

# Primer

## New Hampshire Legislature Resolves 'Agritourism' Debate

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Agritourism is perhaps one of the fastest growing sectors of agriculture today. Nationwide, and in New Hampshire, farmers are gradually incorporating agritourism activities into their farms to remain profitable. For example, many have started to host weddings and agriculture festivals, open corn mazes and petting zoos, and add pick-your-own-produce options to their farm stands.

The benefits of agritourism extend beyond the farm, as it brings visitors to small communities and creates new jobs and local businesses. Agritourism also provides opportunities for people to connect with and learn about local farms and food. However, farmers in New Hampshire have faced difficulties in taking advantage of this market as residents have taken issue with the crowds that come with some of these activities.

For example, in 2012, a tree farmer in Henniker was hosting weddings and other gatherings on his tree farm. The tree farm was located in a zone where agricultural uses and uses accessory to agriculture uses were permitted by the town's zoning ordinance. However, abutters objected to the use of the tree farm for weddings and the town soon got involved.

Henniker's ZBA ultimately determined the use was prohibited by the zoning ordinance because hosting weddings was not an agricultural use, as defined by statute. The tree farmer appealed the ZBA's decision all the way to the New Hampshire Supreme Court arguing that his use constituted agritourism and therefore *was* agriculture.

At the time New Hampshire's statute, RSA 21:34-a, defined agriculture to mean: 1) "all operations of a farm" and 2) "[a]ny practice on the farm" that is incidental to or conducted "in conjunction with" operations on the farm. In 2015, the New Hampshire Supreme court rejected the farmer's argument and upheld the ZBA's decision that agritourism is not agriculture as defined by RSA 21:34-a.

Even though this case was a setback for farmers and agritourism in New Hampshire, as it opened the door for towns to prevent agritourism within their borders, the future of agritourism in New Hampshire looks bright. Recently, in response to the Henniker case, the New Hampshire legislature passed Senate Bill 345.

The bill amends the definition of agriculture, found at RSA 21:34-a, by specifically stating that marketing, which is listed in the statute as a practice incidental to operations of a farm, “includes agritourism.”

The bill also adds a definition of agritourism to the statute. Now, agritourism is defined as “attracting visitors to a farm to attend events and activities that are accessory uses to the primary farm operation, including, but not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, or active involvement in the activity of the farm.” RSA 21:34-a, II(b)(5).

Therefore, under the new law activities, falling within this definition will be permitted in any area zoned for agriculture use. Importantly, towns are still free to regulate agritourism at the local level as long as they are not *prohibiting* agritourism.

*Ultimately, this legislative action demonstrates an ongoing commitment at the state and local level to opening and maintaining markets for farmers.*

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