

SENATE, No. 282

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator EWING

1 AN ACT concerning the responsibilities and liabilities of individuals
2 involved in equestrian activities and supplementing Title 5 of the
3 Revised Statutes.

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

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8 1. The Legislature finds and declares that equine activities are
9 practiced by a large number of citizens of this State; that equine
10 activities attract large numbers of nonresidents to the State; that those
11 activities significantly contribute to the economy of this State; and that
12 horse farms are a major land use which preserves open space.

13 The Legislature further finds and declares that equine activities
14 involve risks that are essentially impractical or impossible for the
15 operator to eliminate; and that those risks must be borne by those who
16 engage in those activities.

17 The Legislature therefore determines that the allocation of the risks
18 and costs of equine activities is an important matter of public policy
19 and it is appropriate to state in law those risks that the participant
20 voluntarily assumes for which there can be no recovery.

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22 2. As used in this act:

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

29 "Equine" means a horse, pony, mule or donkey.

30 "Equine activity" means any activity that involves the use of an
31 equine and shall include selling equipment and tack; transportation,
32 including the loading and off-loading, for travel to or from a horse
33 show or trail system; inspecting, or evaluating an equine belonging to
34 another person whether or not the person has received compensation;
35 placing or replacing shoes on an equine; and veterinary treatment on

1 an equine.

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

5 a. The propensity of an equine to behave in ways that result in
6 injury, harm, or death to nearby persons,

7 b. The unpredictability of an equine's reaction to such phenomena
8 as sounds, sudden movement and unfamiliar objects, persons or other
9 animals,

10 c. Certain natural hazards, such as surface or subsurface ground
11 conditions,

12 d. Collisions with other equines or with objects, and;

13 e. The potential of a participant to act in a negligent manner that
14 may contribute to injury to the participant or others, including but not
15 limited to failing to maintain control over the equine or not acting
16 within the participant's ability.

17 "Operator" means a person or entity who owns, manages, controls
18 or directs the operation of an area where individuals engage in equine
19 activities whether or not compensation is paid. "Operator" shall also
20 include an agency of this State, political subdivisions thereof or
21 instrumentality of said entities, or any individual or entity acting on
22 behalf of an operator for all or part of such activities.

23 "Participant" means any person, whether an amateur or
24 professional, engaging in an equine activity, whether or not a fee is
25 paid to engage in the equine activity or, if a minor, the natural
26 guardian, or trainer of that person standing in loco parentis, and shall
27 include anyone accompanying the participant, or any person coming
28 onto the property of the provider of equine activities or equine area
29 whether or not an invitee or person pays consideration.

30 "Spectator" means a person who is present in an equestrian area for
31 the purpose of observing equine activities whether or not an invitee.
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33 3. A participant and spectator are deemed to assume the inherent
34 risks of equine activities created by equines, weather conditions,
35 conditions of trails, riding rings, training tracks, equestrians, and all
36 other inherent conditions. Each participant is assumed to know the
37 range of his ability and it shall be the duty of each equestrian to
38 conduct himself within the limits of such ability to maintain control of
39 his equine and to refrain from acting in a manner which may cause or
40 contribute to the injury of himself or others, loss or damage to person
41 or property, or death which results from participation in an equine
42 activity.
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44 4. A participant or a spectator shall not engage in, attempt to
45 engage in, or interfere with, an equine activity if he is knowingly under
46 the influence of any alcoholic beverage as defined in R.S.33:1-1 or

1 under the influence of any prescription, legend drug or controlled
2 dangerous substance as is defined in P.L.1970, c.226 (C.24:21-1 et
3 seq.), or any other substance that affects the individual's ability to
4 safely engage in the equine activity and abide by the posted and stated
5 instructions. The operator may prevent an equestrian or a spectator
6 who is perceptibly or apparently under the influence of drugs or
7 alcohol, from engaging in, or interfering with, an equine activity or
8 being in an equine area. An operator who prevents a participant or a
9 spectator from engaging in, or interfering with, an equine activity, or
10 being in an equine area in accordance with this section shall not be
11 criminally or civilly liable in any manner or to any extent whatsoever
12 if the operator has a reasonable basis for believing that the participant
13 or spectator is under the influence of drugs or alcohol.

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15 5. The assumption of risk set forth in section 3 of this act shall be
16 a complete bar of suit and shall serve as a complete defense to a suit
17 against an operator by a participant for injuries resulting from the
18 assumed risks, notwithstanding the provisions of P.L.1973, c.146
19 (C.2A:15-5.1 et seq.) relating to comparative negligence. Failure of
20 a participant to conduct himself within the limits of his abilities as
21 provided in section 3 of this act shall bar suit against an operator to
22 compensate for injuries resulting from equine activities, where such
23 failure is found to be a contributory factor in the resulting injury.

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25 6. a. As a precondition to bringing any suit in connection with a
26 participant injury against an operator, a participant shall submit a
27 written report to the operator setting forth all details of any accident
28 or incident as soon as possible, but in no event longer than 180 days
29 from the time of the accident or incident giving rise to the suit.

