



## NEW JERSEY LAW REVISION COMMISSION

### Revised Tentative Report Relating to

### Equine Activities Liability Act

**January 16, 2014**

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S.* 1:12A-8.

This Tentative Report is distributed to advise interested persons of the Commission's tentative recommendations and the opportunity to submit comments. Comments should be submitted no later than **March 17, 2014**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this tentative report or direct any related inquiries, to:

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# EQUINE ACTIVITIES LIABILITY ACT (“EQUINE ACT”)

## I. Introduction

This project results from the New Jersey Supreme Court decision in *Hubner v. Spring Valley Equestrian Center*, 203 N.J. 184, 1 A.3d 618 (2010), which shed light on a “latent ambiguity in the overall meaning of” the Equine Activities Liabilities Act, *N.J.S. 5:15-1 et seq.* (“Equine Act.”) The goal of this project is to review the law and determine whether the Act’s ambiguity issue can be resolved through revision of its wording or structure.

The New Jersey equine industry plays a significant role in the state.<sup>1</sup> According to the American Horse Council, there are 83,000 horses in New Jersey, over 80 percent of which are involved in showing and recreation. Almost 60,000 New Jerseyans are involved in the equine industry as horse owners, service providers, employees, and volunteers. Even more participate as spectators. Little wonder that *Equus caballus* – the horse – is the New Jersey State Animal.

But horses are potentially dangerous and injuries often arise from participation in equine-related activities.<sup>2</sup> Forty-six states have passed equine liability legislation to encourage equine activities and to protect operators from civil liability.<sup>3</sup> The New Jersey Legislature determined that equine animal activities are practiced by a large number of citizens in this state; that equine animal activities attract large numbers of residents; that those activities significantly contribute to the economy of this state; and that horse farms are a major land use which preserves open space. *N.J.S. 5:15-1*. The Legislature also determined that equine animal activities involve risks that are essentially impractical or impossible for an operator to eliminate. See *Id.* In light of the considerable contributions to New Jersey’s economy attributable to the equine industry, the New Jersey Legislature passed the Equine Act in 1998.

In *Hubner*, the plaintiff was injured after being thrown from a horse when it tripped over wooden rails, known as cavaletti, placed on the ground in the area of the defendant’s riding ring for training purposes. The plaintiff brought an action against the equestrian facility operator for negligence. The trial court granted the motion for summary judgment filed by the operator, concluding that “the case was one of the inherent risks of equine activity and plaintiff’s claim was therefore barred by the Equine Act” and “the statutory exception to immunity if the facility knowingly provides equipment or tack that is faulty, *N.J.S.A. 5:15-9(a)*, was not applicable, because the cavaletti were not faulty, but were simply part of the riding ring.” *Hubner*, 203 N.J. at 190-191.

The Appellate Division reversed the trial court’s grant of summary judgment and focused its analysis not on the statutory definition of inherent and assumed risk, *N.J.S. 5:15-2, -3*, but on the provisions of the Equine Act that create exceptions to the protection afforded to equine

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<sup>1</sup> Walking Through the New Jersey Equine Activity Statute: A Look at Judicial Statutory Interpretations in Jurisdictions with Similar Limited Liability Laws, 12 Seton Hall J. Sports L. 65 at p. 67

<sup>2</sup> *Id.* at p. 69

<sup>3</sup> According to the Animal Legal and Historical Center, all states except California, Maryland, Nevada, and New York have passed equine liability statutes.

facility operators, *see N.J.S. 5:15-9(a), (d)*. The Appellate Division concluded, “The placement of equipment in a position that creates an unnecessary risk of personal injury may constitute negligent disregard for the participant’s safety notwithstanding the assumption of risks for collisions and the conditions of tracks and rings.” *Hubner*, 203 N.J. at 190-191.

The New Jersey Supreme Court began its analysis by recalling its role of determining and effectuating the Legislature’s intent. *Id.* at 193. In considering the Legislature’s intent when the dispute between the parties rests on multiple parts of a single statute, as here, the Court also strives to read and understand all of the provisions in harmony and as parts of a unitary enactment. *Id.* at 194. The Court noted also the Legislature’s enhanced concern for preserving and protecting equine operations or facilities and this expression of a protective policy goal, demonstrating that the Legislature intended for the provisions expressing the scope of the risks assumed to be read broadly in favor of the operators, while the obligations of the operators would be narrowly construed if the two sections of the statute appear to conflict. *Id.* at 203-204.

