

Panel: Need for Equine Liability Law in NY

By Teresa Genaro

Courtesy BloodHorse.com



Photo: Anne M. Eberhardt

A panel at the Saratoga Institute for Equine, Racing, and Gaming Law on Aug. 11 discussed New York's need for a law to protect sponsors or organizers of public equine activities, such as racetracks and breeding farms.

New York is one of five states that lack an equine liability statute, according to Karin Bump, a professor of equine management at Cazenovia College.

The purpose of such statutes, Bump said, is four-fold: reduce frivolous lawsuits; encourage earlier settlement of suits; end lawsuits earlier; and reduce risk to insurance companies, which results in greater access to insurance coverage for those that provide activities involving horses.

Elizabeth Durkin, an attorney at The Durkin Firm LLC in New Jersey who owns a horse farm, stressed the importance, even with a liability law, of equine organizations having a good liability release for both participants and spectators. She said a well-run organization minimizes the reasonable risk of injury.

"If you put a green rider on a green horse, a statute or a release isn't going to protect you," she said.

Jan Dawson, an attorney who is also a riding instructor, founder, and president of the American Association for Horsemanship Safety, went further, discussing her actions to limit the possibility of injury.

"My release informs you about what I think you should know about the sport, and it asks you what I want to know about your experience with horses," she said.

A member of the Equine Science Society, the American Horse Council, and the New York Farm Bureau, Bump said that on a recent survey by New York Thoroughbred Breeders, more than half of respondents listed the passing of an equine liability law as a top priority.

In recent years, though, the New York legislature has not shared that priority. Bump said that every year in recent memory, a law has been passed through the State Assembly's Agriculture Committee only to be stalled in the Judiciary Committee.

New York State Assemblyman Gary Pretlow, chair of the Assembly Committee on Racing and Wagering said, "It's stuck in Judiciary and whenever something is stuck in Judiciary, you know it's an issue that the sandbox is full of lawyers, and they don't play nice together."

"We've become a very litigious society," Pretlow continued. "People are always looking for a reason to try to bring someone to court and try to enrich themselves, and this bill's purpose is to limit that. There are entities that say that you can't limit that because someone is injured, it's usually the fault of someone (else) and there should be compensation."

There is also a sense, he said, that New York courts have held that participants who engage in activities with or near horses assume a certain amount of risk.

"You should really know that if you're around these animals that weigh over a thousand pounds that something bad could happen," he said.

He added that the Judiciary Committee in the Assembly doesn't want to define liability, which this bill does.

"They like the sandbox they're playing in and it's how they make their living, and I can't blame anyone for doing that," he said.

Pretlow later said he was not suggesting members of the Judiciary Committee scuttled the law because it would limit lawsuits.

Said Bump, "What we've been told by the members of the (New York) Farm Bureau, the (American) Horse Council, the Equine Committee (of the Farm Bureau) is that because the trial lawyers are so vehemently opposed to it is why it gets stuck in the Judiciary Committee."

She is concerned, she said, that the lack of a statute in New York will reduce the public's access to horses, as operators of equine activities fear litigation in the event of injury.

"People want to get close to horses," she said. "I spend a lot of time thinking about how to reduce the risks, and I'm concerned that we're in a state that doesn't have a statute that hasn't recognized the importance of horse industries and tried to find some way to balance the scales of justice when it comes to the inherent risks associated with working with horses."

"Where I find the struggle," she continued, "is that I know that there are groups in the horse industry that would welcome the opportunity to sit down with the trial lawyers, since that's the key opposition, so let's work together."