

Spring 2018

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Recommended Citation

Katie Kopf, *Horseplay Gone Wrong: A Proposed Model Equine Liability Act*, 52 Val. U. L. Rev. (2018).
Available at: <https://scholar.valpo.edu/vulr/vol52/iss3/4>

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HORSEPLAY GONE WRONG: A PROPOSED MODEL EQUINE ACTIVITY LIABILITY ACT

I. INTRODUCTION

Eli is a riding instructor at Buckingham Ranch, located in Wyoming.¹ He spends his days at the ranch conducting lessons for horse riders of all skill levels.² He is aware that Wyoming has an Equine Activity Liability Act (EALA). He also recognizes its purpose is to protect equine professionals like himself from being held liable for the injuries incurred from the inherent risks of participating in equine activities.³ Eli met Harry, a new participant at the ranch, shortly before their first scheduled riding lesson together. Part of Eli's job as a riding instructor is to match the rider with a horse, using his best judgment to choose the horse that will best match the rider.⁴ Harry told Eli that he had previous experience with horses and would not consider himself a novice. Shortly into the lesson, it became clear that Harry lied about his skill level, as he fell off when the horse reacted to a loud noise.⁵ When Harry sued Eli and Buckingham Ranch, the court found that Eli should have realized Harry was a novice rider and paired him with a more suitable horse.⁶ Thus, Eli and Buckingham Ranch were held liable for Harry's injuries, even though Wyoming has an EALA.⁷

EALAs differ among the states that have adopted some form of the statute.⁸ Consequently, both equine professionals and participants

¹ This is a hypothetical situation that is only the work of the author and does not mirror any other case or fact pattern pertaining to EALAs.

² See WYO. STAT. § 1-1-122 (2017) (including the actions taken by equine professionals that qualify as equine activities).

³ See Kenneth C. Sandoe, *How Are the New Equine Activity Laws Working?*, DRAFT HORSE J. (Dec. 2002), <http://www.eqgroup.com/Library/equinelaws.htm> [<https://perma.cc/EK23-5A24>] (describing the purpose of the EALA is to provide equine professionals protection from the inherent risks associated with equine activities and to decrease the amount of frivolous equine-related lawsuits).

⁴ See *Horse Riding Instructor*, NAT'L CAREERS SERVICES (Dec. 14, 2016), <https://nationalcareerservice.direct.gov.uk/job-profiles/horse-riding-instructor#skills-required> [<https://perma.cc/3VMX-8HNN>] (expressing the skills required to be a successful riding instructor, including the ability to remain calm under pressure and the patience, along with the skills, to motivate and encourage riders of all skill levels).

⁵ See OHIO REV. CODE § 2305.321 (1997) (acknowledging the unpredictability of an equine's reactions to sounds or sudden movements as inherent risks of equine activities).

⁶ See 745 ILL. COMP. STAT. 47/5 (1995) (discussing equine professionals' duty to not act in a way that shows an utter indifference to or conscious disregard for the safety of others).

⁷ See WYO. STAT. § 1-1-122 (2017) (providing the elements of Wyoming's EALA, referred to as the Recreation Safety Act).

⁸ See *State Equestrian Liability Limitation Laws*, AM. EQUESTRIAN ALL. (Sept. 26, 2016), <http://www.americanequestrian.com/equinelaws.htm> [<https://perma.cc/J7Y2-F5J9>] [hereinafter *State Equestrian Liability*] (listing the current states that have adopted a form of

struggle to understand their rights and liabilities under EALAs.⁹ As a result of the subjective nature, many frivolous lawsuits against equine professionals arise out of the inherent dangers associated with participating in equine activities.¹⁰ Additionally, insurance costs in the equine industry are consistently on the rise due to the frequent injuries.¹¹ Thus, uniformity among the EALAs is necessary to ensure that the risk allocation among all of the parties is balanced in order to deter negligent conduct from both equine professionals and participants.¹²

To create uniformity among EALAs, this Note proposes three provisions for a model EALA, clarifying the requirements and limitations on liability of the equine professionals.¹³ First, Part II introduces the various EALAs that states have enacted, along with describing the

the EALA). See also Julie Fershtman, *Nevada Becomes the 47th State With an Equine Activity Liability Law*, EQUINE L. BLOG (June 10, 2015), <http://www.equinelawblog.com/Nevada-Equine-Activity-Liability-Law> [<https://perma.cc/K968-WYA4>] (introducing Nevada as the 47th state to enact an EALA and explaining its main purpose is to limit or control the liabilities that are associated with equine activities).

⁹ See Jacqueline Sweet, *Did Equine Liability Acts Save the Horse Industry?*, 16 DRAKE J. AGRIC. L. 359, 372 (2011) (analyzing the inconsistencies in both the case law and statutory interpretations that lead to confusion for both equine professionals and participants, such as the definition of inherent risks).

¹⁰ See Krystyna M. Carmel, *The Equine Activity Liability Acts: A Discussion of Those in Existence and Suggestions for a Model Act*, 83 KY. L.J. 157, 157–58 (1994) (explaining that the intended purpose of the EALAs are to protect equine professionals from being held liable for the inherent risks of activities involving horses). Further, the outcome of equine-related cases is determined based off the court's mood on that given day because there is not a unified standard among EALAs. *Id.*

¹¹ See Terence J. Centner, *Modifying Negligence Law for Equine Activities in Arkansas: A New Good Samaritan Paradigm for Equine Activity Sponsors*, 50 ARK. L. REV. 637, 639 (1997) (noting the primary factors that persuaded legislation to modify tort liability pertaining to EALAs are the increase in insurance costs, the high level of danger involved with equine activities, and the overall expansion of tort liability). See also KE Thomas, JL Annest, J Gilchrist, & DM Bixby-Hammett, *Non-Fatal Horse Related Injuries Treated in Emergency Departments in the United States*, BRIT. J. SPORTS MED. (Jul. 15, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2564310/> [<https://perma.cc/JC8D-LPSM>] (finding there are approximately 102,000 equine related visits made to emergency rooms by equine activity participants every year). Further, approximately 12,000 are head injuries. *Id.*

¹² See Zachary Broome, Michael Olexa, & Nicole Kuncl, *Equine "Lemon" Laws*, 18 DRAKE J. AGRIC. L. 289, 312 (2013) (highlighting the importance of equine participants' awareness of the inherent risks of equine activities).

¹³ See Robert O. Dawson, *HorseLaw: The Uneasy Relationship Between Equine Activity Statutes and Release from Liability*, CAUTION: HORSES (2004), https://asci.uvm.edu/equine/law/horselaw/042_uneasy.htm [<https://perma.cc/7JMT-VMZB>] (illustrating the confusion arising from the varying standards set by EALAs). Specifically, the author finds the problem is that the statutes convey a completely different objective than what they were originally set out to accomplish, as equine professionals are being held liable for the inherent risks of equine activities. *Id.*

sections that comprise an EALA in detail.¹⁴ Next, Part III analyzes the problems associated with the statutory language within each section of an EALA, and why provisions for a model EALA are necessary to ensure that the equine industry continues in the future.¹⁵ Finally, Part IV proposes three provisions for a model EALA and suggests that states adopt the model EALA to create uniformity throughout the states.¹⁶ The model EALA will best serve both equine professionals and participants by educating them on their rights and limiting liability for injuries incurred during equine activities.¹⁷

II. BACKGROUND

This Note focuses primarily on the statutory language within EALAs, addressing the components of EALAs that lead to the use of various standards with equine-related cases.¹⁸ First, Part II.A presents the history of the EALAs and the purpose for the enactment of EALAs.¹⁹ Next, Part II.B explains the components of the three sections that comprise an EALA.²⁰

A. *The Rise of EALAs*

One out of sixty-three Americans are involved with equine activities.²¹ Equine activities lead to approximately 75,000 visits to emergency rooms

¹⁴ See *infra* Part II (introducing the first enacted EALA and describing why the states decided to initially enact EALAs).

¹⁵ See *infra* Part III (analyzing the statutory language of each of the three sections within an EALA, while highlighting the issues resulting from the particular language used within each section of an EALA).

¹⁶ See *infra* Part IV (proposing provisions for a model EALA, clarifying the standards for both equine professionals and equine participants).

¹⁷ See *infra* Part III (addressing the current statutory issues with the language within each section of an EALA, which often results in equine professionals being held liable for essentially every injury incurred by an equine participant during an equine activity).

¹⁸ See *infra* Part II.B (focusing on the language used within the sections of the EALAs and acknowledging the different standards that courts have used in the past when dealing with equine-related cases).

¹⁹ See *infra* Part II.A (describing the EALAs that arose from equine professionals' need for protection against liability for certain inherent risks associated with equine activities).

²⁰ See *infra* Part II.B (defining the components of each of the three provisions of an EALA, which include the general purpose, exceptions to the coverage of protection offered by the statute, and the waiver requirements).

