

Equine Activity Liability Acts

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Disclaimer -- This presentation and supporting material is designed for informational and educational purposes and is not intended to take the place of legal advice on a specific matter nor to establish the attorney-client relationship. Participants should seek legal counsel from an attorney properly licensed in his or her state and who regularly practices equine law in his or her state. Be mindful that for valid legal advice and representation, all pertinent facts must be disclosed to your attorney.

I. Introduction to the Equine Activity Liability Acts (EALA)

In the mid-1980's several groups, led primarily by the American Horse Council, began promoting the passage of a liability act to protect owners and participants in equestrian activities. The underlying intention of Equine Activity Liability Act is to encourage equine activities by limiting civil liability of those individuals who offer, organize, or sponsor equine activities. The primary rationale was that equine activities provide a variety of benefits to the states in which they occur, including a significant economic impact. Studies sponsored by the American Horse Council reported that in 2005, the horse industry contributed approximately \$39 billion in direct economic impact to the U.S. economy, including 1.4 million full time jobs and total spending reached \$102 billion. Although, EALAs are designed to support the horse community by limiting liability from the inherent risks associated with horse activities, they do not offer complete immunity. Mishaps involving non-inherent risks fall outside the scope of EALA laws – ie. faulty tack or equipment, failing to properly match mount and rider, latent condition, negligence in any way – supervision, instruction, duty of care owed, etc.

Initially a uniform act was circulated in the 1980's. Over the next three decades an act was introduced and passed in some form by a majority of states. (All but CA & MD.) The most recent was signed into law by New York Governor Cuomo on October 23, 2017. The NY law differs in that it is primarily an agricultural tourism law. Although the EALA was originally designed to be a uniform law, individual states adjusted and reworked the version that passed their individual state legislatures and what became law in individual states was changed and modified to the extent that it no longer resembles a uniform law. One cannot rely on the version passed in one state to apply in another. Specific EALA law must be carefully considered in each state to determine the application and immunity available in that state. Liability assessment varies and is dependent on the specific language of the EALA statute in each state. Before considering what protection is offered by an EALA in any specific state, one must closely read the version that became law in that state, and when possible, read cases to see how the courts in that state have interpreted and applied that law to the unique facts presented in each case.

→ CAVEAT ---- STATE LAW CONTROLS.

Currently, several online equine resources provide descriptions and links to various EALA state statutes throughout the country, as well as some discussions regarding possible legal interpretations. For further reading please refer to the websites of *The American Horse Council*, *The American Equestrian Alliance*, *Equine Legal Solutions*, Equine Law Blog, *Animal Law*, equine insurance websites and many law school websites. Additional internet information is available by searching “Equine Activity Liability Act (or Law)”. Many resources exist, including magazine articles, blogs, law review articles, etc. The reader is cautioned to consider the source of the information before relying on it. Additionally, one must consider the jurisdiction and any changes that may have been made to the law since its enactment.

II. Your Individual State law and Components of EALAs.

Most states have enacted some form of an EALA or a livestock law. Many states also have laws regarding sports, recreation, and/or recreational land use that may compliment or conflict with a state EALA. Because the state legislatures may change the law, it is important to make certain that the state law you are relying on is current. To find the current law in your state you may request it from an attorney in your state or obtain it from a subscriber service like West Law, Lexis Nexis, etc. (fees apply). Alternatively, you may find your state law on the Internet in a several locations: 1) The website for most state legislatures contains a link to the state code; 2) Internet search of “Equine Activity Liability Act”; 3) Website for your county extension office, state horse council, or the American Horse Council; or 4) the lists on the websites such as The American Equestrian Alliance, Animal Law, etc.

Once you obtain a copy of the EALA in your state and verify that it is the current law, break down the specific parts of your law to determine primary points. This is similar to reading the outline you prepared for your high school theme papers. Hierarchy -- Learn how your law is structured and identify the parts.

