

Agritourism Liability: Why Definitions Matter

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Bock Agricultural Law & Policy Symposium

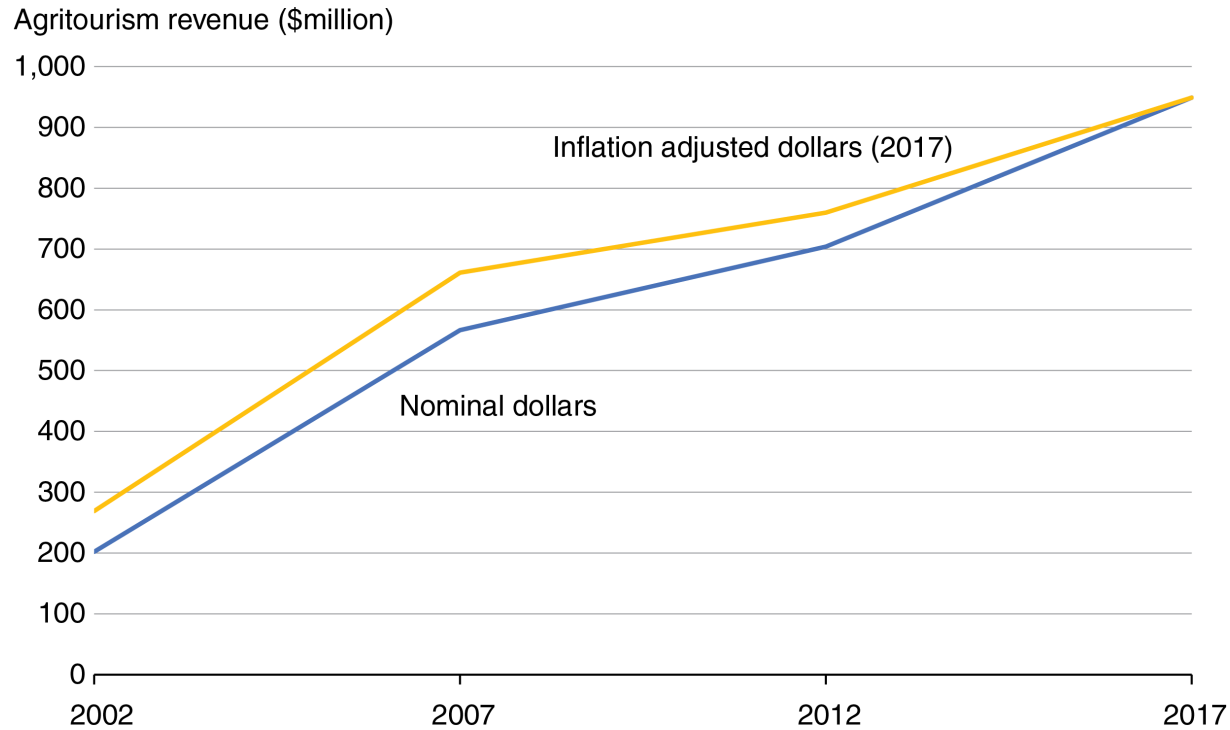
September 9, 2022



UNIVERSITY OF
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Economic Impact (2017 Census of Agriculture)

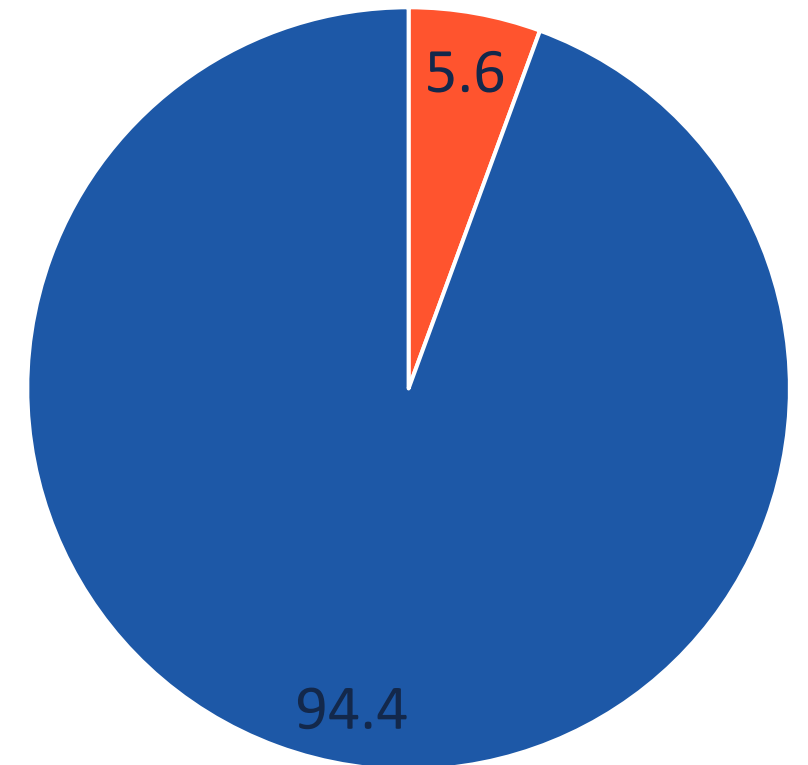
Agritourism revenue tripled between 2002 and 2017



Note: Values for the blue line are adjusted for inflation using the chain-type gross domestic product (GDP) deflator (2017 = 100). Nominal dollars are not adjusted for inflation.

Source: USDA, Economic Research Service using data from USDA, National Agricultural Statistics Service, 2002, 2007, 2012, and 2017 Census of Agriculture.

