S T A T E O F N E W Y O R K

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I N A S S E M B L Y

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Introduced by M. of A. BALL, BURLING, OAKS, CALHOUN -- Multi-Sponsored by -- M. of A. BACALLES, BARCLAY, BUTLER, CONTE, CROUCH, FITZPATRICK, HAYES, KOLB, McDONOUGH, MILLER, RABBITT, RAIA, REILICH, SAYWARD, SCOZZAFAVA -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, the labor law, the vehicle and traffic law, and the court of claims act, in relation to non-economic damages for personal injury; to amend the real property tax law, in relation to the exemption of tax districts from obligation or liability with respect to pre-existing environmental contamination or pollution; to amend the general municipal law, in relation to liability of public entities; to amend the civil practice law and rules, in relation to civil actions against professionals; to amend the general obligations law, in relation to the duty to keep premises safe for certain uses and enacting the "equine activity safety code act"; to amend the civil practice law and rules, in relation to specific defenses for product liability actions; to amend the labor law, in relation to the disclosure of employment related information; and to repeal article 16, section 214-d, subdivision (h) of rule 3211 and subdivision (i) of rule 3212 of the civil practice law and rules and section 241-a of the labor law relating thereto

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

Section 1. The civil practice law and rules is amended by adding a new article 50-C to read as follows:

ARTICLE 50-C

LIMITATION ON NONECONOMIC DAMAGES

5051. DEFINITIONS.

5052. DAMAGE AWARDS.

S 5051. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "NONECONOMIC DAMAGES" MEANS SUBJECTIVE, NONPECUNIARY DAMAGES ARISING FROM THE PAIN, SUFFERING, INCONVENIENCE, PHYSICAL IMPAIRMENT OR

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

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DISFIGUREMENT, MENTAL ANGUISH, EMOTIONAL DISTRESS, LOSS OF SOCIETY AND COMPANIONSHIP, LOSS OF CONSORTIUM, INJURY TO REPUTATION, HUMILIATION AND OTHER NONPECUNIARY DAMAGES.

2. "ACTUAL ECONOMIC DAMAGES" MEANS OBJECTIVELY VERIFIABLE PECUNIARY DAMAGES ARISING FROM MEDICAL EXPENSES AND MEDICAL CARE, LOSS OF EARNINGS AND EARNING CAPACITY, BURIAL COSTS, LOSS OF USE OF PROPERTY, COSTS OF REPAIR OR REPLACEMENT OF PROPERTY, COSTS OF OBTAINING SUBSTITUTE DOMESTIC SERVICES, LOSS OF EMPLOYMENT, LOSS OF BUSINESS OR EMPLOYMENT OPPORTUNITIES, REHABILITATION SERVICES, CUSTODIAL CARE AND OTHER PECUNIARY DAMAGES.

3. "PERSONAL INJURY ACTION" MEANS ANY ACTION, INCLUDING BUT IN NO MANNER LIMITED TO MEDICAL, DENTAL AND PODIATRIC MALPRACTICE ACTIONS, WHETHER IN TORT, CONTRACT, OR OTHERWISE, IN WHICH THE PLAINTIFF SEEKS DAMAGES FOR INJURY TO THE PERSON OR WRONGFUL DEATH.

4. "COMPENSATION" MEANS MONETARY AWARDS.

S 5052. DAMAGE AWARDS. IN ANY PERSONAL INJURY ACTION, THE PREVAILING PLAINTIFF MAY BE AWARDED:

1. COMPENSATION FOR ACTUAL ECONOMIC DAMAGES SUFFERED BY THE INJURED PLAINTIFF; AND

2. COMPENSATION FOR NONECONOMIC DAMAGES SUFFERED BY THE INJURED PLAINTIFF, NOT TO EXCEED TWO HUNDRED FIFTY THOUSAND DOLLARS, PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT APPLY WHERE A VERDICT OR DECISION OF A COURT INVOLVES A FINDING OF WILLFUL, WANTON OR GROSS NEGLIGENCE AGAINST THE RESPONSIBLE PARTY OR PARTIES.

S 2. Section 240 of the labor law, the section heading and subdivision 2 as amended by chapter 683 of the laws of 1947 and subdivision 1 as amended by chapter 241 of the laws of 1981, is amended to read as follows:

S 240. Scaffolding and other devices for use of employees. 1. All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected DEVICES OR EQUIPMENT for the performance of such labor, SUCH AS scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, AND ropes, [and other devices which] WHERE SUCH DEVICES OR EQUIPMENT ARE NECESSARY TO GIVE REASONABLE AND ADEQUATE PROTECTION AND SAFETY TO A PERSON SO EMPLOYED. WHERE SUCH DEVICES OR EQUIPMENT ARE FURNISHED OR ERECTED THE DEVICES OR EQUIPMENT shall be so constructed, placed and operated as to [give proper] PROVIDE REASONABLE AND ADEQUATE protection AND SAFETY to a person so employed.

No liability pursuant to this subdivision for the failure to provide protection to a person so employed shall be imposed on professional engineers as provided for in article one hundred forty-five of the education law, architects as provided for in article one hundred forty-seven of such law or landscape architects as provided for in article one hundred forty-eight of such law who do not direct or control the work for activities other than planning and design. This exception shall not diminish or extinguish any liability of professional engineers or architects or landscape architects arising under the common law or any other provision of law.

2. [Scaffolding or staging more than twenty feet from the ground or floor, swung or suspended from an overhead support or erected with stationary supports, except scaffolding wholly within the interior of a building and covering the entire floor space of any room therein, shall have a safety rail of suitable material properly attached, bolted,

braced or otherwise secured, rising at least thirty-four inches above the floor or main portions of such scaffolding or staging and extending along the entire length of the outside and the ends thereof, with only such openings as may be necessary for the delivery of materials. Such scaffolding or staging shall be so fastened as to prevent it from swaying from the building or structure.

3. All scaffolding shall be so constructed as to bear four times the maximum weight required to be dependent therefrom or placed thereon when in use.] COMPLIANCE WITH APPLICABLE PROVISIONS OF THE FEDERAL OCCUPATIONAL SAFETY AND HEALTH ACT AND PART TWENTY-THREE OF TITLE TWELVE OF THE NEW YORK CODES, RULES AND REGULATIONS, AS AMENDED, SHALL BE PRIMA FACIE PROOF OF COMPLIANCE WITH SUBDIVISION ONE OF THIS SECTION.

3. NOTHING IN THIS SECTION SHALL BE DEEMED TO RELIEVE A PERSON INJURED IN THE ERECTION, DEMOLITION, REPAIRING, ALTERING, PAINTING, CLEANING OR POINTING OF A BUILDING OR STRUCTURE FROM THE CONSEQUENCES OF HIS CULPABLE CONDUCT IN ACCORDANCE WITH SECTION FOURTEEN HUNDRED ELEVEN OF THE CIVIL PRACTICE LAW AND RULES.

S 3. Section 241 of the labor law, as added by chapter 1108 of the laws of 1969, the opening paragraph as amended by chapter 670 of the laws of 1980, subdivisions 6, 7 and 8 as amended and subdivision 10 as added by chapter 520 of the laws of 1989 and subdivision 9 as added by chapter 241 of the laws of 1981, is amended to read as follows:

S 241. Construction, excavation and demolition work. 1. All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, when constructing or demolishing buildings or doing any excavating in connection therewith, shall [comply with the following requirements:

1. If the floors are to be arched between the beams thereof, or if the floors or filling in between the floors are of fireproof material, the flooring or filling in shall be completed as the building progresses.

2. If the floors are not to be filled in between the beams with brick or other fireproof material, the underflooring shall be laid on each story as the building progresses.

3. If double floors are not to be used, the floor two stories immediately below the story where the work is being performed shall be kept planked over.

4. If the floor beams are of iron or steel, the entire tier of iron or steel beams on which the structural iron or steel work is being erected shall be thoroughly planked over, except spaces reasonably required for proper construction of the iron or steel work, for raising or lowering of materials or for stairways and elevator shafts designated by the plans and specifications.

5. If elevators, elevating machines or hod-hoisting apparatus are used in the course of construction, for the purpose of lifting materials, the shafts or openings in each floor and at each landing level shall be inclosed or fenced in on all sides by a barrier of suitable height, except on two sides which may be used for taking off and putting on materials, and those sides shall be guarded by an adjustable barrier not less than three nor more than four feet from the floor and not less than two feet from the edges of such shafts or openings.

6. All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted] CONSTRUCT, SHORE, EQUIP, GUARD, ARRANGE, OPERATE AND CONDUCT SUCH WORK SO as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. The commissioner may make rules to

carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith.

