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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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. 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. WAIVER.
18-306. POSTING AND NOTIFICATION.

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

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

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

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

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

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

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(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;

(E) PROVIDING OR ASSISTING IN PROVIDING VETERINARY TREATMENT OR MAINTENANCE CARE TO AN EQUINE;

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

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

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

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

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

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

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

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

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

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

10. "VETERINARIAN" MEANS A PERSON WHO IS LICENSED TO PRACTICE VETERINARY MEDICINE IN THIS STATE.

S 18-303. LIABILITY OF PERSONS INVOLVED IN EQUINE ACTIVITIES. EXCEPT AS PROVIDED IN SECTION 18-304 OF THIS ARTICLE, AN EQUINE ACTIVITY SPONSOR, EQUINE ACTIVITY PARTICIPANT, EQUINE PROFESSIONAL, VETERINARIAN, FARRIER, OR OTHER PERSON IS NOT LIABLE IN DAMAGES IN A TORT OR OTHER CIVIL ACTION FOR HARM THAT AN EQUINE ACTIVITY PARTICIPANT ALLEGEDLY SUSTAINS DURING AN EQUINE ACTIVITY AND THAT RESULTS FROM AN INHERENT RISK OF AN EQUINE ACTIVITY. EXCEPT AS PROVIDED IN SECTION 18-304 OF THIS ARTICLE, AN EQUINE ACTIVITY PARTICIPANT OR THE PERSONAL REPRESENTATIVE OF AN EQUINE ACTIVITY PARTICIPANT DOES NOT HAVE A CLAIM OR CAUSE OF ACTION UPON WHICH A RECOVERY OF DAMAGES MAY BE BASED AGAINST, AND MAY NOT RECOVER DAMAGES IN A TORT OR OTHER CIVIL ACTION AGAINST, AN EQUINE ACTIVITY SPONSOR, ANOTHER EQUINE ACTIVITY PARTICIPANT, AN EQUINE PROFESSIONAL, A VETERINARIAN, A FARRIER, OR ANOTHER PERSON FOR HARM THAT THE EQUINE ACTIVITY PARTICIPANT ALLEGEDLY SUSTAINED DURING AN EQUINE ACTIVITY AND THAT RESULTED FROM AN INHERENT RISK OF AN EQUINE ACTIVITY.

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

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

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

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

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

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

5. AN EQUINE ACTIVITY SPONSOR, EQUINE ACTIVITY PARTICIPANT, EQUINE PROFESSIONAL, VETERINARIAN, FARRIER, OR OTHER PERSON INTENTIONALLY CAUSES THE HARM INVOLVED.

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

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

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

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

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

5. THIS SECTION DOES NOT CREATE A NEW CAUSE OF ACTION OR SUBSTANTIVE LEGAL RIGHT AGAINST AN EQUINE ACTIVITY SPONSOR, EQUINE ACTIVITY PARTICIPANT, EQUINE PROFESSIONAL, VETERINARIAN, FARRIER, OR OTHER PERSON.

S 18-306. 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 WAIVER AND 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, WAIVERS AND CONTRACTS DESCRIBED IN SUBDIVISION OF ONE 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 18-303 OF THE GENERAL OBLIGATIONS LAW.

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