

Oklahoma's Liability Limitation Acts and Waivers: Comparing and Contrasting Oklahoma Statutes on Agritourism; Equine and Other Livestock Activities; and Recreational Land Use

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Oklahoma has enacted several laws designed to limit liability for specific activities, including agritourism, equine and other livestock activities, and recreational land use.^{i ii iii iv v} These laws aim to encourage landowners and activity providers to offer their land and services to the public by limiting their exposure to civil liability. However, these protections are not absolute and are subject to specific conditions and exceptions. This analysis will compare and contrast these acts to highlight the specific protections and requirements of each, focusing on who is protected, what types of risks are covered, exceptions to immunity, affirmative requirements of the law, and the use of liability waivers.

- The *Oklahoma Agritourism Activities Liability Limitations Act* (See Okla. Stat. tit 2, § 5-14 through 5-17a) is designed to protect agritourism professionals from liability for the inherent risks of agritourism activities.
- The *Oklahoma Livestock Activities Liability Limitation Act* (See Okla. Stat. tit 76, § 50.1-50.4) aims to protect livestock activity sponsors, participants, and livestock professionals from liability related to the inherent risks of equine and other livestock activities.
- The *Oklahoma Limitation of Liability for Farming and Ranching Land Act* (See Okla. Stat. tit 2, § 16-71 through 16-72 & 16-74) and *Limitation on Liability of Persons Making Land Available to Public for Recreational Purposes Without Charge* (See Okla. Stat. tit 76, § 10.1) both seek to limit the liability of landowners who allow the public to use their land for recreational purposes.

Each of these laws seeks to balance the goal of encouraging these activities with the need to ensure a reasonable level of safety for participants and the public. Understanding the nuances of each act is essential for landowners, agritourism professionals, and equine activity sponsors to ensure they are protected, while also complying with the specific conditions and requirements of each law.

1) Who is protected from liability under each act and statute?

- *Oklahoma Agritourism Activities Liability Limitations Act*: This act protects agritourism professionals defined as those engaged in the business of providing agritourism activities and registered with the Oklahoma Department of Agriculture, Food, and Forestry. This protection applies whether or not they are compensated.^{vi}
 - "Agritourism activity" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity;^{vii}
- *Oklahoma Livestock Activities Liability Limitation Act*: Because persons who engage in livestock activities may incur injuries even in the absence of any fault or negligence on the part sponsors, participants or organizers, this act protects livestock activity sponsors, participants, and livestock professionals, acting in good faith and consistent with the standards of the livestock industry, from liability for injuries to any person engaged in livestock activities when such injuries result from the inherent risks of livestock activities.^{viii} A "livestock activity sponsor" is an entity that sponsors, organizes, or provides the facilities for a livestock activity. A "livestock professional" is someone who is compensated for instructing or renting livestock or equipment for a livestock activity. A "participant" is any person, amateur or professional, who engages in a livestock activity.^{ix}
 - "Engages in a livestock activity" includes training, racing, showing, riding, or assisting in medical treatment of, or driving livestock, or engaging in any agritourism activity involving livestock or on a

location where livestock are displayed or raised, and any person assisting a participant, livestock activity sponsor or livestock professional.^x

- *Oklahoma Limitation of Liability for Farming and Ranching Land Act*: To encourage landowners to make their land available for recreational purposes, this act protects owners of land used for farming and ranching by limiting their liability to persons entering or using the farm and ranch land for recreation and to third persons who may be damaged by the acts or omissions of persons entering upon or using these lands.^{xi} An "owner" is defined as the possessor of a fee interest, a tenant, lessee, or person in control of the premises, but not a person using the land for recreational purposes.^{xii} This act does not apply to any land that is used for purposes other than farming and ranching where such land is governed by Okla. Stat. tit 76 § 10.1.^{xiii}
 - "Recreational purpose" includes any of the following, or any combination thereof: hunting, fishing, wildlife and ecological viewing or photography, recreational farming and ranching activities, swimming, boating, camping, picnicking, hiking, pleasure driving, jogging, cycling, other similar events and activities, nature study, water skiing, winter sports, jet skiing, viewing or enjoying historical, archaeological, scenic, or scientific sites and aviation, including fly-ins at private airports.^{xiv}
- *Limitation on Liability of Persons Making Land Available to Public for Recreational Purposes Without Charge*: This statute also protects landowners who make their land available to the public for outdoor recreational purposes without charge.^{xv} An "owner" is the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the land.^{xvi} The provisions of this section shall not apply to any land that is used primarily for farming or ranching activities or to roads, water, watercourses, private ways, buildings, structures, and machinery or equipment when attached to realty which is used primarily for farming or ranching activities. The *Oklahoma Limitation of Liability for Farming and Ranching Land Act* shall govern such land.^{xvii}

