

Legislative Analysis



EQUINE ACTIVITY LIABILITY ACT AMENDMENT

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House Bill 4867 (as reported without amendment)

Sponsor: Rep. Joel Johnson

1st Committee: Judiciary

2nd Committee: Agriculture

First Analysis (7-13-12)

BRIEF SUMMARY: The Equine Activity Liability Act generally limits the liability of equine (horse-related) professionals for injuries and property damage that are the result of a risk normally associated with equine activity. The act contains four exemptions where liability is not limited, including when an equine professional or activity sponsor commits a *negligent act or omission that constitutes a proximate cause of the injury*. House Bill 4867 would eliminate reference to a negligent act and, instead, replace it with an act or omission that constitutes a *willful or wanton disregard for the safety of the participant* that constitutes a proximate cause of the injury.

FISCAL IMPACT: The bill would have no significant fiscal impact on state or local government.

THE APPARENT PROBLEM:

As of October 2011, 46 states, including Michigan, have enacted equine activity liability statutes (see **Background Information**). While each statute has unique characteristics, nearly all of them, generally speaking, provide that equine professionals and activity sponsors should not be held liable if a participant is injured as a result of an inherent risk of equine activity.

Michigan's Equine Activity Liability Act, Public Act 351 of 1994, sought to place certain limits on the civil liability of equine professionals and sponsors of equine activities for injuries (including death) or property damage that resulted from a risk normally associated with (an inherent risk of) equine activities. As such, participants in equine activities and events are not able to make a claim for or recover civil damages from equine professional or activity sponsors for injuries to themselves or property that are a result of an inherent risk of an equine activity.

[Under the act, "equine" means horse, pony, mule, donkey, or hinny. The act applies to a wide range of activities involving horses and the other animals.]

Most of the statutes across the country contain exceptions where equine professionals and activity sponsors can be held liable. In Michigan, the act does **not** prevent or limit the liability of equine professionals and activity sponsors that does any of the following:

- Provides equipment or tack and knows or should know the equipment is faulty, and the equipment or tack is faulty to the extent it is a proximate cause of the injury or damage.
- Provides an equine and fails to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the activity and manage the equine.
- Owns, leases, rents, has authorized use of, or is in lawful possession and control of land or facilities on which the participant sustained injury because of a dangerous latent condition of the land or facilities that is known to the activity sponsor or professional and for which no warnings signs were posted.
- Commits a negligent act or omission that constitutes a proximate cause of the injury.

It is important to note the act allows for two people (presumably the participant and the activity sponsor) to agree in writing to a waiver of liability beyond the provisions of the act, and the waiver would be valid and binding.

At issue in this bill is the fourth provision above, which does not limit the liability of equine professionals for negligent acts or omissions that are a proximate cause of injury or property damage. Michigan is one of only a handful of states that does not limit liability for negligent acts or omissions that are a proximate cause of injury (see ***Background Information***). Members of the equine community feel the negligence standard is too low a standard and has led to a large number of lawsuits, which drive up the cost of liability insurance and threaten the viability of the industry. To remedy this situation, the industry has proposed raising the negligence standard to that of "a willful or wanton disregard for the safety of the participant" and bringing Michigan in line with the majority of other states.

[The bill would only impact the fourth exception to liability (negligence) under the act and would not alter the other exceptions.]

THE CONTENT OF THE BILL:

Generally speaking, Section 3 of the Equine Activity Liability Act (MCL 691.1665) provides that an equine activity sponsor, professional, or another person is not liable for the injury to or the death of a participant resulting from an inherent risk of an equine activity.

The act lists specific circumstances in which immunity from liability would not apply. House Bill 4867 would amend Section 5 of the act to provide that, among other things, an act or omission that constitutes a *willful or wanton disregard for the safety of the participant*, and that is a proximate cause of injury, death, or damage does not prevent or limit the liability of an equine activity sponsor, equine professional, or another person. Under current law, liability is not prevented or limited if equine professionals, activity sponsors, and other people commit a *negligent* act that constitutes a proximate cause of the injury or death. The new "willful or wanton disregard" language would replace the current "negligent" language.

The act defines an "equine activity sponsor" as an individual, group, club, partnership, or corporation, whether or not operating for profit, that sponsors, organizes, or provides the facilities for an equine activity, including, but not limited to, a pony club; 4-H club; hunt club; riding club; school- or college-sponsored class, program, or activity; therapeutic riding program; stable or farm owner; and operator, instructor, or promoter of an equine facility including, but not limited to, a stable, clubhouse, ponyride string, fair, or arena at which the equine activity is held.

An "equine professional" means a person engaged in any of the following for compensation: instructing a participant in an equine activity; renting an equine, equipment, or tack to a participant; providing daily care of horses boarded at an equine facility; training an equine; or breeding of equines for resale or stock replenishment.

BACKGROUND INFORMATION:

Equine liability in other states. According to the Michigan State University College of Law's Animal Legal and Historical Center, 46 states (excluding California, Maryland, Nevada, and New York) have equine activity liability statutes. Of those, 30 states include in their statutes a provision that does not prevent liability in instances where the equine activity sponsor or professional commits an act or omission that constitutes willful or wanton disregard for the safety of the participant that results in injury or death. Four other states have some combination of negligence, gross negligence and willful or wanton misconduct. Only five states, including Michigan, do not limit liability in instances where an equine professional commits a negligent act or omission that is a proximate cause of injury or death. The remaining states have various provisions that fall somewhere in between.

For a state-by-state comparison, see:
<http://www.animallaw.info/articles/armpequineliability.htm>.

Definitions. The following are definitions from Black's Law Dictionary, 7th edition:

- **Negligence** - the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of others' rights.
- **Willful** - voluntary and intentional, but not necessarily malicious.
- **Wanton** - unreasonably or maliciously risking harm while being utterly indifferent to the consequences.

ARGUMENTS:

For:

The equine industry is seeking to limit their liability in some instances in order to protect the viability of their industry. According to committee testimony, the current statute has led to unintended consequences that are not the fault of equine owners. Reportedly, the current standard of negligence has led to a large number of lawsuits that have driven up

the cost of liability insurance. Many feel equine owners and activity sponsors should not be held liable under the fourth exception unless they knowingly cause an injury.

According to testimony, states that have enacted laws with the standard of "willful or wanton misconduct" do not have problems with a large volume of lawsuits. The negligence standard is seen as open-ended and leads to uncertainty in the industry. Increasing the "negligence" standard to that of "wanton or willful misconduct" would bring Michigan in line with at least 30 other states and provide certainty for the equine industry.

Against:

There is concern the new standard of "willful and wanton disregard" may be too high a standard to meet and will essentially exempt equine professionals from liability. While it was stated during testimony that the "negligence" standard has led to a large volume of lawsuits, it is not known exactly how many lawsuits have been filed under the standard. Some feel the current standard is appropriate because it allows affected parties to bring suit and have it resolved through the court system. Raising the standard to "willful or wanton misconduct" could prevent some legitimate suits from being brought.

It was suggested the standard may need to be increased to a higher standard than is currently in the law but that willful or wanton misconduct would be too tough a standard to meet.

POSITIONS:

Michigan Agri-Tourism Association supports the bill. (5-9-12)

Michigan Association of Fairs and Exhibitions supports the bill. (3-28-12)

Michigan Equine Partnership supports the bill. (5-9-12)

Michigan Farm Bureau supports the bill. (5-9-12)

Michigan Association for Justice (trial lawyers) opposes the bill. (3-28-12)

The Negligence Law Section of the State Bar of Michigan opposes the bill. (5-9-12)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.