²¹ See *US Horse Industry Statistics*, THE EQUESTRIAN CHANNEL (Jan. 16, 2017), <http://www.theequestrianchannel.com/id3.html> [https://perma.cc/LM69-Q63H] [hereinafter *The Equestrian Channel*] (stating 1.9 million people own an equine in the United States, with over 7.1 million Americans being involved in the equine industry). Over 2 million Americans own an equine, with a total of 6.9 million equines in the United States. *Id.* Specifically, there are 941,400 racing equines, 3,607,900 showing equines, 4,346,100 recreation

by equine participants each year.²² The majority of these visits involve head injuries.²³ Though participation in equine activities is more dangerous than most other sports, people continue to partake in equine activities.²⁴ Inevitably, a high amount of injuries resulting from unforeseeable accidents are sustained during equine activities.²⁵ These unavoidable accidents result in lawsuits that have a negative impact on the equine industry.²⁶ Thus, to keep the equine industry thriving, states recognized that equine liability laws were needed to protect equine

equines, and 1,607,900 equines involved in activities such as farm work, rodeo, polo, police work, and informal competitions. *Id.*

²² See Charlene Strickland, *Equine-Related Human Injuries*, THE HORSE (Oct. 1, 2000), <http://www.thehorse.com/articles/10102/equine-related-human-injuries> [<https://perma.cc/2RRG-V4GM>] (listing horse behavior, ground handling, trailering, jumping, horse falling or slipping, bucking, or refusing a jump as the primary causes for equine-related injuries). These findings were reported by a 1998 Pony Club study conducted in Australia. *Id.* See also Rebecca Huss, *The Pervasive Nature of Animal Law: How the Law Impacts the Lives of People and Their Animal Companions*, 43 VAL. U. L. REV. 1131, 1135 (2008) (noting only four percent of households in the United States report having an equine as a pet). This includes households that keep equines on their own property and board equines at other farms. *Id.*

²³ See Meredith Chapman & Kirrilly Thompson, *Preventing and Investigating Horse-Related Human Injury and Fatality in Work and Non-Work Equestrian Environments: A Consideration of the Workplace Health and Safety Framework*, ANIMALS (BASEL) (May 6, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4880850/> [<https://perma.cc/M4FV-N5TH>] (finding one in five riders will fall off of the horse while engaging in an equine activity, resulting in injury). Further, the majority of these injuries are to the head or torso. *Id.*

²⁴ See Sweet, *supra* note 9, at 360 (proving that people are willing to look past the high level of danger of equine activities by the fact that thirty million people in the United States alone partake in equine activities per year). Further, the author discusses how the unpredictability of a 1,000 pound equine results in a higher level of risk than other sports. *Id.*

²⁵ See *id.* (expressing that equine activities generate over \$102 billion to the United States economy annually, along with employing over 460,000 people full time). Further, the author recognizes that the equine industry plays an important role in the national economy and the lives of Americans, and equine professionals deserve a high degree of protection from liability to ensure equine activities still take place in the future. *Id.* To ensure that the equine industry economically survives, drastic measures need to be taken to decrease the amount of litigation pertaining to the EALAs and lower the amount of money equine professionals are awarding to equine participants for compensation for injuries that could not have been avoided. *Id.*

²⁶ See *Where the Horses Go*, PASTWHISPERS (Oct. 25, 2016), <http://www.thepastwhispers.com/Horses.html> [<https://perma.cc/B3MK-6D4P>] (“it is not enough for a man to know how to ride; he must know how to fall” is one of the most popular quotes among cowboys). Animals are known for being unpredictable, resulting in a heightened level of danger when participating in an equine activity. *Id.*

professionals from liability.²⁷ This realization led to a number of states enacting some form of an EALA.²⁸

EALA is the umbrella term used for the statutes that are intended to protect equine professionals from the inherent risks of equine activities.²⁹ Throughout the 1980s, many states converted their tort laws from contributory liability to comparative liability.³⁰ The shift in tort law resulted in the loss of the assumption of the risk theory.³¹ Losing the assumption of risk theory created an increase in litigation, which led to the increase in insurance premiums for equine professionals.³² As a result,

²⁷ See Jordan Lipp, *Horse Law—A Look at the Equine Statute and Liability Law*, 41 COLO. LAW. 95, 95 (2012) (acknowledging the General Assembly found that “the state and its citizens derive numerous economic and personal benefits from equine activities,” thus action needed to be taken to limit the civil liability of those involved in equine activities). See also *The Equestrian Channel*, *supra* note 21 (finding the equine industry has a \$39 billion economic effect on the United States annually). Further, there are equines in each state, with over 20,000 equines in forty-five states. *Id.*

²⁸ See Heidi Walson, *Detailed Discussion of the Equine Activity Liability Act*, ANIMAL LEGAL & HISTORICAL CENTER (2003), <https://www.animallaw.info/article/detailed-discussion-equine-activity-liability-act> [<https://perma.cc/8HR9-D2WF>] (reasoning that the states need to give back to the equine industry through the protection provided by the EALAs because equine activities provide a variety of benefits to states).

²⁹ See *id.* (recognizing EALA as an umbrella term used in equine-related cases and acknowledges that each state defines the term inherent risk differently, resulting in a variety of outcomes throughout the states). Further, multiple states’ EALAs fail to define inherent risks, which causes even more confusion. *Id.*

³⁰ See Sweet, *supra* note 9, at 361 (noting that the shift in tort law from contributory liability to comparative liability occurred prior to the adoption of EALAs). Compare *Contributory Negligence*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“[a] plaintiff’s own negligence that played a part in causing the plaintiff’s injury and that is significant enough (in a few jurisdictions) to bar the plaintiff from recovering damages.”), and also includes the theory of assumption of the risk) with *Comparative Negligence*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“[a] plaintiff’s own negligence that proportionally reduces the damages recoverable from a defendant,” also known as comparative fault). Further, the comparative-negligence doctrine reduces the plaintiff’s recovery from injury proportionally to the plaintiff’s degree of fault that caused the damage, instead of barring the plaintiff completely from recovery. *Id.* See also Sandra Gavin, *Stealth Tort Reform*, 42 VAL. U. L. REV. 431, 458 (2007) (defining the goal of the common law tort doctrine as “[t]he principle of fairness must have priority over the policy of wealth-maximization”).

³¹ See Walson, *supra* note 28 (expressing the theory of assumption of the risk banned frivolous lawsuits against equine professionals). Further, comparative liability allows equine participants to recover from injuries incurred during equine activities, even if the injuries were due to the participant’s own negligence. *Id.*

³² See Loren Speziale, *Walking Through the New Jersey Equine Activity Statute: A Look at Judicial Statutory Interpretation in Jurisdictions with Similar Limited Liability Laws*, 12 SETON HALL J. SPORTS L. 65, 90 (2002) (stressing the increased litigation against equine professionals has put the equine industry in serious distress by wasting a lot of time and money).

states recognized the need to protect equine professionals through EALAs in efforts to save the equine industry.³³

The first EALA was enacted in Washington in 1989 to provide protection for equine professionals and decrease the amount of litigation in equine-related cases.³⁴ States began following Washington's lead by adopting versions of EALAs throughout the 1990s for many reasons.³⁵ First, EALAs are in place to protect equine professionals by limiting the amount of financial liability associated with equine activities.³⁶ Second, EALAs are intended to educate equine participants about the inherent risks of equine activities, as well as the immunities from liability for equine professionals.³⁷ Both of these factors can affect potential recourse, and

³³ See Christopher Guzelian, *Liability & Fear*, 65 OHIO ST. L.J. 713, 734 (2004) (acknowledging the dangers of participating in equine activities). Specifically, the author addresses the problem that equine participants are able to recover for injuries incurred by equine accidents that could not have been foreseeable. *Id.* Thus, the author suggests providing more protection for equine professionals through EALAs. *Id.*

³⁴ See WASH. REV. CODE § 4.24.540 (1989) (providing the provisions of the EALA first enacted by Washington in 1989). Washington's EALA stated the following:

Except as provided in subsection (2) of this section, an equine activity sponsor or an equine professional shall not be liable for an injury to or the death of a participant engaged in an equine activity, and, except as provided in subsection (2) of this section, no participant nor participant's representative may maintain an action against or recover from an equine activity sponsor or an equine professional for an injury to or the death of a participant engaged in an equine activity.

Id. Further, Washington's EALA listed two exceptions to the limitations on liability for equine activities. *Id.* One, protection would not be provided to equine professionals whom provided faulty tack or equipment which caused the injury. *Id.* Two, protection would not be provided to equine professionals whom fail to make "reasonable and prudent efforts" in determining the ability of the equine participant to safely engage in the equine activity. *Id.* Also, Washington's EALA does not apply to the equine racing industry. *Id.*

³⁵ See Walson, *supra* note 28 (noting before the adoption of EALAs, liability for injuries incurred by equine participants had been determined based on traditional tort law concepts including assumption of risk and comparative negligence). See also Fershtman, *supra* note 8 (introducing Nevada as the most recent state to enact an EALA, which occurred on May 27, 2015, which Nevada's Governor approved SB 129).