% Farm-Related Income



■ Agritourism ■ All Other Income



Pandemic Effects

Preference shifts favor characteristics associated with agritourism

- Lower population density destinations
- Outdoor
- Ability to practice social distancing
- Closer to home (avoid air travel)*

Table 3. Expected Changes in Agritourism Operations Relative to 2019*
(n=43 operations, online survey)

	Average	Median	Maximum	Minimum
	(%)	(%)	(%)	(%)
Expected Change in Farm Profitability	5.7	10	100	-100
Expected Change in Production Costs	17.7	19.5	87	-100
Expected Change in Number of Employees	-1.7	0.5	62	-100
Expected Change in Number of Customers	17.3	22.5	100	-100

*Note: Question phrased as: "Compared to last year (2019), how do you expect each of the following aspects of your agritourism operation to be affected by Covid-19 in 2020?". Answers were bounded between -100% and +100%.

farmdocDAILY



Pumpkin Patches during the Pandemic: How Agritourism Operations in Illinois are Coping with Covid-19, Maria Kalaitzandonakes, Brenna Ellison, Jessica Guarino, Renata Endres & Bryan Endres, farmdoc daily (Nov. 19, 2020)

Economic & Community Development

Rural Economic Development Potential (ERS, 2019)

- “[P]otential to help revitalize rural economies”
- Labor opportunities for local residents
- Geographic factors
 - Proximity to natural amenities or other outdoor activities
 - More populated counties
 - But farms more likely to adopt agritourism in less populated areas

Potential Non-Market Benefits (see footnote 6)

- Prevent land conversion
- Natural habit preservation/restoration
- Educational opportunities for non-farm public
- Stimulating community engagement



Universal Government Support

Wide range of incentives

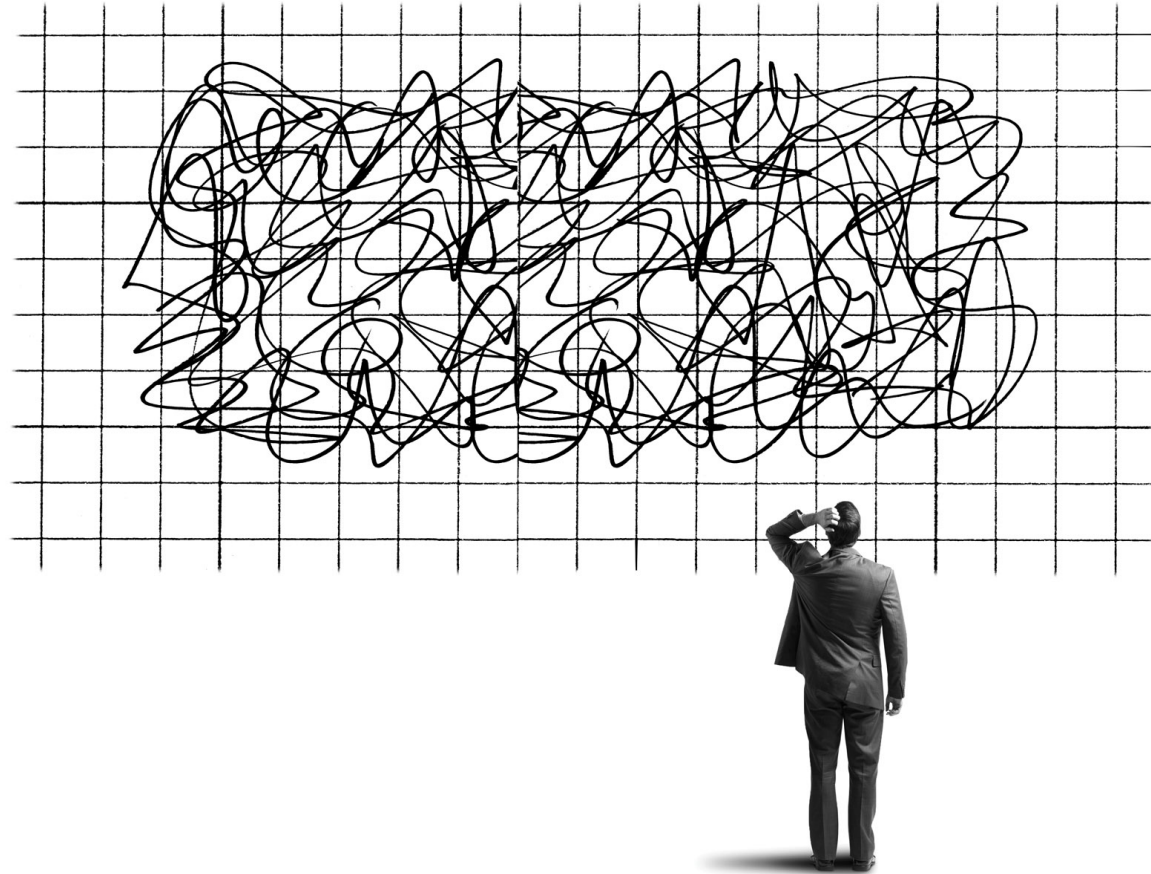
- Zoning or building permit exemptions
- Property tax reductions
- Tax credits
- Premises liability exemptions