[7. The commissioner may make rules to provide for the protection of workers in connection with the excavation work for the construction of buildings, the work of constructing or demolishing buildings and structures, and the guarding of dangerous machinery used in connection therewith, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith.

8.] 2. COMPLIANCE WITH APPLICABLE PROVISIONS OF THE FEDERAL OCCUPATIONAL SAFETY AND HEALTH ACT AND PART TWENTY-THREE OF TITLE TWELVE OF THE NEW YORK CODES, RULES AND REGULATIONS, AS AMENDED, SHALL BE PRIMA FACIE PROOF OF COMPLIANCE WITH SUBDIVISION ONE OF THIS SECTION.

3. NOTHING IN THIS SECTION SHALL BE DEEMED TO RELIEVE A PERSON INJURED IN THE CONSTRUCTION, DEMOLITION OR EXCAVATION OF A BUILDING OR STRUCTURE FROM THE CONSEQUENCES OF HIS CULPABLE CONDUCT IN ACCORDANCE WITH SECTION FOURTEEN HUNDRED ELEVEN OF THE CIVIL PRACTICE LAW AND RULES.

4. The commissioner, as deemed necessary, shall promulgate rules designed for the purpose of providing for the reasonable and adequate protection and safety of persons passing by all areas, buildings or structures in which construction, excavation or demolition work is being performed, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith. The provisions of this subdivision shall not apply to cities having a population of one million or more.

[9.] 5. No liability for the non-compliance with any of the provisions of this section shall be imposed on professional engineers as provided for in article one hundred forty-five of the education law, architects as provided for in article one hundred forty-seven of such law or landscape architects as provided for in article one hundred forty-eight of such law who do not direct or control the work for activities other than planning and design. This exception shall not diminish or extinguish any liability of professional engineers, architects or landscape architects arising under the common law or any other provision of law.

[10.] 6. Prior to advertising for bids or contracting for or commencing work on any demolition work on buildings covered under this section except agricultural buildings as defined in regulations promulgated by the commissioner and except buildings the construction of which was begun on or after January first, nineteen hundred seventy-four, all owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall conduct or cause to be conducted a survey to determine whether or not the building to be demolished contains asbestos or asbestos material as defined in section nine hundred one of this chapter. Such surveys shall be conducted in conformance with rules and regulations promulgated by the commissioner. Information derived from such survey shall be immediately transmitted to the commissioner and to the local governmental entity charged with issuing a permit for such demolition under applicable state or local laws or, if no such permit is required, to the town or city clerk. If such survey finds that a building to be demolished contains asbestos or asbestos material as defined by section nine hundred one of [the] THIS chapter, no bids shall be advertised nor contracts awarded nor demolition work commenced by any owner or agent prior to completion

of an asbestos remediation contract performed by a licensed asbestos contractor as defined by section nine hundred one of this chapter.

S 4. Section 241-a of the labor law is REPEALED.

S 5. The opening paragraph of subdivision 3 of section 30 of the labor law, as added by chapter 162 of the laws of 1993, is amended to read as follows:

Except for variations concerning provisions, rules, codes, orders or any other matter affecting asbestos projects or safety and health standards for public employees, including but not limited to projects covered by article thirty and section twenty-seven-a and subdivision [ten] SIX of section two hundred forty-one of this chapter;

S 6. Subdivision 3 of section 388 of the vehicle and traffic law, as amended by chapter 552 of the laws of 1962, is amended to read as follows:

3. As used in this section, "owner" shall be as defined in section one hundred twenty-eight of this chapter and their liability under this section shall be joint and several. If a vehicle be sold under a contract of sale which reserves a security interest in the vehicle in favor of the vendor, such vendor or his assignee shall not, after delivery of such vehicle, be deemed an owner within the provisions of this section, but the vendee, or his assignee, receiving possession thereof, shall be deemed such owner notwithstanding the terms of such contract, until the vendor or his assignee shall retake possession of such vehicle. A secured party in whose favor there is a security interest in any vehicle out of his possession, shall not be deemed an owner within the provisions of this section. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBDIVISION, IF A VEHICLE IS A LEASED VEHICLE, THE TERM "OWNER" SHALL MEAN THE PERSON TO WHOM THE VEHICLE HAS BEEN LEASED, NOT THE PERSON TO WHOM THE CERTIFICATE OF TITLE FOR THE VEHICLE HAS BEEN ISSUED OR ASSIGNED OR TO WHOM THE MANUFACTURER'S OR IMPORTER'S CERTIFICATE OF ORIGIN FOR THE VEHICLE HAS BEEN DELIVERED OR ASSIGNED. FOR PURPOSES OF THIS SECTION, "LEASED" MEANS THE TRANSFER OF THE POSSESSION OR THE RIGHT TO POSSESSION OF A VEHICLE TO A LESSEE FOR A VALUABLE CONSIDERATION FOR A CONTINUOUS PERIOD OF TWELVE MONTHS OR MORE, PURSUANT TO ONE OR MORE WRITTEN AGREEMENTS.

S 7. Subdivisions 2, 3 and 4 of section 9 of the court of claims act, subdivision 2 as amended by chapter 40 of the laws of 1977, are amended to read as follows:

2. To hear and determine a claim of any person, corporation or municipality against the state, A COUNTY, CITY, TOWN, VILLAGE, SCHOOL DISTRICT, OR A SPECIAL DISTRICT, AS SUCH TERM IS DEFINED IN SECTION ONE HUNDRED TWO OF THE REAL PROPERTY TAX LAW, for the appropriation of any real or personal property or any interest therein, for the breach of contract, express or implied, or for the torts of its officers or employees while acting as such officers or employees, providing the claimant complies with the limitations of this article. For the purposes of this act only, a real property tax lien shall be deemed to be an interest in real property.

3. To hear and determine any claim in favor of the state, A COUNTY, CITY, TOWN, VILLAGE, SCHOOL DISTRICT, OR A SPECIAL DISTRICT, AS SUCH TERM IS DEFINED IN SECTION ONE HUNDRED TWO OF THE REAL PROPERTY TAX LAW, against the claimant, or against his assignor at the time of the assignment.

4. To render judgment in favor of the claimant or the state, A COUNTY, CITY, TOWN, VILLAGE, SCHOOL DISTRICT, OR A SPECIAL DISTRICT, AS SUCH TERM IS DEFINED IN SECTION ONE HUNDRED TWO OF THE REAL PROPERTY TAX LAW,

for such sum as should be paid by or to the state, A COUNTY, CITY, TOWN, VILLAGE, SCHOOL DISTRICT, OR A SPECIAL DISTRICT, AS SUCH TERM IS DEFINED IN SECTION ONE HUNDRED TWO OF THE REAL PROPERTY TAX LAW.

S 8. The court of claims act is amended by adding a new section 9-a to read as follows:

S 9-A. CONSTRUCTION OF "STATE". FOR PURPOSES OF THIS ACT, THE TERM "STATE" SHALL BE DEEMED TO INCLUDE A COUNTY, CITY, TOWN, VILLAGE, SCHOOL DISTRICT, OR A SPECIAL DISTRICT, AS THAT TERM IS DEFINED IN SECTION ONE HUNDRED TWO OF THE REAL PROPERTY TAX LAW, WHENEVER SUCH A CONSTRUCTION IS NECESSARY TO EFFECTUATE THE PROVISIONS OF THIS ACT WITH RESPECT TO THE JURISDICTION CONFERRED BY SECTION NINE OF THIS ARTICLE PERTAINING TO SUCH ENTITIES; PROVIDED THAT SUCH A CONSTRUCTION SHALL NOT BE GIVEN WHEN IT WOULD CONFLICT WITH THE PROVISIONS OF THE GENERAL MUNICIPAL LAW.

S 9. Article 16 of the civil practice law and rules is REPEALED and a new article 16 is added to read as follows:

ARTICLE 16
LIMITED LIABILITY OF PERSONS JOINTLY LIABLE

1600. DEFINITIONS.
1601. LIMITED LIABILITY OF PERSONS JOINTLY LIABLE.
1602. APPLICATION.
1603. BURDEN OF PROOF.

S 1600. DEFINITIONS. AS USED IN THIS ARTICLE, THE TERM "DAMAGES" SHALL INCLUDE, BUT IN NO MANNER BE LIMITED TO, ALL ECONOMIC AND NON-ECONOMIC LOSS AWARDED IN AN ACTION AS PECUNIARY COMPENSATION OR SATISFACTION FOR AN INJURY CAUSED OR LOSS SUSTAINED AS A RESULT OF A BREACH OF A CONTRACTUAL OBLIGATION, A TORTIOUS ACT OF COMMISSION OR OMISSION OF ANY OTHER SUCH INCIDENT.