30 b. The report shall include at least the following: The participant's
31 name and address, a brief description of the accident or incident, the
32 location of the accident or incident, the alleged cause of the accident
33 or incident, the names of any other persons involved in the accident or
34 incident and witnesses, if any. If it is not practicable to submit the
35 report within 180 days because of severe physical disability resulting
36 from an equestrian accident or incident, the report shall be submitted
37 as soon as practicable. This section is not applicable with respect to
38 an equestrian area unless the operator conspicuously posts notice to
39 participants of the requirements of the section.

40 c. A participant who fails to submit the report within 180 days
41 from the time of the accident or incident may be permitted to submit
42 the report at any time within one year after the accident or incident, if
43 in the discretion of a judge of the Superior Court the operator is not
44 substantially prejudiced thereby. Application to the court for
45 permission to submit a late report shall be made upon motion based on
46 affidavits showing sufficient reasons for the participant's failure to give

1 the report within 180 days from the time of the accident or incident.

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3 7. Notwithstanding any provision of this act, or any other law to
4 the contrary, an action for injury or death against an operator, an
5 equestrian area or its employees or owner, whether based upon tort or
6 breach of contract or otherwise arising out of equestrian activities,
7 shall be commenced no later than two years after the occurrence of the
8 incident or earliest of incidents giving rise to the cause of action.

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10 8. If a participant accident or incident, or an action based upon an
11 equine activity or incident, involves a minor, the time limits set forth
12 in sections 6 and 7 of this act shall not begin to run against the minor
13 until the minor reaches the age of majority, unless there was present
14 to approve conditions and riding ability a person standing in loco
15 parentis, who made these decisions for the minor in activities including
16 but not limited to horse shows, trying a horse for sale, riding lessons,
17 trail rides, and performances.

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19 9. Notwithstanding any provisions of sections 3 and 4 of this act
20 to the contrary, the following actions or lack thereof on the part of
21 operators shall be exceptions to the limitation on liability for
22 operators:

23 a. Knowingly providing equipment or tack that is faulty to the
24 extent that it causes or contributes to injury.

25 b. Failure to make reasonable and prudent efforts to determine the
26 participant's ability to safely manage the particular equine, based on
27 the participant's representation of his ability, or the representation of
28 the guardian, or trainer of that person standing in loco parentis, if a
29 minor.

30 c. A case in which the participant is injured or killed by a known
31 dangerous latent condition on property owned or controlled by the
32 equine activity operator and for which warning signs have not been
33 posted.

34 d. An act or omission on the part of the operator that constitutes
35 negligent disregard for the participant's safety, which act or omission
36 causes the injury, and

37 e. Intentional injuries to the participant caused by the operator.

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

43 "WARNING: UNDER NEW JERSEY LAW, AN EQUINE
44 OPERATOR IS NOT LIABLE FOR AN INJURY TO OR THE
45 DEATH OF A PARTICIPANT IN EQUINE ACTIVITIES
46 RESULTING FROM THE INHERENT RISKS OF EQUINE

1 ACTIVITIES, PURSUANT TO P.L. c. (C.)(now before the
2 Legislature as this bill)."
3 Individuals or entities providing equine activities on behalf of an
4 operator, and not the operator, shall be required to post and maintain
5 signs required by this section.

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

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

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13 13. This act shall take effect immediately.

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16 STATEMENT

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18 The purpose of this bill is to establish by statute the responsibilities
19 and liabilities of those individuals who engage in equine activities.
20 Equine activities includes any activity that involves the use of horses
21 and ponies such as riding lessons, trail riding, horse training, or
22 engaging in horse shows. This bill would enable operators of
23 equestrian areas, acting under a reasonable basis, to prevent
24 participants, or spectators who are under the influence of drugs or
25 alcohol from engaging in an equine activity without subjecting the
26 operator to criminal or civil liability.

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

33 The following actions or lack thereof on the part of operators shall
34 be exceptions to the limitation on liability for operators:

35 a. Knowingly providing equipment or tack that is faulty to the
36 extent that it causes or contributes to injury.

37 b. Failure to make reasonable and prudent efforts to determine the
38 participant's ability to safely manage the particular equine, based on
39 the participant's representation of his ability, or the representation of
40 the guardian, or trainer of that person standing in loco parentis, if a
41 minor.

42 c. A case in which the participant is injured or killed by a known
43 dangerous latent condition on property owned or controlled by the
44 equine activity operator and for which warning signs have not been
45 posted.

46 d. An act or omission on the part of the operator that constitutes

1 negligent disregard for the participant's safety, which act or omission
2 causes the injury, and

3 e. Intentional injuries to the participant caused by the operator.

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

12 In addition, this bill provides that when a participant accident
13 involves a minor the time limits for the report and the statute of
14 limitations would not begin to run until the minor reaches the age of
15 majority unless the decisions have knowingly been made by a guardian,
16 trainer or person standing in loco parentis.

17 Finally, the bill would require operators to post and maintain signs
18 that state that the operator is not liable for an injury to or the death of
19 a participant in equine activities resulting from the inherent risks of
20 equine activities.

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25 Establishes certain responsibilities of participants in equestrian
26 activities and the rights of equestrian area operators.