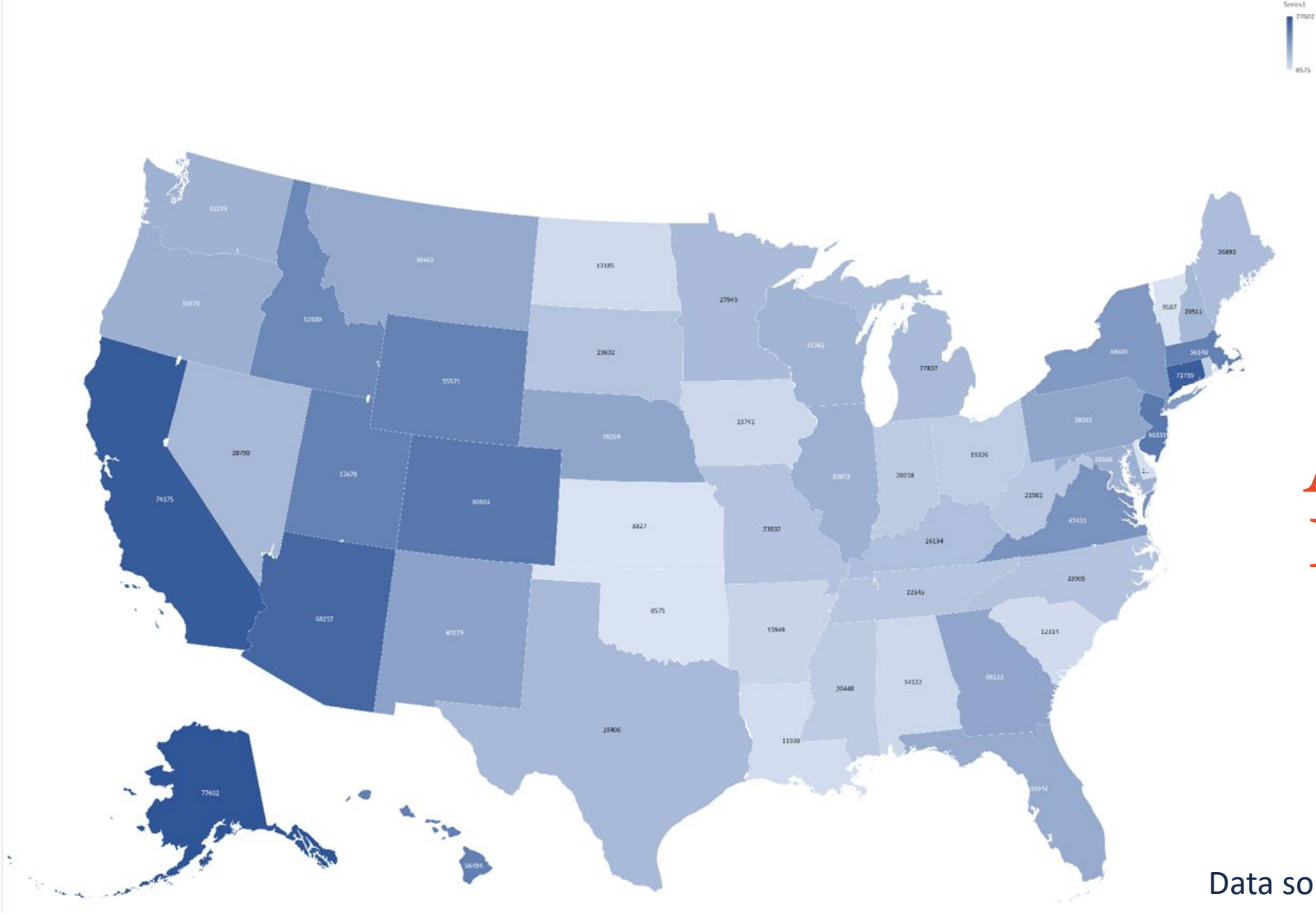
Even more robust incentives in EU

- EU Structural & Investment Funds
 - Regional Development
 - Cohesion Fund
 - Agric. Fund for Rural Development
- Other direct member state support



Popular? Yes. Impact? Unknown.





Average Agritourism Revenue, by State

Data source: 2017 Census of Agriculture



Economic Impact?

Economic impact of agritourism in the U.S. is uncertain

Agritourism has potential to increase rural per capital income,

- But not necessarily if located closer to an urban center
- Further research needed to distinguish between dude ranch and camping versus U-pick, Christmas tree farms and pumpkin patches.

Source: Anders Van Sandt & Craig Wesley Carpenter, *So Close, Yet So Far: The Benefits and Limits of Rural-Urban Industry Linkages*, SUSTAINABILITY (March 2022)