Generally, EALAs contain about 4 components in some order:

1. **Definitions** – CRITICAL that you understand these in your state. What qualifies as an equine activity, equine professional, equine sponsor, participant, equine (or animal!), inherent risks, etc. is a threshold matter that controls whether the EALA applies.

2. Statement of the specific and **limited immunity** granted by the law.

3. **Exceptions**.

4. **Requirements** to invoke the limited immunity offered. This could be signage and notices on contracts, releases, etc. and may include specific required wording. Failure to comply with requirements and the law may not protect you!

The primary legal question to determine whether the EALA immunity is invoked is: **Was the participant injured/damaged as a result of the inherent risk of being engaged in an equine activity offered by an equine activity sponsor or equine professional?**

III. Case Law

When a case is determined by a court, it becomes legal precedent in that jurisdiction and is binding on very specific facts and law. A case determined in one state is NOT binding legal precedent in another state for many reasons. First, the laws in the two states must be identical. Any variation in the law from one state to another state can result in a completely different outcome. Similarly, the facts must be identical. Even a slight variation in the facts can result in a totally different determination by the court. These two things, the law and the facts, are threshold matters. It is critical that you carefully select an attorney who is well-versed in the equine laws of your state and once you chose your legal counsel, you must be very open and totally candid concerning the exact details (facts) of your situation. A case in a lower court (trial) must be appealed to an upper level court to have a published opinion that can be cited as case law. Some cases are reported without an opinion and are of no legal consequence elsewhere.

Helpful terms in reading legal cases: At the trial (lower) court level, the *Plaintiff* is the one who brings the action and the *Defendant* is the one who is being sued. If the case goes to a higher court, new names for the parties: the *Appellant* is the one (may be the plaintiff or defendant) who is unhappy with what the trial court decided and takes the case (appeals) to a higher court hoping to change the result. The *Appellee* is in the position on appeal of defending the ruling of the lower court.

IV. Some Interesting Cases *Pre-EALA – good read:*

Ewing v. Prince, 425 S.W. 2d 732, Kentucky (1968)

Plaintiff claimed damages for injuries when she was kicked by a mare she approached from behind while riding another horse. Held that no dangerous or vicious propensities in Jezebel, the animal in question. She had plenty of life but could be handled by anyone. Great language re:Flicka, Trigger, Champion and even Mr. Ed!

North Hardin Developers, Inc. v. Corkran, 839 S.W. 2d 258, Kentucky (1992) Child sustained fractured skull after being kicked by horse she approached from behind in pasture. Undisputed that child had climbed through barbed wire fence on a dare to touch a horse. Horse was not known to be violent and was startled. Property owner knew kids trespassed, had posted notices and even hired someone part time to chase the children away! Good case re: attractive nuisance doctrine and duty of care owed to others. Ordinary domesticated animals are a natural condition when securely maintained on a farm and do not constitute an unreasonable risk or even a foreseeable risk of harm to others.

***** *Cases after EALA* *****

Markowitz v. Bainbridge Equestrian Center, Inc., 11th District, 2007 WL 959906, Ohio. Unpublished. Horse camp rider injured when pony startled by thunder, reared. Good language re: “Precisely the kind of activity” the EALA is intended to immunize.

Baker v. McIntosh, 132 S. W. 3d 20, Kentucky, (2004) Plaintiff Baker claimed injuries after colt backed into gate pinning and breaking Baker's wrist. McIntosh, was a horse trader, Baker, friend and frequent visitor. Baker could not expect McIntosh to make special preparation for his safety when it was obvious that Baker could have discovered that himself. McIntosh was entitled to conduct his business as he was accustomed and had no duty to further warn Baker. Similar, **Allison v. Johnson**, 2001 WL589384, Ohio, (2001), dealing with gate that broke when horse struck it causing a board to hit and injure Plaintiff.