³⁶ See Stephanie Lawson, *After 16 Years, the PEC's Equine Liability Bill Becomes Law*, PENNSYLVANIA EQUESTRIAN (Oct. 22, 2016), <http://www.pennsylvaniaequestrian.com/news/equine-liability-2006.php> [<https://perma.cc/DH6Z-M5XG>] (demonstrating Pennsylvania's Governor Rendell's excitement about the passing of Pennsylvania's EALA). Specifically, Governor Rendell recognized the tremendous impact the equine industry has on Pennsylvania's economy. *Id.* Aside from providing the first means of transportation and labor to this country, the equine breeding farms and the prestigious equestrian events have helped build the state of Pennsylvania and the United States of America. *Id.* Because of the equine industry's positive impact on society, Governor Rendell acknowledged that equine professionals deserve the protection provided by the EALA that he has signed into law. *Id.*

³⁷ See Marc A. Wites, *Back in the Saddle Again: An Analysis of Florida's Equine Immunity Act*, 71 FLA. B.J. 18, 20 (1997) (finding the more specific and detailed the statutory language is within an EALA, the more effective it will be in making both equine professionals and

awareness can help decrease the amount of equine-related lawsuits.³⁸ Third, EALAs give equine professionals defenses in litigation for equine-related accidents that could not have been avoided.³⁹ EALAs also strive to protect equine professionals from being held liable for injuries incurred by equine participants during an equine event as a result of the equine participant's own negligence.⁴⁰ Most importantly, EALAs are in place to ensure continued participation in equine activities.⁴¹

participants aware of the liabilities and inherent risks involved with equine activities). Further, the author finds that educating both the equine participants and professionals will benefit the equine industry financially by promoting safety precautions, such as wearing helmets, during the participation of equine activities. *Id.*

³⁸ See Fershtman, *supra* note 8 (highlighting that educating the public before participation in equine activities of the immunities from liability and the inherent risks associated with participating in equine activities is the most ethical practice in decreasing the amount of civil litigation pertaining to equine-related lawsuits). Further, the author claims the more education provided to the public, the less amount of injuries will occur during the participation of equine activities. *Id.*

³⁹ See Carmel, *supra* note 10, at 186 (acknowledging equine professionals are financially at risk with the consistent increase in insurance prices, resulting from increased litigation in equine-related cases). Furthermore, the article states that EALAs are intended to benefit the equine industry by making it more profitable through limited liability. *Id.* See also Terence J. Centner, *The New Equine Liability Statutes*, 62 TENN. L. REV. 997, 998-99 (1994) (explaining the high insurance costs for equine professionals and businesses results from the severity of injuries incurred by equine participants during equine activities and the legal rules governing liability).

⁴⁰ See *Gardner v. Simon*, 445 F.Supp.2d 786, 791 (W.D. Mich. 2006) (finding the equine professional liable for the equine participant's injuries sustained after falling off a horse, even though the participant lied about his skill level). Specifically, the plaintiff insisted that he had enough experience with horses to not be considered a novice. *Id.* Thus, the defendant provided him with a green broke horse, meaning the horse was young and inexperienced. *Id.* While the plaintiff was riding, the horse spooked at a loud noise, which caused the plaintiff to fall off. *Id.* The defendant claimed the plaintiff most likely would not have fallen off if he had been an experienced rider. *Id.*

⁴¹ See COLO. REV. STAT. § 13-21-119(1) (2016) (specifying the state's EALA is an attempt to save the equine industry). The Colorado EALA recognizes the high risk of injury resulting from equine activities. *Id.* The general assembly also acknowledges the economic and personal benefits that equine activities bring to the state. *Id.* Therefore, the general assembly attempts to encourage equine activities by limiting the civil liability involved. *Id.* See also 745 ILL. COMP. STAT. 47/5 (1995) (defining the purpose of the Illinois EALA). Specifically, the Illinois statute states:

The General Assembly recognizes that persons who participate in equine activities may incur injuries as a result of the risks involved in those activities. The General Assembly also finds that the State and its citizens derive numerous economic and personal benefits from equine activities. Therefore, it is the intent of the General Assembly to encourage equine activities by delineating the responsibilities of those involved in equine activities.

Id. See also *Walson*, *supra* note 28 (finding the main intent of the EALAs is to provide protection to equine professionals and sponsors against liability of injuries from equine activities). Further, the author explains that the shift in many states' tort laws from

Aside from California, Maryland, and New York, every state has adopted some form of an EALA to date.⁴² Despite the many differences among the variations of EALAs, there are also similarities among the statutes.⁴³ For example, each of the EALAs intend to protect equine professionals from liability of the inherent risks associated with equine activities.⁴⁴ Most importantly, every EALA contains three specific sections pertaining to the same concepts.⁴⁵ Part II.B addresses each section of an EALA individually.⁴⁶

B. Three Sections that Comprise an EALA

All EALAs consist of three sections: the general purpose of an EALA, exceptions to equine professionals' immunity from financial liability for injuries of equine participants, and the notice requirements.⁴⁷ Part II.B.1 illustrates the components of various states' EALA general purpose

contributory liability to comparative liability led to an increase in equine-related litigation. *Id.* As a result of the increased litigation, a large amount of money has been paid out to victims of equine activity accidents. *Id.* This increase in litigation results in significantly higher insurance costs for equine professionals, putting the equine industry in financial trouble. *Id.*

⁴² See Fershtman, *supra* note 8 (reiterating that since May 2016, 47 states have passed some form of an EALA statute). Specifically, the states that have enacted an EALA are Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. *Id.*

⁴³ See Fershtman, *supra* note 8 (stating most EALAs have common characteristics and state that defendants should not be liable if an equine activity participant sustained injury, death, or damage from an inherent risk of equine-related activities, subject to exceptions). Further, each of the states' EALAs apply different exceptions to the limitations on liability for equine professionals. *Id.* See also Carmel, *supra* note 10, at 173 (expressing the most important common characteristics among EALAs are the reliance on the definition of inherent risks, along with specific language used on the warning signs).

⁴⁴ See *State Equestrian Liability*, *supra* note 8 (providing the provisions of each states' EALA). Ultimately, each states' EALAs provides the intention of granting equine professionals protection for certain circumstances that could not be avoided. *Id.* These unavoidable circumstances are defined as the inherent risks of equine activities. *Id.*

⁴⁵ See *infra* Part II.B (explaining the three sections comprising an EALA, which are the general purpose, exceptions of when the EALAs do not apply, and the notice requirements).

⁴⁶ See *infra* Part II.B (addressing each section of an EALA in detail). The general purpose section provides definitions to key terms pertaining to EALAs. *Id.* The exceptions section list certain circumstances in which equine professionals will not be granted immunity from liability. *Id.* The notice requirements of EALAs includes sign requirements and release form requirements. *Id.*

⁴⁷ See Sweet, *supra* note 9, at 363-64 (providing that the elements of successful EALAs include waivers, specific wording, posted signs, and common exceptions to equine owner's limited liability).

provisions.⁴⁸ Specifically, this section addresses the inherent risk definitions, or lack thereof, in many of the EALAs.⁴⁹ Next, Part II.B.2 provides the various exception provisions included within the EALAs.⁵⁰ Lastly, Part II.B.3 presents the wide range of the states' EALA notice requirements.⁵¹ Together, the three sections of an EALA creates the standard that help courts determine when protection for equine professionals is appropriate in equine-related lawsuits.⁵²

1. General Purpose Provision of an EALA

The majority of EALAs begin the general purpose section stating something similar to the following: “no equine professional is liable for an injury to or the death of a participant resulting from the inherent risks of equine activities.”⁵³ Further, the general purpose section typically

⁴⁸ See *infra* Part II.B.1 (highlighting key terms that are defined in the majority of the EALAs' general provision section). Some of these key terms include inherent risks, equine professionals, equine participants, and equine activities. *Id.*

⁴⁹ See *infra* Part II.B.1 (specifying the variety of ways that EALAs define inherent risks, or do not provide a definition at all).

⁵⁰ See *infra* Part II.B.2 (listing the exceptions that are included in most EALAs, focusing primarily on the negligence exception).

⁵¹ See *infra* Part II.B.3 (providing examples of the different notice requirements, or lack of requirements, among various states' EALAs).

⁵² See John Kropp, John Flanagan, & Thomas Kahle, *Choosing the Equine Business Form*, 70 KY. L.J. 941, 970 (1981) (finding three of the most widely used business forms in the equine industry are the sole proprietorship, partnership, and corporation, or a variation of these three). Further, the article discusses the various liabilities associated not only with owning an equine, but also the liabilities associated with being an equine professional. *Id.* The authors note that there is a high amount of liability associated with the equine industry, and most EALAs only offer a limited amount of protection for equine professionals. *Id.*

⁵³ 10 DEL. ADMIN. CODE § 8140 (1995). See, e.g., ALA. CODE § 6-5-337 (1975) (discussing the inherent risk provision of the general purpose section of the statute). More specifically, the Alabama EALA states:

An equine activity sponsor, an equine professional, or any other person, which shall include a corporation or partnership, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities and no participant or representative of a participant shall make any claim against, maintain an action against, or recover from an equine-activity sponsor, an equine professional, or any other person for injury, loss, damage, or death of the participant resulting from any of the inherent risks of equine activities.

Id. See also MICH. COMP. LAWS § 691.1663 (1995) (describing the inherent risk of equine activity and the limitation of liability, which states “an equine activity sponsor, an equine professional, or another person is not liable for an injury to or the death of a participant or property damage resulting from an inherent risk of an equine activity.”); 745 ILL. COMP. STAT. 47/5 (1995) (explaining the purpose of the enactment of Illinois's EALA). The purpose section specifically states:

The General Assembly recognizes that persons who participate in equine activities may incur injuries as a result of the risks involved in

provides definitions of key terms pertaining to the equine industry.⁵⁴ These key terms include equine professionals, equine participants, equine activities, and inherent risks.⁵⁵ There are many variations of how EALAs define these key terms.⁵⁶

Typically, EALAs define an equine professional as any person that is engaged in instructing a participant in an equine activity; renting an equine or equipment to a participant; providing daily care of equines boarded in an equine facility; training an equine; or breeding of equines for resale or stock replenishment for compensation.⁵⁷ An equine participant is usually defined as any person who directly engages in an

those activities. The General Assembly also finds that the State and its citizens derive numerous economic and personal benefits from equine activities. Therefore, it is the intent of the General Assembly to encourage equine activities by delineating the responsibilities of those involved in equine activities.