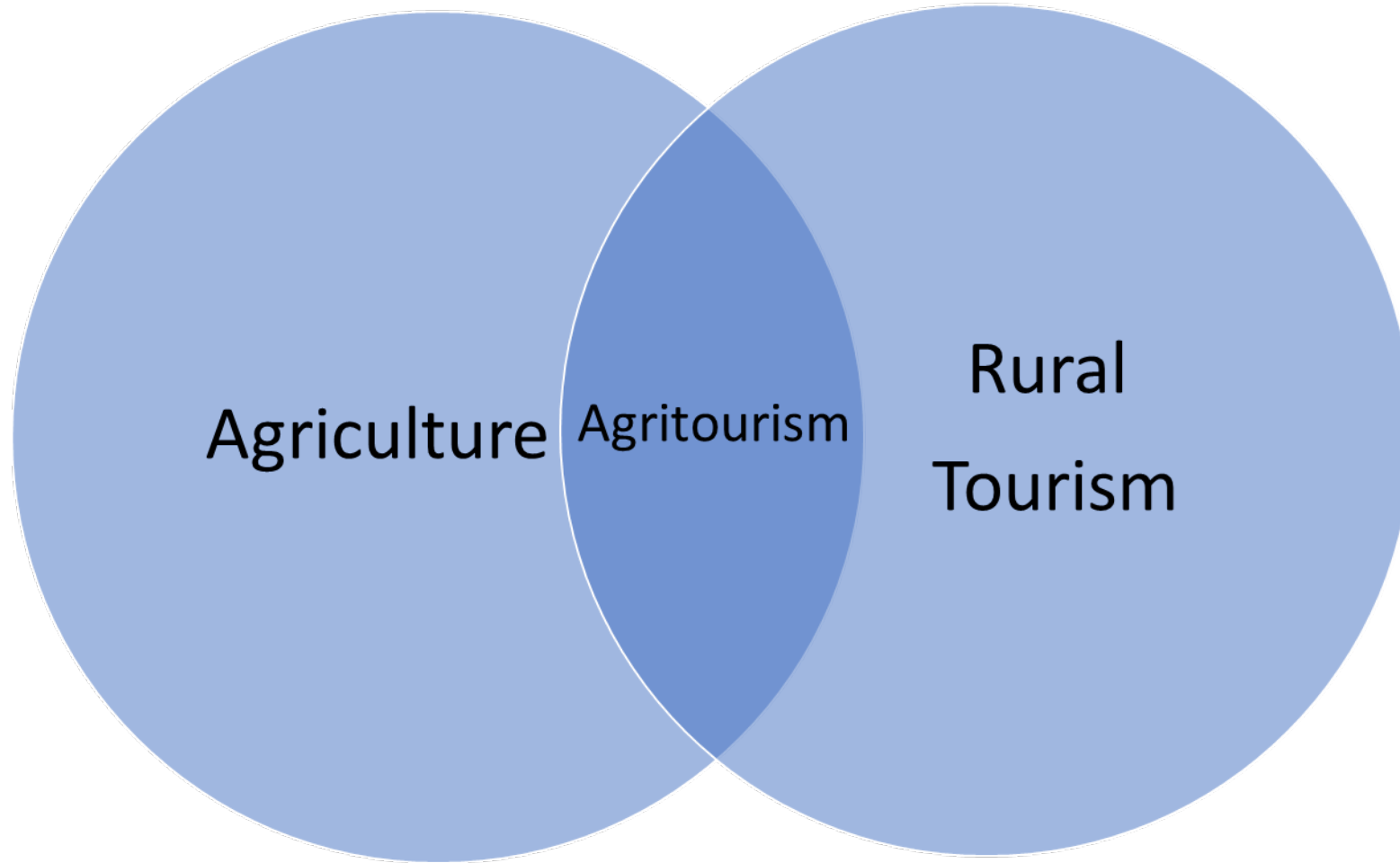


2 Research Questions

1. Do policy incentives—specifically premises liability exemptions—have a measurable impact on (a) agritourism profitability at the firm level or (b) rural economic development?
2. What is agritourism?



2. What is Agritourism?



Conceptualizing Agritourism



Countryside Tourism

- Non-working farm
- Non-farm events in rural areas
- Staged activities not linked to agricultural lifestyle or practices



Authentic Agritourism

- Working farm
- Tourist activities correspond to setting of an active farm
- Agricultural production activities predominate



The Woodstock Question



Was the Woodstock musical festival held on a dairy farmer's alfalfa field "agritourism"?

If agritourism, would a liability exemption apply?

Justifications for Liability Exemptions

FARM SAFETY HAZARDS		
	ELECTRICITY <ul style="list-style-type: none">- Electric Fence lines- Powerlines	<ul style="list-style-type: none">• Electric shock• Death• Injury 
	CHEMICALS <ul style="list-style-type: none">- Acid/ Alkali/ Chlorine- Pesticides/ Herbicides- Hot Water/ Cleaning	<ul style="list-style-type: none">• Skin Burns• Toxic Inhalation/gas• Poison• Death/ Injury• Flammable 
	HEAVY MACHINERY <ul style="list-style-type: none">- Tractors- Diggers- Implements/ Irrigators	<ul style="list-style-type: none">• Moving parts• Crushing/ impact• Entrapment• Death/ Injury 
	VEHICLES <ul style="list-style-type: none">- Motorbikes- Cars/ Side by Sides- Trucks	<ul style="list-style-type: none">• Speed/Terrain• Overloading• Slips/ Falls• Collisions• Injury• Roll over 
	ANIMALS <ul style="list-style-type: none">- Unpredictable Behaviour- Disease (zoonotic)	<ul style="list-style-type: none">• Crushing/ impact• Breaks• Injury/ Death• Disease/ Infection 
	WEATHER <ul style="list-style-type: none">- Low light/ dark conditions- Rain/ Fog/ Hail/ Snow- Sun/ Glare	<ul style="list-style-type: none">• Slippery• Poor visibility• Sunburn/ heat stroke• Coldness/ wet• Injury 
	TERRAIN <ul style="list-style-type: none">- Uneven/ Holes- Creeks/ drains- Obstacles/ Tape gates	<ul style="list-style-type: none">• Capsize/ roll over• Dust – poor visibility• Impact• Falls/ Crushing/ Entrapment• Injury 
	PEOPLE <ul style="list-style-type: none">- Children- Visitors/ Contractors- Team members	<ul style="list-style-type: none">• Speed limits• Collision/ Impact• Entrapment• Injury/ Death 

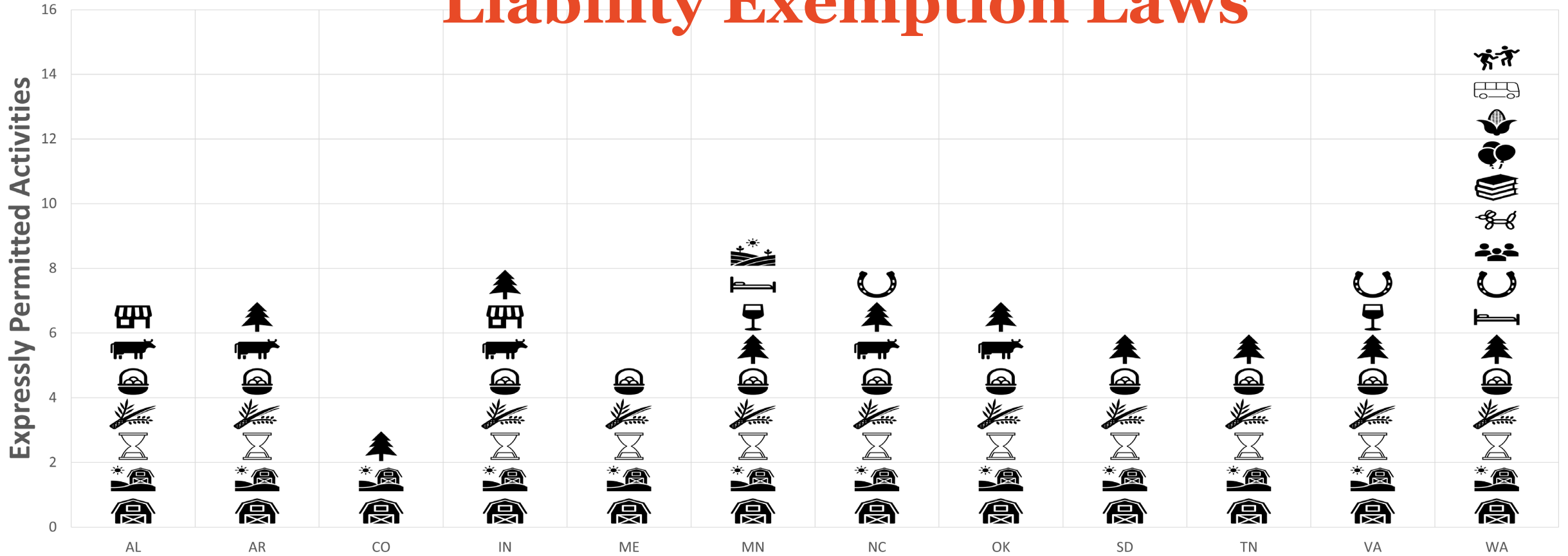
Grassmere Dairy Safety Hazards Key Point Lesson v1.0



As an increasing number of [Insert State Name] residents are removed from day-to-day agricultural experiences, agritourism provides a valuable opportunity for the general public to interact with, experience and understand agriculture.