Columbus v. Moore, 2006 WL 2089210, Michigan. Unpublished. Plaintiff injured by horse kick at a horse sale. Contended she was a spectator since she was not buying. Court said she was a participant – she looked, talked with sellers, and was in area of the activity. EALA applied.

Amburgey v. Sauder, 605 N.W. 2d 84, Michigan, (1999). Plaintiff, Amburgey, claimed damages for injuries to her arm and shoulder as a result of being bitten by a horse as she was walking in the hallway of defendant Sauder's boarding stable. The court determined that the intent of the Michigan EALA was to grant immunity to qualifying defendants for certain acts or omissions. By the express definition in the EALA, Amburgey was a "participant" who was "engaged in an equine activity" while touring the barn (MI statute included "visiting, touring, or utilizing an equine facility" within the definition of equine activity) and therefore, Amburgey fell within the class of persons who were barred from recovering from a qualified defendant. The MI statute required posting of specific notices and evidence was presented that more than one appropriate sign was posted "in a clearly visible location in close proximity to the equine activity." A goat had eaten one of the signs but other signs posted elsewhere, including at the main entrance, were intact. Because there was appropriate posting of signs, Sauder, who met the statutory definition of "equine professional", could invoke the EALA protections. This case contains an excellent judicial discussion regarding the strict interpretation of the actual words of the MI EALA as well as the purposes. By footnote, cites the "penalty" imposed by an EALA for failure to post a sign; i.e. the law will not protect!

A similar horse bite case was determined in Connecticut. See **Vendrella v. Astriab**, 87 A. 3d 546, (2014) final decision at 60 Conn. L. Rptr. 592 (July 2015). Vendrella has a long history, was bounced around in the courts on legal and technical issues, not related to the EALA; however, good language and fun reading regarding the propensity of a horse to bite.

Friedli v. Kerr, Tenn. App., unpublished, 2001 WL 177184, Tennessee, (2001) . The Friedli's were touring downtown Nashville in horse-drawn carriage owned by Kerr when a loud noise frightened Talon, the horse, and he bolted. The Friedli's were dumped on the street, Talon broke free and then completed his usual route without the carriage, the driver, or the passengers. Friedli's sued and Kerr claimed EALA. The trial court determined that Kerr owed a heightened duty of care as an "amusement ride operator" or as a "common carrier" rather than as an equine professional under EALA. On appeal, the court disagreed and held that Kerr owed the Friedli's only an ordinary duty of care. The appeals court expressly reversed the trial court's judgment determining that Kerr should NOT be held to the same heightened duty expected of common

carriers or operators of amusement rides. Case made no final rulings whether the EALA applied but costs were taxed to BOTH parties – giving rise to doubt and questions.

Gardner v. Simon, 2006 WL 2244124, Michigan. Plaintiff Gardner was injured when horse, Nick, reared, caught hooves in tree, and fell over. Good language re: green broke horse, warnings, and legal discussion of limiting the liability and application of EALA under circumstances of negligence. Trial court granted summary judgment, relieving Simon under EALA. Gardner appealed and presented evidence that she was not warned of Nick's known dangerous propensities. Appeals court returned to trial court to review facts to determine appropriate duty of care owed to Gardner by Simon. Was there negligence?

Gamble v. Peyton, 182 S.W. 3d 1, Texas, (2005). Plaintiff Peyton claimed damages from falling from a horse she was purchasing from Defendant, Gamble. The trainer rode the horse in the riding pen, then Peyton rode the horse under the trainer's supervision. As Peyton was dismounting, the horse tossed her and she seriously injured her back, requiring surgery. The trainer had mentioned the fire ants in the pen before Peyton mounted and when he returned the horse to the barn after the accident, he found fire ants on the horse's back legs. Peyton sued and Gamble prevailed under the Texas EALA. The court found that Gamble was a professional, and that Peyton was a participant in an equine activity. The court determined that the presence of fire ants in an outdoor riding pen is a natural condition that was known to Peyton and the behavior of the horse was an inherent risk of riding.

