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

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2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. HAWLEY, GIGLIO, CROUCH, CALHOUN, FINCH -- Multi-Sponsored by -- M. of A. BARCLAY, KOLB -- read once and referred to the Committee on Judiciary

AN ACT 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"

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, 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

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

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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 OF THIS SECTION,

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 2. 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 SECTION 18-305 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 3. This act shall take effect immediately; provided, however, that the provisions of section two of this act shall take effect on the ninetieth day after it 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.