New Laws to Reduce Lawsuits against and Liability of Pick-Your-Own Operations

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Commercial operators and producers who invite persons on their property need to be concerned about the safety of the public. Expenses that arise from the injury of another person can be so large that they may adversely affect the economic viability of a business. Legal fees to defend oneself against a legal action, regardless of fault, may be more than \$10,000. If a case goes to trial and a jury awards damages, costs can run much higher. While insurance may cover some of these expenses, a major lawsuit may exceed the policy limits and subject the business to liability. Moreover, the time and effort required to respond to a lawsuit reduce time a business owner can spend on other important aspects of the business. A lawsuit may consume an inordinate amount of energy of an owner or manager, affecting the business adversely.

Liability for accidents is a special concern for pick-your-own operations and persons who allow others on their property. Pick-your-own operations involving relatively small land holdings near urban areas have become an occupational option for persons who want to engage in horticultural pursuits (Henneberry and Barron, 1990). Because pick-your-own operations tend to encourage the maintenance of open space and horticultural activities in areas being pressured by more intense development, they may be supported by various legislative provisions. Pick-your-own operations often offer consumers fresh products at lower prices than are available at other marketing outlets (Singh et al., 1991).

In the past 30 years, changes in contract and tort liability have encouraged lawsuits against business owners including horticultural producers. Interpretations of warranties and product liability law have altered contractual arrangements to increase the grounds for finding businesses liable for defective products (Croley and Hanson, 1993; Schwartz, 1988). This has increased lawsuits based on a breach of a warranty or a defective product. Furthermore, social attitudes have changed so that increased numbers of injured persons seek damages for injuries through a lawsuit.

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With respect to tort liability, states have enacted a comparative negligence rule in place of contributory negligence. Under comparative negligence, a plaintiff who may be partly responsible for an accident can sue others, claiming they were also negligent. This means that a plaintiff who takes a risk and is injured may sue property owners and business firms and may collect some damages. Juries assign a percentage of the negligence to the plaintiff and the defendant, with the plaintiff only collecting those damages that are attributable to the defendant. For example, if a jury found a defendant to be 60% negligent, the plaintiff would collect 60% of the damages.

To respond to the alleged problem of excessive litigation, interest groups have asked state legislatures to enact new laws to limit situations in which plaintiffs may maintain lawsuits. Legislatures have responded with a variety of new immunity laws based on an assortment of justifications. Concerning agricultural nuisances, every state passed an antinuisance law known as a right-to-farm law. For tort liability, states have enacted Good Samaritan, recreational use, sport responsibility, gleaning, and equine liability laws to reduce situations in which qualifying defendants are liable for injuries. Another development that is generating attention is a special state law for pick-your-own operators to help them avoid liability for customer accidents (Centner, 1997).

After delineating categories of immunity laws, this article examines five pick-your-own laws to show two distinct immunity strategies. An examination of each pick-your-own strategy through an examination of two lawsuits shows that some immunity laws may not offer much protection against lawsuits. Although greater protection to pick-your-own operators against lawsuits is possible, the egregious conduct strategy is recommended as a reasonable legislative response. This strategy provides immunity in some situations, but allows persons who are injured due to the willful misconduct of pick-your-own operators to collect damages.

Immunity laws

Five groups of immunity laws are important in providing exceptions that reduce the liability of qualifying defendants: 1) Good Samaritan, 2) recreational use, 3) sport responsibility, 4) gleaning, and 5) equine liability laws. From these groups of immunity laws, three distinct immunity strategies may be identified. Good Samaritan laws for doctors and police provide the most widely known immunity strategy. In the 1970s, recreational use laws were adopted by most states as a second strategy for landowners gratuitously allowing others to use their property. A third immunity strategy is embodied in diverse sport respon-

sibility laws. The major objective of each immunity strategy is to limit the liability of a class of persons deserving special treatment. Each strategy, however, responds with a divergent configuration to show multiple avenues to assist worthy persons in avoiding liability for accidents.

These three strategies form the basis for liability exceptions incorporated in other legislation. An examination of the gleaning and equine liability laws discloses that the separate state laws do not follow a single immunity strategy. Rather, gleaning and equine liability laws have drawn from the Good Samaritan, recreational use, and sport responsibility strategies to provide immunity from tort liability. Different legislative bodies selected unlike immunity strategies to achieve a similar goal. Other immunity laws, such as pick-your-own laws, may rely on dissimilar strategies to provide protection against lawsuits.

