

3195

2011-2012 Regular Sessions

I N S E N A T E

February 11, 2011

Introduced by Sen. RANZENHOFER -- read twice and ordered printed, and
when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to creating the
equine activity safety code

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The general obligations law is amended by adding a new
2 article 18-B to read as follows:

3 ARTICLE 18-B

4 EQUINE ACTIVITY SAFETY CODE

5 SECTION 18-301. SHORT TITLE.

6 18-302. DEFINITIONS.

7 18-303. LIABILITY OF PERSONS INVOLVED IN EQUINE ACTIVITIES.

8 18-304. LIMITATION OF LIABILITY.

9 18-305. WAIVER.

10 18-306. POSTING AND NOTIFICATION.

11 S 18-301. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
12 THE "EQUINE ACTIVITY LIABILITY ACT".

13 S 18-302. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING
14 WORDS OR PHRASES SHALL BE DEFINED AS FOLLOWS:

15 1. "EQUINE" MEANS A HORSE, PONY, MULE, DONKEY, HINNY, ZEBRA, ZEBRA
16 HYBRID, OR ALPACA.

17 2. (A) "EQUINE ACTIVITY" MEANS ANY OF THE FOLLOWING:

18 (I) AN EQUINE SHOW, FAIR, COMPETITION, PERFORMANCE, OR PARADE THAT
19 INVOLVES AN EQUINE AND AN EQUINE DISCIPLINE, INCLUDING, BUT NOT LIMITED
20 TO, DRESSAGE, A HUNTER AND JUMPER SHOW, GRAND PRIX JUMPING, A THREE-DAY
21 EVENT, COMBINED TRAINING, A RODEO, DRIVING, PULLING, CUTTING, REINING,
22 TEAM PENNING, BARREL RACING, POLO, STEEPLE CHASING, ENGLISH OR WESTERN
23 PERFORMANCE RIDING, ENDURANCE OR NON-ENDURANCE TRAIL RIDING, WESTERN
24 GAMES, HUNTING, PACKING, AND RECREATIONAL RIDING;

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD06836-01-1

(II) AN EQUINE OR RIDER TRAINING, TEACHING, INSTRUCTING, TESTING, OR EVALUATING ACTIVITY, INCLUDING, BUT NOT LIMITED TO, A CLINIC, SEMINAR, OR SYMPOSIUM;

(III) THE BOARDING OF AN EQUINE, INCLUDING, BUT NOT LIMITED TO, NORMAL DAILY CARE OF AN EQUINE;

(IV) THE TRAILERING, LOADING, UNLOADING, OR TRANSPORTING OF AN EQUINE;

(V) THE RIDING, INSPECTING, OR EVALUATING OF AN EQUINE OWNED BY ANOTHER PERSON, REGARDLESS OF WHETHER THE OWNER HAS RECEIVED ANYTHING OF VALUE FOR THE USE OF THE EQUINE OR IS PERMITTING A PROSPECTIVE PURCHASER OF THE EQUINE TO RIDE, INSPECT, OR EVALUATE IT;

(VI) A RIDE, TRIP, HUNT, BRANDING, ROUNDUP, CATTLE DRIVE, OR OTHER ACTIVITY THAT INVOLVES AN EQUINE AND THAT IS SPONSORED BY AN EQUINE ACTIVITY SPONSOR, REGARDLESS OF WHETHER THE ACTIVITY IS FORMAL, INFORMAL, PLANNED, OR IMPROMPTU;

(VII) THE PLACING OR REPLACING OF HORSESHOES ON AN EQUINE, THE REMOVING OF HORSESHOES FROM AN EQUINE, OR THE TRIMMING OF THE HOOVES OF AN EQUINE;

(VIII) THE PROVISION OF OR ASSISTANCE IN THE PROVISION OF VETERINARY TREATMENT OR MAINTENANCE CARE FOR AN EQUINE;

(IX) THE CONDUCTING OF PROCEDURES OR ASSISTANCE IN THE CONDUCTING OF PROCEDURES NECESSARY TO BREED AN EQUINE BY MEANS OF ARTIFICIAL INSEMINATION OR OTHERWISE.