Inherent risks exist on farms and ranches, the elimination of which would diminish the agritourism experience.

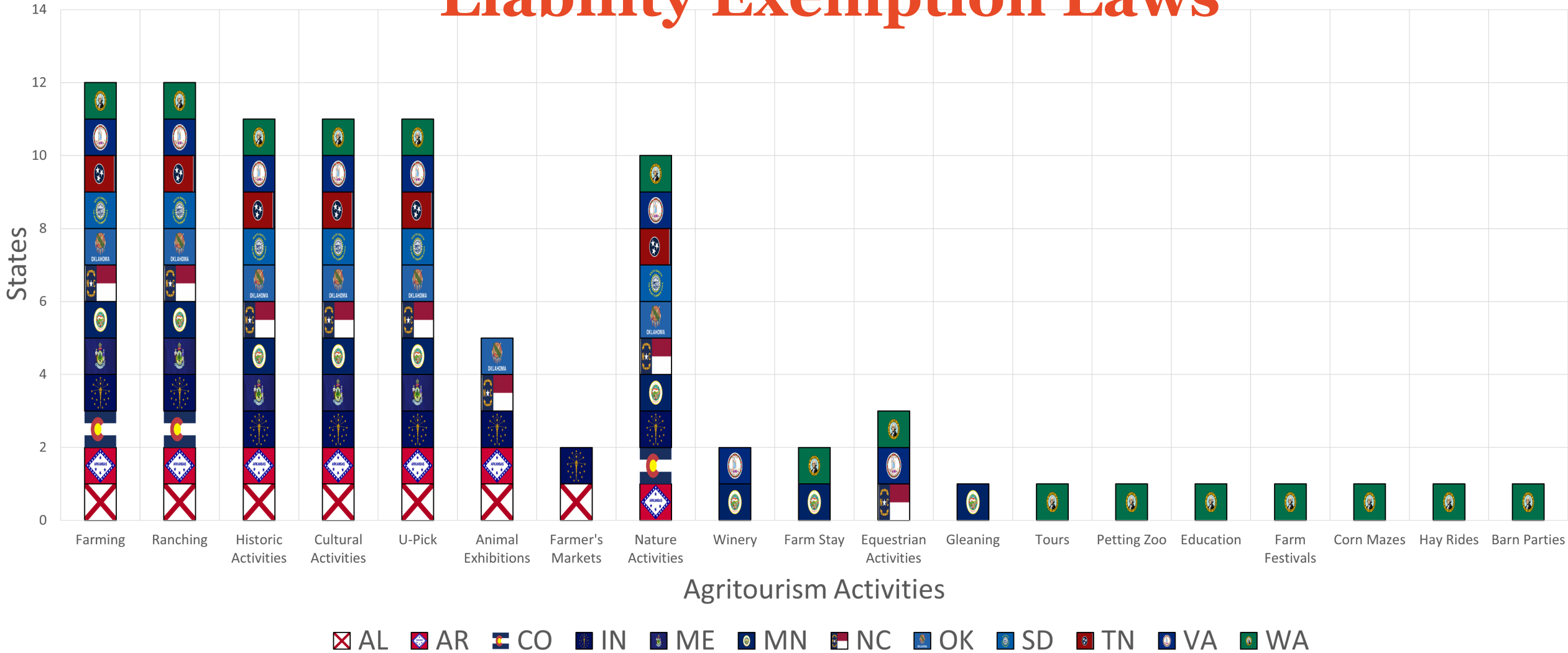
Agritourism Activities Expressly Included in Liability Exemption Laws