THE GOOD SAMARITAN STRATEGY. Perhaps the best known strategy for limiting the liability of qualifying persons is a Good Samaritan law. Good Samaritan laws initially involved physicians rendering medical assistance, but each state has adopted laws to cover additional charitable or philanthropic activities (Brandt, 1983; Mapel and Weigel, 1981). Some of the more common Good Samaritan laws cover firefighters, law enforcement officers, ambulance service, medical emergency personnel, veterinarians, and drug enforcement officers.

Good Samaritan laws usually provide immunity against negligent actions so that qualifying persons who commit an act or omission causing an injury while performing a good deed are excused from liability for damages. Persons are not excused for injuries if they were grossly negligent or intended to injure another. Each state law sets forth its particular qualifications that must be met before an individual would qualify for immunity. For example, each Good Samaritan law identifies a protected class, such as physicians or police. Next, the law delineates a zone of protection, which is generally an emergency situation or the site of an accident. Many Good Samaritan laws require a gratuitous act and preclude the collection of a fee or a charge for the service before a defendant qualifies for protection against liability.

THE RECREATIONAL USE STRATEGY. Conservation groups and persons interested in recreational activities on rural lands developed a recreational use strategy that was widely adopted by states in the 1970s (Church 1979). In contrast to the direct grant of immunity to qualifying persons by Good Samaritan laws, recreational use laws reduce the duties owed to others. This makes it more difficult for an injured person to prove negligence and establish that the property owner should be liable for the accident.

Recreational use laws alter the duty of care to encourage property owners to make their land available to others for recreational uses (Noble, 1991). Through various provisions, the laws reduce the duty of care to keep premises safe that recreational property owners owe to persons who use their property. Entrants to recreational property generally are given no higher status than a trespasser. Persons continue to incur liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity. By that, the recreational use laws generally provide immunity from simple negligence.

THE SPORT RESPONSIBILITY STRATEGY. Many states have enacted sport responsibility laws for risky sport activities like skiing, roller skating, whitewater rafting, and hockey. The sport responsibility strategy seeks to inform participants about dangers of the sport and preclude lawsuits against persons providing specialized risky sport activities. The laws create responsibilities for persons who choose to engage in an enumerated sport activity and persons who provide activities. Therefore, they may be called responsibility laws. Sport participants who fail to subscribe to the enumerated duties may be liable for injuries to themselves or to others.

Besides the prescribed duties, the sport responsibility laws also provide immunity for others whenever a sport participant is injured from any of the inherent dangers and risks of the sport. In this manner, the Good Samaritan immunity strategy is adopted to preclude liability for some injuries. Sport participants are liable for injuries from inherent dangers and are barred from maintaining a lawsuit against the provider for such injuries.

GLEANNING LAWS. Some states have enacted gleanings laws to limit the liability of property owners who allow needy individuals to collect leftover products. Most of the gleanings laws follow the Good Samaritan strategy and provide immunity for qualifying persons, with a major qualification being that no immunity exists for gross negligence or willful conduct.

The term glean is used by one or more laws in two distinct ways. From the historical development of the term, a gleanings law may concern only the harvesting or collecting farm products from the fields of a farmer who grants access to others without charging a fee (Maryland Code Annotated, 1995). More recently, however, gleanings has been defined so that it may include the donation and distribution activities (Pennsylvania Statutes Annotated, 1996). By that, persons who donate products to needy individuals, including grocery products that may not be a part of gleanings, qualify for immunity.

Although most gleanings laws provide immunity through the adoption of a Good Sa-

maritan strategy, some states have incorporated gleanings provisions in their recreational use laws. States that follow the recreational use strategy alter the duty of care required by persons engaged in gleanings activities. While gleanings laws following the Good Samaritan and recreational use strategies provide immunity, the distinctions may be important in delineating the breadth of immunity for defendants being sued by injured plaintiffs.

EQUINE LIABILITY LAWS. Thirty-eight states have adopted equine liability laws that afford encouragement for equine activities by providing equine owners and other persons protection against civil liability suits for injuries to riders (Centner, 1995). Many equine liability laws specify that qualifying persons are not liable for an injury or death of a participant resulting from the inherent risks of equine activities. This directive incorporates the Good Samaritan strategy to provide immunity to persons meeting the listed requirements. Nevertheless, the immunity is severely limited by exceptions. For example, persons providing animals to riders may not avoid liability if they were negligent in their efforts in determining the ability of the rider.