Gibson V. Donahue, 772 N.E. 2d 646, Ohio, 2002. Plaintiff Gibson, on her own horse, suffered personal injuries when she involuntarily dismounted after being chased by a free-running dog on a city-owned field. Defendant Donahue, the dog-owner, claimed immunity under the EALA – court said EALA cannot be applied to dog owner or city, and simply does not qualify under the terms of the equine law. However, the leash laws might make the dog owner responsible so it was sent back to the trial court to consider that. City went out on immunity. This case is hilarious reading and worth the view!

Halpern v. Wheeldon, 890 P.2d. 562, Wyoming, (1995). Plaintiff Halpern, who was inexperienced with horses, was injured while attempting to mount a horse owned by Defendant Wheeldon for a contracted trail ride. The trial court ruled in favor of Wheeldon and Halpern appealed. The Wyoming statute did not provide guidance of inherent risks of equine activities, so the determination of whether mounting was an inherent risk is a question of fact, not law; therefore, inappropriate for summary judgment. The supreme court returned this case to the trial court to factually determine whether mounting was an inherent risk.

Hellen v. Hellen, 831 N.W. 2d 430, 348 Wis. 2d 223, 2013 WI App 69 (2013). Ruth Hellen injured while holding lead rope for daughter-in-law, Rebecca Hellen to mount Whisper. Hip broken in her fall. EALA applied since equine activity, not necessarily mounted. However, summary judgment improper since there is a factual issue of whether Rebecca made reasonable effort to determine Ruth's ability to engage in equine activity.

Kangas v. Perry, 620 N.W. 2d 429, Wisconsin (2000). Kangas claimed damages for injuries she sustained when she fell backwards from a horse-drawn sled owned by Perry. Kangas chose to stand behind the only seat on the sled and during a rest stop, let go of the seat to open a beer. When the horses unexpectedly moved forward, she lost her balance and fell off backwards sustaining serious injuries. Perry trained and competed draft horses and used a sled for training. Kangas was visiting the horse farm with her husband and was invited to ride on the sled. Finding that Perry was an equine activity sponsor within the definition of the Wisconsin EALA, and that Kangas was a participant, the court applied the protections of that law to Perry. The court further found that the propensity of a horse to move without warning is an inherent risk of equine activity as contemplated by the statute.

Perry v. Whitley County 4-H Clubs, Inc., 931 N.E.2d 933; 2010 Indiana App. LEXIS 1501. Plaintiff Perry was an adult helper with 4-H equine events and was injured when a horse kicked her in a competition as she was assisting a child horse-handler. She also argued improper signage on the competition barn but admitted seeing the appropriate sign in an adjacent barn on numerous past occasions. Trial court ruled that sign was appropriate and that Perry's injury resulted from inherent risks of equine activities within the EALA. Appeals court upheld.

Snider v. Ft. Madison Rodeo, 2002 WL 570890, Iowa (2002) Unpublished. Plaintiff Snider crossed the street mid-parade and was injured by a pony in the parade. She sued the parade sponsor, the rodeo company. Snider lost and appealed. The Iowa Court of Appeals upheld that summary judgment for the parade sponsor was proper. (Summary judgment is when there is no material issue of fact and the moving party, here Ft. Madison, is entitled to judgment as a matter of law.) A spectator is specifically listed as a participant involved in a "domestic animal activity" according to the very terms of the Iowa EALA.

Stoffels v. Harmony Hill, 912 A. 2d 184, New Jersey (2006). Plaintiff Stoffels was injured when she was thrown from a horse owned by Defendant Harmony Hills. T/ct ruled for defendant giving full coverage to the EALA. NJ Superior Court held that EALA clearly applied, however, not absolute immunity. Rider claimed that the stable owner was negligent in horse assignment for her abilities. Appeals court returned to the t/ct for a determination of whether the stable owner was negligent in matching the horse and rider.

