

TOPIC: Farm Liability and Agricultural Harvesting

ISSUE: Farmers are always exploring new marketing strategies to increase the sale of agricultural products. One such strategy is a “pick-your-own” agreement, whereby customers are invited onto farmland to pick or harvest what they wish to buy. In this situation, the question of liability arises. Would a farmer who allows individuals onto the fields be liable if someone accidentally were to be injured while harvesting? This ALM provides guidance on this question.

A “pick-your-own” agreement allows people to enter farmland and harvest agricultural produce on their own without the assistance of the farmer. After harvesting, people pay the farmer a fee for the produce picked. Typically, “pick-your-own” agreements involve agricultural products such as apples, flowers, vegetables, pumpkins, Christmas trees, and berries. Farmers market their products by getting customers to think of it as an outing or an agricultural adventure, not merely a trip to the store. The farmer may offer recreational incentives such as corn mazes or wagon rides, activities often referred to as “agri-tourism.” See [ALM 10-05](#).

Farmers engaging in “pick-your-own” agreements are naturally concerned about their potential liability to their invited customers. Massachusetts General Law (M.G.L) [Chapter 128, Section 2E](#), (Section 2E) offers a high level of protection for the farmer; Section 2E protects owners, operators, and employees of farms from liability from injuries or property damage to anyone allowed on the farm “for the purpose of agricultural harvesting...under a so-called ‘pick-your-own’ agreement except when injury or damage is the result of willful, wanton, or reckless conduct on the part of the owners, operators, or employees. Section 2E. To receive this protection, the owner or operator must post and maintain a sign with a specified warning notice. The sign must be posted in a location visible to persons that are allowed on the farm for agricultural harvesting. In *MacFadyen v. Maki*, 70 Mass. App. Ct. 618 (2007), the Massachusetts Appeals Court ruled that the sign must meet the following statutory requirements:

“The warning notice shall appear on a sign in black letters, with each letter to be a minimum of one inch in height and shall contain the following notice:

“WARNING

“Under section 2E of chapter 128 of the General Laws the owner, operator, or any employees of this farm, shall not be liable for injury or death of persons, or damage to property, resulting out of the conduct of this ‘pick-your-own’ harvesting activity in the absence of wilful, wanton, or reckless conduct.”

As long as the farm operator posts the warning, the liability protections stand.

Section 2E contains no requirement or discussion about whether the individual entering the farm for the agricultural harvesting activity is paying for what is harvested. Thus, Section 2E offers the broadest protection against liability.

[Chapter 21, Section 17C](#) of M.G.L. also offers farmers protection against liability. Section 17C states that any person who permits the public use of the his or her land for certain purposes that could include agricultural harvesting, shall not be “liable for personal injuries or property damage sustained by such members of the public, ...while on such land in the absence of willful, wanton, or reckless conduct” by the landowner. The purposes under Section 17C include any public use of the land “for recreational, conservation, scientific, educational, environmental, ecological, research, religious, or charitable purposes without imposing a charge or fee therefor, or who leases such land for said purposes to the commonwealth or any political subdivision thereof or to any nonprofit corporation, trust or association...” (Emphasis added) Section 17C(a). As long as the farmer permits the public use of the land for one of these enumerated purposes and without charging a fee for entry (as distinct from the purchase prices of the produce picked) Section 17C offers a level of protection to the farmer from liability.

Under Section 17C, a farmer who allows individuals to enter their property for a corn maze or allows individuals to enter the property to “glean” (the act of entering a field to harvest any crops left in the field after an initial harvest at no charge) receives protection from liability.

Section 2E and Section 17C, then, offer a high level of liability protection to farmers who offer activities within the scope of those listed in the statute. Also note that this ALM does not address the tax considerations of gleaning, which the reader may wish to discuss with a tax advisor.