Id.

⁵⁴ See Centner, *supra* note 11, at 637–39, 658 (comparing Arkansas’s EALA with the Good Samaritan Rule, explaining the key terms that the EALA defines in its general purpose section). The author proposes combining the Good Samaritan Rule with Arkansas’s EALA to provide the most protection for both equine professionals and participants. *Id.* One of the proposed amendments requires written waivers to require equine participants to wear a helmet. *Id.*

⁵⁵ See OHIO ADMIN. CODE § 2305.321 (1997) (including definitions for equine professionals, equine participants, equine activities, and inherent risks within Ohio’s EALA). For example, Ohio’s EALA lists the following inherent risks: the propensity of an equine to behave in ways that may result in injury, death, or loss to persons on or around the equine; the unpredictability of an equine’s reaction to sounds, sudden movement, unfamiliar objects, persons, or other animals; hazards including but not limited to surface or subsurface conditions; and a collision with another equine, another animal, a person, or an object. *Id.*

⁵⁶ See Carmel, *supra* note 10, at 172–73 (acknowledging that all EALAs have a group of “typical” key terms that are defined in the general purpose section). Some of these terms include equines, equine participant, equine sponsor, and equine activities. *Id.* The author notes that the definitions of these key terms are necessary for lay persons to understand. *Id.*

⁵⁷ See MICH. COMP. LAWS § 691.1162 (1994) (establishing the elements that define the meaning of an equine professional). Some of these elements include instructing participants in equine activities, renting an equine to equine participants, providing daily care to an equine at a boarding equine facility, breeding of equines for resale, and training an equine. *Id.* To qualify as an equine professional, the person must be partaking in any of these activities for compensation. *Id.*

equine activity.⁵⁸ An equine activity is any activity dealing with horses.⁵⁹ These activities include equestrian sports and recreational use of horses.⁶⁰ Most of the EALAs specifically list what constitutes an equine activity along with the definition.⁶¹

⁵⁸ See 745 ILL. COMP. STAT. 47/10(a) (1995) (“‘[e]ngages in an equine activity’ means riding, training, assisting in medical treatment of, driving, or being a passenger upon an equine, whether mounted or unmounted, or assisting a participant”); IND. CODE § 34-4-44-1 (1995) (describing an equine participant as “[a] person, whether an amateur or a professional, who engages in an equine activity, whether or not a fee is paid to participant in the equine activity”). Further, Indiana’s EALA explicitly states that an equine participant does not include being a spectator at an equine activity. *Id.* Also, Indiana’s EALA does not classify spectators at an equine activity event as an equine participant. *Id.* Indiana’s EALA also defines equine sponsors as:

[A]n individual, group, club, partnership, or corporation, whether or not the sponsor is operating for profit or nonprofit, that sponsors, organizes, or provides the facilities for an equine activity, including, but not limited to, pony clubs, 4-H clubs, hunt clubs, riding clubs, school and college sponsored classes, programs and activities, therapeutic riding programs, and operators, instructors, and promoters of equine facilities, including, but no limited to, stables, clubhouses, pony ride strings, fairs, and arenas at which the activity is held.

Id. See also *Equine Activity Statutes – Fact and Fiction*, EQUINE LEGAL SOLUTIONS (2016), <http://www.equinelegalsolutions.com/equine-activity-statutes.html> [<https://perma.cc/JEY8-PPTK>] [hereinafter *Equine Legal Solutions*] (illustrating that EALAs provide protection only for defined groups, which varies among each of the states’ EALAs. *Id.* For example, Ohio’s EALA’s definition of equine professionals includes veterinarians and equine reproductive technicians, while Oregon’s EALA does not. *Id.*

⁵⁹ See IND. CODE § 34-4-44-1 (1995) (explaining an equine includes a horse, pony, mule, donkey, or hinny). See also Michael Beethe, *Equine Activity Liability Statutes What Do They Protect?*, EQUINE INSURANCE SPECIALISTS (July 1998), <http://www.equispec.com/equine-activity-liability-statutes-what-do-protect> [<https://perma.cc/9P63-HMBM>] (finding that the EALAs typically define equine activities broadly). Specifically, the EALAs do not provide lists of what qualifies as an equine activity. *Id.*

⁶⁰ See *Most Common Uses of Horses by Owners and Managers in the United States as of March 2012*, THE STATISTICS PORTAL (2012), <https://www.statista.com/statistics/395438/most-common-uses-of-horses-by-owners-and-managers-us/> [<https://perma.cc/HRV8-32KY>] (providing a graph that shows trail riding, dressage, lessons, natural horsemanship, breeding, and breed shows are the most common uses of horses in the United States). See also *Equine Activity Statutes – Fact and Fiction*, EQUINE LEGAL SOLUTIONS (2016), <http://www.equinelegalsolutions.com/equine-activity-statutes.html> [<https://perma.cc/JEY8-PPTK>] (acknowledging Ohio’s EALA’s definition of equine activities includes activities involving zebras and alpacas, while Oregon’s EALA does not).

⁶¹ See, e.g., FLA. STAT. § 773.01 (3) (2012) (listing the activities that constitute an equine activity). Specifically, Florida’s EALA provides the following:

(3) "Equine activity" means: 8 (a) Equine shows, fairs, competitions, performances, or parades that involve any or all breeds of equines and any of the equine disciplines including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, riding, driving, pulling, cutting, polo, steeplechasing, English and western performance riding, endurance trail riding, gymkhana games, and hunting. (b) Equine training or

Most EALA general purpose provisions do not specifically define what comprises an inherent risk of equine activities.⁶² This imprecise statutory language allows courts to define inherent risks broadly, resulting in inconsistent outcomes in equine-related lawsuits against equine professionals arising out of similar situations.⁶³ For example, compare the holdings from *Sapone v. Grand Targhee, Inc.* and *Halpern v. Wheeldon*.⁶⁴ In *Sapone*, the Tenth Circuit found that the sudden bolting of

teaching activities or both. (c) Boarding, including normal daily care of an equine. (d) Riding, inspecting, or evaluating an equine belonging to another by a purchaser or an agent, whether or not the owner has received monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser to ride, inspect, or evaluate it. (e) Rides, trips, hunts, or other equine activities of any type, no matter how informal or impromptu, that are sponsored by an equine activity sponsor. (f) Placing or replacing horseshoes or hoof trimming on an equine. (g) Providing or assisting in veterinary treatment.

Id. See also Michael Beethe, *Equine Activity Liability Statutes What Do They Protect?*, EQUINE INSURANCE SPECIALISTS (July 1998), <http://www.equispec.com/equine-activity-liability-statutes-what-do-protect> [<https://perma.cc/9P63-HMBM>] (explaining the definition of equine activity will vary among the states' EALAs). For example, Florida's EALA includes the horseracing industry within the definition of equine activities, while Wyoming's EALA does not. *Id.*

⁶² See Sharlene A. McEvoy, *The Rise of Equine Activity Liability Acts*, 3 ANIMAL L. 201, 202-06 (1997) (highlighting the uncertainties and ambiguities associated with EALAs). Specifically, the author discusses the decision made by the California Supreme Court in *Harrold v. Rolling J. Ranch*. *Id.* The issue for the Court was whether or not the rider subjectively understood the risk that this particular horse she was about to ride was easily spooked, and whether the equine professional owed a duty of care to the equine participant. *Id.* The Court held: "[w]e are unwilling and do not impose on purveyors of horse riders a duty when a horse acts as a horse any more than we would impose a general duty on commercial small boat operators when a wave suddenly moves a boat causing a passenger to be unbalanced and injured." *Id.* The majority opinion was sharply dissented by Judge Johnson. *Id.* Judge Johnson argued that public policy supports the idea of imposing a duty to warn equine participants of the risks of taking equines on trail rides. *Id.* Further, Judge Johnson compares sending inexperienced riders on a trail ride with a horse known to have unsuitable propensities to putting people on the freeway in a car that has known design defects. *Id.* See also Broome, *supra* note 12 (showing the Georgia Court of Appeals defined inherent risks of equine activities as those dangers or conditions which are an integral part of equine activities including, but not limited to, the propensity of the animal to behave in ways that may result in injury, harm, or death to persons on or around them).