S 1601. LIMITED LIABILITY OF PERSONS JOINTLY LIABLE. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A VERDICT OR DECISION IN AN ACTION OR CLAIM FOR ECONOMIC OR NON-ECONOMIC DAMAGES IS DETERMINED IN FAVOR OF A CLAIMANT IN AN ACTION INVOLVING TWO OR MORE WRONGDOERS JOINTLY LIABLE OR IN A CLAIM AGAINST THE STATE, THE LIABILITY OF EACH SUCH WRONGDOER TO THE CLAIMANT FOR LOSS SHALL NOT EXCEED THE WRONGDOER'S EQUITABLE SHARE DETERMINED IN ACCORDANCE WITH THE RELATIVE CULPABILITY OF EACH PERSON CAUSING OR CONTRIBUTING TO THE TOTAL LIABILITY, WHETHER OR NOT SUCH PERSON WAS OR COULD HAVE BEEN A PARTY TO THE ACTION.

2. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT OR IMPAIR ANY RIGHT OF A WRONGDOER PURSUANT TO THE PROVISIONS OF SECTION 15-108 OF THE GENERAL OBLIGATIONS LAW.

S 1602. APPLICATION. THE LIMITATIONS SET FORTH IN THIS ARTICLE SHALL:

1. APPLY TO ANY CLAIM FOR CONTRIBUTION OR INDEMNIFICATION BUT SHALL NOT INCLUDE: (A) A CLAIM FOR INDEMNIFICATION IF, PRIOR TO THE ACCIDENT OR OCCURRENCE ON WHICH THE CLAIM IS BASED, THE CLAIMANT AND THE WRONGDOER HAD ENTERED INTO A WRITTEN CONTRACT IN WHICH THE WRONGDOER HAD EXPRESSLY AGREED TO INDEMNIFY THE CLAIMANT FOR THE TYPE OF LOSS SUFFERED; OR (B) A CLAIM FOR INDEMNIFICATION BY A PUBLIC EMPLOYEE, INCLUDING INDEMNIFICATION PURSUANT TO SECTION FIFTY-K OF THE GENERAL MUNICIPAL LAW OR SECTION SEVENTEEN OR EIGHTEEN OF THE PUBLIC OFFICERS LAW.

2. NOT BE CONSTRUED TO IMPAIR, ALTER, LIMIT, MODIFY, ENLARGE, ABROGATE OR RESTRICT (A) THE LIMITATIONS SET FORTH IN SECTION TWENTY-A OF THE COURT OF CLAIMS ACT; (B) ANY IMMUNITY OR RIGHT OF INDEMNIFICATION AVAILABLE TO OR CONFERRED UPON ANY DEFENDANT FOR ANY NEGLIGENT OR WRONGFUL ACT OR OMISSION; (C) ANY RIGHT ON THE PART OF ANY DEFENDANT TO PLEAD AND

PROVE AN AFFIRMATIVE DEFENSE AS TO CULPABLE CONDUCT ATTRIBUTABLE TO A CLAIMANT OR DECEDENT WHICH IS CLAIMED BY SUCH DEFENDANT IN DIMINUTION OF DAMAGES IN ANY ACTION; AND (D) ANY LIABILITY ARISING BY REASON OF A NON-DELEGABLE DUTY OR BY REASON OF THE DOCTRINE OF RESPONDENT SUPERIOR.

3. NOT BE APPLIED TO CLAIMS UNDER THE WORKERS' COMPENSATION LAW OR TO A CLAIM AGAINST A DEFENDANT WHERE THE CLAIMANT HAS SUSTAINED A "GRAVE INJURY" AS DEFINED IN SECTION ELEVEN OF THE WORKERS' COMPENSATION LAW TO THE EXTENT OF THE EQUITABLE SHARE OF ANY PERSON AGAINST WHOM THE CLAIMANT IS BARRED FROM ASSERTING A CAUSE OF ACTION BECAUSE OF THE APPLICABILITY OF THE WORKERS' COMPENSATION LAW; PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION SHALL BE CONSTRUED TO CREATE, IMPAIR, ALTER, LIMIT, MODIFY, ENLARGE, ABROGATE OR RESTRICT ANY THEORY OF LIABILITY UPON WHICH ANY PERSON MAY BE HELD LIABLE.

4. IN CONJUNCTION WITH THE OTHER PROVISIONS OF THIS ARTICLE NOT BE CONSTRUED TO CREATE OR ENLARGE ACTIONS FOR CONTRIBUTIONS OR INDEMNITY BARRED BECAUSE OF THE APPLICATION OF THE WORKERS' COMPENSATION LAW OF THIS STATE, ANY OTHER STATE OR THE FEDERAL GOVERNMENT, OR SECTION 18-201 OF THE GENERAL OBLIGATIONS LAW.

S 1603. BURDEN OF PROOF. IN ANY ACTION OR CLAIM FOR DAMAGES, A PARTY ASSERTING THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS ARTICLE DO NOT APPLY SHALL ALLEGE, AND MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE, THAT ONE OR MORE OF THE EXEMPTIONS SET FORTH IN EITHER SUBDIVISION TWO OF SECTION SIXTEEN HUNDRED ONE, OR SECTION SIXTEEN HUNDRED TWO OF THIS ARTICLE, SHALL APPLY.

S 10. The real property tax law is amended by adding a new section 1181 to read as follows:

S 1181. EXEMPTION OF TAX DISTRICT FROM OBLIGATION OR LIABILITY WITH RESPECT TO PRE-EXISTING ENVIRONMENTAL CONTAMINATION OR POLLUTION. A TAX DISTRICT SHALL NOT INCUR ANY OBLIGATION OR LIABILITY FOR (1) THE ASSESSMENT, REGISTRATION, CLEANUP, REMOVAL, ABATEMENT, DISPOSAL OR TREATMENT OF ANY HAZARDOUS SUBSTANCE OR WASTE, PETROLEUM DISCHARGE, BURIED TANK OR CONTAINER, TOXIC SUBSTANCE OR WASTE, ASBESTOS, LEAD PAINT, PESTICIDE, RADIOACTIVE SUBSTANCE, OR OTHER ENVIRONMENTAL CONTAMINANT OR POLLUTANT WHICH WAS PRESENT UPON, IN THE AIR ABOVE, OR IN THE GROUND BELOW A PARCEL OF REAL PROPERTY OR (2) ANY INJURY OR DAMAGE TO PERSON OR PROPERTY RESULTING THEREFROM WHICH OCCURRED PRIOR TO THE TIME TITLE TO SUCH PARCEL WAS ACQUIRED BY SUCH TAX DISTRICT PURSUANT TO THE PROVISIONS OF THIS ARTICLE, UNLESS THE PRESENCE OF SUCH ENVIRONMENTAL CONTAMINANT OR POLLUTANT OR SUCH PRIOR INJURY OR DAMAGE RESULTING THEREFROM WAS PHYSICALLY CAUSED OR CONTRIBUTED TO BY SUCH TAX DISTRICT. NOR SHALL A TAX DISTRICT HAVING ACQUIRED TITLE TO SUCH ENVIRONMENTALLY CONTAMINATED OR POLLUTED PARCEL OF REAL PROPERTY PURSUANT TO THE PROVISIONS OF THIS ARTICLE INCUR ANY SUCH OBLIGATION OR LIABILITY AS A RESULT OF THEREAFTER (A) TAKING ANY ACTION TO SECURE, PRESERVE, STABILIZE, MAINTAIN, OR COLLECT FROM ANY HOLDOVER OCCUPANT THEREOF THE FAIR VALUE OF THE TEMPORARY USE AND OCCUPANCY OF SUCH PARCEL OR (B) TRANSFERRING TITLE TO SUCH PARCEL TO ANY OTHER PERSON OR ENTITY, UNLESS SUCH ACTION OR TRANSFER OF TITLE PHYSICALLY CONTRIBUTES TO SUCH PRE-EXISTING ENVIRONMENTAL CONTAMINATION OR POLLUTION OR PRIOR INJURY OR DAMAGE TO PERSON OR PROPERTY.

S 11. The general municipal law is amended by adding a new article 4-A to read as follows:

ARTICLE 4-A

LIABILITY OF PUBLIC ENTITIES

SECTION 60. DEFINITIONS.