*****Reading a variety of the cases across the country will help you understand some of the reasons people may sue. This sampling should help you get started on a fun reading adventure!

V. Take Away.

KNOW YOUR STATE LAW! The law in another state has no application in your state!

**PATH, Region 2 Conference – Binghamton, New York
September 22-23, 2018 -- Delaware, Maryland, New Jersey, New York,
Pennsylvania, Washington, D.C.**

Delaware -- Title 10, Chapter 81, Delaware Code Section 8140

(a) For purposes of this section, the following terms shall have the meaning ascribed herein:

(1)(a) 'Engages in an equine activity' means riding, training, assisting in medical treatment of, driving, or being a passenger upon an equine, whether mounted or unmounted or any person assisting a participant or show management.

(b) 'Engages in an equine activity' does not include being a spectator at an equine activity, except in cases where the spectator places such spectator's person in an unauthorized area and in immediate proximity to the equine activity;

(2) 'Equine' means a horse, pony, mule, donkey, or hinny;

(3) 'Equine activity' means:

(a) Equine shows, fairs, competitions, performances, or parades that involve any or all breeds of equines and any of the equine disciplines, including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, driving, pulling, cutting, polo, steeplechasing, English and western performance riding, endurance trail riding and western games, and hunting;

(b) Equine training or teaching activities, or both;

(c) Boarding equines;

(d) Riding, inspecting, or evaluating an equine belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect, or evaluate the equine;

(e) Rides, trips, hunts, or other equine activities of any type, however informal or impromptu, that are sponsored by an equine activity sponsor; and

(f) Placing or replacing horseshoes on an equine;

(4) 'Equine activity sponsor' means an individual, group, club, partnership, or corporation, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for an equine activity, including, but not limited to, pony clubs, 4-H clubs, hunt clubs, riding clubs, school and college-sponsored classes, programs and activities, therapeutic riding programs, and operators, instructors, and promoters of equine facilities, including, but not limited to, stables, clubhouses, ponyride strings, fairs, and arenas at which the activity is held;

(5) 'Equine professional' means a person engaged for compensation:

(a) In instructing a participant or renting to a participant an equine for the purpose of riding, driving, or being a passenger upon the equine; or

(b) In renting equipment or tack to a participant;

(6) 'Inherent risks of equine activities' means those dangers or conditions which are an integral part of equine activities, including, but not limited to:

(a) The propensity of an equine to behave in ways that may result in injury, harm, or death to persons on or around them;

(b) The unpredictability of an equine's reaction to such things as sounds, sudden movements, and unfamiliar objects, persons, or other animals;

(c) Certain hazards such as surface and subsurface conditions;

(d) Collisions with other equines or objects; and

(e) The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within the participant's ability.

(7) 'Participant' means any person, whether amateur or professional, who engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

(b) Except as provided in §8140(C), an equine activity sponsor, an equine professional, or any other person, which shall include a corporation or partnership, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities. Except as provided in §8140(C), no participant or participant's representative shall make any claim against, maintain an action against, or recover from an equine activity sponsor, an equine professional, or any other person for injury, loss, damage, or death of the participant resulting from any of the inherent risks of equine activities.

(c) (1) This chapter shall not apply to the horse racing industry as regulated in Title 3.

(2) Nothing in §8140(B) shall prevent or limit the liability of an equine activity sponsor, an equine professional, or any other person if the equine activity sponsor, equine professional, or person:

a.1. Provided the equipment or tack, and knew or should have known that the equipment or tack was faulty, and such equipment or tack was faulty to the extent that it did cause the injury; or

2. Provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity and determine the ability of the participant to safely manage the particular equine based on the participant's representations of the participant's ability;

b. Owns, leases, rents, or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous latent condition which was known or should have been known to the equine activity sponsor, equine professional, or person and for which warning signs have not been conspicuously posted;

c. Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission caused the injury; or

d. Intentionally injures the participant.