⁶³ See Sweet, *supra* note 9, at 360 (expressing 460,000 people are full-time employees of equine professions, with equestrian activities having a \$102 billion effect on the United States economy annually). Further, many of the unavoidable equine activity accidents that occur often result in lawsuits, which has taken a toll on the equine industry. *Id.*

⁶⁴ See *Sapone v. Grand Targhee, Inc.*, 308 F.3d 1096, 1098 (10th Cir. 2002) (explaining why *Sapone* was considered to be participating in an inherent risk of equine activities at the time of her injuries). In this case, the court held that the EALA did apply, thus granting immunity to the ranch owners. *Id.* See also *Halpern v. Wheeldon*, 890 P.2d 562, 566 (Wyo. 1995) (expressing the court did not feel comfortable determining Halpern was partaking in an

a horse is considered an inherent risk of horseback riding according to Wyoming's EALA.⁶⁵ Meanwhile, in *Halpern*, the Wyoming Supreme Court could not reach this same conclusion in regards to a horse's unexpected bolting.⁶⁶ The court reasoned that because the Wyoming EALA did not specify the definition of inherent risks, a jury needed to decide if an inherent risk was at issue in this case.⁶⁷ Shortly after this ruling, Wyoming amended its EALA to eliminate the inherent risk definition provision from the general purpose section.⁶⁸ As a result, the

inherent risk of an equine activity when he sustained his injuries). In this case, the court held that the Wyoming EALA did not apply. *Id.*

⁶⁵ See *Sapone*, 308 F.3d at 1104 (holding there was enough evidence to make the inference that Sapone was engaged in an inherent risk of an equine activity at the time she sustained her injuries).

⁶⁶ See *Halpern*, 890 P.2d at 563 (finding an issue with the material facts of the case in determining if Wheeldon was partaking in an inherent risk of an equine activity at the time he sustained his injuries from falling off a spooked horse).

⁶⁷ See *id.* at 564 (acknowledging that the Wyoming EALA did not provide a list of inherent risks for the court to compare the presented issue to). Further, the court stated "[t]o say that inherent risks are assumed by sports participants 'as a matter of law' is of little solace to defendants when the question remains: what risks in a sport are inherent, obvious, or necessary to its participation, a question that ordinarily must be resolved by the jury." *Id.* at 566. The court suggested the EALA should be amended to include a list of what constitutes an inherent risk of equine activities. *Id.* In support, the court cited Colorado's EALA, which defines inherent risks as:

Those dangers or conditions which are an integral part of equine activities, as the case may be, including, but not limited to: (I) The propensity of the animal to behave in ways that may result in injury, harm, or death to persons on or around them; (II) The unpredictability of the animal's reaction to such things as sounds, sudden movement, and unfamiliar objects, persons, or other animals; (III) Certain hazards such as surface and subsurface conditions; (IV) Collisions with other animals or objects; (V) The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within his or her ability.

COLO. REV. STAT. § 13-21-119(2)(f) (1992).

⁶⁸ See *Halpern*, 890 P.2d at 566 (ignoring the court's suggestion to provide a list of inherent risks, the Wyoming legislature decided to broaden the definition of inherent risks, eliminating half of the definition). See also WYO. STAT. § 1-1-122 (2013) ("Inherent risk" with regard to any sport or recreational opportunity means those dangers or conditions which are characteristic of, intrinsic to, or an integral part of any sport or recreational opportunity"); Catherine H. Stamp, *Recreational Injuries and Inherent Risks: Wyoming's Recreational Safety Act—An Update*, 33 LAND & WATER L. REV. 249, 270-71 (1998) (explaining the legislature's intent of the 1996 amendment was to clarify the meaning of inherent risk, but ultimately settling on an approach that leaves to the courts the task of defining what is and what is not an "inherent risk" within the meaning of the statute); Carmel, *supra* note 10, at 177-78 (finding Wyoming's EALA only states that equine professionals are liable for negligence, not the inherent risks associated with equine activities). This has opened the floodgates to equine-activity litigation, allowing equine participants to bring lawsuits for essentially any equine-related injury. *Id.*

Wyoming courts' decisions have been inconsistent, relying heavily on their own discretion when determining the meaning of inherent risks of equine activities.⁶⁹

On the other hand, there are some state EALAs that provide a specific definition for inherent risks.⁷⁰ Ohio's EALA not only defines inherent risks, but also produces a list of inherent risks.⁷¹ This list helps set a standard that produces consistency with the courts' rulings in equine-related cases.⁷² Also, this list gives both equine professionals and

⁶⁹ See, e.g., *Sapone*, 308 F.3d at 1104 (disagreeing with the district court's determination that falling off a bolting horse is not an inherent risk of horseback riding). But see *Cooperman v. David*, 214 F.3d 1162, 1168-69 (10th Cir. 2000) (holding the plaintiffs failed to provide evidence of why the saddle fell off the horse and the explanation given is not enough to establish an inherent risk). See also *Hansen-Stamp*, *supra* note 68, at 263 (exposing the double definition of inherent risks within Wyoming's EALA, essentially allowing the courts to use complete discretion in determining whether to define inherent risks broadly or narrowly, resulting in inconsistent rulings).

⁷⁰ See, e.g., COLO. CODE REGS. § 13-21-119 (f) (1992) (defining inherent risks as "[t]hose dangers or conditions which are an integral part of equine activities. . ."). Specifically, Colorado's EALA states the following are considered inherent risks of equine activities:

- (I) The propensity of the animal to behave in ways that may result in injury, harm, or death to persons on or around them;
- (II) The unpredictability of the animal's reaction to such things as sounds, sudden movement, and unfamiliar objects, persons, or other animals;
- (III) Certain hazards such as surface and subsurface conditions;
- (IV) Collisions with other animals or objects;
- (V) The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within his or her ability.

Id.

⁷¹ See OHIO REV. CODE § 2305.321 (7) (1997) (explaining the meaning of inherent risks). Ohio's EALA specifically lists the following as inherent risks:

- (a) The propensity of an equine to behave in ways that may result in injury, death, or loss to persons on or around the equine;
- (b) The unpredictability of an equine to behave in ways that may result in injury, death, or loss to persons on or around the equine;
- (c) Hazards, including, but not limited to, surface or subsurface conditions;
- (d) A collision with another equine, another animal, a person, or an object;
- (e) The potential of an equine activity participant to act in a negligent manner that may contribute to injury, death, or loss to the person of the participant or to other persons, including, but not limited to, failing to maintain control over an equine or failing to act within the ability of the participant.

Id.

⁷² See Chris Tieke, *No More Horsing Around with the Ohio Revised Code*, U. CIN. L. REV. (Sept. 12, 2013), <https://uclawreview.org/2013/09/12/no-more-horsing-around-with-the-ohio-revised-code/> [<https://perma.cc/VV2E-9AND>] (acknowledging that Ohio's EALA statutory terms defined in a clear enough manner for the courts to utilize the rules consistently with the legislature's intent for the EALAs). Specifically, the author focuses on

participants the opportunity to know exactly which situations the EALA will provide protection for equine professionals from liability.⁷³ The exception section of all EALAs consists of a list of all the exceptions that the EALAs recognize in determining the limitations of immunity from liability for equine professionals.⁷⁴

2. Equine Professional's Exceptions from EALA Protection

Each EALA includes exceptions to the general rule that equine professionals are immune from liability resulting from equine participants' injuries.⁷⁵ Providing a horse without making a

the Ohio Supreme Court's decision in *Smith v. Landfair*. *Id.* In *Landfair*, the court held that helping unload a horse from a trailer is considered an equine activity. *Id.* Further, the court held that this is considered an inherent risk of participating in equine activities, thus granting Landfair immunity under Ohio's EALA. *Id.* Also, the inherent risks provided within Ohio's EALA is not an exhaustive list. *Id.* The provisions contain a clause that states the list provided within Ohio's EALA is not extensive. *Id.*

⁷³ See *id.* (reiterating the importance of providing both equine professionals and equine participants with the best opportunity to know of their rights and limitations throughout an equine activity). Further, the author expresses the amount of equine-related lawsuits would decrease if both equine professionals and participants are aware of their rights and limitations. *Id.*

⁷⁴ See *infra* Part II.B.2 (introducing the various equine professional's exceptions from being granted protection under the EALAs).

⁷⁵ See 745 ILL. COMP. STAT. 47/20 (2016) (listing the following exceptions within the Illinois EALA: intentional misconduct, suitability of the equine for the participant, faulty equipment, dangerous latent conditions, and willful and wanton conduct); IOWA CODE § 673.2 (2015) (addressing a list of exceptions covered by the Iowa EALA). More specifically, the Iowa EALA states the following exceptions:

An act committed intentionally, recklessly, or while under the influence of an alcoholic beverage or other drug or a combination of such substances which causes damages, injury, or death; The use of equipment or tack used in the domesticated animal activity which the defendant provided to a participant, if the defendant knew or reasonably should have known that the equipment or tack was faulty or defective; The failure to notify a participant of a dangerous latent condition on real property in which the defendant holds an interest, which is known or should have been known; The notice may be made by posting a clearly visible warning sign on the property; A domesticated animal activity which occurs in a place designated or intended by an animal activity sponsor as a place for persons who are not participants to be present; A domesticated animal activity which causes damage, injury, or death to a spectator who is in a place where a reasonable person who is alert to inherent risks of domestic animal activities would not expect a domesticated animal activity to occur.