61. APPLICATION.

62. LIABILITY OF PUBLIC ENTITIES FOR INJURIES SUSTAINED ON OR IN PUBLIC RECREATIONAL FACILITIES.

S 60. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "PUBLIC ENTITY" MEANS (A) A COUNTY, CITY, TOWN, VILLAGE OR ANY OTHER POLITICAL SUBDIVISION OR CIVIL DIVISION OF THE STATE; (B) A SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL SERVICES OR ANY OTHER GOVERNMENTAL ENTITY OR COMBINATION OR ASSOCIATION OF GOVERNMENTAL ENTITIES OPERATING A PUBLIC SCHOOL, COLLEGE OR COMMUNITY COLLEGE OR UNIVERSITY, EXCEPT A STATE UNIVERSITY; (C) A PUBLIC IMPROVEMENT OR SPECIAL DISTRICT OR DISTRICT CORPORATION; (D) A PUBLIC BENEFIT CORPORATION; (E) A MUNICIPAL HOUSING AUTHORITY; OR (F) ANY OTHER PUBLIC CORPORATION OR POLITICAL SUBDIVISION OF THE STATE.

2. "OPERATOR" MEANS A PERSON OR PERSONS UNDER CONTRACT WITH A PUBLIC ENTITY TO PROVIDE FOR THE OPERATION, MAINTENANCE OR BOTH OF A PUBLIC RECREATIONAL FACILITY.

3. "PUBLIC RECREATIONAL FACILITY" MEANS A FACILITY OWNED BY A PUBLIC ENTITY FOR THE USE OF THE GENERAL PUBLIC AS SPECTATORS OR PARTICIPANTS IN RECREATION ACTIVITIES INCLUDING, BUT NOT LIMITED TO, SKIING, GOLFING, SWIMMING, TENNIS, ICE SKATING OR ICE HOCKEY FACILITIES, TOGETHER WITH ALL BUILDINGS, STRUCTURES, MACHINERY, EQUIPMENT, FACILITIES AND APPURTENANCES THERETO.

S 61. APPLICATION. THE PROVISIONS OF THIS ARTICLE SHALL APPLY TO ALL CAUSES OF ACTION FOR PERSONAL INJURY, INJURY TO PROPERTY OR WRONGFUL DEATH AGAINST A PUBLIC ENTITY.

S 62. LIABILITY OF PUBLIC ENTITIES FOR INJURIES SUSTAINED ON OR IN PUBLIC RECREATIONAL FACILITIES. IN ORDER TO ENCOURAGE THE GRANTING OF ACCESS TO PUBLIC RECREATIONAL FACILITIES, IT IS HEREBY DECLARED THAT USE BY THE PUBLIC OF SUCH FACILITIES INCLUDES AN ASSUMPTION OF RISK BY THE USER. NOTWITHSTANDING THE PROVISIONS OF SECTION 5-326 OF THE GENERAL OBLIGATIONS LAW, ACTIONS FOR INJURIES SUSTAINED ON OR IN PUBLIC RECREATIONAL FACILITIES, INCLUDING EQUIPMENT, DEVICES, ATTRACTIONS, RIDES OR OTHERWISE, SHALL BE ALLOWED ONLY IF SUCH INJURIES AROSE FROM WILLFUL, WANTON OR GROSS NEGLIGENCE ON THE PART OF THE PUBLIC ENTITY OR OPERATOR.

S 12. Section 3012-a of the civil practice law and rules, as amended by chapter 507 of the laws of 1987, is amended to read as follows:

S 3012-a. Certificate of merit in medical, dental and podiatric malpractice actions AND ACTIONS AGAINST ALL OTHER PROFESSIONALS. (a) In any action for medical, dental or podiatric malpractice, OR IN ANY ACTION FOR DAMAGES, CONTRIBUTION OR INDEMNITY ARISING OUT OF ALLEGED NEGLIGENCE OF A PROFESSIONAL SUBJECT TO THE PROVISIONS OF TITLE EIGHT OF THE EDUCATION LAW, the complaint shall be accompanied by a certificate, executed by the attorney for the plaintiff, OR OTHER PARTY ASSERTING THE CAUSE OF ACTION, declaring that:

(1) the attorney has reviewed the facts of the case and has consulted with at least one physician in medical malpractice actions, at least one dentist in dental malpractice actions [or], at least one podiatrist in podiatric malpractice actions, OR AT LEAST ONE PROFESSIONAL IN THE SAME PROFESSION AS THE PERSON OR PERSONS DEFENDANT IN THE SUBJECT SUIT IN OTHER PROFESSIONAL MALPRACTICE OR NEGLIGENCE ACTIONS AND who is licensed to practice in this state or any other state and who the attorney reasonably believes is knowledgeable in the relevant issues involved in the particular action, AND WHO HAS SIGNED AN AFFIDAVIT CONCLUDING THAT THERE IS A REASONABLE BASIS FOR THE COMMENCEMENT OF AN ACTION, SUCH AFFIDAVIT SHALL ACCOMPANY THE CERTIFICATE REQUIRED BY THIS SECTION, and that the attorney has concluded on the basis of such review [and],

consultation AND AFFIDAVIT that there is a reasonable basis for the commencement of such action; or

(2) the attorney was unable to obtain the consultation AND AFFIDAVIT required by paragraph one of this subdivision because a limitation of time, established by article two of this chapter, would bar the action and that the certificate required by paragraph one of this subdivision could not reasonably be obtained before such time expired. If a certificate is executed pursuant to this subdivision, the certificate required by this section shall be filed within ninety days after service of the complaint; or

(3) the attorney was unable to obtain the consultation AND AFFIDAVIT required by paragraph one of this subdivision because the attorney had made three separate good faith attempts with three separate physicians, dentists [or], podiatrists OR SUBJECT PROFESSIONALS, in accordance with the provisions of paragraph one of this subdivision to obtain such consultation AND AFFIDAVIT and none of those contacted would agree to such a consultation AND AFFIDAVIT.

(b) Where a certificate is required pursuant to this section, a single certificate shall be filed for each action, even if more than one defendant has been named in the complaint or is subsequently named.

(c) Where the attorney intends to rely solely on the doctrine of "res ipsa loquitur", this section shall be inapplicable. In such cases, the complaint shall be accompanied by a certificate, executed by the attorney, declaring that the attorney is solely relying on such doctrine and, for that reason, is not filing a certificate required by this section.

(d) If a request by the plaintiff for the records of the plaintiff's medical or dental treatment by the defendants has been made and such records have not been produced, the plaintiff shall not be required to serve the certificate required by this section until ninety days after such records have been produced.

(e) For purposes of this section, and subject to the provisions of section thirty-one hundred one of this chapter, an attorney who submits a certificate as required by paragraph one or two of subdivision (a) of this section and the physician, dentist [or], podiatrist OR SUBJECT PROFESSIONALS with whom the attorney consulted shall not be required to disclose the identity of the physician, dentist [or], podiatrist OR SUBJECT PROFESSIONALS consulted and the contents of such consultation AND AFFIDAVIT; provided, however, that when the attorney makes a claim under paragraph three of subdivision (a) of this section that he was unable to obtain the required consultation AND AFFIDAVIT with the physician, dentist [or], podiatrist OR SUBJECT PROFESSIONALS, the court may, upon the request of a defendant made prior to compliance by the plaintiff with the provisions of section thirty-one hundred ONE of this chapter, require the attorney to divulge to the court the names of physicians, dentists [or], podiatrists OR SUBJECT PROFESSIONALS refusing such consultation AND AFFIDAVIT.

(f) The provisions of this section shall not be applicable to a plaintiff who is not represented by an attorney.

(g) The plaintiff may, in lieu of serving the certificate required by this section, provide the defendant or defendants with the information required by paragraph one of subdivision (d) of section thirty-one hundred one of this chapter within the period of time prescribed by this section.

(H) THE SUBJECT PROFESSIONAL OR PROFESSIONALS CONSULTED MAY NOT BE A PARTY TO THE LITIGATION.

(I) FOR PURPOSES OF THIS SECTION, A COMPLAINT SHALL INCLUDE A COMPLAINT, THIRD PARTY COMPLAINT, AN ANSWER CONTAINING A COUNTERCLAIM OR A CROSS CLAIM.

S 13. Section 9-103 of the general obligations law, as amended by chapter 408 of the laws of 1979, paragraph a of subdivision 1 as separately amended by chapters 141 and 286 of the laws of 1984 and paragraph c of subdivision 1 as added by chapter 174 of the laws of 1980, is amended to read as follows:

S 9-103. No duty to keep premises safe for certain uses; responsibility for acts of such users. 1. THE LEGISLATURE REAFFIRMS THE PURPOSE OF THIS SECTION WHICH IS TO ENCOURAGE PROPERTY OWNERS TO MAKE LAND AND WATER AREAS AVAILABLE TO THE PUBLIC FOR RECREATIONAL OR CONSERVATION PURPOSES BY LIMITING THEIR POTENTIAL LIABILITY EXPOSURE TOWARD PERSONS ENTERING THEREON FOR SUCH PURPOSES. ITS PROVISIONS SHOULD BE CONSTRUED TO ACCOMPLISH THOSE OBJECTIVES.

