

ASSEMBLY, No. 817

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman ARNONE and Assemblywoman FARRAGHER

1 AN ACT concerning the liability of individuals involved in equestrian
2 activities and supplementing Title 2A.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

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7 1. a. The Legislature finds and declares that equine activities are
8 practiced by a large number of citizens of this State and that those
9 activities attract to this State large numbers of nonresidents,
10 significantly contributing to the economy of this State and, therefore,
11 the allocation of the risks and costs of equine activities are an
12 important matter of public policy.

13 b. The purpose of this law is to make explicit a policy of this State
14 which clearly defines the responsibility of all persons servicing equine
15 activities and equestrians, recognizing that equine activities involve
16 risks which must be borne by those who engage in such activities and
17 which are essentially impractical or impossible for the operator to
18 eliminate. It is, therefore, the purpose of this act to state those risks
19 which the equestrian voluntarily assumes for which there can be no
20 recovery.

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22 2. As used in this act:

23 "Equestrian area" includes all of the real and personal property
24 under the control of the operator or on the premises of the operator
25 which are being occupied, by license, lease, fee simple or otherwise,
26 including but not limited to, designated trail areas and other areas
27 utilized for equine activities.

28 "Equestrian" means any person, whether amateur or professional,
29 engaging in an equine activity, whether or not a fee is paid to
30 participate in the equine activity or any person utilizing any property
31 for equestrian activities such as trail riding, riding lessons, training of
32 horses, competition of horses, and includes anyone accompanying the
33 person. Equestrian also includes any person who comes on the
34 property of the provider of equine activities, whether or not said
35 person pays consideration.

1 "Equine activity" includes any activity that involves the use of the
2 horse, pony, mule or donkey.

3 "Inherent risk or risks of an equine activity" means those dangers
4 which are an integral part of equine activity, including but not limited
5 to:

6 (1) The propensity of an equine animal to behave in ways that
7 result in injury, harm or death to nearby persons;

8 (2) The unpredictability of an equine animal's reaction to such
9 phenomena as sounds, sudden movement, and unfamiliar objects,
10 persons or other animals;

11 (3) Certain natural hazards, such as surface or subsurface ground
12 conditions;

13 (4) Collisions with other equine animals or with objects; and

14 (5) The potential of an equestrian to act in a negligent manner that
15 may contribute to injury to the equestrian or others, including but not
16 limited to, failing to maintain control over the animal or not acting
17 within the equestrian's ability.

18 "Operator" means a person or entity who owns, manages, controls
19 or directs the operation of an area where individuals engage in equine
20 activities whether boarding horses, receiving riding lessons, engaging
21 in horse shows, training horses, trail riding, or using horse-drawn
22 vehicles, and includes an agency of this State, political subdivisions
23 thereof or instrumentality of said entities, or any individual or entity
24 acting on behalf of an operator for all or part of such activities.

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26 3. An equestrian is deemed to assume the inherent risks of equine
27 activities created by horses, ponies, mules, donkeys, weather
28 conditions, conditions of trails, riding rings, training tracks, other
29 equestrians, and all other inherent conditions. Each equestrian is
30 assumed to know the range of his ability and it shall be the duty of
31 each equestrian to conduct himself within the limits of such ability, to
32 maintain control of his horse, pony, mule, or donkey, and to refrain
33 from acting in a manner which may cause or contribute to the injury
34 of himself or others.

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36 4. The assumption of risk set forth in section 3 of this act shall be
37 a complete bar of suit and shall serve as a complete defense to a suit
38 against an operator by an equestrian for injuries resulting from the
39 assumed risks, notwithstanding the provisions of P.L.1973, c.146
40 (C.2A:15-5.1 et seq.), relating to comparative negligence. Failure of
41 an equestrian to conduct himself within the limits of his abilities as
42 provided in section 3 of this act shall bar suit against an operator to
43 compensate for injuries resulting from equine activities, where such
44 failure is found to be a contributory factor in the resulting injury.