Id. See also Tina Jordan, Allison v. Johnson: *Ohio Interprets its Equine Activity Liability Act*, 25 AM. J. TRIAL ADVOC. 435, 438 (2001) (concluding that EALAs are not intended to be a blanket rule for all injuries resulting from an equine activity, but that equine sponsors involved in fact patterns correctly falling under the EALA will be granted immunity from liability).

determination of the equine participant's skill level, offering a faulty horse or faulty tack, or causing intentional injury to the equine participant are common exceptions within many EALAs.⁷⁶ Also, some EALAs contain a negligence exception.⁷⁷ Specifically, many of the EALAs have an exception similar to Missouri's exception, stating an equine professional whom "[f]ails to use that degree of care that an ordinarily careful and prudent person would use under the same or similar circumstances. . ." will not have protection under the EALA.⁷⁸ Ohio's EALA also contains a

⁷⁶ See Carmel, *supra* note 10, at 173 (discussing the exceptions to immunity provided in Alabama's EALA and Colorado's EALA). Both Alabama and Colorado's EALAs have the same exceptions to immunity for equine professionals. *Id.*

⁷⁷ See, e.g., VA. CODE § 32-6203 (2008) (describing the liability of equine activity sponsors and equine professionals). The Virginia EALA states:

No provision of this chapter shall prevent or limit the liability of an equine activity sponsor or equine professional or any other person who commits an act or omission that constitutes negligence for the safety of the participant and such act or omission caused the injury, unless such participant, parent or guardian has expressly assumed the risk causing the injury.

Id. See FLA. STAT. § 773.03 (2)(d) (2000) (providing the exceptions for limitation on liability for equine activity). More specifically, Florida's EALA states the following negligence exception:

Commits an act or omission that a reasonably prudent person would not have done or omitted under the same or similar circumstances or that constitutes willful or wanton disregard for the safety of the participant, which act or omission was a proximate cause of the injury.

Id. See also NEV. REV. STAT. § 41.519 (2015) (stating an exception to immunity under the EALA is "a professional, sponsor, or other person failing to act responsibly while conducting an equine activity or maintaining an equine."). See also Fershtman, *supra* note 8 (highlighting Nevada's EALA's exception of "failed to act responsibly" in detail, which appears to be a negligence exception, makes Nevada's EALA vague, not giving a clear definition for the exception).

⁷⁸ WYO. STAT. § 1-1-122 (2013). See OHIO ADMIN. CODE § 2305.321 (2016) (demonstrating a similar negligence exception within the exceptions section to the Missouri's EALA negligence exception). Specifically, the Ohio EALA states:

The potential of an equine activity participant to act in a negligent manner that may contribute to injury, death, or loss to the person of the participant or to other persons, including but not limited to, failing to maintain control over an equine or failing to act within the ability to participant.

Id. See also N.C. GEN. STAT. § 99E-2 (2015) (describing the exceptions to North Carolina's EALA). Specifically, the North Carolina EALA states the following exceptions:

except as provided in subsection (b) of this section, an equine activity sponsor, an equine professional, or any other person engaged in an equine activity, including a proportion or partnership, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities and, except as provided in subsection (b) of this section, no participant or participants representative shall maintain an action against or recover from an equine activity sponsor, an equine professional, or any other person engaged in an equine activity for

negligence exception for the equine professionals, which states the following:

The potential of an equine activity participant to act in a negligent manner that may contribute to injury, death, or loss to the person of the participant or to other persons, including but not limited to, failing to maintain control over an equine or failing to act within the ability of the participant.⁷⁹

Because of this negligence exception, equine professionals are essentially held liable for every injury incurred by equine participants.⁸⁰

The exposure to liability created by the negligence exception is illustrated throughout the Michigan Supreme Court's decision in *Beattie v. Mickalich*.⁸¹ In his separate opinion, Justice Young recognized Michigan's EALA's loophole in granting qualified immunity for equine professionals, yet eliminating the immunities through a negligence exception shortly

injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of equine activities. (b) nothing in subsection (a) of this section shall prevent or limit the liability of an equine activity sponsor, an equine activity if the equine activity sponsor, equine professional, or person engaged in an equine activity does any one or more of the following: (1) provides the equipment or track, and knew or should have known that the equipment that the equipment or track was faulty, and such faulty equipment or track proximately caused the injury, damage, or death. (2) provides the equine and failed to make responsible and prudent efforts to determine the ability of the participant to engage safely in the equine activity or to safely manage the particular equine. (3) commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission proximately caused the injury, damage, or death. (4) commits ant other act of negligence or omission that proximately caused the injury, damage, or death. (c) nothing in subsection (a) of this section shall prevent or limit the liability of an equine activity sponsor, an equine professional, or any other person engaged in an equine activity under liability provisions as set forth in the products liability laws.

Id.

⁷⁹ OHIO ADMIN. CODE § 2305.321 (1998).

⁸⁰ See Fershtman, *supra* note 8 (discussing how Michigan's EALA allowed too many lawsuits against equine professionals before the amendment that changed the unsuccessful ordinary negligence standard to a gross negligence standard).

⁸¹ See 784 N.W.2d 38, 39 (Mich. 2010) (finding the defendant liable for the injuries incurred by the plaintiff because the defendant negligently allowed the plaintiff to handle a "green broke" horse). In this case, the plaintiff was holding the lead rope attached to the halter of Whiskey, a "green broke" horse, while the defendant was putting the saddle on. *Id.* Suddenly, Whiskey reared up on his hind legs as the plaintiff's hand became stuck in the halter, causing the plaintiff to get lifted into the air. *Id.* The plaintiff was then slammed to the ground, resulting in injuries to her shoulder and arm. *Id.*

thereafter.⁸² After the *Beattie v. Mickalich* decision, an amendment to Michigan's EALA was signed into law in an attempt to eliminate the negligence exception loophole.⁸³ By changing the statutory language, the legislature changed the exception from negligence to a gross negligence standard.⁸⁴ This eliminated the reasonably prudent person standard and

⁸² See *id.* at 41 (agreeing that the EALA was not intended to allow negligence claims involving a negligent act beyond the inherent risk of an equine activity). Further, Justice Young agreed that the negligence exception cannot be so broadly construed as to allow general negligence claims to prevail without completely eviscerating the idea of limited liability under the EALA. *Id.* See also *Amburgey v. Sauder*, 605 N.W.2d 84 (1999) (holding Michigan's EALA abolishes strict liability for equine owners, thus the defendant was not strictly liable for the plaintiff's injuries). The court in *Beattie v. Mickalich* acknowledged this rule, but then found that EALAs do not abolish negligent actions against horse owners. *Id.* at 40. Thus, the Court found that Michigan's EALA does not limit the liability if the equine professional commits a negligent act or omission that results in a proximate cause of the equine participant's injury. *Id.*

⁸³ See Michigan's Equine Activity Liability Act, M.C.L. § 691.1665 (2015) (amending Michigan's EALA to eliminate the negligence exception). Furthermore, Michigan's modifications to the EALA include the following:

If the person is an equine activity sponsor or equine professional, commits an act or omission that constitutes a willful or wanton disregard for the safety of the participant, and that is a proximate cause of the injury, death, or damage; if the person is not an equine activity sponsor or equine professional, commits a negligent act or omission that constitutes a proximate cause of the injury, death, or damage.

Id. See also Julie I. Fershtman, *Your State Enacted or Amended its Equine Activity Liability Act—Are the Changes Retroactive?*, EQUINE LAW BLOG (June 30, 2016), <http://www.equinelawblog.com/state-equine-activity-liability-act> [<https://perma.cc/BWX8-EDC2>] [hereinafter Equine Law Blog] (highlighting the 2016 amendment to Michigan's EALA was enacted after *Johnson v. Outback Lodge & Equestrian Ctr.* was decided). In *Johnson*, Michigan's appellate court reversed trial court's decision of the ranch's motion for summary judgement. *Id.* In this case, the plaintiff took a trail ride while attending an equine riding camp at the defendant's ranch. *Id.* The plaintiff's horse spooked and took off, resulting in the plaintiff sustaining injuries. *Id.* The court held that the 2016 amendment did not apply to this case because the accident occurred before the amendment was in effect, thus finding the ranch liable for the plaintiff's injuries. *Id.*

⁸⁴ See *Gardner v. Simon*, 445 F. Supp. 2d 786, 790 (W.D. Mich. 2006) (relying on the rule that to establish an ordinary negligence claim, the plaintiff must establish the following elements: the defendant owed him a duty; defendant breached that duty; defendant's breach was the proximate cause of his injuries; and he suffered damages as a result of his injuries). In this case, the plaintiff argued that the defendant negligently failed to warn the plaintiff that the horse that caused the injuries had a history of having vicious propensities. *Id.* Specifically, the horse had thrown three other riders before bucking off the plaintiff, whom sustained injuries costing over \$75,000 worth of medical care. *Id.* See also *Rutecki v. CSX Hotels*, 290 Fed. App'x 537, 543 (4th Cir. 2008) (interpreting Virginia law to define gross negligence as the degree of negligence which shows an utter disregard of prudence amounting to complete negligence of the safety of another). In this case, the plaintiff failed to prove that the defendants failed to assess her horseback riding ability. *Id.* Further, there was no evidence that the defendants would or should have paired the plaintiff with a different horse based on her experience level. *Id.*

replaced it with a willful or/and wanton standard.⁸⁵ The last section of all EALAs contains the notice requirements, which are unique to each states' EALA.⁸⁶

3. Notice Requirements of an EALA

Most states' EALAs require some form of notice that warns equine participants of the assumption of risk involved with participating in an equine activity.⁸⁷ The goal of the notice requirements is to give equine participants the opportunity to become aware of the assumption of the risk when participating in equine activities.⁸⁸ Some EALAs require both the posting of warning notice and consent through a contract or release form.⁸⁹ Surprisingly, only a minority of the current EALAs require the posting of signs around the property of an equine event.⁹⁰ Others require

⁸⁵ See *Gross Negligence*, BLACK'S LAW DICTIONARY (10th ed. 2014) (comparing the difference between gross negligence and ordinary negligence "is one of degree and not of quality. Gross negligence is traditionally said to be the omission of even such diligence as habitually careless and inattentive people do actually exercise in avoiding danger to their own person or property.").