1-A. DEFINITIONS. AS USED IN THIS SECTION:

A. "LANDS USED IN AGRICULTURAL PRODUCTION" MEANS LAND AS DEFINED IN SUBDIVISION FOUR OF SECTION THREE HUNDRED ONE OF THE AGRICULTURE AND MARKETS LAW, EXCEPT THAT THE PARCEL OF LAND MAY BE LESS THAN TEN ACRES AND STILL QUALIFY.

B. "OWNER, LESSEE, OR OCCUPANT" MEANS ANY PERSON ENTITLED TO THE EXCLUSIVE OR NON-EXCLUSIVE USE OR POSSESSION OF THE PREMISES, INCLUDING HOLDERS OF CONSERVATION AND TRAIL EASEMENTS.

C. "UNDEVELOPED PREMISES" MEANS PROPERTY EXISTING IN ITS NATURALLY OCCURRING STATE, WITHOUT STRUCTURES, IMPROVEMENTS OR MANMADE OBJECTS CONSTRUCTED, SITUATED OR PLACED ON THE PROPERTY BY THE OWNER, LESSEE, OCCUPANT OR OTHER PERSONS. IF PROPERTY CONTAINS BOTH UNDEVELOPED AND DEVELOPED AREAS, THE OWNER, LESSEE OR OCCUPANT OWES NO DUTY TO KEEP THE UNDEVELOPED PORTION OF THE PREMISES SAFE FOR ENTRY OR USE BY OTHERS FOR RECREATIONAL PURPOSES, BUT NOTHING IN THIS SECTION AFFECTS OR ALTERS THE LIABILITY OF SUCH OWNER, LESSEE OR OCCUPANT TO OTHERS WHO ENTER UPON THE DEVELOPED PORTION OF THE PREMISES. UNDEVELOPED LAND MAY INCLUDE A CLEARED PATH IF IT IS NOT PAVED AND THE PATH SHALL NOT CEASE TO BE "UNDEVELOPED" BECAUSE ITS CREATION OR MAINTENANCE REQUIRES MINOR ALTERATION OF LANDSCAPE. LAND DOES NOT CEASE TO BE "UNDEVELOPED" IF THE ONLY MANMADE ALTERATION IS THE PLANTING AND MAINTENANCE OF FLORA, INCLUDING TREES, SHRUBS, FLOWERS, OR GRASS.

2. Except as provided in subdivision [two] THREE,

a. an owner, lessee or occupant of UNDEVELOPED premises OR OF LAND USED IN AGRICULTURAL PRODUCTION, whether or not posted as provided in section 11-2111 of the environmental conservation law, AND WHETHER OR NOT A FARM, owes no duty to keep the premises safe for entry or use by others for ANY RECREATIONAL USE, INCLUDING BUT NOT LIMITED TO hunting, fishing, organized gleaning as defined in section seventy-one-y of the agriculture and markets law, canoeing, boating, trapping, hiking, cross-country skiing, tobogganing, sledding, speleological activities, horseback riding, bicycle riding, hang gliding, motorized vehicle operation for recreational purposes, snowmobile operation, cutting or gathering of wood for non-commercial purposes or training of dogs, or to give warning of any hazardous condition or use of or structure or activity on such premises to persons entering for such purposes;

b. an owner, lessee or occupant of premises who gives permission to another to pursue any such activities upon such premises does not thereby (1) extend any assurance that the premises are safe for such purpose, or (2) constitute the person to whom permission is granted an invitee to whom a duty of care is owed, or (3) assume responsibility for or incur

liability for any injury to person or property caused by any act of persons to whom the permission is granted.

c. an owner, lessee or occupant of a farm, as defined in section six hundred seventy-one of the labor law, whether or not posted as provided in section 11-2111 of the environmental conservation law, owes no duty to keep such farm safe for entry or use by a person who enters or remains in or upon such farm without consent or privilege, or to give warning of any hazardous condition or use of or structure or activity on such farm to persons so entering or remaining. This shall not be interpreted, or construed, as a limit on liability for acts of gross negligence in addition to those other acts referred to in subdivision [two] THREE of this section.

[2.] 3. This section does not limit the liability which would otherwise exist:

a. for willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure or activity; or

b. for injury suffered in any case where permission to pursue any of the activities enumerated in this section was granted for a consideration other than the consideration, if any, paid to said landowner by the state or federal government, or permission to train dogs was granted for a consideration other than that provided for in section 11-0925 of the environmental conservation law; or

c. for injury caused, by acts of persons to whom permission to pursue any of the activities enumerated in this section was granted, to other persons as to whom the person granting permission, or the owner, lessee or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.

[3.] 4. Nothing in this section creates a duty of care or ground of liability for injury to person or property.

5. NO CAUSE OF ACTION SHALL ARISE AGAINST THE OWNER, TENANT OR LESSEE OF LAND OR PREMISES FOR INJURIES TO ANY PERSON, OTHER THAN AN EMPLOYEE OR CONTRACTOR OF THE OWNER, TENANT OR LESSEE, WHO IS ON THE LAND OR PREMISES FOR THE PURPOSE OF PICKING AND PURCHASING AGRICULTURAL OR FARM PRODUCTS AT A FARM OR "U-PICK" OPERATION, UNLESS THE PERSON'S INJURIES WERE CAUSED BY A CONDITION WHICH INVOLVED AN UNREASONABLE RISK OF HARM AND ALL OF THE FOLLOWING APPLY:

A. THE OWNER, TENANT OR LESSEE KNEW, HAD REASON TO KNOW OF, OR REASONABLY SHOULD HAVE KNOWN OF THE CONDITION OR RISK.

B. THE OWNER, TENANT OR LESSEE FAILED TO EXERCISE REASONABLE CARE TO MAKE THE CONDITION SAFE, OR TO WARN THE PERSON OF THE CONDITION OR RISK.

S 14. Section 214-d of the civil practice law and rules is REPEALED and a new section 214-d is added to read as follows:

S 214-D. LIMITATIONS ON CERTAIN ACTIONS AGAINST PROFESSIONAL ENGINEERS, ARCHITECTS, LANDSCAPE ARCHITECTS, LAND SURVEYORS OR CONSTRUCTION CONTRACTORS. 1. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION TWO OF THIS SECTION, NO ACTION TO RECOVER DAMAGES FOR INJURY TO THE PERSON OR FOR WRONGFUL DEATH OR FOR DAMAGE TO PROPERTY NOR ANY ACTION FOR CONTRIBUTION OR INDEMNITY FOR DAMAGES SUSTAINED ON ACCOUNT OF SUCH INJURY OR WRONGFUL DEATH OR DAMAGE TO PROPERTY ARISING FROM ANY DEFECT IN THE STRUCTURE OR IMPROVEMENT RESULTING FROM THE DESIGN, PLANNING OR SUPERVISION OF CONSTRUCTION OF AN IMPROVEMENT TO REAL PROPERTY SHALL BE BROUGHT AGAINST A PROFESSIONAL ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, LAND SURVEYOR OR CONSTRUCTION CONTRACTOR MORE THAN TEN YEARS AFTER THE COMPLETION OF SUCH IMPROVEMENT.

2. IF, BY REASON OF SUCH DEFECT, AN INJURY TO THE PERSON OR AN INJURY CAUSING WRONGFUL DEATH OR AN INJURY TO PROPERTY OCCURS DURING THE TENTH

YEAR AFTER COMPLETION, AN ACTION TO RECOVER DAMAGES FOR SUCH INJURY OR WRONGFUL DEATH OR DAMAGE TO PROPERTY MAY BE BROUGHT WITHIN ONE YEAR AFTER THE DATE ON WHICH SUCH INJURY OCCURRED, BUT IN NO EVENT MAY SUCH ACTION BE BROUGHT MORE THAN ELEVEN YEARS AFTER THE COMPLETION OF THE IMPROVEMENT.