(B) "EQUINE ACTIVITY" DOES NOT INCLUDE HORSE OR MULE RACING.

3. "EQUINE ACTIVITY PARTICIPANT" MEANS A PERSON WHO ENGAGES IN ANY OF THE FOLLOWING ACTIVITIES, REGARDLESS OF WHETHER THE PERSON IS AN AMATEUR OR A PROFESSIONAL OR WHETHER A FEE IS PAID TO PARTICIPATE IN THE PARTICULAR ACTIVITY:

(A) RIDING, TRAINING, DRIVING, OR CONTROLLING IN ANY MANNER AN EQUINE, WHETHER THE EQUINE IS MOUNTED OR UNMOUNTED;

(B) BEING A PASSENGER UPON AN EQUINE;

(C) PROVIDING MEDICAL TREATMENT TO AN EQUINE;

(D) CONDUCTING PROCEDURES OR ASSISTING IN CONDUCTING PROCEDURES NECESSARY TO BREED AN EQUINE BY MEANS OF ARTIFICIAL INSEMINATION OR OTHERWISE;

(E) ASSISTING A PERSON WHO IS ENGAGED IN AN ACTIVITY DESCRIBED IN PARAGRAPH (A), (B), (C) OR (D) OF THIS SUBDIVISION;

(F) SPONSORING AN EQUINE ACTIVITY;

(G) BEING A SPECTATOR AT AN EQUINE ACTIVITY.

4. "EQUINE ACTIVITY SPONSOR" MEANS EITHER OF THE FOLLOWING PERSONS:

(A) A PERSON WHO, FOR PROFIT OR NOT FOR PROFIT, SPONSORS, ORGANIZES, OR PROVIDES A FACILITY FOR AN EQUINE ACTIVITY, INCLUDING, BUT NOT LIMITED TO, A PONY CLUB, 4-H CLUB, HUNT CLUB, RIDING CLUB, OR THERAPEUTIC RIDING PROGRAM, OR A CLASS, PROGRAM, OR ACTIVITY THAT IS SPONSORED BY A SCHOOL, COLLEGE, OR UNIVERSITY;

(B) AN OPERATOR OR PROMOTER OF, OR AN INSTRUCTOR AT, AN EQUINE FACILITY, SUCH AS A STABLE, CLUBHOUSE, PONY RIDE, FAIR, TRAINING FACILITY, SHOW GROUND, OR ARENA AT WHICH AN EQUINE ACTIVITY IS HELD.

5. "EQUINE PROFESSIONAL" MEANS A PERSON WHO ENGAGES FOR COMPENSATION IN ANY OF THE FOLLOWING ACTIVITIES:

(A) TRAINING, TEACHING, INSTRUCTING, TESTING, OR EVALUATING AN EQUINE OR AN EQUINE ACTIVITY PARTICIPANT;

(B) RENTING TO AN EQUINE ACTIVITY PARTICIPANT AN EQUINE FOR THE PURPOSE OF RIDING, DRIVING, OR BEING A PASSENGER UPON AN EQUINE;

(C) RENTING EQUIPMENT OR TACK TO AN EQUINE ACTIVITY PARTICIPANT FOR USE IN AN EQUINE ACTIVITY;

(D) PROVIDING DAILY CARE TO AN EQUINE BOARDED AT AN EQUINE ACTIVITY;

1 (E) PROVIDING OR ASSISTING IN PROVIDING VETERINARY TREATMENT OR MAIN-
2 TENANCE CARE TO AN EQUINE;

3 (F) CONDUCTING PROCEDURES OR ASSISTING IN CONDUCTING PROCEDURES NECES-
4 SARY TO BREED AN EQUINE BY MEANS OF ARTIFICIAL INSEMINATION OR OTHER-
5 WISE.

6 6. "HARM" MEANS INJURY, DEATH, OR LOSS TO PERSON OR PROPERTY.