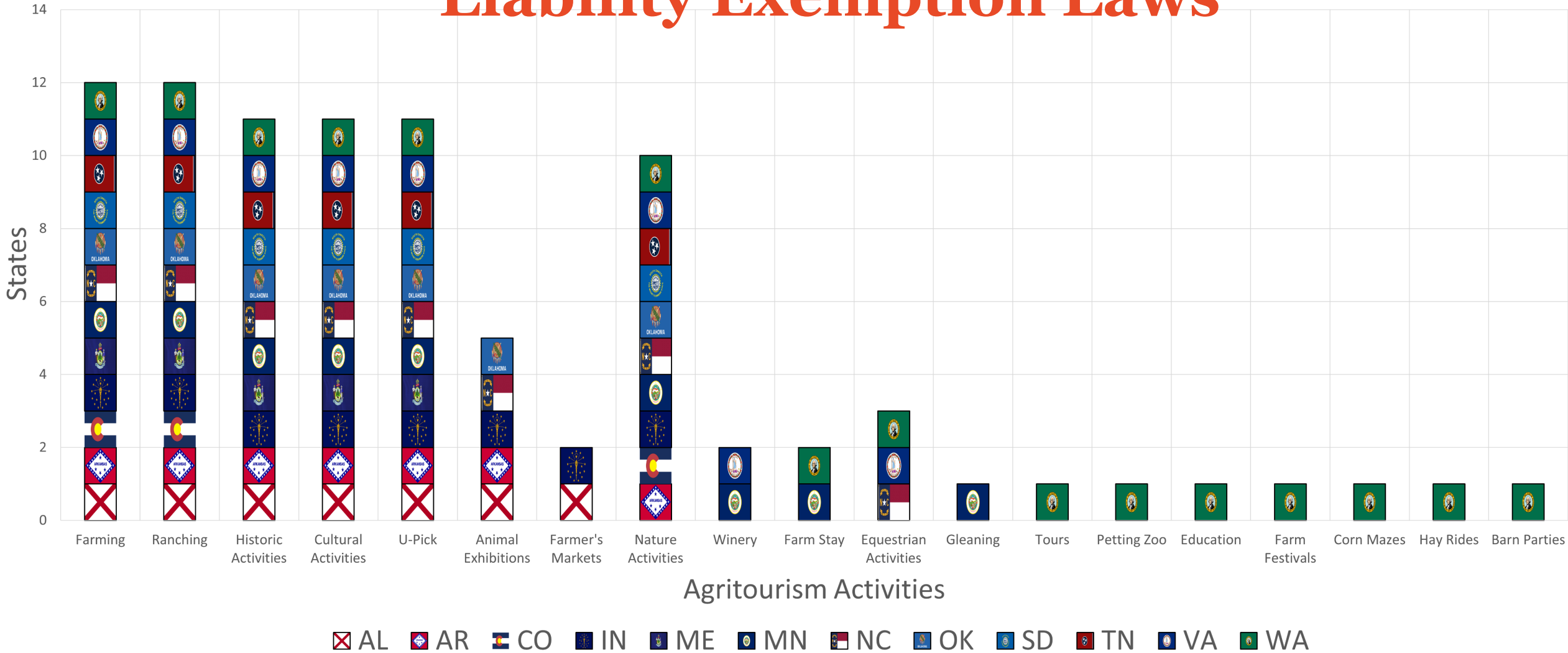
- Farming
- Ranching
- Historic Activities
- Cultural Activities
- U-Pick
- Animal Exhibitions
- Farmer's Markets
- Nature Activities
- Winery
- Farm Stay
- Equestrian Activities
- Gleaning
- Tours
- Petting Zoo
- Education
- Farm Festivals
- Corn Mazes
- Hay Rides
- Barn Parties



Agritourism Activities Expressly Included in Liability Exemption Laws



“Nature Activities” Included in Agritourism Liability Exemption Laws



Quick Note: Alternatives to Liability Exemptions

Tax credits to offset cost of insurance for agritourism operations

Kansas (Kan. Stat. Ann. §§ 74-50, 156)

- First 5-years
- 20% of “agritourism” part of insurance
- Up to \$2000

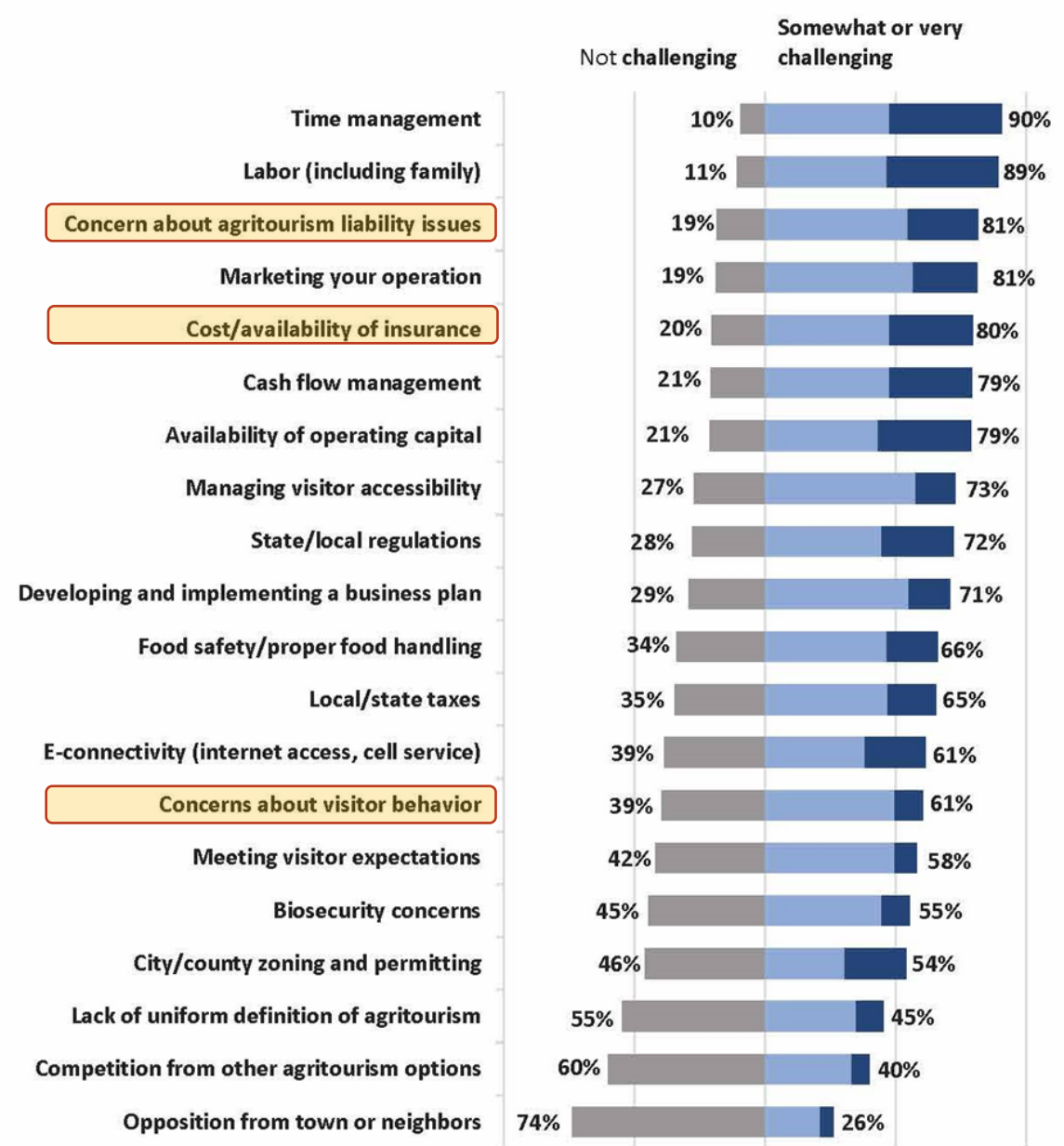
Illinois (35 ILCS 5/232)

- Annual
- 100% of “agritourism” part of insurance
- Up to \$1000
- First attempt by state to define “agritourism”



1. Do policy incentives—specifically premises liability exemptions—have a measurable impact on (a) agritourism profitability at the firm level or (b) rural economic development?