A few equine liability laws follow the recreational use strategy and alter the duty owed by persons providing animals or owners of land used for equestrian activities. Other equine liability laws prescribe duties so that their provisions are more analogous to the sport responsibility strategy. This means that the equine liability laws show three different immunity strategies being used to provide immunity for qualifying persons.

PICK-YOUR-OWN LAWS. Arkansas (Arkansas Statutes Annotated, 1996), Massachusetts (Massachusetts General Laws Annotated, 1995), Michigan (Michigan Compiled Laws Annotated, 1996), New Hampshire (New Hampshire Revised Statutes Annotated, 1995), and Pennsylvania (Pennsylvania Statutes Annotated, 1996) have expanded their immunity protection to persons who invite the public to participate in pick-your-own activities. These laws, called the pick-your-own laws, have distinct provisions that affect the immunity granted to pick-your-own operators. An examination of these laws identifies four issues as important in defining the scope of protection offered by pick-your-own laws.

An initial issue concerning protection under a pick-your-own law is who may qualify for immunity. The New Hampshire law limits qualification to land owners. This might not be very helpful to nonlandowners such as operators, occupants, tenants, lessees, and employees. The other pick-your-own laws have broader coverage so the immunity may be expected to apply to individuals involved in pick-your-own operations.

A second issue involves a qualification concerning the location of an accident. Immunity under the Massachusetts law only applies if the injury occurred on a farm. Would an injury at a small pick-your-own operation occur at a farm? This depends on the definition of a farm. Recent litigation from New York shows a potential problem with definitions of farm or agricultural activity as established by a specific law (Dribusch, 1997). A New York court determined that a heifer replacement operation was not an agricultural activity under a local law because it was more akin to an industrial operation. A small pick-your-own operation runs the risk of not being classified as a farm. A pick-your-own law that limits application to farms may be overly restrictive and not provide assistance for some operations.

A warning sign to advise participants of the immunity protection is a third issue to be considered under a pick-your-own law. Such a warning requirement has been incorporated in the Massachusetts pick-your-own law. An owner or operator of a pick-your-own operation is required to post and maintain signs with a warning notice explaining that the owner is not liable for injuries in the absence of willful or reckless conduct. Similar to sport responsibility and equine liability laws, a warning requirement serves as a precondition to qualifying for immunity.

The question of how employees and contractors are affected by the pick-your-own laws is a fourth issue. Generally, the laws provide that the rights of employees and contractors are not affected. This means that operators remain liable for injuries to employees and contractors. Such dispensation is consistent with the purpose of the pick-your-own laws, which is to address injuries to customers harvesting produce.

Pick-your-own immunity strategies

The pick-your-own laws show two separate adoptions of the Good Samaritan immunity strategy being used to reduce the liability of horticultural producers. Arkansas, Michigan, and Pennsylvania adopted a strategy granting immunity unless a condition creates an unreasonable risk accompanied by enumerated prerequisites. Massachusetts and New Hampshire adopted an egregious conduct strategy to provide immunity whenever a pick-your-own business did not engage in willful or reckless conduct.

AN UNREASONABLE RISK STRATEGY. The Arkansas, Michigan, and Pennsylvania pick-your-own laws enunciate an unreasonable risk strategy. These laws offer immunity for qualifying persons against damages for injuries except that they do not offer immunity for some conditions involving an unreasonable risk. An unreasonable risk concerns a dangerous condition or risk of harm that is excessive. Whenever an injury arises from a condition involving an

unreasonable risk and the prerequisites listed in the law are met, the property owner can be held liable for the injury. If one of the prerequisites is not met, a defendant qualifies for the immunity provided by the pick-your-own law despite the existence of a condition involving an unreasonable risk.

The initial prerequisite is an unreasonable risk related to the injury. Without a relationship, the defendant qualifies for immunity. For example, a hole in the ground in an area where a person was invited to walk could be considered a condition involving an unreasonable risk of injury. If such a hole caused a plaintiff's injury, this prerequisite would be met. Under the second prerequisite, the defendant would not qualify for the immunity if it is shown that the defendant knew or should have known of the unreasonable condition or risk that caused the injury. Knowledge or constructive knowledge by the defendant of the unreasonable condition or risk thereby is necessary before a defendant may incur liability under an unreasonable risk strategy.