7 7. "INHERENT RISK OF AN EQUINE ACTIVITY" MEANS A DANGER OR CONDITION
8 THAT IS AN INTEGRAL PART OF AN EQUINE ACTIVITY, INCLUDING, BUT NOT
9 LIMITED TO, ANY OF THE FOLLOWING:

10 (A) THE PROPENSITY OF AN EQUINE TO BEHAVE IN WAYS THAT MAY RESULT IN
11 INJURY, DEATH, OR LOSS TO PERSONS ON OR AROUND THE EQUINE;

12 (B) THE UNPREDICTABILITY OF AN EQUINE'S REACTION TO SOUNDS, SUDDEN
13 MOVEMENT, UNFAMILIAR OBJECTS, PERSONS, OR OTHER ANIMALS;

14 (C) HAZARDS, INCLUDING, BUT NOT LIMITED TO, SURFACE OR SUBSURFACE
15 CONDITIONS;

16 (D) A COLLISION WITH ANOTHER EQUINE, ANOTHER ANIMAL, A PERSON, OR AN
17 OBJECT;

18 (E) THE POTENTIAL OF AN EQUINE ACTIVITY PARTICIPANT TO ACT IN A NEGLI-
19 GENT MANNER THAT MAY CONTRIBUTE TO INJURY, DEATH, OR LOSS TO THE PERSON
20 OF THE PARTICIPANT OR TO OTHER PERSONS, INCLUDING, BUT NOT LIMITED TO,
21 FAILING TO MAINTAIN CONTROL OVER AN EQUINE OR FAILING TO ACT WITHIN THE
22 ABILITY OF THE PARTICIPANT.

23 8. "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST, ESTATE,
24 TRUST, PARTNERSHIP, OR ASSOCIATION.

25 9. "TORT ACTION" MEANS A CIVIL ACTION FOR DAMAGES FOR INJURY, DEATH,
26 OR LOSS TO PERSON OR PROPERTY. "TORT ACTION" DOES NOT INCLUDE A CIVIL
27 ACTION FOR DAMAGES FOR A BREACH OF CONTRACT OR ANOTHER AGREEMENT BETWEEN
28 PERSONS.

29 10. "VETERINARIAN" MEANS A PERSON WHO IS LICENSED TO PRACTICE VETERI-
30 NARY MEDICINE IN THIS STATE.

31 S 18-303. LIABILITY OF PERSONS INVOLVED IN EQUINE ACTIVITIES. EXCEPT
32 AS PROVIDED IN SECTION 18-304 OF THIS ARTICLE, AN EQUINE ACTIVITY SPON-
33 SOR, EQUINE ACTIVITY PARTICIPANT, EQUINE PROFESSIONAL, VETERINARIAN,
34 FARRIER, OR OTHER PERSON IS NOT LIABLE IN DAMAGES IN A TORT OR OTHER
35 CIVIL ACTION FOR HARM THAT AN EQUINE ACTIVITY PARTICIPANT ALLEGEDLY
36 SUSTAINS DURING AN EQUINE ACTIVITY AND THAT RESULTS FROM AN INHERENT
37 RISK OF AN EQUINE ACTIVITY. EXCEPT AS PROVIDED IN SECTION 18-304 OF THIS
38 ARTICLE, AN EQUINE ACTIVITY PARTICIPANT OR THE PERSONAL REPRESENTATIVE
39 OF AN EQUINE ACTIVITY PARTICIPANT DOES NOT HAVE A CLAIM OR CAUSE OF
40 ACTION UPON WHICH A RECOVERY OF DAMAGES MAY BE BASED AGAINST, AND MAY
41 NOT RECOVER DAMAGES IN A TORT OR OTHER CIVIL ACTION AGAINST, AN EQUINE
42 ACTIVITY SPONSOR, ANOTHER EQUINE ACTIVITY PARTICIPANT, AN EQUINE PROFES-
43 SIONAL, A VETERINARIAN, A FARRIER, OR ANOTHER PERSON FOR HARM THAT THE
44 EQUINE ACTIVITY PARTICIPANT ALLEGEDLY SUSTAINED DURING AN EQUINE ACTIV-
45 ITY AND THAT RESULTED FROM AN INHERENT RISK OF AN EQUINE ACTIVITY.