Here, the Court recognized that the broadly written risk assumption provision did indeed conflict with the Act’s broadly written exception to limitations on operator liability provisions, thus revealing a latent ambiguity in the overall meaning of the statute. *Id.* at 197. In its present form, the language imposing liability on operators is as follows:

*N.J.S. 5:15-9* states that civil liability protection is unavailable to operators who:

- a. Knowingly providing equipment or tack that is faulty to the extent that it causes or contributes to injury;
- b. Failure to make reasonable and prudent efforts to determine the participant’s ability to safely manage the particular equine animal, based on the participant’s representation of his ability, or the representation of the guardian, or trainer of that person standing in loco parentis, if a minor;
- c. A case in which the participant is injured or killed by a known dangerous latent condition on property owned or controlled by the equine animal activity operator and for which warning signs have not been posted;
- d. An act or omission on the part of the operator that constitutes negligent disregard for the participant’s safety, which act or omission causes the injury, and;
- e. Intentional injuries to the participant caused by the operator.

According to the court, reading the exceptions to the protections offered by the Equine Act narrowly allows the statute to function similarly to the provisions in the Ski Act, *See N.J.S. 5:13-1 to -11*, or the Roller Skating Rink Safety and Fair Liability Act (“Roller Skating Rink Act”), *See N.J.S. 5:14-1 to -7*, by separating the risks that are assumed from the statutorily defined duties of care that the facility’s operator owes to the participants. *Hubner*, 203 N.J. at 206. While the Ski Act and the Roller Act address inherent risks and limitations on operator liability, both are structurally different from the Equine Act.

*N.J.S. 5: 14-4* of the Roller Skating Rink Act, for example, delineates a list of 13 specific responsibilities for roller rink operators. Exemplary of these responsibilities are: posting the duties of roller skaters and spectators in conspicuous places; keeping a floor guard on duty; maintaining the skating surface in reasonably safe condition and inspecting before each session; installing and inspecting fire extinguishers; checking to insure rental skates are in good mechanical condition; prohibiting the sale or use of alcoholic beverages; and complying with applicable safety codes.

Similarly, the Ski Act delineates a set of responsibilities (i.e. “duties”) that ski hill operators owe to their patrons. See *N.J.S. 15:13-3*. As applied, Section 9 of the Equine Act serves the same function as Section 3 of the Ski Act, but the operator responsibilities in the Ski Act are far more specific. Exemplary of these operator responsibilities are: identifying and designating the relative difficulties of slopes and trails; providing trail maps and reports to skiers; and informing skiers of daily slope and trail conditions. This section of the Ski Act also limits the responsibility of operators in cases such as: abrupt weather changes; hazards normally associated with varying snow conditions; or the location of man-made facilities and equipment necessary for ordinary operations.

To address the ambiguity issue identified by the New Jersey Supreme Court, Staff suggests a limited structural redrafting of the Equine Act with limited changes to the language of the statute. Staff believes this will remedy the potential confusion created by the conflicts between the broad language of the inherent risks, identified in *N.J.S. 5:15-3*, and the broad language used to describe the acts on the part of the operator that can result in the imposition of liability pursuant to *N.J.S. 5:15-9*.

The following draft includes the changes requested by the Commission. For ease of review, although the previous draft made an effort to show the progression of proposed changes to the statutory language, the draft below shows only the distinction between the existing statute and the changes proposed at this time (shown with underlining for proposed additions and strikeout for proposed deletions).

## **II. Draft**

### **5:15-1. Legislative findings and declarations**

The Legislature finds and declares that equine animal activities are practiced by a large number of citizens of this State; that equine animal activities attract large numbers of nonresidents to the State; that those activities significantly contribute to the economy of this State; and that horse farms are a major land use which preserves open space.

The Legislature further finds and declares that equine animal activities involve risks that are essentially impractical or impossible for the operator to eliminate; and that those risks must be borne by those who engage in those activities.

The Legislature therefore determines that the allocation of the risks and costs of equine animal activities is an important matter of public policy and it is appropriate to state in law those risks that the participant voluntarily assumes for which there can be no recovery.

## Comment

This section is identical to Section 1 of the Equine Act.

### 5:15-2. Definitions

As used in this act:

“Equestrian area” means all of the real and personal property under the control of the operator or on the premises of the operator which are being occupied, by license, lease, fee simple or otherwise, including but not limited to designated trail areas, designated easements or rights-of-way for access to trails, and other areas utilized for equine animal activities.

“Equine animal” means a horse, pony, mule or donkey.

