



**STATE OF NEW JERSEY**

**LAW REVISION COMMISSION**

**Tentative Report**

Relating to

**Equine Activities Liability Act (“Equine Act”)**

**December 10, 2012**

This tentative report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. 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 tentative report, please inform the Commission so that your approval can be considered along with other comments.

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# EQUINE ACTIVITIES LIABILITY ACT (“EQUINE ACT”)

## I. Introduction

This project resulted from the New Jersey Supreme Court decision in *Hubner v. Spring Valley Equestrian Center*, 203 N.J. 184, 1 A.3d 618 (2010), addressing the “latent ambiguity” in the interpretation and application of the Equine Activities Liabilities Act, *N.J.S.A. 5:15-1 et. seq.* (“Equine Act”). In *Hubner*, the New Jersey Supreme Court determined that although the words used by the Legislature in each part of the Equine Act appear plain, the manner in which they operate as a unified whole is not immediately apparent. The ambiguity in the statute interferes with the interpretation and application of the Equine Act. As a result, Staff has reviewed the law to determine if revising the wording or the structure of the Act would resolve the issue.

The Equine Act is a statutory tool designed to protect owners and operators of equine facilities from potential liability. The 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 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. *N.J.S.A. 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.* As such, equine operators are particularly susceptible to costly tort suits that could potentially threaten the existence of the equine industry. In light of the considerable contributions to New Jersey’s economy attributed to the equine industry, the Legislature created the Equine Act to limit tort suits against equine operators and protect operators of equine activities from civil liability in order to preserve the economic viability of the industry in New Jersey.

The Act provides that participants assume the possible risk of injury that is associated with participating in equine activities, which creates a shield of liability protection for equine operators, barring civil suits. *N.J.S.A. 5:15-5*. However, the shield of protection created by the Equine Act does include exceptions to the limitation on liability for operators. *N.J.S.A. 5:15-9*.

The goal of this project is to reconcile the issue identified by the Court *Hubner v. Spring Valley Equestrian Center*, 203 N.J. 184 (2010), regarding the ambiguity created by the broad language of the inherent risks, articulated in *N.J.S.A. 5:15-3*, and the broad language used to describe the acts on the part of the operator that can result in a piercing of the shield of protection outlined in *N.J.S.A. 5:15-9*.

In *Hubner*, the plaintiff suffered several injuries after being thrown from a horse when it tripped over wooden logs placed on the ground in the area of the defendant’s riding ring for horse training purposes. 203 N.J. at 188. The plaintiff brought an action against the equestrian facility operator for negligence and the trial court granted the motion for summary judgment filed by the operator, concluding that:

“Whether plaintiff’s injury was caused by the horse’s unpredictable behavior or because the horse tripped over the cavaletti, the case was one of the inherent risks of equine activity and plaintiff’s claim was therefore barred by the Equine Act. As

part of that analysis, the court concluded that 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 was not faulty, but were simply part of the riding ring.” *Id.* at 190-191.

Following the decision by the trial court, 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.A. 5:15-2, -3*, but on the provisions of the Equine Act that create exceptions to the protection afforded to equine facility operators, *see N.J.S.A. 5:15-9(a), (d)*. *Id.* at 191. 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.” *Id.*

The New Jersey Supreme Court began its analysis by acknowledging that the risk assumption and the exception provisions of the Equine Act are in conflict, revealing a latent ambiguity in the overall meaning of the statute. *Id.* at 197. In order to rule on the issue presented, the court focused on the legislative history and purpose of the Equine Act. *Id.* at 193. The non-exhaustive list of inherent risks found in *N.J.S.A. 5:15-2*, and the expansive language used to describe the inherent risks of equine activities in *N.J.S.A. 5:15-3*, support the determination of the court that the primary purpose of the Equine Act was to afford broad civil liability protections to operators. *Id.* at 198-206. The New Jersey Supreme Court found that although the statute includes language imposing liability that could be read expansively, the historical background in which the Equine Act was adopted and the overall intention expressed by the Legislature demand that it be given a narrow reading. *Id.* at 206. In its present form, the language imposing liability on operations is as follows:

*N.J.S.A. 5:15-9* purports 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.

As stated by 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.A.*

5:13-1 to -11, or the Roller Skating Rink Safety and Fair Liability Act (“Roller Skating Rink Act”), *See N.J.S.A. 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. *Id.* 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.A. 5: 14-4* of the Roller Skating Rink Act, for example, delineates very specific responsibilities for roller rink operators.

