

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990



ENROLLED

Committee Substitute for
SENATE BILL NO. 44

(By Senator *Sears, et al*)



PASSED March 10, 1990

In Effect *90 days from* Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 44

(By SENATORS SPEARS, JONES AND J. MANCHIN,
original sponsors)

[Passed March 10, 1990; in effect ninety days from passage.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four, relating to limiting the tort liability of persons organizing, promoting, presenting or providing equestrian activities or providing facilities for equestrian activities; describing legislative purpose; defining certain terms; describing the duties of horsemen; describing the duties of persons who are participants in equestrian activities; providing for the liability of horsemen; providing for the liability of participants; and exempting the horse racing industry from the provisions of said article four.

Be it enacted by the Legislature of West Virginia:

That chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article four, to read as follows:

ARTICLE 4. EQUESTRIAN ACTIVITIES RESPONSIBILITY ACT.

§20-4-1. Legislative purpose.

1 The Legislature finds that equestrian activities are
2 engaged in by a large number of citizens of West
3 Virginia and that such activities also attract to West
4 Virginia a large number of nonresidents, significantly
5 contributing to the economy of West Virginia. Since it
6 is recognized that there are inherent risks in eques-
7 trian activities which should be understood by partic-
8 ipants therein and which are essentially impossible for
9 the operators of equestrian businesses to eliminate, it
10 is the purpose of this article to define those areas of
11 responsibility and those affirmative acts for which the
12 operators of equestrian businesses shall be liable for
13 loss, damage or injury suffered by participants, and to
14 further define those risks which the participants
15 expressly assume and for which there can be no
16 recovery.

§20-4-2. Definitions.

1 In this article, unless a different meaning plainly is
2 required:

3 (1) "Equestrian activity" means any sporting event
4 or other activity involving a horse or horses, including,
5 but not limited to:

6 (A) Shows, fairs, competitions, performances or
7 parades;

8 (B) Any of the equine disciplines such as dressage,
9 hunter and jumper shows, grand prix jumping, three
10 day events, combined training, rodeos, driving, west-
11 ern games and hunting;

12 (C) Rides, trips or hunts;

13 (D) Riding classes, therapeutic riding programs,
14 school and college sponsored classes and programs, or
15 other classes in horsemanship;

16 (E) The boarding or keeping of horses; and

17 (F) Providing equipment or tack.

18 (2) "Horseman" or "operator of a horseman's busi-
19 ness" means any individual, sole proprietorship,
20 partnership, association, public or private corporation,
21 the United States or any federal agency, this state or
22 any political subdivision of this state, and any other
23 legal entity which engages, with or without compensa-
24 tion, in organizing, promoting, presenting or providing
25 equestrian activities or in providing facilities for
26 equestrian activities.

27 (3) "Horse" means each animal of the horse kind, in
28 every class or breed of horses, and, without limitation
29 or exception, all members of the genus *Equus* and
30 family *Equidae*.

31 (4) "Participant" means any person using the servi-
32 ces or facilities of a horseman so as to be directly
33 involved in an equestrian activity.

§20-4-3. Duties of horsemen.

1 Every horseman shall:

2 (1) Make reasonable and prudent efforts to deter-
3 mine the ability of a participant to safely engage in the
4 equestrian activity, to determine the ability of the
5 horse to behave safely with the participant, and to
6 determine the ability of the participant to safely
7 manage, care for and control the particular horse
8 involved;

9 (2) Make known to any participant any dangerous
10 traits or characteristics or any physical impairments or
11 conditions related to a particular horse which is
12 involved in the equestrian activity of which the
13 horseman knows or through the exercise of due
14 diligence could know;

15 (3) Make known to any participant any dangerous
16 condition as to land or facilities under the lawful
17 possession and control of the horseman of which the
18 horseman knows or through the exercise of due
19 diligence could know, by advising the participant in
20 writing or by conspicuously posting warning signs
21 upon the premises;

22 (4) In providing equipment or tack to a participant,
23 make reasonable and prudent efforts to inspect such
24 equipment or tack to assure that it is in proper
25 working condition and safe for use in the equestrian
26 activity;

27 (5) Prepare and present to each participant or
28 prospective participant, for his or her inspection and
29 signature, a statement which clearly and concisely
30 explains the liability limitations, restrictions and
31 responsibilities set forth in this article.

§20-4-4. Duties of participants.

1 It is recognized that equestrian activities are hazard-
2 ous to participants, regardless of all feasible safety
3 measures which can be taken.

4 Each participant in an equestrian activity expressly
5 assumes the risk of and legal responsibility for any
6 injury, loss or damage to person or property which
7 results from participation in an equestrian activity.
8 Each participant shall have the sole individual respon-
9 sibility for knowing the range of his or her own ability
10 to manage, care for, and control a particular horse or
11 perform a particular equestrian activity, and it shall
12 be the duty of each participant to act within the limits
13 of the participant's own ability, to maintain reasonable
14 control of the particular horse or horses at all times
15 while participating in an equestrian activity, to heed
16 all posted warnings, to perform equestrian activities
17 only in a area or in facilities designated by the
18 horseman and to refrain from acting in a manner
19 which may cause or contribute to the injury of
20 anyone. If while actually riding in an equestrian
21 event, any participant collides with any object or
22 person, except an obviously intoxicated person of
23 whom the horseman is aware, or if the participant
24 falls from the horse or from a horse-drawn convey-
25 ance, the responsibility for such collision or fall shall
26 be solely that of the participant or participants
27 involved and not that of the horseman.

28 A participant involved in an accident shall not
29 depart from the area or facility where the equestrian

30 activity took place without leaving personal identifica-
31 tion, including name and address, or without notifying
32 the proper authorities, or without obtaining assistance
33 when that person knows or reasonably should know
34 that any other person involved in the accident is in
35 need of medical or other assistance.

§20-4-5. Liability of horsemen.

1 (a) A horseman shall be liable for injury, loss or
2 damage caused by failure to follow the duties set forth
3 in section three of this article where the violation of
4 duty is causally related to the injury, loss or damage
5 suffered. A horseman shall not be liable for any
6 injury, loss or damage caused by the negligence of any
7 person who is not an agent or employee of such
8 horseman.

9 (b) A horseman shall be liable for acts or omissions
10 which constitute gross negligence or willful and
11 wanton conduct which is the proximate cause of
12 injury to a participant.

13 (c) A horseman shall be liable for an intentional
14 injury which he or she inflicts upon a participant.

15 (d) Every horseman shall carry public liability
16 insurance in limits of no less than one hundred
17 thousand dollars per person, three hundred thousand
18 dollars per occurrence and ten thousand dollars for
19 property damage.

§20-4-6. Liability of participants.

1 Any participant shall be liable for injury, loss or
2 damage resulting from violations of the duties set
3 forth in section four of this article.

§20-4-7. Applicability of article.

1 The provisions of this article do not apply to the
2 horse racing industry that is regulated by the provi-
3 sions of article twenty-three, chapter nineteen of this
4 code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick J. Resken
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell G. Holm
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Keith Bunette
.....
President of the Senate

Bob D'All
.....
Speaker House of Delegates

The within *is approved* this the *30th*
day of *March*, 1990.

Gaston Caperton
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/20/90

Time 10:05 am

RECEIVED
1990 MAR 30 AM 11:24
OFFICE OF ASST. SECRETARY
SECRETARY OF THE STAFF