(3) Nothing in §8140(B) shall prevent or limit the liability of an equine activity sponsor or an equine professional under either product liability or trespass claims.

(d)(1) Every equine professional shall post and maintain signs which contain the warning notice specified in subsection (2). Such signs shall be placed in clearly visible locations on or near stables, corrals, or arenas where the equine professional conducts equine activities if such stables, corrals, or arenas are owned, managed, or controlled by the equine professional. The warning notice specified in subsection (2) shall appear on the sign in red and white, with each

letter to be a minimum of one inch (1") in height. Every written contract entered into by an equine professional for the providing of professional services, instruction, or the rental of equipment or tack or an equine to a participant, whether or not the contract involves equine activities on or off the location or site of the equine professional's business, shall contain in clearly readable print the warning notice specified in subsection (2).

(2) The signs and contracts described in subsection (1) shall contain the following warning notice: 'WARNING

Under Delaware Law, an equine professional is not liable for an injury to or the death of a participant in equine activities resulting from the inherent risks of equine activities, pursuant to 10 Delaware Code Section 8140.'

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Maryland

Maryland – No Equine Statute -- But see 2006 University of Baltimore law forum article by Jennifer D. Merryman → Bucking the Trend: Why Maryland Does Not Need an Equine Activity Statute and Why It May Be Time to Put All of These Statutes Out to Pasture.

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New Jersey -- Title 5 Chapter 15

NJ ST 5:15-1

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

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

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

NJ ST 5:15-2

As used in this act:

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

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

"Equine animal activity" means any activity that involves the use of an equine animal and shall include selling equipment and tack; transportation, including the loading and off-loading for

travel to or from a horse show or trail system; inspecting, or evaluating an equine animal belonging to another person whether or not the person has received compensation; placing or replacing shoes on an animal equine; and veterinary treatment on an equine animal.

"Inherent risk or risks of an equine animal activity" means those dangers which are an integral part of equine animal activity, which shall include but need not be limited to:

- a. The propensity of an equine animal to behave in ways that result in injury, harm, or death to nearby persons;
- b. The unpredictability of an equine animal's reaction to such phenomena as sounds, sudden movement and unfamiliar objects, persons or other animals;
- c. Certain natural hazards, such as surface or subsurface ground conditions;
- d. Collisions with other equine animals or with objects; and
- e. The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including but not limited to failing to maintain control over the equine animal or not acting within the participant's ability.

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

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

"Spectator" means a person who is present in an equestrian area for the purpose of observing animal equine activities whether or not an invitee.

NJ ST 5:15-3

A participant and spectator are deemed to assume the inherent risks of equine animal activities created by equine animals, weather conditions, conditions of trails, riding rings, training tracks, equestrians, and all other inherent conditions. Each participant is assumed to know the range of his ability and it shall be the duty of each participant to conduct himself within the limits of such ability to maintain control of his equine animal and to refrain from acting in a manner which may cause or contribute to the injury of himself or others, loss or damage to person or property, or death which results from participation in an equine animal activity.

NJ ST 5:15-4

A participant or a spectator shall not engage in, attempt to engage in, or interfere with, an equine animal activity if he is knowingly under the influence of any alcoholic beverage as defined in

R.S.33:1-1 or under the influence of any prescription, legend drug or controlled dangerous substance as is defined in P.L.1970, c. 226 (C.24:21-1 et seq.), or any other substance that affects the individual's ability to safely engage in the equine animal activity and abide by the posted and stated instructions. The operator may prevent a participant or a spectator who is perceptibly or apparently under the influence of drugs or alcohol, from engaging in, or interfering with, an equine animal activity or being in an equestrian area. An operator who prevents a participant or a spectator from engaging in, or interfering with, an equine animal activity, or being in an equestrian area in accordance with this section shall not be criminally or civilly liable in any manner or to any extent whatsoever if the operator has a reasonable basis for believing that the participant or spectator is under the influence of drugs or alcohol.