“Equine animal activity” means any activity that involves the use of an equine animal and shall include selling equipment and tack; transportation, including the loading and off-loading for travel to or from a horse show or trail system; inspecting, or evaluating an equine animal belonging to another person whether or not the person has received compensation; placing or replacing shoes on an equine animal; and veterinary treatment on an equine animal.

~~“Inherent risk or risks of an equine animal activity” means those dangers which are an integral part of equine animal activity, which shall include but need not be limited to:~~

~~a. The propensity of an equine animal to behave in ways that result in injury, harm, or death to nearby persons;~~

~~b. The unpredictability of an equine animal's reaction to such phenomena as sounds, sudden movement and unfamiliar objects, persons or other animals;~~

~~c. Certain natural hazards, such as surface or subsurface ground conditions;~~

~~d. Collisions with other equine animals or with objects; and~~

~~e. The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including but not limited to failing to maintain control over the equine animal or not acting within the participant's ability.~~

“Operator” means a person or entity who owns, manages, controls or directs the operation of an area where individuals engage in equine animal activities whether or not compensation is paid. The term “operator” shall also include an agency of this State, political subdivisions thereof or instrumentality of said entities, or any individual or entity acting on behalf of an operator for all or part of such activities.

~~“Operator” shall also include an agency of this State, political subdivisions thereof or instrumentality of said entities, or any individual or entity acting on behalf of an operator for all or part of such activities.~~

“Participant” means any person, whether an amateur or professional, engaging in an equine animal activity, whether or not a fee is paid to engage in the equine animal activity or, if a minor, the natural guardian, or trainer of that person standing in loco parentis, and shall include anyone accompanying the participant, or any person coming onto the property of the provider of equine animal activities or equestrian area whether or not an invitee or person pays consideration.

“Spectator” means a person who is present in an equestrian area for the purpose of observing animal equine activities whether or not an invitee.

#### COMMENT

This section is substantially identical to the original language used in Section 2 of the Equine Act. Because the language detailing the inherent risks of an equine activity is substantive in nature, it has been moved to the “assumption of inherent risks” portion of the Act, under Section 3. This change puts all of the listed inherent risks of equine activity under one section to enhance internal cohesiveness.

Also in this section, two definitions for the word “operator” have been combined.

### **5:15-3. Assumption of inherent risks**

a. A participant and spectator are deemed to assume the inherent risks of equine animal activities, meaning those dangers that are an integral part of equine activity, including:

(1) The propensity of an equine animal to behave in ways that result in injury, harm or death to nearby persons;

(2) The unpredictability of an equine animal’s reaction to such phenomena as sounds, sudden movement and unfamiliar objects, persons or other animals;

(3) Risks created by weather or certain natural hazards, such as surface or subsurface ground conditions;

(4) Collisions with other equine animals or with objects; and

(5) The potential of a participant or other person to act in a negligent manner that may contribute to injury to the participant or others, including but not limited to failing to maintain control over the equine animal or not acting within the participant’s ability.

b. Each participant is assumed to know the range of his ability and it shall be the duty of each participant to conduct himself within the limits of such ability to maintain control of his equine animal and to refrain from acting in a manner which may cause or contribute to the injury of himself or others, loss or damage to person or property, or death which results from participation in an equine animal activity.

## COMMENT

This section is substantially similar to Section 3 of the Equine Act. The inherent risks initially included in Section 2 have been inserted to provide a more clear and comprehensive list of the dangers assumed by participants in equine activities and by spectators. The phrase “that are an integral part of equine activity, including” is meant to further elaborate that the list, while not exhaustive, reflects the most common and likely hazards associated with equine activities.

Subsections (1) and (2) are identical to the original subsections (a) and (b), respectively, under Section 2.

Subsection (3) combines terminology relating to weather and ground conditions found in pre-revision Sections 2 and 3, respectively. This version reflects the Commission’s decision to avoid adding detailed requirements not found in the current law that might increase rather than decrease the difficulty associated with the distinction between risks assumed by participants and duties owed by operators.

Subsections (4) is identical to the original subsection (d) under Section 2.

Subsection (5) is identical to the original subsection (e) under Section 2, with the addition of “or other person” to recognize the possibility of nonparticipants acting negligently in the context of equine activities.

Finally, the language in the new subsection b., explaining that participants are responsible for knowing their level of expertise and conducting themselves within the scope of their abilities, is identical to the final sentence of pre-revision Section 3.