3. EXCEPT AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION, IN THE EVENT THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION SHALL HAVE REDUCED THE PERIOD DURING WHICH AN ACTION AGAINST A PROFESSIONAL ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, LAND SURVEYOR OR CONSTRUCTION CONTRACTOR COULD HAVE OTHERWISE BEEN BROUGHT PURSUANT TO ANY OTHER PROVISION OF LAW, RULE OR REGULATION, THE CLAIMANT SHALL, IN THAT EVENT, BE ENTITLED TO INSTITUTE ANY SUCH ACTION FOR A PERIOD OF ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION.

4. THE LIMITATIONS PRESCRIBED BY THIS SECTION SHALL NOT APPLY TO ACTIONS BROUGHT BY ONE IN CONTRACTUAL OR PROFESSIONAL PRIVITY WITH THE ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, LAND SURVEYOR OR CONSTRUCTION CONTRACTOR AND SHALL NOT BE ASSERTED BY WAY OF DEFENSE BY ANY PERSON IN ACTUAL POSSESSION OR CONTROL AS OWNER, TENANT, OR OTHERWISE, OF SUCH AN IMPROVEMENT AT THE TIME ANY DEFECT IN SUCH IMPROVEMENT CONSTITUTES THE PROXIMATE CAUSE OF THE INJURY OR DEATH FOR WHICH IT IS PROPOSED TO BRING AN ACTION.

5. FOR PURPOSES OF THIS SECTION AN IMPROVEMENT SHALL BE DEEMED TO BE "COMPLETED" (A) WHEN, AFTER THE IMPROVEMENT HAS BEEN STARTED, A PERMANENT CERTIFICATE OF OCCUPANCY IS ISSUED BY THE MUNICIPALITY IN WHICH THE IMPROVEMENT IS SITUATED, IF SUCH IS REQUIRED OR IS ACTUALLY ISSUED PURSUANT TO LAW OR REGULATION; OR (B) IF A PUBLIC IMPROVEMENT, UPON THE ACCEPTANCE OF THE IMPROVEMENT BY THE OWNER, IF A CERTIFICATE OF OCCUPANCY IS NOT REQUIRED AND HAS NOT BEEN ISSUED; OR (C) ON THE EARLIER OF THE FOLLOWING DATES, IF THE PROVISIONS OF PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION DO NOT APPLY (I) FOUR MONTHS PRIOR TO THE LAST DAY ON WHICH MECHANIC'S LIEN, RESULTING FROM WORK PERFORMED OR MATERIALS FURNISHED WITH RESPECT TO SUCH IMPROVEMENT, CAN BE FILED; OR (II) UPON THE OWNER'S FINAL PAYMENT FOR SERVICES RENDERED OR MATERIALS SUPPLIED WITH RESPECT TO SUCH IMPROVEMENT.

6. AN ARCHITECT, ENGINEER, LANDSCAPE ARCHITECT, OR LAND SURVEYOR SHALL MEAN A PERSON LICENSED OR REGISTERED AS AN ARCHITECT, ENGINEER, LANDSCAPE ARCHITECT, LAND SURVEYOR OR CONSTRUCTION CONTRACTOR, PURSUANT TO THE PROVISIONS OF THE EDUCATION LAW OR ANY PARTNERSHIP, CORPORATION OR ANY OTHER ENTITY LAWFULLY PERFORMING ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL OR SURVEYING SERVICES.

S 15. Subdivisions 4 and 5 of section 214 of the civil practice law and rules, as separately amended by chapters 485 and 682 of the laws of 1986, are amended to read as follows:

4. an action to recover damages for an injury to property except as provided in [section] SECTIONS 214-c, 214-D AND 214-F;

5. an action to recover damages for a personal injury except as provided in sections 214-b, 214-c, 214-D, 214-F and 215;

S 16. Subdivision (h) of rule 3211 and subdivision (i) of rule 3212 of the civil practice law and rules are REPEALED.

S 17. The general obligations law is amended by adding a new article 18-B to read as follows:

ARTICLE 18-B

EQUINE ACTIVITY SAFETY CODE

SECTION 18-301. SHORT TITLE.
18-302. DEFINITIONS.
18-303. LIABILITY OF PERSONS INVOLVED IN EQUINE ACTIVITIES.

18-304. LIMITATION OF LIABILITY.
18-305. POSTING AND NOTIFICATION.

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

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

1. "ENGAGES IN AN EQUINE ACTIVITY" MEANS RIDING, TRAINING, ASSISTING IN VETERINARY TREATMENT OF, DRIVING, OR BEING A PASSENGER UPON AN EQUINE, WHETHER MOUNTED OR UNMOUNTED, VISITING OR TOURING OR UTILIZING AN EQUINE FACILITY AS PART OF AN ORGANIZED EVENT OR ACTIVITY, OR ANY PERSON ASSISTING A PARTICIPANT OR SHOW MANAGEMENT. THE TERM "ENGAGES IN AN EQUINE ACTIVITY" DOES NOT INCLUDE BEING A SPECTATOR AT AN EQUINE ACTIVITY, EXCEPT IN CASES WHERE THE SPECTATOR PLACES HIMSELF IN AN UNAUTHORIZED AREA OR IN IMMEDIATE PROXIMITY TO THE EQUINE ACTIVITY.

2. "EQUINE" MEANS A HORSE, PONY, MULE OR DONKEY.

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, RIDING, DRIVING, PULLING, CUTTING, POLO, STEEPLECHASING, ENGLISH AND WESTERN PERFORMANCE RIDING, ENDURANCE TRAIL RIDING, GYMKHANA GAMES, AND HUNTING.

(B) EQUINE TRAINING OR TEACHING ACTIVITIES OR BOTH.

(C) THE BOARDING OF EQUINES; INCLUDING NORMAL DAILY CARE THEREOF.

(D) RIDING, INSPECTING OR EVALUATING BY A PURCHASER OR AN AGENT 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.

(F) PLACING OR REPLACING HORSESHOES OR HOOF TRIMMING ON AN EQUINE.

(G) PROVIDING OR ASSISTING IN VETERINARY TREATMENT OF AN EQUINE.

4. "EQUINE ACTIVITY SPONSOR" MEANS AN INDIVIDUAL, GROUP, CLUB, PARTNERSHIP, LIMITED LIABILITY COMPANY 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, STABLE AND FARM OWNERS AND OPERATORS, INSTRUCTORS, AND PROMOTERS OF EQUINE FACILITIES, INCLUDING BUT NOT LIMITED TO FARMS, STABLES, CLUBHOUSES, PONY RIDE 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;

(B) IN RENTING EQUIPMENT OR TACK TO A PARTICIPANT;

(C) TO PROVIDE DAILY CARE OF HORSES BOARDED AT AN EQUINE FACILITY; OR

(D) TO TRAIN AN EQUINE.

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 EQUINES 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 MOVEMENT, AND UNFAMILIAR OBJECTS, PERSONS OR OTHER ANIMALS;

(C) CERTAIN HAZARDS SUCH AS SURFACE AND SUBSURFACE CONDITIONS INCLUDING, BUT NOT LIMITED TO, ROCKS, FOREST GROWTH, DEBRIS, BRANCHES, TREES, ROOTS, STUMPS OR OTHER NATURAL OBJECTS;

(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 HIS OR HER 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.

S 18-303. LIABILITY OF PERSONS INVOLVED IN EQUINE ACTIVITIES. 1. NOTHING IN SECTION 18-304 OF THIS ARTICLE SHALL PREVENT OR LIMIT THE LIABILITY OF AN EQUINE ACTIVITY SPONSOR OR AN EQUINE PROFESSIONAL, IF THE EQUINE ACTIVITY SPONSOR OR EQUINE PROFESSIONAL:

(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 HIS ABILITY;

(B) OWNS, LEASES, RENTS, HAS AUTHORIZED USE OF OR IS OTHERWISE 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 OR EQUINE PROFESSIONAL AND FOR WHICH WARNING SIGNS, PURSUANT TO SUBDIVISION FOUR OF SECTION 18-302 OF THIS ARTICLE 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;

(D) INTENTIONALLY INJURES THE PARTICIPANT.

2. THIS SECTION SHALL NOT APPLY TO THE HORSE RACING ACTIVITY AUTHORIZED PURSUANT TO ARTICLE TWO, THREE OR FOUR OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW.

S 18-304. LIMITATION OF LIABILITY. 1. EXCEPT AS PROVIDED IN SUBDIVISION TWO OF SECTION 18-303 OF THIS ARTICLE, AN EQUINE ACTIVITY SPONSOR, AN EQUINE PROFESSIONAL OR ANY OTHER PERSON, WHICH SHALL INCLUDE A LIMITED LIABILITY COMPANY, 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 AND, EXCEPT AS PROVIDED IN SUBDIVISION TWO OF SECTION 18-303 OF THIS ARTICLE, NO PARTICIPANT NOR 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.

