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

6034

2009-2010 Regular Sessions

I N A S S E M B L Y

February 24, 2009

Introduced by M. of A. KOON -- read once and referred to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to limiting the civil liability of farm or "u-pick" operations and to enact the equine activity safety code act

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

Section 1. Section 9-103 of the general obligations law is amended by adding a new subdivision 1-a to read as follows:

1-A. 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 2. Legislative intent. The legislature hereby finds that horseback riding is both a major recreational sport and a major industry within the state of New York. The legislature further finds: (1) that horseback riding, like many other sports, contains inherent risks including, but not limited to, the risks of personal injury or death or property damage, which may be caused by the propensity of equines to behave in ways not always controllable by the participant; the unpredictability of an equine's reaction to such things as sounds, sudden movements, and unfamiliar objects, persons, or other animals; surface or subsurface conditions; collisions with other equines or objects; and the potential of a participant to act in a negligent manner; (2) that it is

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

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appropriate, as well as in the public interest, to establish certain duties and obligations of equine sponsors and equine professionals relative to the safety of the horseback riding public; and (3) that it is also necessary and appropriate that the public become apprised of, and understand, the risks inherent in the sport of horseback riding so that they may make an informed decision of whether or not to participate in horseback riding notwithstanding the risks. Therefore, the purpose and intent of this article is to establish guidelines for the conduct of the participants, sponsors and professionals involved in the sport of horseback riding; to educate the public as to the inherent risks in the sport of horseback riding so as to minimize the risk of injury to persons engaged in the sport of horseback riding; to promote safety in the horseback riding industry, and to preserve the financial sustainability of the equine sponsors and equine professionals engaged in the horseback riding industry.

S 3. 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 MAY BE CITED AND SHALL BE KNOWN 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 OR HERSELF 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, 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 OR HER 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 OF OMISSION THAT CONSTITUTES WILLFUL OR WANTON DISREGARD FOR THE SAFETY OF THE PARTICIPANT, AND THAT ACT OF 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 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 4. Severability. If any section, part or provision of this act shall be declared unconstitutional, invalid or ineffective by any court of competent jurisdiction, such declaration shall be limited to the section, part or provision directly involved in any such controversy in which such declaration was made and shall not affect any other section, part or provision thereof.

S 5. This act shall take effect immediately, provided, however, that section three of this act shall take effect on the ninetieth day after it shall have become a law.