46 S 18-304. LIMITATION OF LIABILITY. THE IMMUNITY FROM TORT OR OTHER
47 CIVIL LIABILITY CONFERRED BY SECTION 18-303 OF THIS ARTICLE IS FORFEITED
48 IF ANY OF THE FOLLOWING CIRCUMSTANCES APPLIES:

49 1. AN EQUINE ACTIVITY SPONSOR, EQUINE ACTIVITY PARTICIPANT, EQUINE
50 PROFESSIONAL, VETERINARIAN, FARRIER, OR OTHER PERSON PROVIDES TO AN
51 EQUINE ACTIVITY PARTICIPANT FAULTY OR DEFECTIVE EQUIPMENT OR TACK AND
52 KNOWS OR SHOULD KNOW THAT THE EQUIPMENT OR TACK IS FAULTY OR DEFECTIVE,
53 AND THE FAULT OR DEFECT IN THE EQUIPMENT OR TACK PROXIMATELY CAUSES THE
54 HARM INVOLVED.

55 2. AN EQUINE ACTIVITY SPONSOR, EQUINE ACTIVITY PARTICIPANT, EQUINE
56 PROFESSIONAL, VETERINARIAN, FARRIER, OR OTHER PERSON PROVIDES AN EQUINE

1 TO AN EQUINE ACTIVITY PARTICIPANT AND FAILS TO MAKE REASONABLE AND
2 PRUDENT EFFORTS TO DETERMINE THE EQUINE ACTIVITY PARTICIPANT'S ABILITY
3 TO SAFELY ENGAGE IN THE EQUINE ACTIVITY OR TO SAFELY MANAGE THE EQUINE
4 BASED ON THE EQUINE ACTIVITY PARTICIPANT'S REPRESENTATIONS OF THE
5 PARTICIPANT'S ABILITY, THE EQUINE ACTIVITY PARTICIPANT FAILS TO SAFELY
6 ENGAGE IN THE EQUINE ACTIVITY OR TO SAFELY MANAGE THE EQUINE, AND THAT
7 FAILURE PROXIMATELY CAUSES THE HARM INVOLVED.

8 3. THE HARM INVOLVED IS PROXIMATELY CAUSED BY A DANGEROUS LATENT
9 CONDITION OF THE LAND ON WHICH OR THE PREMISES AT WHICH THE HARM OCCURS,
10 AN EQUINE ACTIVITY SPONSOR, EQUINE ACTIVITY PARTICIPANT, EQUINE PROFES-
11 SIONAL, VETERINARIAN, FARRIER, OR OTHER PERSON OWNS, LEASES, RENTS, OR
12 OTHERWISE LAWFULLY POSSESSES AND CONTROLS THE LAND OR PREMISES AND KNOWS
13 OR SHOULD KNOW OF THE DANGEROUS LATENT CONDITION, BUT DOES NOT POST
14 CONSPICUOUSLY PRIOR TO THE TIME OF THE HARM INVOLVED ONE OR MORE SIGNS
15 THAT WARN OF THE DANGEROUS LATENT CONDITION PURSUANT TO SECTION 18-306
16 OF THIS ARTICLE.

17 4. AN ACT OR OMISSION OF AN EQUINE ACTIVITY SPONSOR, EQUINE ACTIVITY
18 PARTICIPANT, EQUINE PROFESSIONAL, VETERINARIAN, FARRIER, OR OTHER PERSON
19 CONSTITUTES A WILLFUL OR WANTON DISREGARD FOR THE SAFETY OF AN EQUINE
20 ACTIVITY PARTICIPANT AND PROXIMATELY CAUSES THE HARM INVOLVED.

