

Equine Activity Liability Act Protections

As an equine owner, professional, facility owner or enthusiast, you likely appreciate that horses pose a risk of injury due to horses' inherently unpredictable nature, size and strength. Despite this obvious undertaking of risk, many lawsuits are filed to recover for injuries caused by or related to horses. Over the past 30 years, 48 states across the country have enacted Equine Activity Liability Acts to combat these lawsuits—at present, all but California and Maryland.

These statutes are designed to protect those in the equine industry from liability if a “participant,” that is, a person who engages in an equine-related activity, suffers an injury, death or other damage from the risks associated with equine-related activities. Generally, these statutes give the equine industry “limited liability” and protect them from being held liable for horse-related accidents or injuries. These statutes, however, are not absolute.

Although a horse may be considered the cause of an injury, this does not automatically indicate liability protection under a state's Equine Liability Statute. To do so, the following questions must be considered while determining if the Equine Liability Statute applies:

1. **Who is the statute designed to protect** — does the statute limit the liability of equine owners, agents of equine owners, professionals, landowners of equine facilities?
2. **Does the statute apply to the injured person** — does it apply to audiences, spectators or participants in equine-related activities? This is a fact-specific inquiry.
3. **Was the accident or injury caused by, or did it contribute to an “inherent or natural risk”** associated with equines?
4. **Does an exception to the statute apply?** Depending on the state that the injury occurred, exceptions may be included in the language of the statute, or in case law interpreting and applying the statute.

As Equine Activity Liability Acts are designed to protect those in the equine industry, this first element can be quickly established. Though, whether the statute applies to the injured person is a more in-depth inquiry. The injured person will likely argue the statute is not applicable to them because they were not engaged in an equine activity. For purposes of liability protection, state statutes and case law are authoritative in determining which individuals qualify as a “participant” in such activities for purposes of liability protection under the statute.

For example, the Texas Court of Appeals in 2018 determined an injured ranch employee, hired farm hand, or independent contractor is not considered a “participant” in an equine activity under Texas' Equine Activity Liability Act, *Rodriguez v. Waak*, 562 S.W.3d 570 (Tex. App. 2018). The State Court's interpretation rendered the statute inapplicable allowing the ranch owner to be susceptible to liability.

In Arizona, only a person who takes “control” of an equine is considered a participant under that state's **Equine Activity Liability Act**, therefore providing liability protection for the owner. Under Arizona's interpretation, if an injured person never took control of the equine, no liability protection exists under the Act. As an example, if a person gets kicked by a horse as it passes, the horse owner may be liable because the injured person did not have “control” over the horse's actions.

Even though different states have equine liability statutes, each states' court may evaluate whether the injured person is a "participant" under the statutory language differently. If the injured person qualifies as a "participant" under a state's equine activity liability act, the following question is whether the injury was caused by an inherent risk of an equine activity.

Generally, courts have considered injuries caused by a horse "spooking" as an "inherent risk" of equine activity. But if the circumstances regarding why the horse spooked are in doubt, a jury then must consider whether the injury was caused by an "inherent risk" of an equine activity under the circumstances. This type of analysis has led to the creation of exceptions that removing a horse-related injury from liability protection under the equine liability statutes.

Some notable exceptions to an Equine Activity Liability Act may include:

- Negligent instruction involving a horse-related activity
- Faulty tack or equipment that contributes to accident or injury
- Negligent evaluation of participant's abilities to handle the horse
- Land that poses a dangerous latent, hidden, condition
- Gross negligence or "willful and wanton" conduct
- The following states specify an ordinary negligence standard: Florida, Kansas, Kentucky, Michigan, Missouri, Nebraska, Nevada, New Jersey, New Mexico, Rhode Island, Utah and Virginia

There are several practices an equine owner, professional or facility owner can implement to help protect themselves from liability. The first is to require all participants to sign a liability waiver or release. The Release should be drafted by an attorney so that it clearly delineates risks associated with the equine-related activities and set forth, in clear and conspicuous language, a denial of liability for injury or death from the equine-related activity. Liability releases require the participant to read and acknowledge in writing, by signature acknowledgement, their assumed risks by participating in the equine-related activity. Depending on the state, the liability release may provide liability protection or provide a strong defense against imposing liability.

Additionally, each equine owner, professional and facility owner always should take time to assess each individual participant's physical and mental ability to handle, work and control their assigned horse. Such inquiry should include questions allowing you, the owner or professional to gauge the participant's prior experience level and type of riding they had previously experienced particularly if the participant had only commercial trail riding experience.

Horses have the potential to cause serious injuries and every equine owner, professional and facility owner should keep inherent risks and liability exposure related to equine-related activities in mind.

To learn more about Litchfield Cavo's equine law practice attorneys, please contact [Jordan A. Willette](mailto:Jordan.A.Willette@LitchfieldCavo.com) in our Phoenix Office at 602.786.6459 or Willette@LitchfieldCavo.com.

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