2. NOTHING IN THIS ARTICLE SHALL LIMIT THE APPLICATION OF THE PROVISIONS OF SECTION 9-103 OF THIS CHAPTER.

S 18-305. POSTING AND NOTIFICATION. 1. EVERY EQUINE PROFESSIONAL SHALL POST AND MAINTAIN SIGNS WHICH CONTAIN THE WARNING NOTICE SPECIFIED

IN SUBDIVISION TWO OF THIS SECTION. SUCH SIGNS SHALL BE PLACED IN A CLEARLY VISIBLE LOCATION IN THE PROXIMITY OF THE EQUINE ACTIVITY. THE WARNING NOTICE SPECIFIED IN SUBDIVISION TWO OF THIS SECTION SHALL APPEAR ON THE SIGN IN BLACK LETTERS, WITH EACH LETTER TO BE A MINIMUM OF ONE INCH 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 SUBDIVISION TWO OF THIS SECTION.

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

WARNING

UNDER NEW YORK LAW, AN EQUINE PROFESSIONAL OR EQUINE ACTIVITY SPONSOR 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 SECTION 18-304 OF THE GENERAL OBLIGATIONS LAW.

S 18. The civil practice law and rules is amended by adding a new section 214-f to read as follows:

S 214-F. ACTIONS ALLEGING INJURY FROM A PRODUCT; REPOSE. (A) NOTWITHSTANDING ANY LAW TO THE CONTRARY, AND SUBJECT TO THE PROVISIONS OF SUBDIVISIONS (B), (C) AND (D) OF THIS SECTION, NO CAUSE OF ACTION ARISING OUT OF THE MANUFACTURE, SALE OR MARKETING OF A PRODUCT MAY BE COMMENCED MORE THAN TEN YEARS AFTER ANY SUCH PRODUCT IS DELIVERED TO THE FIRST PURCHASER OR LESSEE.

(B) THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION SHALL NOT BAR A PRODUCT LIABILITY ACTION AGAINST A SUBJECT DEFENDANT WHO SHALL HAVE MADE AN EXPRESS WARRANTY, IN WRITING, AS TO THE SAFETY OR LIFE EXPECTANCY OF THE SPECIFIC PRODUCT INVOLVED, WHICH PERIOD OF WARRANTY IS LONGER THAN TEN YEARS, EXCEPT THAT SUCH SUBDIVISION SHALL APPLY AT THE EXPIRATION OF THAT WARRANTY.

(C) IF A PRODUCT LIABILITY CAUSE OF ACTION ACCRUES DURING THE TEN YEAR PERIOD DESCRIBED IN SUBDIVISION (A) OF THIS SECTION BUT AT A TIME LESS THAN TWO YEARS PRIOR TO THE EXPIRATION OF SUCH PERIOD, SUCH ACTION MAY BE BROUGHT WITHIN TWO YEARS AFTER ACCRUAL THEREOF; PROVIDED, HOWEVER, THAT IN NO EVENT MAY SUCH ACTION BE BROUGHT MORE THAN TWELVE YEARS AFTER THE PRODUCT WAS DELIVERED TO THE FIRST PURCHASER OR LESSEE.

(D) EXCEPT AS PROVIDED IN SUBDIVISIONS (B) AND (C) OF THIS SECTION, IN THE EVENT THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION SHALL HAVE REDUCED THE PERIOD DURING WHICH A PRODUCT LIABILITY ACTION COULD HAVE OTHERWISE BEEN BROUGHT PURSUANT TO ANY OTHER PROVISION OF LAW, RULE OR REGULATION, THE CLAIMANT SHALL, IN THAT EVENT, BE ENTITLED TO INSTITUTE ANY SUCH ACTION FOR A PERIOD OF ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION.

(E) FOR PURPOSES OF THIS SECTION, "CAUSE OF ACTION ARISING OUT OF THE MANUFACTURE, SALE OR MARKETING OF A PRODUCT" MEANS ANY ACTION, INCLUDING BUT NOT LIMITED TO A CONTRIBUTION, INDEMNITY OR RESTITUTION ACTION, BROUGHT FOR OR ON ACCOUNT OF PERSONAL INJURY, WRONGFUL DEATH, INJURY TO PROPERTY OR EXPENDITURE OF FUNDS THAT IS ALLEGED TO HAVE RESULTED FROM THE MANUFACTURE, SALE, USE, CONSTRUCTION, DESIGN, FORMULATION, DEVELOPMENT OF STANDARDS, PREPARATION, PROCESSING, ASSEMBLY, REBUILDING, TESTING, LISTING, CERTIFYING, MARKETING, ADVERTISING, PACKAGING OR LABELING OF ANY PRODUCT, OR ANY WARNING OR INSTRUCTION OR LACK OF WARNING OR INSTRUCTION ASSOCIATED WITH THAT PRODUCT, REGARDLESS OF THE THEORY OF LIABILITY EMPLOYED.

(F) NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION OR ANY OTHER PROVISION OF LAW, RULE OR REGULATION, NO CLAIM MAY BE BROUGHT AGAINST A DEFENDANT IN ANY CIVIL ACTION IF EITHER (I) WITH RESPECT TO ALL CIVIL ACTIONS, INCLUDING ACTIONS SUBJECT HEREIN, THE CLAIM IS BASED IN WHOLE OR IN PART ON ANY ACT OR OMISSION OF THE DEFENDANT WHICH OCCURRED MORE THAN TWENTY-FIVE YEARS BEFORE THE CLAIM WAS BROUGHT; OR (II) WITH RESPECT TO ANY SUCH ACTIONS SUBJECT HEREIN, THE CLAIM IS BROUGHT MORE THAN TWENTY-FIVE YEARS AFTER THE DATE OF DELIVERY OF THE PRODUCT TO THE FIRST PURCHASER OR LESSEE, WHICH PRODUCT IS ALLEGED TO HAVE CAUSED THE PLAINTIFF'S INJURY OR DAMAGE.

S 19. The civil practice law and rules is amended by adding a new article 14-B to read as follows:

ARTICLE 14-B

PRODUCT LIABILITY ACTIONS; SPECIFIC DEFENSES

1420. POSTMANUFACTURE CHANGES.
1421. SEALED CONTAINERS.
1422. STATE OF THE ART DESIGN.

S 1420. POSTMANUFACTURE CHANGES. IN A PRODUCT LIABILITY ACTION, EVIDENCE OF MEASURES TAKEN BY THE MANUFACTURER OR SELLER AFTER AN EVENT, WHICH IF TAKEN PREVIOUSLY WOULD HAVE MADE THE EVENT LESS LIKELY TO OCCUR, IS NOT ADMISSIBLE TO PROVE NEGLIGENCE OR CULPABLE CONDUCT OR TO PROVE A DEFECT IN THE PRODUCT. EVIDENCE OF SUBSEQUENT MEASURES MAY, HOWEVER, BE ADMISSIBLE WHEN OFFERED TO IMPEACH OR AS PROOF OF OWNERSHIP, CONTROL OR FEASIBILITY OF PRECAUTIONARY MEASURES, IF SUCH ISSUES ARE CONTROVERTED.

S 1421. SEALED CONTAINERS. IN ANY PRODUCT LIABILITY ACTION A PARTY MAY ASSERT AS A DEFENSE IN SUCH ACTION THAT HE OR SHE IS NOT THE MANUFACTURER OF THE PRODUCT IN QUESTION AND THAT SUCH PRODUCT WAS ACQUIRED AND SOLD BY HIM OR HER IN A SEALED CONTAINER OR THAT THE PRODUCT WAS ACQUIRED AND SOLD BY HIM OR HER UNDER CIRCUMSTANCES IN WHICH HE OR SHE WAS AFFORDED NO REASONABLE OPPORTUNITY TO INSPECT THE PRODUCT IN SUCH A MANNER WHICH WOULD HAVE OR SHOULD HAVE, IN THE EXERCISE OF REASONABLE CARE, REVEALED THE EXISTENCE OF THE DEFECTIVE CONDITION; PROVIDED, HOWEVER, THAT THE DEFENSE SET FORTH IN THIS SECTION SHALL NOT BE AVAILABLE IF (A) THE MANUFACTURER IS NOT SUBJECT TO SERVICE OF PROCESS UNDER THE LAWS OF THE STATE IN WHICH THE PLAINTIFF BRINGS THE ACTION, OR (B) THE MANUFACTURER HAS BEEN JUDICIALLY DECLARED INSOLVENT AND IS UNABLE TO PAY ITS DEBTS AS THEY BECOME DUE IN THE ORDINARY COURSE OF BUSINESS, OR (C) THE COURT DETERMINES THAT THE PLAINTIFF WOULD BE UNABLE TO ENFORCE A JUDGMENT AGAINST THE MANUFACTURER. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ACTIONS BASED UPON BREACH OF EXPRESS WARRANTY, NEGLIGENCE OR FRAUDULENT MISREPRESENTATION OF THE SELLER.