Agritourism operators identify fear of liability and related issues and related issues



Source: *Agritourism and On-Farm Direct Sales Survey: Results for the U.S.*, available at <https://www.uvm.edu/sites/default/files/Vermont-Tourism-Research-Center/survey/US-Agritourism-Survey-Report-012021.pdf>



Agritourism operators expressing support for liability exemption laws

Methodology:

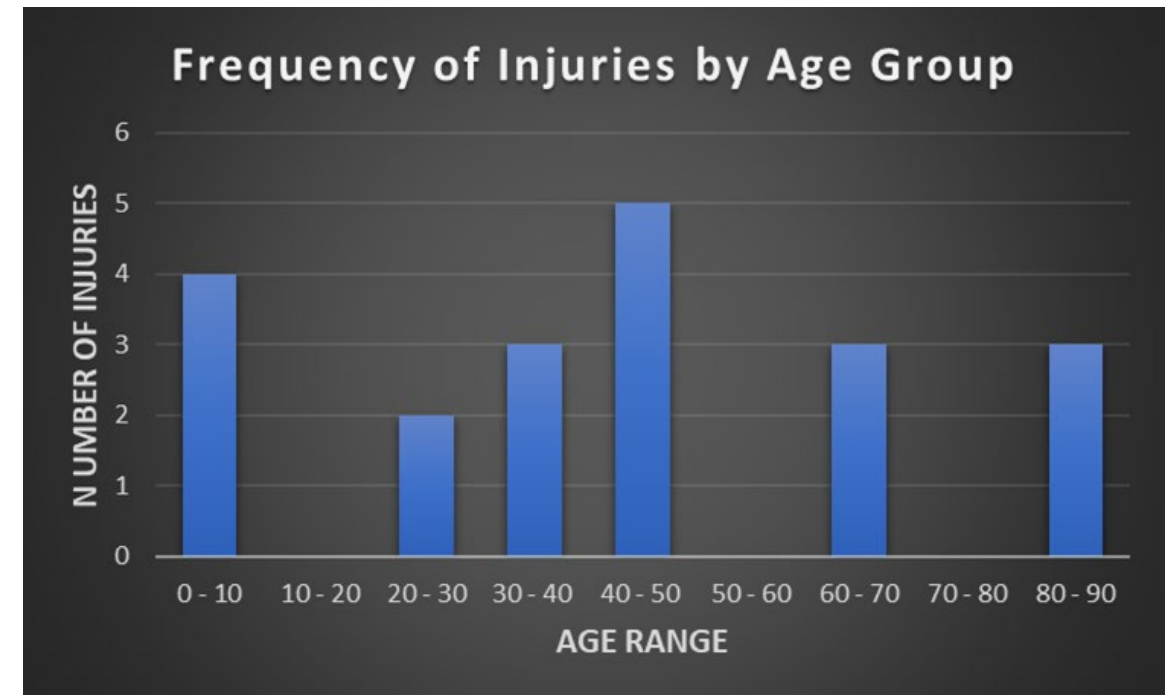
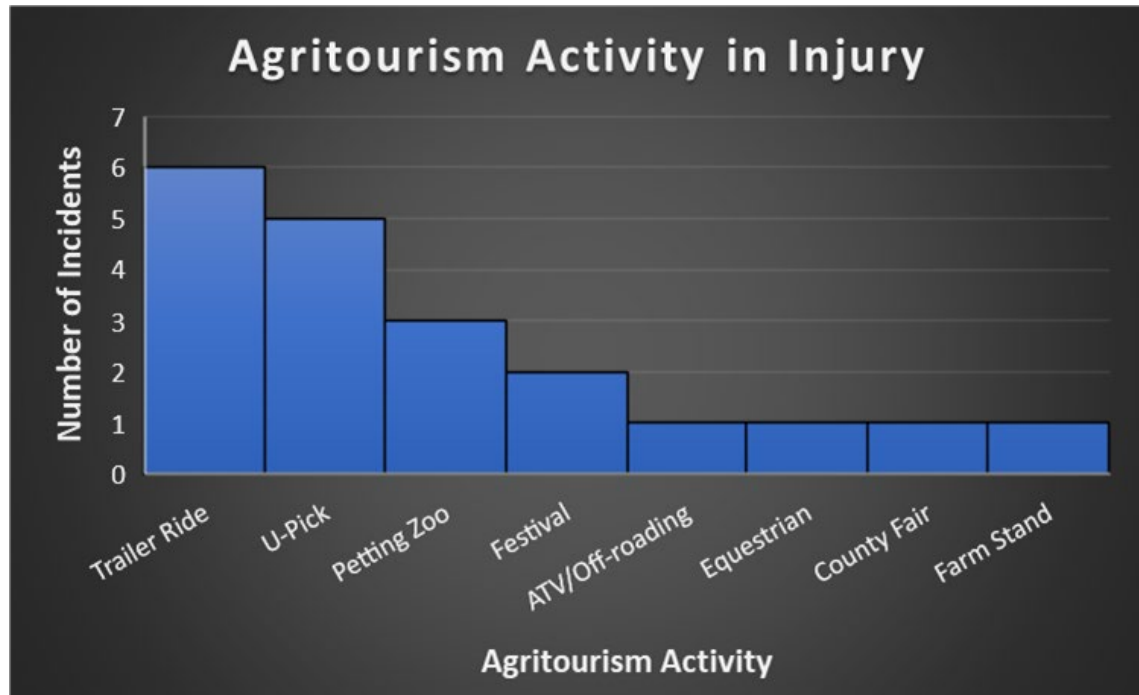
- Twitter (using *Atlas.ti* software)
- Lexis and Google search