It shall be the responsibility of the operators to the extent practicable to:

- a. Post the duties of roller skaters and spectators and the duties, obligations and liabilities of the operator as prescribed in this act, in conspicuous places in at least three locations in the roller skating rink;
- b. Maintain the stability and legibility of all signs, symbols and posted notices required by this act;
- c. When the rink is open for sessions, have at least one floor guard on duty for every approximately 200 skaters;
- d. Maintain the skating surface in reasonably safe condition and clean and inspect the skating surface before each session;
- e. Maintain the railings, kickboards and wall surrounding the skating surface in good condition;
- f. In rinks with step-up or step-down skating surfaces, insure that the covering on the riser is securely fastened;
- g. Install fire extinguishers and inspect fire extinguishers at recommended intervals;
- h. Provide reasonable security in parking areas during operational hours;
- i. Inspect emergency lighting units periodically to insure the lights are in proper order;
- j. Keep exit lights and lights in service areas on when skating surface lights are turned off during special numbers;
- k. Check rental skates on a regular basis to insure the skates are in good mechanical condition;
- l. Prohibit the sale or use of alcoholic beverages on the premises; and
- m. Comply with all applicable State and local 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.A. 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 are far more specific. *N.J.S.A. 5:13-3* of the Ski Act outlines the responsibilities of the ski operators.

- a. It shall be the responsibility of the operator to the extent practicable, to:
  - (1) Establish and post a system generally identifying slopes and trails and designating relative degrees of difficulty thereof; and to make generally available to skiers information in the form of trail maps or trail reports.
  - (2) Make generally available either by oral or written report or otherwise, information concerning the daily conditions of the slopes and trails.
  - (3) Remove as soon as practicable obvious, man-made hazards.
- b. No operator shall be responsible to any skier or other person because of its failure to comply with any provisions of subsection 3.a. if such failure was caused by:
  - (1) Abrupt changes in weather conditions
  - (2) Hazards normally associated with the varying conditions of snow or undercover, including skier use; or
  - (3) Subject to the provisions of subsection 3.a.(3), the location of man-made facilities and equipment necessary for the ordinary operation of the ski area, such as transportation or grooming vehicles, which are marked by flashing lights or other suitable sight or sound devices, towers, fencing of any type, racing poles, or any other object or piece of equipment utilized in connection with the maintenance of trails, buildings or other facilities used in connection with skiing.
- c. Grooming shall be at the discretion of the operator.
- d. No operator shall be liable to any skier unless said operator has knowledge of the failure to comply with the duty imposed by this section or unless said operator should have reasonably known of such condition and having such knowledge has had a reasonable time in which to correct any condition or comply with any duty set forth in this section.

As with the Roller Act, the Ski Act imposes specific affirmative obligations on the operator. Failure to adhere to these specific criteria results in the operator being vulnerable to civil liability. Because both statutes assign very specific duties to operators and provide specific exceptions to these duties, they appear to be easier to apply than the Equine Act. It appears that the structural differences contribute to the ambiguity within the Equine Act. In an effort to address the latent ambiguity identified by the New Jersey Supreme Court, Staff suggests structurally redrafting the Equine Act to address this issue. Staff believes that a structural change, rather than just a change in language, could address the potential confusion created by the conflicts between the broad language of the inherent risks, identified in *N.J.S.A. 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.A. 5:15-9.

## **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.~~

~~“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. The language detailing the inherent risks of an equine activity has been moved to the “assumption of inherent risks” portion of the Act, under Section 3. This change puts all the listed inherent risks of equine activity in one outlined section in provide the statute more clarity.

### **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 any other natural conditions pertaining to the surface or subsurface ground conditions, as well as risks created by conditions of trails, riding rings, training tracks, equestrians, and all other inherent conditions;
- (4) Collisions with other equine animals or with objects; and
- (5) 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.

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 list of inherent risks that were initially found in Section 2 was inserted to create a more comprehensive and clear list of the dangers assumed by equine animal activities. The phrase "that are an integral part of equine activity, including but not limited to" was added to Section 3 to further elaborate that the following list are the most common and likely hazards associated with all equine activities. Nevertheless, the list is not exhaustive.

Subsection (a) and (b) are identical to the original subsection (a) and (b) originally listed in Section 2. Subsection (3) of the revised portion is a combination the phrase "Certain natural hazards, such as surface or subsurface ground conditions" and "weather conditions, conditions of trails, riding rings, training tracks, equestrians, and all other inherent conditions" found in Section 2 and Section 3 respectively. Subsection (3) is useful for exempting equine operators from the natural risks that are likely out of their immediate control. The Legislature intended to have the assumption of risk provisions be broad in scope in an attempt to maximize protection for equine operators. Subsection (3) creates a broad exemption that serves that purpose as it pertains to the risks resulting in the natural wear and tear that natural elements have on equestrian areas and some equipment. Subsection (4) and (5) are exactly the same as they initially appeared in Section 2.