2) What types of risks does each law apply to?

- *Oklahoma Agritourism Activities Liability Limitations Act*: This act applies to injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities. Inherent risks of agritourism activities include dangers integral to the activity, such as hazards, surface and subsurface conditions, natural conditions of land, vegetation, waters, the behavior of animals, and the ordinary dangers of structures and equipment used in farming and ranching. The inherent risks also include the potential for a participant to act negligently. The Act does not apply to the agritourism professional participating in a covered activity. (See Okla. Stat. tit 2, § 5-15 & 5-16)
- *Oklahoma Livestock Activities Liability Limitation Act*: This act applies to injuries resulting from the inherent risks of livestock activities. These include the propensity of livestock to behave in ways that may cause injury, the unpredictability of livestock reactions, hazards like unknown surface conditions, collisions with objects or other animals, and the potential for tack to become dislodged. (See Okla. Stat. tit 76, § 50.2-50.3)
- *Oklahoma Limitation of Liability for Farming and Ranching Land Act*: This act applies to injuries on land used primarily for farming and ranching activities made available for recreational purposes. With enumerated exceptions to liability limitation, landowner does not extend any assurance that the premises are safe for any purpose; incur any duty of care toward a person who enters or uses the land; or assume responsibility or incur liability for any injury to person or property caused by an act or omission of such persons. (See Okla. Stat. tit 2, § 16-71.3(B))
- *Limitation on Liability of Persons Making Land Available to Public for Recreational Purposes Without Charge*: This statute applies to land made available for outdoor recreational purposes. "Outdoor recreational purposes" include activities such as hunting, fishing, swimming, camping, hiking, and more. It limits liability for injuries sustained while engaging in these activities on qualifying land. See Okla. Stat. tit 76, § 10.1(A) and 10.1(A)(2)(b))

3) What are the exceptions to immunity from liability under the various statutes?

- *Oklahoma Agritourism Activities Liability Limitations Act*: An agritourism professional is not protected from liability if: (See Okla. Stat. tit 2, § 5-16(B))

- Commission of an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant.
- Has actual knowledge or reasonably should have known of a dangerous condition on the land, facilities, or equipment, or a dangerous propensity of a particular animal used in the activity, and fails to make the danger known to the participant and such failure proximately causes injury, damage, or death to the participant.
- *Oklahoma Livestock Activities Liability Limitation Act: (See Okla. Stat. tit 76, § 50.3(B))*
 - A livestock activity sponsor, participant, or professional is not protected from liability if they:
 - Commit an act or omission that constitutes willful or wanton disregard for the safety of a person, and that act caused the injury.
 - Intentionally injure a person engaged in livestock activities.
 - Provide faulty equipment that causes injury (unless in youth organizations where participants share equipment).
 - Fail to make a reasonable effort to determine the ability of the participant to manage the particular livestock based upon the participant's representations of such participant's ability, unless it's a show, sale, or rodeo where competency can be assumed if there is a signed entry form.
 - Owns or controls the land and fails to make known a dangerous condition to the participant.
 - The act does not limit liability for death resulting from inherent risks of livestock activities.
 - The act does not apply to employees of the sponsor or professional who are covered by worker's compensation.
 - The act does not extend to spectators at a livestock activity, except in cases where the spectator places himself or herself in immediate proximity to livestock activity.^{xviii}
 - The act does not limit liability for property damage.^{xix}
- *Oklahoma Limitation of Liability for Farming and Ranching Land Act: An owner of farming and ranching land is not protected from liability for: (See Okla. Stat. tit 2, § 16-71.5)*
 - Want of ordinary care.
 - Deliberate, willful, or malicious injury.
 - Failure to guard or warn against a dangerous or hazardous condition.
 - Willful or wanton acts of negligence or gross negligence in a case where a written release or waiver is signed.
- *Limitation on Liability of Persons Making Land Available to Public for Recreational Purposes Without Charge: Landowners are not protected from liability if:*
 - Any charge is made or is usually made for entering or using any part of the land.^{xx}
 - Any commercial or other activity for profit directly related to the use is conducted on any part of the land.^{xxi}
 - There is a want of ordinary care or for deliberate, willful, or malicious injury to persons or property.^{xxii}
 - Liability for the operation and maintenance of structures affixed to real property for use by the general public.^{xxiii}