⁸⁶ See *infra* Part II.B.3 (introducing the notice requirements as the last section of an EALA).

⁸⁷ See Equine Law Blog, *supra* note 83 (finding the majority view is that waivers can potentially bar claims that arise out of equine activities).

⁸⁸ See Centner, *supra* note 39, at 1017 (acknowledging the failure of the equine professional to meet the warning notice requirements disqualifies a person from the immunity provided by the EALAs).

⁸⁹ See, e.g., FLA. STAT. § 773.04 (2015) (requiring both the posting of signs and release forms pertaining to warning notice); CO. REV. STAT. § 13-21-119 (2015) (providing the warning notice of contracts and posted sign requirements); N.C. GEN. STAT. § 99E-8 (2017) (describing the requirements for both written release forms and sign notice requirements in explicit detail).

⁹⁰ See MINN. STAT. § 604A.12(4) (2016) (explaining the Minnesota EALA posting notice requirements). The Minnesota EALA specifically lists the following requirements:

- 1) A livestock activity sponsor shall post plainly visible signs at one or more prominent locations in the premises where the livestock activity takes place that include a warning of the inherent risks of livestock activity and the limitation of liability under this section;
- 2) the commissioner of natural resources shall post plainly visible signs at one or more prominent locations on any state property being used for grazing purposes pursuant to an agreement with the commissioner. The signs shall include a warning of the inherent risks of livestock activity, and the limitations of liability provided in this section and any other applicable law.

Id. See also 13 PA. STAT. AND CONS. STAT. § 603 (2006) (describing the sign requirements as the following: "this act shall provide immunity only where signing is conspicuously posted on the premises on a sign at least three feet by two feet, in two or more locations, which states the following: You assume the risk of equine activities pursuant to Pennsylvania law.").

written notice through a contract or release form.⁹¹ Some EALAs do not require any sort of liability signs or warning through a contract or release form.⁹² As a result, many lawsuits could have been avoided if the equine participant had been aware of the assumption of risk when participating in an equine activity.⁹³

Regardless, each warning requirement in the EALA must contain the language specified within the statute.⁹⁴ In *Day v. Snowmass Stables, Inc.*,

⁹¹ See OHIO REV. CODE § 2305.321 (2016) (noting the assumption of the risk of equine activities must be expressed in writing). The Ohio EALA requires a valid waiver in writing subscribed by the equine participant or parent. *Id.* The waiver must list the inherent risks of equine activities that will be a subject of tort or other civil liability. *Id.* See also VA. CODE § 3.1-796.132 (2016) (introducing the requirements of the written waiver within the Virginia EALA). The Virginia EALA specifically states:

Except as provided in § 3.1-796.133, no participant or parent or guardian of a participant who has knowingly executed a waiver of his rights to sue or agrees to assume all risks specifically enumerated under this subsection may maintain an action against or recover from an equine activity sponsor or an equine professional for an injury to or the death of a participant engaged in an equine activity. The waiver shall give notice to the participant of the risks inherent in equine activities, including (i) the propensity of an equine to behave in dangerous ways which may result in injury to the participant; (ii) the inability to predict an equine's reaction to sound, movements, objects, persons, or animals; and (iii) hazards of surface or subsurface conditions. The waiver shall remain valid unless expressly revoked by the participant or parent or guardian of a minor. In the case of school and college sponsored classes and programs, waivers executed by a participant or parent or guardian of a participant shall apply to all equine activities in which the participant is involved in the next succeeding twelve-month period unless earlier expressly revoked in writing.

Id.

⁹² See WYO. STAT. § 1-1-122 (2017) (showing there is no sign requirement or contractual language in release forms required by the equine professional). See also MONT. CODE § 27-1-726 (2015) (omitting any requirements for liability signs or contractual language in release forms).

⁹³ See *Speziale*, *supra* note 32, at 103–05 (discussing that equine professionals are given the benefit of using reasonable efforts to abide by the guidelines described in the EALA and explaining the statutory intent of the warning notice requirements is to protect the equine industry from litigious equine participants). See also *Sweet*, *supra* note 9, at 363–64 (explaining that exculpatory clauses have proven to be successful when dealing with cases that pertain to EALAs).

⁹⁴ See, e.g., ARK. CODE § 16-120-202 (2015) (presenting the precise language that all warning notices should have). Specifically, the following is Arkansas's EALA's warning notice requirement:

WARNING: Under Arkansas law, an equine activity sponsor is not liable for any injury to or the death of a participant in equine activities resulting from the inherent risk of equine activities or livestock activities.

the court denied the defendant's motion for summary judgment because the equine professional should have known the tack provided to the equine participant was faulty, thus Colorado's EALA did not apply.⁹⁵ The defendant argued he was immune from liability because the plaintiff had signed a waiver.⁹⁶ The court found that the release form was not valid because the statutory language used in the release form did not clearly exclude the equine professionals from the liability associated with the inherent risks of equine activities.⁹⁷ Another example of a case in which a

Id. See also N.J. STAT. § 5:15-10 (1998) (specifying the language that is required within the notice warning signs that are to be posted around the property). Specifically, the New Jersey EALA states:

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, PURSUANT TO P.L. 1997, c.287 (C.5:15-1 et seq.).

Id. But see IOWA CODE § 673.3 (1997) (providing the specific language that needs to be included on the signs). Specifically, the Iowa EALA must contain the following language:

WARNING: UNDER IOWA LAW, A DOMESTICATED ANIMAL PROFESSIONAL IS NOT LIABLE FOR DAMAGES SUFFERED BY, AN INJURY TO, OR THE DEATH OF A PARTICIPANT RESULTING FROM THE INHERENT RISKS OF DOMESTICATED ANIMAL ACTIVITIES, PURSUANT TO IOWA CODE CHAPTER 673. YOU ARE ASSUMING INHERENT RISKS OF PARTICIPATING IN THIS DOMESTICATED ANIMAL ACTIVITY.

Id. See also, e.g., N.C. GEN. STAT. § 99E-2 (2015) (requiring the signs to state the following: "[W]ARNING: under North Carolina law, an equine activity sponsor or equine professional is not liable for an injury or to the death of a participant in equine activities resulting exclusively from the inherent risks of equine activities."); *Day v. Snowmass Stables, Inc.*, 810 F. Supp. 289, 295 (D. Colo. 1993) (finding a written waiver invalid due to the ambiguous statutory language used within the ranch's release form not in compliance with Colorado's EALA); Carmel, *supra* note 10, at 169 (noticing that all cases dealing with determining if a release form was valid generally are a result of the inherent risks of the equine activity).

⁹⁵ *Day*, 810 F. Supp. at 295 (analyzing the first case in the state of Colorado dealing with the interpretation of the state's EALA). In this case, the plaintiff was injured after being thrown from a horse drawn wagon, which was owned and operated by the defendants. *Id.* at 291. Before taking the horse drawn wagon ride, the plaintiff signed a release form, which was titled "Release, Acknowledgment of the Risks, Acceptance of Responsibility." *Id.*

⁹⁶ See *id.* at 295 (finding the stable owner liable for the injuries that the plaintiff sustained throughout the duration of an equine activity). The judge found that neither the release form signed by the plaintiff nor Colorado's EALA bars the plaintiff's negligence claim against the defendant. *Id.* Thus, the defendant's motion for summary judgment was denied. *Id.*

⁹⁷ See *Day*, 810 F. Supp. at 294 (presenting the vague language that created the stable's release form). Also, the court acknowledged the specific language that the court felt was too ambiguous to properly educate the equine participant of the risks taken when participating in equine activities. *Id.* Further, the four factors that a Colorado court considers in determining the validity of a release form are: (1) the existence of a duty to the public; (2)

consent form was found to be invalid is *Frank v. Mathews*, where a girl fell off a horse during the course of a riding lesson under the watch of her riding instructor.⁹⁸ In this case, the equine participant won even though the accident occurred due to the participant's negligent use of a crop, a short whip used to encourage equines to move forward, even after the riding instructor had told her to stop.⁹⁹

Due to the large amount of money spent by equine professionals defending themselves from lawsuits and compensation for equine participant's injuries, uniformity is needed among the states' EALAs.¹⁰⁰ Thus, Part III analyzes the current legal framework of EALAs and evaluates why the states' current EALAs are failing to create concrete standards.¹⁰¹ This results in inconsistent rulings by the courts with cases dealing with similar fact patterns pertaining to particular states' EALAs.¹⁰² In order to promote uniformity among EALA statutes and provide equine professionals adequate protection against liability, Part IV proposes provisions for a model EALA.¹⁰³

the nature of the service performed; (3) whether the contract was fairly entered into; and (4) whether the intention of the parties is expressed in clear and unambiguous language. *Id.* The court found that the defendants did not meet the fourth factor, as the release form the plaintiff signed did not clearly and unambiguously release the defendant from liability for a negligence claim. *Id.*

⁹⁸ See 136 S.W.3d 196, 201 (Mo. Ct. App. 2004) (ruling the release form was invalid for not following the specific language set forth by the EALA, thus finding the riding instructor liable for a beginner equine participant's injuries after mishandling a crop). The court acknowledged that release forms are not favored because of the tendency of the contracts to be one-sided, but are not against public policy. *Id.* Also, the court stated that release forms are strictly construed against the drafter of the release form. *Id.* The court concluded that the specific language used within the release form leaves doubt that a reasonable person would understand that the form waives all claims resulting from injuries sustained at the defendant's stable. *Id.* Specifically, the court did not like that the release form had the release language of "any and all claims" after the long list of inherent risks of equine activities. *Id.* In this situation, it is unclear if the plaintiff's claim arises out of the inherent risks of equine activity. *Id.*

⁹⁹ See Carmel, *supra* note 10, at 167 (acknowledging that many equine-related cases are decided on small technicalities, such as an equine professional not using the specific language for notices that are set forth by the EALA).