21 5. AN EQUINE ACTIVITY SPONSOR, EQUINE ACTIVITY PARTICIPANT, EQUINE
22 PROFESSIONAL, VETERINARIAN, FARRIER, OR OTHER PERSON INTENTIONALLY CAUS-
23 ES THE HARM INVOLVED.

24 S 18-305. WAIVER. 1. NOTWITHSTANDING THE IMMUNITY CONFERRED BY SECTION
25 18-303 OF THIS ARTICLE AND THE GROUNDS FOR ITS FORFEITURE SPECIFIED IN
26 SECTION 18-304 OF THIS ARTICLE, SUBJECT TO SUBDIVISIONS THREE AND FOUR
27 OF THIS SECTION, AN EQUINE ACTIVITY SPONSOR, EQUINE ACTIVITY PARTIC-
28 IPANT, EQUINE PROFESSIONAL, VETERINARIAN, FARRIER, OR OTHER PERSON IS
29 NOT LIABLE IN DAMAGES IN A TORT OR OTHER CIVIL ACTION FOR HARM THAT AN
30 EQUINE ACTIVITY PARTICIPANT ALLEGEDLY SUSTAINS DURING AN EQUINE ACTIVITY
31 AND THAT RESULTS FROM AN INHERENT RISK OF AN EQUINE ACTIVITY IF THAT
32 EQUINE ACTIVITY PARTICIPANT OR A PARENT, GUARDIAN, CUSTODIAN, OR OTHER
33 LEGAL REPRESENTATIVE OF THAT EQUINE ACTIVITY PARTICIPANT VOLUNTARILY
34 EXECUTES, PRIOR TO THE OCCURRENCE OF THE HARM INVOLVED, A WRITTEN WAIVER
35 AS DESCRIBED IN SUBDIVISION TWO OF THIS SECTION. SUBJECT TO SUBDIVISIONS
36 THREE AND FOUR OF THIS SECTION, THE EQUINE ACTIVITY PARTICIPANT WHO IS
37 THE SUBJECT OF THAT WAIVER OR THE PARENT, GUARDIAN, CUSTODIAN, OR OTHER
38 LEGAL REPRESENTATIVE OF THE EQUINE ACTIVITY PARTICIPANT WHO IS THE
39 SUBJECT OF THAT WAIVER DOES NOT HAVE A CLAIM OR CAUSE OF ACTION UPON
40 WHICH A RECOVERY OF DAMAGES MAY BE BASED AGAINST, AND MAY NOT RECOVER
41 DAMAGES IN A TORT OR OTHER CIVIL ACTION AGAINST, AN EQUINE ACTIVITY
42 SPONSOR, ANOTHER EQUINE ACTIVITY PARTICIPANT, AN EQUINE PROFESSIONAL, A
43 VETERINARIAN, A FARRIER, OR ANOTHER PERSON IN WHOSE FAVOR THE WAIVER WAS
44 EXECUTED.

45 2. A VALID WAIVER FOR PURPOSES OF SUBDIVISION ONE OF THIS SECTION
46 SHALL BE IN WRITING AND SUBSCRIBED BY THE EQUINE ACTIVITY PARTICIPANT OR
47 THE PARENT, GUARDIAN, CUSTODIAN, OR OTHER LEGAL REPRESENTATIVE OF THE
48 EQUINE ACTIVITY PARTICIPANT, AND SHALL SPECIFY AT LEAST EACH INHERENT
49 RISK OF AN EQUINE ACTIVITY THAT IS LISTED IN SECTION 18-304 OF THIS
50 ARTICLE AND THAT WILL BE A SUBJECT OF THE WAIVER OF TORT OR OTHER CIVIL
51 LIABILITY AND SHALL CONTAIN THE NOTIFICATION REQUIRED BY SECTION 18-306
52 OF THIS ARTICLE.