The third prerequisite involves establishing that the defendant failed to exercise reasonable care with respect to the condition or risk. An allegation that the defendant failed to use reasonable care would present a jury issue. Conversely, whenever the defendant was careful to make the condition safe or to warn the plaintiff of the condition or risk, the defendant continues to qualify for the immunity. Due to consideration of reasonable care under this prerequisite, actions in negligence may be maintained for some conditions under pick-your-own laws adopting an unreasonable risk strategy.

A fourth prerequisite involving the absence of knowledge by the plaintiff is required by the Arkansas and Michigan pick-your-own laws to establish liability in cases where a condition involves an unreasonable risk. Under this prerequisite, the plaintiff must not have had knowledge of the condition or risk that caused the injury. Whenever a plaintiff knew or should have known of the condition involving an unreasonable risk of harm, such plaintiff is estopped from maintaining a lawsuit for injuries under the Arkansas and Michigan pick-your-own laws. This fourth prerequisite establishes an additional hurdle for a plaintiff to establish a cause of action against a pick-your-own operator.

An important concern about the three pick-your-own laws adopting the unreasonable risk strategy is whether they establish an affirmative duty for pick-your-own operators? The provisions setting forth the unreasonable risk strategy may establish a duty to exercise reasonable care in making premises safe or in warning customers of conditions involving an unreasonable risk. Owners of pick-your-own operations who fail to use reasonable care to make the condition safe or to

warn the injured party of the condition would be negligent. Therefore, a pick-your-own law adopting an unreasonable risk strategy may increase the potential liability for a pick-your-own operator.

AN EGREGIOUS CONDUCT STRATEGY. Under the Massachusetts and New Hampshire laws, pick-your-own operators are not liable for injuries to customers engaged in pick-your-own activities unless they engaged in willful or reckless conduct. This immunity is similar to some Good Samaritan, gleaning, and equine liability laws. The strategy pattern may be called an egregious conduct strategy, with egregious referring to willful or reckless conduct. Such conduct goes beyond negligence and gross negligence.

State courts have interpreted various laws to decide the meaning of willful and reckless conduct. Willful conduct is action intended to do harm. Evidence that a person intentionally persists in conduct involving a high degree of probability that substantial harm would result to another supports a finding of recklessness. Willful conduct often involves a conscious disregard for the consequences regarding the safety of other persons.

Under the egregious conduct strategy of the Massachusetts and New Hampshire laws, a defendant who is simply negligent or grossly negligent may qualify for the immunity and avoid liability for injuries or property damage. If, however, a plaintiff presents allegations of egregious conduct, the plaintiff would establish an issue for trial. An egregious conduct strategy thereby protects pick-your-own operators from lawsuits based on simple and gross negligence.

A look at two cases

The most likely cause of action against a pick-your-own operation for injuries to a person harvesting crops would be some type of negligence by the operator. The person suffering an injury would argue that the property owner had failed to use reasonable care in the maintenance of the premises, and that this failure led to the injury. As noted above, an injured person will need to overcome the immunity offered by the applicable pick-your-own law. A law incorporating an unreasonable risk strategy will provide immunity unless the injured person establishes qualification of the exception regarding an unreasonable risk. A pick-your-own law adopting an egregious conduct strategy will provide immunity unless the injured person shows willful conduct.

Previously decided cases show two major categories of conditions being involved in accidents at pick-your-own operations. One category involves allegations of negligence with respect to obvious dangers and known conditions. The second category involves a dangerous condition known to a pick-your-own operator but not to a person harvesting a product.

An analysis of these categories for each of the two pick-your-own immunity strategies shows distinctions in the immunity provided by each strategy. Through this analysis, the unreasonable risk strategy is shown as offering little assistance to property owners in avoiding liability for accidents, whereas an egregious conduct strategy should provide immunity for defendant operators and owners.

OBVIOUS DANGERS AND KNOWN CONDITIONS.