1 5. As a precondition to bringing any suit in connection with an
2 equestrian injury against an operator, an equestrian shall report in
3 writing to the operator all the details of any accident as soon as
4 possible, but in no event longer than 180 days from the time of the
5 incident giving rise to the suit.

6 The report shall include at least the following: name, address, brief
7 description of the accident or incident, location, alleged cause, others
8 involved and witnesses, if any. If it is not practicable to give the
9 report because of severe physical disability resulting from an
10 equestrian accident or incident, the report shall be given as soon as
11 practicable. This section is not applicable with respect to an
12 equestrian area unless the operator conspicuously posts notice to
13 equestrians of the requirements of the section.

14 An equestrian who fails to give the report within 180 days from the
15 time of the accident or incident may be permitted to give the report at
16 any time within one year after the accident or incident, in the
17 discretion of a judge of the Superior Court, if the operator is not
18 substantially prejudiced thereby. Application to the court for
19 permission to give a late report shall be made upon motion based
20 upon affidavits showing sufficient reasons for the equestrian's failure
21 to give the report within 180 days from the time of the accident or
22 incident.

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24 6. Sections 2 and 3 of this act, and any other law notwithstanding,
25 an action for injury or death against an operator, an equestrian area or
26 its employees or owner, whether based upon tort or breach of contract
27 or otherwise arising out of equestrian activities shall be commenced no
28 later than two years after the occurrence of the incident or earliest of
29 incidents giving rise to the cause of action.

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31 7. If an equestrian accident or incident, or an action based upon an
32 equestrian accident or incident, involves a minor, the time limits set
33 forth in sections 5 and 6 of this act shall not begin to run against the
34 minor until the minor reaches the age of majority.

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36 8. Notwithstanding any provisions of sections 3 and 4 of this act
37 to the contrary, the following actions or lack thereof, on the part of
38 operators shall be exceptions to the limitation on liability for
39 operators:

40 a. Knowingly providing equipment or tack that is faulty to the
41 extent that it causes or contributes to injury;

42 b. Failure to make reasonable and prudent efforts to determine the
43 equestrian's ability to safely manage the particular horse, based on the
44 equestrian's representation of his ability;

45 c. A case in which the equestrian is injured or killed by a known
46 dangerous latent condition on property owned or controlled by the

1 equine activity operator and for which warning signs have not been
2 conspicuously posted;

3 d. An act or omission on the part of the operator that constitutes
4 negligent disregard for the equestrians's safety, which act or omission
5 causes the injury; and

6 e. Intentional injuries to the equestrian caused by the operator.

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8 9. All operators shall post and maintain signs on all lands owned or
9 leased thereby and used for equine activities, which signs shall be
10 posted in a manner that makes them visible to all equestrians and
11 which shall contain the following notice in large, capitalized print:

12 "WARNING: UNDER NEW JERSEY LAW, AN EQUINE
13 OPERATOR IS NOT LIABLE FOR AN INJURY TO OR THE
14 DEATH OF AN EQUESTRIAN IN EQUINE ACTIVITIES
15 RESULTING FROM THE INHERENT RISKS OF EQUINE
16 ACTIVITIES, PURSUANT TO P.L. , c. (C.).

17 Individuals or entities providing equine activities on behalf of an
18 operator, and not the operator, shall be required to post and maintain
19 the signs required by this section.

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21 10. a. Every written contract entered into by an operator for the
22 provision of professional services, instruction, or the rental of
23 equipment or tack or an equine animal to an equestrian, whether or not
24 the contract involves equine activities on or off the equestrian area,
25 shall contain, in clear and conspicuous print, the warning notice
26 specified in section 9 of this act, and shall contain, in clear and
27 conspicuous print, a notice that no equestrian, or parent or guardian
28 of an equestrian who is a minor, who knowingly executes a waiver of
29 the right to sue or who agrees to assume the inherent risks of equine
30 activity may maintain an action against or recover from the operator
31 for an injury to or death of an equestrian resulting from the inherent
32 risks of equine activities.