NJ ST 5:15-5

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

NJ ST 5:15-6

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

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

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

NJ ST 5:15-7

Notwithstanding any provision of this act, or any other law to the contrary, an action for injury or death against an operator, an equestrian area or its employees or owner, whether based upon tort or breach of contract or otherwise arising out of equine animal activities, shall be commenced no

later than two years after the occurrence of the incident or earliest of incidents giving rise to the cause of action.

NJ ST 5:15-8

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

NJ ST 5:15-9

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

- a. Knowingly providing equipment or tack that is faulty to the extent that it causes or contributes to injury.
- b. Failure to make reasonable and prudent efforts to determine the participant's ability to safely manage the particular equine animal, based on the participant's representation of his ability, or the representation of the guardian, or trainer of that person standing in loco parentis, if a minor.
- c. A case in which the participant is injured or killed by a known dangerous latent condition on property owned or controlled by the equine animal activity operator and for which warning signs have not been posted.
- d. An act or omission on the part of the operator that constitutes negligent disregard for the participant's safety, which act or omission causes the injury, and
- e. Intentional injuries to the participant caused by the operator.

NJ ST 5:15-10

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

"WARNING: UNDER NEW JERSEY LAW, AN EQUESTRIAN AREA OPERATOR IS NOT LIABLE FOR AN INJURY TO OR THE DEATH OF A PARTICIPANT IN EQUINE ANIMAL ACTIVITIES RESULTING FROM THE INHERENT RISKS OF EQUINE ANIMAL ACTIVITIES, PURSUANT TO P.L., CHAPTER 287"

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

NJ ST 5:15-11

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

NJ ST 5:15-12

This act shall not apply to the horse racing industry.

NJ ST 5:15-13

This act shall take effect immediately.

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New York -- Article 18-B. Sections 18-301 through 18-303. New in 2017 -- Agri-Tourism bill

Section 18-301.

This article shall be known and may be cited as the "Safety in Agricultural Tourism Act".

Section 18-302. DEFINITIONS.

For purposes of this article:

1. "Agricultural tourism" means activities, including the production of maple sap and pure maple products made therefrom, farm and winery tours, equine activities both outdoors and indoors but excluding equine therapy, u-pick Christmas trees, hiking, hunting and other forms of outdoor recreation offered to farm visitors, conducted by a farmer on-farm for the enjoyment and/or education of the public, which primarily promote the sale, marketing, production, harvesting or use of the products of the farm and enhance the public's understanding and awareness of farming and farm life.

2. "Equine therapy" shall include equine activities for children or adults with physical or mental disabilities, post-traumatic stress disorder or other condition for which equine therapy is sought for therapeutic purposes or treatment.

Section 18-303. Responsibilities of operators and visitors of agricultural tourism areas.

1. Operators of agricultural tourism areas shall have the following additional responsibilities:

a. To post and maintain way finding signage to delineate the paths, areas and buildings that are open to the public;

b. To adequately train employees who are actively involved in agricultural tourism activities;

c. To post at every point of sale or distribution of tickets, whether on or off the premises of the agricultural tourism area, a conspicuous "Warning to Visitors" relative to the inherent risks of participating in activities on working farms and to provide written information having such text and graphics as the commissioner of agriculture and markets shall specify, which shall conspicuously direct the attention of all visitors to the required "Warning to Visitors";

d. To post at every point of sale or distribution of tickets at an agricultural tourism area a conspicuous notice to visitors that pursuant to this article such visitors have a responsibility to

exercise reasonable care regarding the disclosed risks of the agricultural activity, and reasonably comply with posted way finding signs, reasonably remain in areas designated for the agricultural tourism activity, reasonably follow any and all written and conspicuously posted rules of conduct provided by such operator to visitors or verbal or other communication for persons with disabilities, and not to willfully remove, deface, alter or otherwise damage signage, warning devices or implements, or other safety devices;