Knowledge by an injured person of the particular condition that led to the accident causing the injuries is important because such knowledge may defeat the lawsuit. If an obvious danger existed, or if the injured person should have been aware of the condition, the pick-your-own operator may not be liable for the injuries under state law, despite the existence of a pick-your-own law. Rather, persons must take care to avoid injuries from known conditions.

Due to known conditions, a court dismissed a lawsuit against a defendant in *Ciaglo v. Ciaglo* (1959). In *Ciaglo*, the plaintiff was injured when she fell off a ladder while picking fruit in a pasture containing cows. The injury occurred due to a cow that frightened the plaintiff. Since the plaintiff knew she was picking fruit in a pasture containing cows, the court found that the plaintiff had failed to establish any evidence of negligence. Thus, the dismissal of the lawsuit was appropriate.

If a pick-your-own operator is not generally liable for obvious dangers and known conditions under state law, why is an analysis of this case significant? Besides providing immunity, a pick-your-own law adopting an unreasonable risk strategy may prescribe a legal duty to be careful to make a condition safe. Legal duties establish liability if a person fails to meet the prescribed standard. By defining a new duty, the Pennsylvania pick-your-own law appears to increase the liability of a pick-your-own operator in situations such as the accident in *Ciaglo*. The Arkansas and Michigan pick-your-own laws also may create a duty, but the duty does not apply in situations involving a known condition.

Assuming the Pennsylvania pick-your-own law applied to the accident reported in *Ciaglo*, would the defendant qualify for immunity? The immunity provided by the Pennsylvania law is not available if the accident was caused by a condition involving an unreasonable risk and the pick-your-own operator failed to be careful in making a known condition safe. As the cattle could have been excluded from the area containing the tree from which the plaintiff was picking fruit, the *Ciaglo* defendant may have failed to exercise reasonable care in making the premises safe. The Pennsylvania pick-your-own law, by saying that immunity is not available to persons who fail to use care, may increase the liability of pick-your-own opera-

tions. The Pennsylvania law may create liability for a situation where no liability existed under common law.

If the *Ciaglo* accident occurred in Arkansas, Massachusetts, Michigan, or New Hampshire after each of these states adopted their pick-your-own law, the defendant would qualify for immunity. Under the Arkansas and Michigan laws incorporating an unreasonable risk strategy, the major question is whether the injured plaintiff had knowledge or should have known of the unreasonable risk that contributed to the accident. As the injured *Ciaglo* plaintiff knew of the unreasonable risk of harm presented by the cow in the area of her ladder, she failed to establish the fourth prerequisite of the unreasonable risk strategy. Thus, the immunity provided by the unreasonable risk strategy of the Arkansas and Michigan pick-your-own laws is available to defeat the cause of action. Under the Massachusetts and New Hampshire laws incorporating an egregious conduct strategy, the defendant should be protected by the immunity. The defendant had not engaged in egregious conduct of a type that would defeat the immunity.

DANGEROUS UNKNOWN CONDITIONS. As opposed to obvious or known conditions that cause injuries, accidents may involve unknown dangerous conditions. Defendant property owners may incur liability for not keeping their premises safe if they should be expected to know about the existence of a dangerous condition. If such a dangerous condition precipitates an accident, the injured plaintiff may have a cause of action based on negligence. Drawing on the facts reported by a Georgia court, this section reveals that pick-your-own laws adopting an unreasonable risk strategy may not protect owners from liability for dangerous conditions.

In *Lawless v. Sasnett* (1991), a Georgia court considered the issue of constructive knowledge of a dangerous condition by the orchard owners. Constructive knowledge involves a question of whether property owners, who did not know of a dangerous condition, should have known of the condition. The lack of knowledge of the dangerous condition was due to the owners' failure to be careful in inspecting their premises. While the plaintiff in *Lawless* was walking among defendants' trees, her left leg went into a hole causing multiple fractures to the plaintiff's right ankle. The injured plaintiff claimed she had looked down toward the ground but had not seen the hole. The grass, which was about one-foot in height, had precluded her from seeing the hole. The plaintiff sued the orchard owners to recover damages for her injuries.