S 1422. STATE OF THE ART DESIGN. (A) IN ANY PRODUCT LIABILITY ACTION BASED UPON DEFECTIVE DESIGN, A PARTY SHALL NOT BE LIABLE UNLESS THE PLAINTIFF PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT, AT THE TIME THE PRODUCT LEFT THE CONTROL OF THE PARTY, THERE EXISTED A FEASIBLE ALTERNATIVE DESIGN THAT WOULD HAVE PREVENTED THE HARM WITHOUT SUBSTANTIALLY IMPAIRING THE USEFULNESS OR DESIRABILITY OF THE PRODUCT TO USERS.

(B) IN ANY PRODUCT LIABILITY ACTION BASED UPON DEFECTIVE DESIGN, A PARTY SHALL NOT BE LIABLE UNLESS THE PLAINTIFF PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE PRODUCT DESIGN WAS THE IMMEDIATE, PHYSICAL AND PRODUCING CAUSE OF THE INJURY OR DAMAGE OF WHICH THE PLAINTIFF COMPLAINS, AND THAT, IF A FEASIBLE ALTERNATIVE DESIGN AS PROVIDED IN SUBDIVISION (A) OF THIS SECTION WAS MARKETED BY THE DEFENDANT, THE USER OF THE PRODUCT WOULD HAVE RESPONDED BY ALTERING HIS CONDUCT AND THEREBY

WOULD HAVE AVOIDED OR REDUCED THE INJURY OR DAMAGE OF WHICH THE PLAINTIFF COMPLAINS.

(C) IN ANY PRODUCT LIABILITY ACTION BASED UPON DEFECTIVE DESIGN, A PARTY SHALL NOT BE LIABLE UNLESS THE PLAINTIFF PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT, AT THE TIME THE PRODUCT LEFT THE CONTROL OF THE PARTY, SUCH PARTY KNEW OR, IN LIGHT OF THEN EXISTING SCIENTIFIC AND TECHNOLOGICAL KNOWLEDGE, REASONABLY SHOULD HAVE KNOWN OF THE DANGER THAT CAUSED THE PLAINTIFF'S HARM.

(D) IN ANY PRODUCT LIABILITY ACTION BASED ON DEFECTIVE DESIGN, A PRODUCT SHALL NOT BE FOUND TO CONTAIN A DEFECT OR BE UNREASONABLY DANGEROUS FOR ITS INTENDED USE IF THE PERSONAL INJURY, PROPERTY DAMAGE OR DEATH FOR WHICH RECOVERY OF DAMAGES IS SOUGHT WAS CAUSED BY AN INHERENT ASPECT OF THE PRODUCT ABOUT WHICH ADEQUATE SPECIFICATIONS, INSTRUCTIONS OR WARNINGS ARE PROVIDED OR WHICH WOULD BE RECOGNIZED AS CAPABLE OF CAUSING HARM BY THE ORDINARY PERSON WHO USES OR CONSUMES THE PRODUCT WITH THE ORDINARY KNOWLEDGE COMMON TO THE CLASS OF PERSONS FOR WHOM THE PRODUCT IS INTENDED.

(E) IN ANY PRODUCT LIABILITY ACTION BASED ON DEFECTIVE DESIGN, A PRODUCT SHALL NOT BE FOUND TO CONTAIN A DEFECT OR BE UNREASONABLY DANGEROUS FOR ITS INTENDED USE IF THE PERSONAL INJURY, PROPERTY DAMAGE OR DEATH FOR WHICH RECOVERY OF DAMAGES IS SOUGHT WAS CAUSED BY AN UNAVOIDABLY UNSAFE PRODUCT, AS DEFINED IN COMMENT K TO SECTION 402A OF THE RESTATEMENT (2D) OF TORTS, AND SPECIFICATIONS, WARNINGS OR INSTRUCTIONS ARE PROVIDED TO THE EXTENT REQUIRED BY THIS ARTICLE.

S 20. The labor law is amended by adding a new section 742 to read as follows:

S 742. DISCLOSURE OF EMPLOYMENT RELATED INFORMATION; PRESUMPTIONS; CAUSES OF ACTION; DEFINITIONS. 1. ANY EMPLOYER WHO, UPON REQUEST BY A PROSPECTIVE EMPLOYER OR A CURRENT OR FORMER EMPLOYEE, PROVIDES ACCURATE INFORMATION ABOUT A CURRENT OR FORMER EMPLOYEE'S JOB PERFORMANCE OR REASONS FOR SEPARATION SHALL BE IMMUNE FROM CIVIL LIABILITY AND OTHER CONSEQUENCES OF SUCH DISCLOSURE PROVIDED SUCH EMPLOYER IS NOT ACTING IN BAD FAITH. AN EMPLOYER SHALL BE CONSIDERED TO BE ACTING IN BAD FAITH ONLY IF IT CAN BE SHOWN BY A PREPONDERANCE OF THE EVIDENCE THAT THE INFORMATION DISCLOSED WAS KNOWINGLY FALSE AND DELIBERATELY MISLEADING.

2. ANY PROSPECTIVE EMPLOYER WHO REASONABLY RELIES ON INFORMATION PERTAINING TO AN EMPLOYEE'S JOB PERFORMANCE OR REASONS FOR SEPARATION, DISCLOSED BY A FORMER EMPLOYER, SHALL BE IMMUNE FROM CIVIL LIABILITY INCLUDING LIABILITY FOR NEGLIGENT HIRING, NEGLIGENT RETENTION, AND OTHER CAUSES OF ACTION RELATED TO THE HIRING OF SUCH EMPLOYEE, BASED UPON SUCH REASONABLE RELIANCE, UNLESS FURTHER INVESTIGATION, INCLUDING BUT NOT LIMITED TO A CRIMINAL BACKGROUND CHECK, IS REQUIRED BY LAW.

3. AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE FOLLOWING MEANINGS UNLESS THE CONTEXT CLEARLY REQUIRES OTHERWISE:

(A) "EMPLOYER" MEANS ANY PERSON, FIRM, LIMITED LIABILITY COMPANY OR CORPORATION, INCLUDING THE STATE AND ITS POLITICAL SUBDIVISIONS, AND ANY AGENT THEREOF WITH ONE OR MORE EMPLOYEES, OR INDIVIDUALS PERFORMING SERVICES UNDER ANY CONTRACT OF HIRE OR SERVICE, EXPRESSED OR IMPLIED, ORAL OR WRITTEN.

(B) "EMPLOYEE" MEANS ANY PERSON, PAID OR UNPAID, IN THE SERVICE OF AN EMPLOYER.

(C) "PROSPECTIVE EMPLOYER" MEANS ANY "EMPLOYER", AS DEFINED IN PARAGRAPH (A) OF THIS SUBDIVISION, TO WHICH A PROSPECTIVE EMPLOYEE HAS MADE APPLICATION, EITHER ORAL OR WRITTEN, OR FORWARDED A RESUME OR OTHER CORRESPONDENCE EXPRESSING AN INTEREST IN EMPLOYMENT.

(D) "PROSPECTIVE EMPLOYEE" MEANS ANY PERSON WHO HAS MADE AN APPLICATION, EITHER ORAL OR WRITTEN, OR HAS SENT A RESUME OR OTHER CORRESPONDENCE INDICATING AN INTEREST IN EMPLOYMENT.

(E) "JOB PERFORMANCE" INCLUDES, BUT IS NOT LIMITED TO, ATTENDANCE, ATTITUDE, AWARDS, DEMOTIONS, DUTIES, EFFORT, EVALUATIONS, KNOWLEDGE, SKILLS, PROMOTIONS, AND DISCIPLINARY ACTIONS.

S 21. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

S 22. This act shall take effect immediately; provided, however, the provisions of sections one, six, seven, eight and nine of this act shall take effect on the one hundred eightieth day after this act shall have become a law; provided further, the provisions of sections fourteen, fifteen and sixteen of this act shall take effect on the first of January next succeeding the date on which this act shall have become a law; provided further the provisions of section seventeen of this act shall take effect on the ninetieth day after this act shall have become a law; and provided further, that the provisions of this act shall apply only to causes of action commenced on or after the effective date of each applicable section.