### **5:15-4. Participation in equestrian activities under the influence of alcohol or drugs**

A participant or a spectator shall not engage in, attempt to engage in, or interfere with, an equine animal activity if he is knowingly under the influence of any alcoholic beverage as defined in R.S.33:1-1 or under the influence of any prescription, legend drug or controlled dangerous substance as is defined in P.L.1970, c. 226 (C.24:21-1 et seq.), or any other substance that affects the individual's ability to safely engage in the equine animal activity and abide by the posted and stated instructions. The operator may prevent a participant or a spectator who is perceptibly or apparently under the influence of drugs or alcohol, from engaging in, or interfering with, an equine animal activity or being in an equestrian area. An operator who prevents a participant or a spectator from engaging in, or interfering with, an equine animal activity, or being in an equestrian area in accordance with this section shall not be criminally or civilly liable in any manner or to any extent whatsoever if the operator has a reasonable basis for believing that the participant or spectator is under the influence of drugs or alcohol.

## COMMENT

This section is identical to Section 4 of the Equine Act.

### **5:15-5. Assumption of risk as bar to suit or complete defense**

The assumption of risk set forth in section 3 of this act shall be a complete bar of suit and shall serve as a complete defense to a suit against an operator by a participant for injuries resulting from the assumed risks, notwithstanding the provisions of P.L.1973, c. 146 (C.2A:15-5.1 et seq.) relating to comparative negligence. Failure of a participant to conduct himself within the limits of his abilities as provided in section 3 of this act shall bar suit against an operator to compensate

for injuries resulting from equine animal activities, where such failure is found to be a contributory factor in the resulting injury.

**COMMENT**

This section is identical to Section 5 of the Equine Act.

**5:15-6. Written injury report; submission to operator as precondition to suit**

a. As a precondition to bringing any suit in connection with a participant injury against an operator, a participant shall submit a written report to the operator setting forth all details of any accident or incident as soon as possible, but in no event longer than 180 days from the time of the accident or incident giving rise to the suit.

b. The report shall include at least the following: The participant's name and address, a brief description of the accident or incident, the location of the accident or incident, the alleged cause of the accident or incident, the names of any other persons involved in the accident or incident and witnesses, if any. If it is not practicable to submit the report within 180 days because of severe physical disability resulting from a participant accident or incident, the report shall be submitted as soon as practicable. This section is not applicable with respect to an equestrian area unless the operator conspicuously posts notice to participants of the requirements of the section.

c. A participant who fails to submit the report within 180 days from the time of the accident or incident may be permitted to submit the report at any time within one year after the accident or incident, if in the discretion of a judge of the Superior Court the operator is not substantially prejudiced thereby. Application to the court for permission to submit a late report shall be made upon motion based on affidavits showing sufficient reasons for the participant's failure to give the report within 180 days from the time of the accident or incident.

**COMMENT**

This section is identical to Section 6 of the Equine Act.

**5:15-7. Limitations**

Notwithstanding any provision of this act, or any other law to the contrary, an action for injury or death against an operator, an equestrian area or its employees or owner, whether based upon tort or breach of contract or otherwise arising out of equine animal activities, shall be commenced no later than two years after the occurrence of the incident or earliest of incidents giving rise to the cause of action.

**COMMENT**

This section is identical to Section 7 of the Equine Act.

**5:15-8. Limitations; injuries to minors**

If a participant accident or incident, or an action based upon an equine animal activity or incident, involves a minor, the time limits set forth in sections 6 and 7 of this act [FN1] shall not begin to run against the minor until the minor reaches the age of majority, unless there was present to approve conditions and riding ability a person standing in loco parentis, who made



these decisions for the minor in activities including but not limited to horse shows, trying a horse for sale, riding lessons, trail rides, and demonstrations .

**COMMENT**

This section is identical to Section 8 of the Equine Act.

**5:15-9. Responsibilities of operators; Exception to limitations on operator liability**

a. It shall be the responsibility of the operator, to the extent practicable, to:

~~a. Knowingly providing equipment or tack that is faulty to the extent that it causes or contributes to injury.~~

~~b. Failure to make reasonable and prudent efforts to determine the participant's ability to safely manage the particular equine animal, based on the participant's representation of his ability, or the representation of the guardian, or trainer of that person standing in loco parentis, if a minor.~~

~~c. A case in which the participant is injured or killed by a known dangerous latent condition on property owned or controlled by the equine animal activity operator and for which warning signs have not been posted.~~

~~d. An act or omission on the part of the operator that constitutes negligent disregard for the participant's safety, which act or omission causes the injury, and~~