The owners of the orchard moved to dismiss the case without a trial claiming they had no knowledge of the hole. Because the

owners did not know about the hole, they argued they had not breached their duty to exercise ordinary care in keeping the premises safe. However, the fact that the orchard owners had not known of the hole causing the plaintiff's injury does not complete the inquiry of negligence. The critical issue was whether the evidence established that the defendants should have known of the hole's existence. The court found that the hole may have been in existence for a substantial period of time and was large enough to have been observable during normal maintenance, such as mowing. As the defendants had failed to present evidence that they had in fact used reasonable care in inspecting the premises, the evidence could be found to establish constructive knowledge of the hole. Therefore, the court could not dismiss the case without a trial.

Now, assume that the *Lawless* accident occurred in a state with a pick-your-own law. Under the Arkansas, Michigan, and Pennsylvania pick-your-own laws incorporating an unreasonable risk strategy, immunity would apply unless the plaintiff established the prerequisites. A review of the facts of the *Lawless* case establishes these four prerequisites. The hole was a condition involving an unreasonable risk. Since the defendants would have known of the hole if they had mowed the grass, they had constructive knowledge of the dangerous condition. By not taking action to fix the hole, the defendants failed to be careful in making the condition safe or warning to the plaintiff of the condition or risk. And fourth, the plaintiff did not know of the condition. These facts mean that the *Lawless* defendants would not qualify for the immunity provided by a pick-your-own law adopting an unreasonable risk strategy.

The facts of the *Lawless* case evaluated under a pick-your-own law that adopted an egregious conduct strategy suggest that such a law would change the result. The existence of a hole in an orchard does not seem to constitute conduct that would be categorized as willful or reckless. Rather, the defendants' failure to find and attend to the hole may be negligence. A pick-your-own law encompassing an egregious conduct strategy can help defendants in avoiding liability for accidents resulting from defendants negligence.

Selecting a legislative strategy

Immunity laws use three strategies to help persons avoid liability for injuries: Good Samaritan, recreational use, and sport responsibility strategies. The state pick-your-own laws have adopted the Good Samaritan strategy with very different results. An analysis of the factual situations of the *Ciaglo* and *Lawless* cases showed that pick-your-own laws adopting an unreasonable risk strategy allow cases based on ordinary and gross negligence. It may

be argued that pick-your-own laws incorporating an unreasonable risk strategy fail markedly to improve the immunity of pick-your-own operators. Alternatively, pick-your-own laws adopting an egregious conduct strategy provide defendants immunity from some injuries.

When considering whether an immunity law is appropriate for a special group or activity, legislatures need to consider what the immunity will mean to persons who may be precluded from recovering damages for their injuries. Under what conditions and circumstances is it fair to preclude injured persons from collecting damages? Should pick-your-own operators or other persons who are negligent be shielded from lawsuits when they contribute to the injury of another? Shielding negligent persons from liability, as occurs under immunity laws, needs to be limited to extraordinary situations.

Although existing pick-your-own provisions incorporating an egregious conduct strategy may be expected to reduce lawsuits and the liability of pick-your-own operators, a question may be asked whether another strategy might provide even greater protection. The sport responsibility laws, by placing the burden of damages from risks inherent in the sport on participants, show that stronger protection against liability is available. This suggests that a pick-your-own law could place greater responsibility on consumers, provide an expanded description of the assumed risks, or further limit the liability of pick-your-own operators to prevent injured plaintiffs from successfully suing for injuries.

Given the various legislative options, what strategy should horticulturists advocate for pick-your-own operations? While the sport responsibility strategy offers the greatest protection, pick-your-own activities are not risky activities involving inherent risks. Furthermore, the sport responsibility strategy does not seem to provide a fair resolution to the injuries that would occur at a pick-your-own operation.

The recreational use strategy generally has not been used in situations where charges or fees are charged. Profit-seeking pick-your-own operations do not seem to entail an activity meant to be included under this strategy.

By rejecting the sport responsibility and recreational use strategies, only the Good Samaritan strategy remains to be adopted in pick-your-own laws. The unreasonable risk strategy might not be encouraged since it failed to provide immunity when examining the facts of the *Lawless* case. Moreover, the Pennsylvania law should be rejected because it creates a new duty to exercise reasonable care to make a condition safe. By a process of elimination, the egregious conduct strategy emerges as the best resolution for injuries occurring at pick-your-own operations. The egregious conduct strategy should reduce lawsuits, but will allow persons who were injured due to willful or

reckless conduct by a pick-your-own operator to recover damages for such injuries. Given this analysis, a question remains whether horticulturists can convince state legislative bodies that pick-your-own legislation is needed.

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