Alabama Farmers Federation. (2012, July 1). <i>Agritourism Liability Law Provides Protection, Requires Signage</i> . alfafarmers.org. Retrieved April 19, 2022, from https://alfafarmers.org/agritourism-liability-law-provides-protection-requires-signage/	
Allie Corcoran, Barbour County Alabama	"With the threat of being sued removed, our business would grow," "We will have a sense of security allowing us to invest in activities to make our farm the best experience possible."
Cooper Holmes, Perry County Alabama	"We could lose everything if someone were to trip and fall on their own account and sue us, claiming it was our fault."
Holdman, J. (2012, March 25). Extra legal protections could increase Nd agritourism. <i>Bismarck Tribune</i> .	
Jessie Veeder Schofield, North Dakota cattle rancher	"I want to share with others what North Dakota means to me," "They don't want to have to put their agricultural business on the line," "There's too much invested in those places to put them at risk."
James Odermann, on situations when an agritourism visitor is walking through a pasture and stumbles in a prairie dog hole.	"The landowner, in the past, had to accept full responsibility for that...They're at risk to lose that entire operation."
Sanctis, M. (2016, May 13). Bill could boost farms, tourism in Clark, Champaign counties. <i>Dayton Daily News</i> .	
Dan Young, CEO of Young's Dairy, on how Ohio's agritourism law could benefit farmers hoping to incorporate a tourism attraction to their operation	"It will make it easier for small farmers to get into some part of the business and help them remain a farm."

See Appendix C for additional media quotes from farmers regarding agritourism liability.



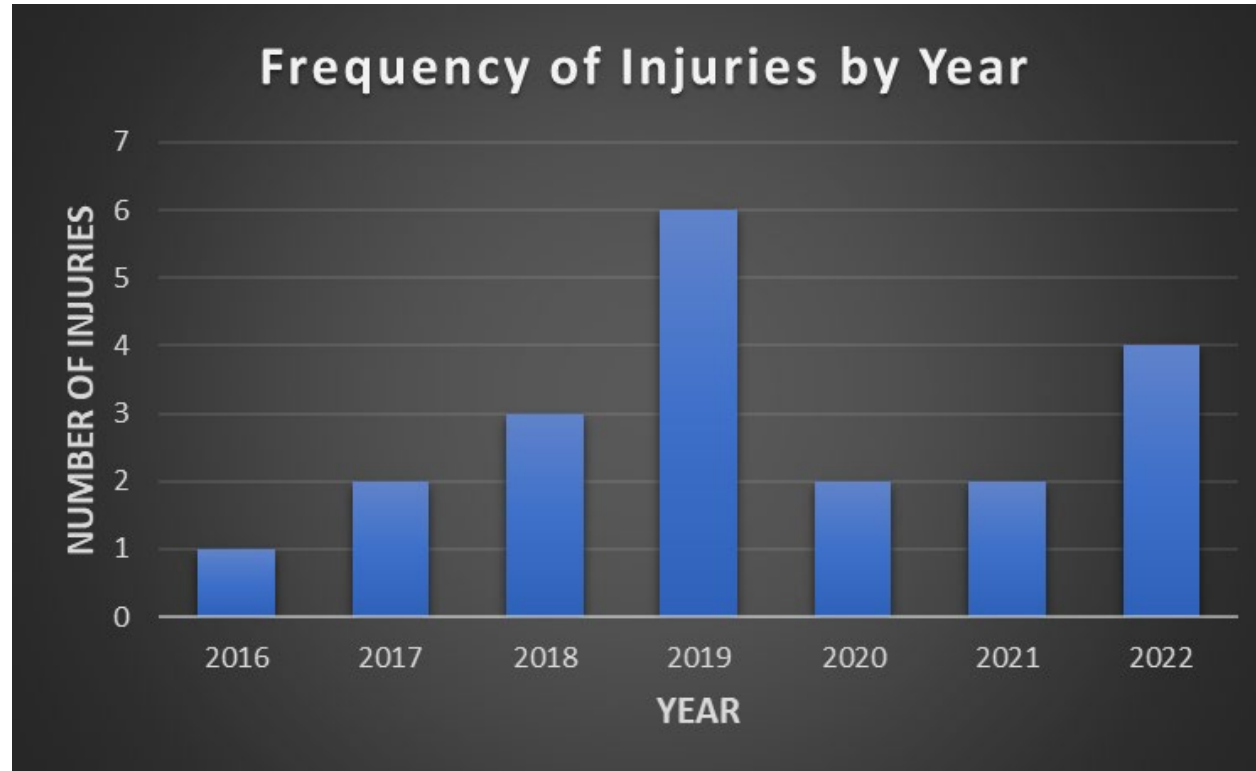
What is the risk of injury?



Data source: AgInjury News (archive of injury reports sourced from a variety of public sources), which is part of the National Farm Medicine Center-Marshfield Clinic Research Institute.



What is the risk of injury?



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What is the risk of liability?

- Very few reported cases
- Settlements and insurance payments difficult to obtain
- Media (including social media) reports scarce

But to the extent laws eliminate perceived risk of liability or directly lower insurance costs through tax credits, there *should be* some response related to enterprise profitability, expansion of agritourism operations, reduction of insurance premiums, or increase in the availability of agritourism insurance.

Or, is the primary purpose of the legislation a low-cost means to signal state support for agritourism and rural development?



Next Steps

Income & Expense Data Challenges:

- Census of Agriculture (response Feb. 2023; data release Spring 2024)
- State-level tourism data lacks granularity

Qualitative Approach

- Survey (late fall 2022)
- Focus Groups (spring 2023)
- Case Studies (spring/summer 2023)



Attorneys and Agritourism

Risk Assessment

- Annual inventory of activities (e.g., u-pick to music festivals)
 - What activities qualify as “agritourism”?
 - Confirm insurance coverage for new activities
- Required visitor signs

Business and Strategic Planning

- Tax credits
- Heterogeneous agritourism
 - Identify activities driving increased income
- Community efforts
 - Certification marks/authenticity signals



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Questions/Comments?

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