4) What is required to qualify for immunity from liability under each statute?

- *Oklahoma Agritourism Activities Liability Limitations Act: (See Okla. Stat. tit 2, § 5-15 – 5-17)*
 - Agritourism activity must be registered with the Oklahoma Department of Agriculture, Food, and Forestry which includes a site visit^{xxiv};
 - Agritourism professionals must post and maintain warning signs at the entrance and site of the agritourism activity.
 - The warning sign must be in black letters, with each letter at least one inch in height.

- The warning notice must also be included in any written contracts for services, instruction, or equipment rental.
- The warning must state:
 - "WARNING
 - Under Oklahoma law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such injury or death 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 or death. You are assuming the risk of participating in this agritourism activity."
- Failure to comply with warning sign and notice requirements will prevent an agritourism professional from invoking the immunity provided by the act.
- In any action for damages against an agritourism professional for agritourism activity, the agritourism professional must plead the affirmative defense of assumption of the risk of agritourism activity by the participant.
- *Oklahoma Livestock Activities Liability Limitation Act*: This act does not contain specific affirmative requirements for liability protection other than acting in good faith and in accordance with industry standards. (See Okla. Stat. tit 76, § 50.3)
- *Oklahoma Limitation of Liability for Farming and Ranching Land Act*: This act does not contain any specific affirmative requirements, though it specifies that unless otherwise agreed in writing, its provisions are applicable to the duties and liabilities of an owner if the land is on or adjoins land entered on the National Register of Historic Places and an easement has been granted to the Oklahoma Historical Society or is leased to the state for recreational purposes. (See Okla. Stat. tit 2, § 16-74)
- *Limitation on Liability of Persons Making Land Available to Public for Recreational Purposes Without Charge*: Other than the requirement of no charge for the recreational use, this statute also does not contain other affirmative requirements for liability protection. (See Okla. Stat. tit 76, § 10.1)

5) How effective are waivers in supplementing legal liability protections?

Oklahoma law allows parties to agree in writing to extend the limitation of liability, and liability waivers can be useful in supplementing legal liability protections.^{xxv} However, they are not a guarantee of complete protection. Here's a breakdown of how waivers work in the context of Oklahoma law:

- **Waivers are Contracts**: While waivers can be beneficial, they are not absolute. There are instances where a waiver may not be effective in limiting liability:
 - A liability release or waiver is a contract, principles of contract law apply.
 - **Lack of Specificity**: A waiver needs to be clear and definite to be effective. Vague or unclear language could render the waiver unenforceable.
 - **Bad Faith, Gross Negligence, and Intentional Misconduct**: Waivers typically do not protect against claims of wrongful death, bad faith, gross negligence, or intentional unlawful conduct.
 - **Minors**: A liability release signed by a minor is voidable by that minor. To protect enforceability, a parent or guardian must sign on behalf of a minor.
 - **Unequal bargaining power among the parties and/or coercion**.
- **Agritourism Specifics**: For agritourism activities, the *Oklahoma Agritourism Activities Liability Limitations Act* provides some liability protection for agritourism professionals if they post specific warning signs and *include the warning in contracts which would include liability waivers*. Failure to comply with these requirements can nullify the immunity offered by the act. (See Okla. Stat. tit 2, § 5-17)

