



Jan. 17, 2017

### **A.559 (Woerner) /S.1152 (Ortt)**

AN ACT to amend the general obligations law, in relation to the inherent risks of operating agricultural tourism areas and participating in activities in agricultural tourism areas.

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The New York State Trial Lawyers Association (NYSTLA) opposes this bill, which implies that members of the public who accept an invitation to enter property to patronize an agricultural tourism business have assumed the risk of negligence on the part of the owner/operator of the business.

A person who invites the public onto his or her property, in order to make money from agricultural tourism, must show reasonable care for their safety – especially for the safety of children. Roughly one-third of agricultural tourism customers are children under age 13, according to a survey of agricultural tourism customers.<sup>1</sup> Injuries of children visitors on farms does occur. (Reportedly, approximately 3,735 visiting youth nationwide were injured on farms in 2014.<sup>2</sup>)

Broken fencing around sometimes aggressive animals, defective cutting equipment on holiday tree farms, wineries with rows of large casks unsafely stacked, and greenhouses with broken glass, for examples, all are hazards that should be eliminated through careful maintenance and planning. Bee hives require careful management, and food safety precautions should be followed. The New York Center for Agricultural Medicine & Health has a guidance booklet for farmers on safety in tourism.<sup>3</sup>

Agricultural tourism activities vary. Any question about the reasonableness of the owner or operator's action, under New York common law, is a question of fact as to what conduct shows reasonable care under the circumstances, including the circumstances of the agricultural environment.

Members of the public may not recognize a particular risk, or understand it. Yet section 18-303 (2) of this bill states that tourists have duties to read and follow signs “to enable them to make informed decisions as to the advisability of their participation in agricultural tourism activities” even though they are not likely to be farmers or to have a farmer's knowledge of agricultural risks and they may not become so informed merely by reading a sign. Section 18-303(1)(f) also could be read to imply that if a member of the public does not reject an activity and request a refund because of an unwillingness to accept a risk, he or she has consented to and accepted the risks of harm from negligent conduct and the owner/operator is thus off the hook for negligence in operating the agri-tourism business.

For these reasons, NYSTLA urges the legislature to reject this proposed legislation.

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<sup>1</sup> Sea Grant factsheet, available at [http://www.agmrc.org/media/cms/agtourmktfs\\_1CB11950FA839.pdf](http://www.agmrc.org/media/cms/agtourmktfs_1CB11950FA839.pdf).

<sup>2</sup> <http://nasdonline.org/7114/d002364/childhood-agricultural-injuries-in-the-u-s-2016.html>.

<sup>3</sup> <http://www.nycamh.org/resources/articles/#agritourism>.