53 3. A WAIVER IN THE FORM DESCRIBED IN SUBDIVISION TWO OF THIS SECTION
54 SHALL REMAIN VALID UNTIL IT IS REVOKED IN THE MANNER DESCRIBED IN SUBDI-
55 VISION FOUR OF THIS SECTION. UNLESS SO REVOKED, SUCH A WAIVER THAT
56 PERTAINS TO EQUINE ACTIVITIES SPONSORED BY A SCHOOL, COLLEGE, OR UNIVER-

1 CITY SHALL APPLY TO ALL EQUINE ACTIVITIES IN WHICH THE EQUINE ACTIVITY
2 PARTICIPANT WHO IS THE SUBJECT OF THE WAIVER IS INVOLVED DURING THE
3 TWELVE-MONTH PERIOD FOLLOWING THE EXECUTION OF THE WAIVER.

4 4. A VALID WAIVER IN THE FORM DESCRIBED IN SUBDIVISION ONE OF THIS
5 SECTION MAY BE REVOKED IN WRITING BY THE EQUINE ACTIVITY PARTICIPANT OR
6 THE PARENT, GUARDIAN, CUSTODIAN, OR OTHER LEGAL REPRESENTATIVE OF THE
7 EQUINE ACTIVITY PARTICIPANT WHO EXECUTED THE WAIVER. THE REVOCATION OF
8 THE WAIVER DOES NOT AFFECT THE AVAILABILITY OF THE IMMUNITY CONFERRED BY
9 SECTION 18-303 OF THIS ARTICLE.

10 5. THIS SECTION DOES NOT CREATE A NEW CAUSE OF ACTION OR SUBSTANTIVE
11 LEGAL RIGHT AGAINST AN EQUINE ACTIVITY SPONSOR, EQUINE ACTIVITY PARTIC-
12 IPANT, EQUINE PROFESSIONAL, VETERINARIAN, FARRIER, OR OTHER PERSON.

13 S 18-306. POSTING AND NOTIFICATION. 1. EVERY EQUINE PROFESSIONAL SHALL
14 POST AND MAINTAIN SIGNS WHICH CONTAIN THE WARNING NOTICE SPECIFIED IN
15 SUBDIVISION TWO OF THIS SECTION. SUCH SIGNS SHALL BE PLACED IN A CLEARLY
16 VISIBLE LOCATION IN THE PROXIMITY OF THE EQUINE ACTIVITY. THE WARNING
17 NOTICE SPECIFIED IN SUBDIVISION TWO OF THIS SECTION SHALL APPEAR ON THE
18 SIGN IN BLACK LETTERS, WITH EACH LETTER TO BE A MINIMUM OF ONE INCH IN
19 HEIGHT. EVERY WRITTEN WAIVER AND EVERY WRITTEN CONTRACT ENTERED INTO BY
20 AN EQUINE PROFESSIONAL FOR THE PROVIDING OF PROFESSIONAL SERVICES,
21 INSTRUCTION, OR THE RENTAL OF EQUIPMENT OR TACK OR AN EQUINE TO A
22 PARTICIPANT, WHETHER OR NOT THE CONTRACT INVOLVES EQUINE ACTIVITIES ON
23 OR OFF THE LOCATION OR SITE OF THE EQUINE PROFESSIONAL'S BUSINESS, SHALL
24 CONTAIN IN CLEARLY READABLE PRINT THE WARNING NOTICE SPECIFIED IN SUBDI-
25 VISION TWO OF THIS SECTION.

26 2. THE SIGNS, WAIVERS AND CONTRACTS DESCRIBED IN SUBDIVISION OF ONE
27 THIS SECTION SHALL CONTAIN THE FOLLOWING WARNING NOTICE:

28 WARNING

29 UNDER NEW YORK LAW, AN EQUINE PROFESSIONAL OR EQUINE ACTIVITY SPONSOR
30 IS NOT LIABLE FOR AN INJURY TO, OR THE DEATH OF, A PARTICIPANT IN EQUINE
31 ACTIVITIES RESULTING FROM THE INHERENT RISKS OF EQUINE ACTIVITIES,
32 PURSUANT TO SECTION 18-303 OF THE GENERAL OBLIGATIONS LAW.

33 S 2. This act shall take effect immediately and shall apply to causes
34 of action commenced on or after such effective date.