~~e. Intentional injuries to the participant caused by the operator.~~

(1) Maintain in good condition all equipment and tack used in equine animal activities;

(2) Inspect all equipment and tack on a regular basis to insure the equipment and tack are in good condition;

(3) Make reasonable and prudent efforts to determine the participant's ability to manage the particular equine animal, based on the participant's representation of his ability, or the representation of the guardian, or trainer of that person standing in loco parentis, if a minor;

(4) Make reasonable inspections of the property owned, controlled, or used by the equine animal activity operator for equine animal activity, in order to: discover dangerous conditions on that property, eliminate the dangerous conditions or post warnings signs when elimination is not practicable, maintain the property in a reasonably safe condition, and refrain from creating conditions that would render the property unsafe;

(5) Refrain from any act or omission that would constitute a negligent disregard for the participant's safety and causes injury; and

(6) Refrain from causing intentional injuries to the participant.

b. Nothing in N.J.S. 5:15-3 and N.J.S. 5:15-4 should be read to insulate an operator from any of the obligations imposed upon the operator by this section.

**COMMENT**

The content and title of this section have been revised to reflect the addition of affirmative operator responsibilities. The Roller Skating Rink and Ski Acts each contain a section with a similarly descriptive title.

The original language in subsection (1) may create operator liability when equipment or tack provided to participants is found to be faulty and results in an injury. The new language pertains to all equipment and tack used in equine activities (as opposed to only that which is provided to participants) and provides an affirmative operator responsibility similar to that found in the corresponding Section 4 of the Roller Skating Rink Act.

Subsection (2) requires that equine operators be required to not only maintain in good condition all equipment and tack, but also inspect equipment in order to limit the possible injuries that can result from faulty equipment.

Subsection (3) comports with the intent of the Legislature by creating an affirmative duty on the part of the operator to make reasonable and prudent efforts to determine a participant's ability to manage a particular equine animal.

Subsection (4) takes into consideration that there may be hazards that cannot be removed and that some hazards are not obvious or man-made. In response to the concerns expressed by the Court in *Hubner*, and the Commissioners' discussions about how to best distinguish between the risks assumed by participants and the responsibilities imposed on operators, this language was redrafted in an effort to clarify the legal standard. It is based on New Jersey tort law regarding the standard of care generally owed by proprietors to invitees.

Subsection (5) and (6) are identical to the former subsections (d) and (e), respectively, in Section 9 of the Equine Act.

Section b. reflects cleaner, less complicated language and, although it does not impact the standards imposed on operators or to the protections afforded to them, removing it entirely could inadvertently signal a change to the standards and balance of liability intended by the legislature.

### **5:15-10. Posting of warning signs**

All operators shall post and maintain signs on all lands owned or leased thereby and used for equine activities, which signs shall be posted in a manner that makes them visible to all participants and which shall contain the following notice in large capitalized print:

“WARNING: UNDER NEW JERSEY LAW, AN EQUESTRIAN AREA OPERATOR IS NOT LIABLE FOR AN INJURY TO OR THE DEATH OF A PARTICIPANT IN EQUINE ANIMAL ACTIVITIES RESULTING FROM THE INHERENT RISKS OF EQUINE ANIMAL ACTIVITIES, PURSUANT TO P.L.1997, c.287 (C.5:15-1 et seq.).”

All such signs shall, underneath the capitalized print, list the duties of participants and spectators and the duties and obligations of the operator as set forth in N.J.S. 5:15-3 and N.J.S. 5:15-9.

Individuals or entities providing equine animal activities on behalf of an operator, and not the operator, shall be required to post and maintain signs required by this section.

#### **COMMENT**

This section is identical to the original Section 10 of the Equine Act, with an additional requirement that operators list the duties of participants, spectators, and operators beneath the capitalized print.

The passage following the capitalized warning is derived from section 4(a) of the Roller Skating Rink Act, which requires operators to “post the duties of roller skaters and spectators and the duties, obligations, and liabilities of the operator.” Adopting similar language here is intended to clearly notify all participants as to what qualifies as an inherent risk.

**5:15-11 Additional defenses; public entities or employees**

The provisions of this act are cumulative with the defenses available to a public entity or public employee under the “New Jersey Tort Claims Act”, N.J.S.59:1-1 et seq.

**COMMENT**

This section is identical to Section 11 of the Equine Act.

**5:15-12. Exception; horse racing**

This act shall not apply to the horse racing industry.

**COMMENT**

This section is identical to Section 12 of the Equine Act.