- Negligence and Failure to Follow Standards: If an equine professional or agritourism professional fails to determine a participant's ability, does not match them appropriately with animals or equipment, or fails to adhere to industry standards, a liability release may not be effective.^{xxvi}
- Recreational Use: The *Oklahoma Limitation of Liability for Farming and Ranching Land Act* encourages landowners to make their land available for recreation by limiting their liability. However, this act does not limit liability for a lack of ordinary care or deliberate, willful, or malicious injury. *The act also specifies that a written release or waiver will be binding, unless the landowner's conduct is found to be willful or grossly negligent.* (See Okla. Stat. tit 2, § 16-71.6(B)(2))
- Importance of Legal Review: It is advisable to have a liability release reviewed by an attorney familiar with Oklahoma law rather than using a generic release.

Waivers can strengthen liability protection, but they are not foolproof. They must be carefully written, specific, and should not be relied upon to excuse gross negligence or willful misconduct. Additionally, compliance with specific state laws, such as posting warning signs for agritourism, is also necessary for liability limitation.

In summary:

Oklahoma has several acts that limit liability for different types of activities including: agritourism, equine and other livestock activities, and recreational land use. The Agritourism Act has specific requirements, including warning signs and notices, in order for professionals to receive protection from liability. The Livestock Activities Act requires that those seeking protection act in good faith and according to industry standards. Both of these acts protect from the inherent risks of those respective activities. The acts limiting liability for use of farming and ranching land or recreational land, generally offer protection if landowners are not charging for recreational use of their land and are not acting with gross negligence. Waivers of liability can further limit liability if they are clear, specific, and not the result of gross negligence. Lastly, it is not a good practice to use a liability release you picked up from someone else or found on-line unless you've had it reviewed by an attorney familiar with Oklahoma law.

This article does not constitute legal advice and is intended to be used for educational purposes only.

About the Author

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ⁱ Oklahoma Agritourism Website: https://oklahomaagritourism.com/producers/legal/oklahoma-agritourism-limited-liability-law?utm_source=chatgpt.com ((Site Accessed December 23, 2024)

ⁱⁱ Okla. Stat. tit 2, § 5-14 through 5-17a

ⁱⁱⁱ Okla. Stat. tit 2, § 16-71 through 16-72 & 16-74

^{iv} Okla. Stat. tit 76, § 50.1-50.4

^v Okla. Stat. tit 76, § 10.1

^{vi} Okla. Stat. tit 2, § 5-16(A)

^{vii} Okla. Stat. tit 2, § 5-15(1)

^{viii} Okla. Stat. tit 76, § 50.1(B)(1) and § 50.3(A)

^{ix} Okla. Stat. tit 76, § 50.2

^x *Id.*

^{xi} Okla. Stat. tit 2, § 16-71.1(B)

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- xii Okla. Stat. tit 2, § 16-71.1(C)(2)
- xiii Okla. Stat. tit 2, § 16-71.1(D)
- xiv Okla. Stat. tit 2, § 16-71.1(C)(3)
- xv Okla. Stat. tit 76, § 10.1
- xvi *Id.*
- xvii *Id.*
- xviii Okla. Stat. tit 76, § 50.2(1)
- xix Okla. Stat. tit 76, § 50.3(A)(Injury to person with no mention of injury to property.)
- xx *Sanders v. River Parks Authority*, 2016 OK CIV APP 79
- xxi *Id.*
- xxii Okla. Stat. tit 76, § 10.1(F)(1)
- xxiii Okla. Stat. tit 76, § 10.1(F)(2)
- xxiv Oklahoma Agritourism Website: https://oklahomaagritourism.com/producers/getting-started/how-to-join?utm_source=chatgpt.com (Site Accessed December 23, 2024)
- xxv *Schmidt v. US*, 1996 OK 29
- xxvi *Brown v. Beets*, 2012 OK CIV APP 62