced an average yearly gross income of at least twenty-five hundred dollars during such three-year period or where there is evidence of an anticipated gross income of such amount from such activities during the tax year in which application is made, or were devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with an agency of the federal government;

(3) A tract, lot, or parcel of land taxed under sections 5713.22 to 5713.26 of the Revised Code is not land devoted exclusively to agricultural use;

(4) Tracts, lots, or parcels of land, or portions thereof that, during the previous three consecutive calendar years have been designated as land devoted exclusively to agricultural use, but such land has been lying idle or fallow for up to one year and no action has occurred to such land that is either inconsistent with the return of it to agricultural production or converts the land devoted exclusively to agricultural use as defined in this section. Such land shall remain designated as land devoted exclusively to agricultural use provided that beyond one year, but less than three years, the landowner proves good cause as determined by the board of revision.

"Land devoted exclusively to agricultural use" includes tracts, lots, or parcels of land or portions thereof that are used for conservation practices, provided that the tracts, lots, or parcels of land or portions thereof comprise twenty-five per cent or less of the total of the tracts, lots, or parcels of land that satisfy the criteria established in division (A)(1), (2), or (4) of this section together with the tracts, lots, or parcels of land or portions thereof that are used for conservation practices.

Notwithstanding any other provision of law to the contrary, the existence of agritourism on a tract, lot, or parcel of land that otherwise meets the definition of "land devoted exclusively to agricultural use" as defined in this division does not disqualify that tract, lot, or parcel from valuation under sections 5713.30 to 5713.37 and 5715.01 of the Revised Code.

(B) "Conversion of land devoted exclusively to agricultural use" means any of the following:

(1) The failure of the owner of land devoted exclusively to agricultural use during the next preceding calendar year to file a renewal application under section 5713.31 of the Revised Code without good cause as determined by the board of revision;

(2) The failure of the new owner of such land to file an initial application under that section without good cause as determined by the board of revision;

(3) The failure of such land or portion thereof to qualify as land devoted exclusively to agricultural use for the current calendar year as requested by an application filed under such section;

(4) The failure of the owner of the land described in division (A)(4) of this section to act on such land in a manner that is consistent with the return of the land to agricultural production after three years.

The construction or installation of an energy facility, as defined in section 5727.01 of the Revised Code, on a portion of a tract, lot, or parcel of land devoted exclusively to agricultural use shall not cause the remaining portion of the tract, lot, or parcel to be regarded as a conversion of land devoted exclusively to agricultural use if the remaining portion of the tract, lot, or parcel continues to be devoted exclusively to agricultural use.

(C) "Tax savings" means the difference between the dollar amount of real property taxes levied in any year on land valued and assessed in accordance with its current agricultural use value and the dollar amount of real property taxes that would have been levied upon such land if it had been valued and assessed for such year in accordance with Section 2 of Article XII, Ohio Constitution.

(D) "Owner" includes, but is not limited to, any person owning a fee simple, fee tail, or life estate or a buyer on a land installment contract.

(E) "Conservation practices" are practices used to abate soil erosion as required in the management of the farming operation, and include, but are not limited to, the installation, construction, development, planting, or use of grass waterways, terraces, diversions, filter strips, field borders, windbreaks, riparian buffers, wetlands, ponds, and cover crops for that purpose.

(F) "Wetlands" has the same meaning as in section 6111.02 of the Revised Code.

(G) "Biodiesel" means a mono-alkyl ester combustible liquid fuel that is derived from vegetable oils or animal fats or any combination of those reagents and that meets the American society for testing and materials specification D6751-03a for biodiesel fuel (B100) blend stock distillate fuels.

(H) "Biologically derived methane gas" means gas from the anaerobic digestion of organic materials, including animal waste and agricultural crops and residues.

(I) "Biomass energy" means energy that is produced from organic material derived from plants or animals and available on a renewable basis, including, but not limited to, agricultural crops, tree crops, crop by-products, and residues.

(J) "Electric or heat energy" means electric or heat energy generated from manure, cornstalks, soybean waste, or other agricultural feedstocks.

(K) "Agritourism" has the same meaning as in section 901.80 of the Revised Code.

**SECTION 2.** That existing sections 303.21, 519.21, and 5713.30 of the Revised Code are hereby repealed.