33 As used in this section, "clear and conspicuous print" means
34 capitalizing the words when the rest of the contract is printed in lower
35 case, putting the words in bold print and printing the words in a type
36 size that is substantially larger than the print in the other parts of the
37 contract.

38 The waiver shall give notice to an equestrian of the risks inherent
39 in equine activities, including:

40 (1) The propensity of an equine animal to behave in ways that
41 result in injury, harm or death to nearby persons;

42 (2) The unpredictability of an equine animal's reaction to such
43 phenomena as sounds, sudden movement, and unfamiliar objects,
44 persons or other animals;

45 (3) Certain natural hazards, such as surface or subsurface ground
46 conditions;

1 (4) Collisions with other equine animals or with objects; and

2 (5) The potential of other equestrians to act in a negligent manner
3 that may contribute to injury to an equestrian or others, including but
4 not limited to, failing to maintain control over the animal or not acting
5 within an equestrian's ability.

6 b. The waiver shall remain valid unless expressly revoked by an
7 equestrian or by the parent or guardian of an equestrian who is a
8 minor. In the case of school and college-sponsored classes and
9 programs, waivers executed by an equestrian, or parent or guardian of
10 an equestrian who is a minor, shall apply to all equine activities in
11 which the equestrian is involved in the next succeeding twelve month
12 period unless expressly revoked in writing prior to the expiration of
13 the twelve month period.

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15 11. The provisions of this act are cumulative with the defenses
16 available to a public entity or public employee under the "New Jersey
17 Tort Claims Act," N.J.S.59:1-1 et seq..

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19 12. This act shall not apply to the horse racing industry.

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21 13. This act shall take effect immediately.

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STATEMENT

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26 This bill would establish by statute the responsibilities and liabilities
27 of those individuals who engage in equine activities. Equine activities
28 include any activities that involves the use of horses and ponies such
29 as riding lessons, trail riding, horse training, or engaging in horse
30 shows.

31 This bill provides that one who engages in equine activities assumes
32 the risks involved in those activities. Under the provisions of this bill,
33 notwithstanding the provisions of New Jersey's law with regard to
34 comparative negligence, an equestrian would be completely barred
35 from suing an operator for injuries to which the equestrian contributed
36 to by failing to conduct himself within the limits of his abilities.

37 The bill also provides that every written contract entered into for
38 the provision of professional services to an equestrian shall contain a
39 warning notice concerning the liabilities and responsibilities of persons
40 engaging in equine activities, and shall also contain a notice that an
41 equestrian who executes a waiver or agrees to assume the inherent
42 risks of equine activities gives up the right to sue an operator for
43 injuries resulting from inherent risks of equine activities.

44 In addition, the bill provides that any waiver executed by an
45 equestrian remains valid unless expressly revoked. In the case of
46 minors involved in school-sponsored programs, the bill provides that

1 waivers remain valid for 12 months unless revoked earlier in writing.

2 The bill also establishes certain preconditions which must be met
3 prior to instituting an action against an operator. The equestrian must
4 file a report with the operator, in writing, outlining the details of the
5 injury. This report must be filed no later than 180 days after the time
6 of the accident. If the equestrian fails to file the report within the
7 prescribed time, a Superior Court judge may allow him to file any time
8 within one year after the accident provided that the operator is not
9 substantially prejudiced by the late report.

10 In addition, this bill provides that when an equestrian accident
11 involves a minor the time limits for the report and the statute of
12 limitations would not begin to run until the minor reaches the age of
13 majority.

14 The bill also requires that written contracts between an operator
15 and equestrian notify equestrians of their legal responsibilities and
16 liabilities established by statute and also notify equestrians that by
17 executing a waiver or agreeing to assume the inherent risks of equine
18 activities, they give up their right to sue an operator for injuries
19 resulting from the inherent risks of equine activities.

20 The bill also provides that an executed waiver remains valid unless
21 expressly revoked and, in the case of minors participating in school-
22 sponsored programs, executed waivers remain valid for 12 months
23 unless revoked in writing.

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28 Establishes the responsibilities and liabilities of equestrians.