e. To take reasonable care to prevent reasonably foreseeable risks to visitors, consistent with the responsibility of a landowner to keep his or her premises reasonably safe for intended and reasonably foreseeable uses and users, and to post conspicuous notice to visitors of the right to a refund to the purchaser in the amount paid in the initial sale of any tickets returned to the operator of the agricultural tourism area, intact and unused, upon declaration by such purchaser that he or she believes that he or she is unprepared or that he or she is unwilling to participate in the agricultural tourism activity due to the risks inherent in the activities or the duties imposed upon him or her by this section; and

f. Owners and operators of agricultural tourism areas shall not be liable for an injury to or death of a visitor if the provisions of this subdivision are complied with.

2. Visitors to agricultural tourism areas have the responsibility to exercise reasonable care regarding the disclosed risks of the agricultural activity and:

a. to reasonably comply with posted way finding signs and reasonably remain in areas designated for the agricultural tourism activity;

b. to reasonably follow any and all written information or conspicuously posted rules of conduct provided by such operator to visitors, or verbal or other form of communication of rules of conduct where needed for effective communication for people with disabilities; and

c. not to willfully remove, deface, alter or otherwise damage signage, warning devices or implements or other safety devices.

NOTE -- There is also a law in NY requiring a rider under age 18 to wear an equestrian helmet.

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Pennsylvania 4 P.S. § 601-606 Amusements

§ 601. Scope

This act shall apply to an individual, group, club or business entity that sponsors, organizes, conducts or provides the facilities for an equine activity as defined in this act.

§ 602. Immunity

(a) Assumption of risk--As to those within the scope of this act, liability for negligence shall only be barred where the doctrine of knowing voluntary assumption of risk is proven with respect to damages due to injuries or death to an adult participant resulting from equine activities.

(b) Equine activities--For the purposes of this act, immunity shall apply where an equine is utilized in the following manner:

(1) Equine training, teaching, riding instruction, shows, fairs, parades, competitions or performances which involve breeds of equine participating in an activity. This paragraph shall include, but not be limited to, dressage, hunter and jumper shows, Grand Prix jumping, three-day eventing, combined training, rodeos, reining, cutting, team penning and sorting, driving, pulling, barrel racing, steeplechasing, English and Western performance riding and endurance and nonendurance trail riding. This paragraph shall also include Western games, gymkhana, hunting, packing, therapeutic riding and driving and recreational riding.

(2) Equine or rider and driver training, teaching, instruction or evaluation. This paragraph includes clinics, seminars and demonstrations.

(3) Boarding equines, including normal daily care.

(4) Breeding equines, whether by live cover or artificial insemination.

(5) Inspecting, riding or evaluating an equine belonging to another by a purchaser or agent, whether or not the owner of the equine has received anything of value for the use of the equine or is permitting a prospective purchaser or a purchaser's agent to ride, drive, inspect or evaluate the equine.

(6) Recreational rides or drives which involve riding or other activity involving the use of an equine.

(7) Placing, removing or replacing of horseshoes or the trimming of an equine's hooves.

(8) Leading, handling or grooming of an equine.

§ 603. Signing

This act shall provide immunity only where signing is conspicuously posted on the premises on a sign at least three feet by two feet, in two or more locations, which states the following:

You assume the risk of equine activities pursuant to Pennsylvania law.

§ 604. Equine propensity

Evidence of viciousness of the equine shall not be required before a possessor of an equine shall be subject to liability for harm.

§ 605. Effect on other laws

This act shall not affect common law or any statute for the protection of the user of the equine. In no event shall this act apply to any matter involving a motor vehicle covered by 75 Pa.C.S. Ch. 17 (relating to financial responsibility) or a successor act or to any non-equine-related activity or entity.

§ 606. Construction

The immunity provided for by this act shall be narrowly construed.