Finally, the passage following subsection (5) is the exact language that appears in Section 3 explaining that participants are responsible for knowing their level of expertise and conducting themselves within the scope of their abilities.

#### **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. 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 all equipment and tack provided to participants;

(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) Eliminate all known dangerous latent hazards on the property owned or controlled by the equine animal activity operator or post and maintain warnings of hazards where physical removal of a hazard is not practicable;

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

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

b. Notwithstanding any provisions of N.J.S. 5:15-3 and N.J.S. 5:15-4 to the contrary, the failure of an operator to comply with subsection a. of this section shall subject the operator to liability.

#### COMMENT

This section is an attempt to retain the essence of Section 9 of the Equine Act, while redrafting the Section to more closely follow the format used in the Ski Act and the Roller Act.

The original language in Subsection (1) creates operator liability when equipment or tack that is faulty is provided and results in an injury. The new language mandates that operators take the preventive measure of maintaining all equipment as to ensure that equipment or tack is not faulty when used by participants. Under this Act, "maintain" is to be interpreted as meaning that the operators are responsible for keeping any equipment used to ride a horse, such as saddle, girths, cinches, bridles, and martingales in a condition of good repair or efficiency.

Subsection (2) requires that equine operators be required to not only maintain all equipment and tack, but also inspect equipment in order to limit the possible injuries that can result from faulty equipment. Coupled with subsection (1), these two subsections succeed in preventing equine operators from escaping liability for failing to take the necessary due diligence to ensure that equipment that is provided to participants are not faulty and potentially dangerous.

Subsection (3) comports with the intent of the Legislature by creating the affirmative duty that mandates that operators make reasonable efforts to determine the participant's ability to manage the particular equine animal. This subsection grants protection to a novice participant that was provided a horse that the operator knows is particularly beyond the level expertise of the participant.

Subsection (4) creates a narrow affirmative duty that mandates all operators to remove all known dangerous latent hazards on the equine property. The reference to "known" latent (non-apparent) hazards places a narrow obligation on operators than would be the case if they were responsible for obvious hazards of which they may not have had actual knowledge. If the operator knows of a dangerous hazard, the operator is required to remove the hazard immediately. The term "remove" not only means "to ... uproot" but also means, "to eliminate or reduce or obviate." *Brett v. Great American Recreation*, 279 N.J.Super. 306, 317 (1995). As such, subsection (4) creates the obligation that equine operators must take the necessary steps to remove all known dangerous latent hazards as they arise on the property owned or controlled by the operator. In the case of a potentially dangerous conditions on the property owned or controlled by the equine animal activity operator that is impractical to remove, subsection (4) mandates that it is the operators responsibility to post warning signs to allow a participant the opportunity to avoid injury.

Subsections (5) and (6) both are derived from the limitations initially placed on equine operators. Subsections (5) and (6) are now articulated in a list format to fit the structure of Section 9.

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

a. It shall be the responsibility of operators or any entity providing equine animal activities on behalf of an operator, to the extent practicable to:

- (1) ~~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, obligations, and liabilities 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 begins essentially the same as Section 10 of the Equine Act, with the obligations of the operator to post warning signs now appearing in the form of a list.

Subsection (1) is consistent with the intent of the Legislature and the original language used in Section 10 of the Equine Act. Subsection (1) creates an affirmative duty that mandates that operators post and maintain signs on all lands owned or lease and used for equine activities. The posted warnings must still contain the disclaimer in large capitalized print warning participants that the equestrian area operators are not liable for injury or death stemming from inherent risks.

The passage following Subsection (1) is derived from section 4(a) if the Roller Skating Rink Act that creates a mandate that all roller-skating rink operators, “post the duties of roller skaters and spectators and the duties, obligations, and liabilities of the operator”. This mandate eliminates the ambiguity that can be associated with the term “inherent risks”. Adopting similar language in the Equine Act will clearly notify all participants exactly what qualifies as an inherent risk allowing them to make informed decisions on whether they want to partake in the activity. If the inherent risks associated with equine activities are clearly posted for participants, all participants will know that any injury resulting from those risks will fall on them and not on the operator. The result of this change will have a positive impact on limiting tort suits against equine operators and help protect operators of equine activities from civil liability as intended by the Legislature.

#### **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.