¹⁰⁰ See *supra* Part II.A (discussing the original goals that the legislators had in mind when enacting EALAs, which remain the same goals as today).

¹⁰¹ See *infra* Part III (analyzing the language within each section of the EALAs). This section criticizes the current statutory language within each section of the EALAs for lack of clarity and leading to confusion among all parties. *Id.*

¹⁰² See *infra* Part III (highlighting conflicting decisions made in separate equine-related cases, with each court using a different standard and coming to a different conclusion even when dealing with similar equine activity situations).

¹⁰³ See *infra* Part IV (proposing three provisions for a model EALA to create a clear standard for courts to follow in efforts to provide adequate protection for equine professionals).

III. ANALYSIS

Washington's enactment of the original EALA in 1989 paved the way for EALAs throughout the country to provide more protection for equine professionals from liability.¹⁰⁴ Although advocates of the EALAs praise the protection the statutes provide to equine professionals, critics fear the vague standards and loopholes are not enough to provide the amount of protection for equine professionals necessary to save the equine industry.¹⁰⁵ More specifically, the current EALAs' protection for equine professionals is insufficient to reduce the large amount of litigation in equine-related cases, which wastes a lot of equine professionals' time and money.¹⁰⁶ Also, the insurance costs for equine professionals will consistently be on the rise due to the inherent risks of equine activities and will put the equine industry in jeopardy of failing.¹⁰⁷ Therefore, a model EALA is necessary to set a standard that will help courts make consistent rulings in similar equine-related situations.¹⁰⁸ This will help reduce the amount of frivolous lawsuits brought against equine professionals for unavoidable injuries.¹⁰⁹ By reducing the amount of lawsuits, the amount of money spent on equine-related litigation will sharply decrease, and the equine industry will continue to benefit the economy.¹¹⁰

¹⁰⁴ See WASH. REV. CODE § 4.24.540 (1989) (providing the provisions of the first EALA to be enacted by one of the states). Further, Washington recognized that the shift in tort law welcomed many lawsuits against equine professionals. *Id.*

¹⁰⁵ See Barbara Gislason & Julie Fershtman, *Recent Developments in Animal Tort and Insurance Law*, 41 TORT TRIAL & INS. PRAC. L.J. 153, 165-66 (2006) (raising concerns and issues with the current EALAs that will continue to negatively impact the equine industry).

¹⁰⁶ See Walson, *supra* note 28 (finding that the high amount of litigations resulted in a large amount of money being paid out to victims, whom were partially to blame for their own injuries incurred during the participation of an equine activity).

¹⁰⁷ See Jennifer D. Merryman, *Bucking the Trend: Why Maryland Does Not Need an Equine Activity Statute and Why It May Be Time to Put All of These Statutes Out to Pasture*, 36 U. BALT. L.F. 133, 136 (2006) (discussing how equine professionals saw an increase in insurance premiums during the 1980s when the implied assumption of risk was virtually eliminated).

¹⁰⁸ See Sweet, *supra* note 9, at 363 (acknowledging that "not all equine activity laws and interpretations have been consistent and some are considerably more effective than others.").

¹⁰⁹ See Equine Legal Solutions, *supra* note 58 (stating equine participants are less likely to sue when aware of the conditions of the state's EALA). Further, with more defenses offered by the EALA for the equine professional, lawsuits are more likely to settle earlier and for a smaller amount of money. *Id.* Also, this lower amount of money decreases the amount of risks for insurance companies. *Id.* This promotes more competition among insurance companies, resulting in lower costs on insurance premiums for equine professionals. *Id.*

¹¹⁰ See *Horse Industry Statistics*, USEF (Jan. 16, 2017), <http://www.theequestrianchannel.com/sitebuildercontent/sitebuilderfiles/2002USEFdemographics.pdf> [<https://perma.cc/U7KZ-Z3XG>] [hereinafter USEF] (showing equine activities make more of a contribution to the nation's GDP than motion picture productions, railroad transportation, and tobacco product manufacturing industries). These statistics are

In order to provide the appropriate amount of protection for equine professionals, this Note proposes a model EALA.¹¹¹ Uniformity among the states' EALAs will help define standards for the courts to follow in equine-related litigation, therefore reducing the amount of unpredictable rulings.¹¹² First, Part III.A analyzes the issues with vague language in the definitions of equine terms in the general purpose section.¹¹³ More specifically, this section focuses on various EALAs' definition of inherent risks, or lack thereof.¹¹⁴ Next, Part III.B evaluates exceptions allowing equine professionals to be liable for injury to equine participants, as well as the pitfalls of the negligence exception.¹¹⁵ Additionally, Part III.B evaluates the benefits of holding equine professionals to a gross negligence standard.¹¹⁶ Lastly, Part III.C discusses the wide range of notice requirements found in EALAs, focusing on the disadvantages of not requiring any notice requirements.¹¹⁷ Further, Part III.C discusses the benefits of EALAs having both written contracts and sign notice requirements in place.¹¹⁸ Ultimately, the goal of the model EALA is to help ensure that the equine industry continues to thrive in the future by creating a unified standard among all EALAs.¹¹⁹

a result of a year-long study conducted by the Barents Group of Washington, D.C. and commissioned by the American Horse Council Foundation. *Id.*

¹¹¹ See *infra* Part IV (introducing the provisions for a model EALA and presenting an explanation of how the model EALA will be more effective than the current EALAs).

¹¹² See *infra* Part IV (providing the benefits of having uniformity among the states' EALAs, which include raising awareness of liability to both the equine professionals and participants).

¹¹³ See *supra* Part II.A (exploring different EALA definitions of key equine terms). Specifically, most EALAs define the following terms: equine, equine activities, equine professionals, equine sponsors, and equine participants. *Id.*

¹¹⁴ See *infra* Part III.A (analyzing Wyoming's EALAs removal of the definition of the inherent risks associated with equine activities).

¹¹⁵ See *infra* Part III.B (addressing exceptions included in various EALAs and discussing the problem with Missouri's overly broad negligence standard).

¹¹⁶ See *infra* Part III.B (suggesting the use of a gross negligence standard instead of the ordinary person standard that is currently used in most states' EALAs).

¹¹⁷ See *infra* Part III.C (discussing the three variations of notice requirements within the EALAs: the equine professional must post liability signs, have a provision including liability in the contract, having both posted signs and written contracts, or no requirements of posted signs or notice through contractual language in release forms).

¹¹⁸ See *infra* Part III.C (finding courts have been tending to be more forgiving to the equine professionals whom have followed both the written contract and sign notice requirements set forth by certain EALAs).

¹¹⁹ See *infra* Part IV (arguing that the equine industry is at risk of financially failing due to the amount of money spent on litigation and settlements to equine participants).

A. *General Purpose Provisions: The Problem with Not Providing a Definition of “Inherent Risks”*

Most definitions of the key terms use vague statutory language, resulting in confusion among both equine professionals and participants.¹²⁰ Most of the EALAs define words pertaining to equine activities, such as equine, equine participant, equine professional, and equine sponsor.¹²¹ In particular, most EALAs do not specify what comprises an inherent risk of equine activities.¹²² The omission of the inherent risks definition within an EALA results in a higher number of equine-related lawsuits, thus significantly hurting the equine industry financially.¹²³ The absence of an inherent risks definition also allows courts to rely heavily on discretion, which results in the use of a vague definition of inherent risks.¹²⁴ As a result, equine professionals are typically held liable for every injury that an equine participant incurs

¹²⁰ See McEvoy, *supra* note 62, at 218–19 (acknowledging the definitions within many of the EALAs are vague, resulting in courts interpreting the meaning of key terms differently and setting varying standards). See also *Smith v. Lane*, 832 N.E.2d 947, 951–52 (Ill. App. Ct. 2005) (finding the lack of clarity within Illinois’s EALA creates confusion in interpretation of the key terms used in equine-related cases). Further, the court found the application of the sections of the EALA consistently to be difficult because of the EALA’s “less-than-artful drafting . . .” *Id.* Since the enactment of Illinois’s EALA in 1995, there had only been three cases dealing with defining equine activity, each dealing with situations involving actual horseback riding. *Id.* at 951. The court held that a passenger in a horse-drawn carriage is not considered an equine activity, therefore immunity from liability was not granted for the carriage company. *Id.* See also, e.g., Sweet, *supra* note 9, at 371 (illustrating the inconsistent rulings between two cases dealing with essentially the same equine activity). Specifically, the author compares the holdings between *Lawson v. Dutch Heritage Farms* and *Freidli v. Kerr*, both cases involving horses, carriages, and accidents. *Id.* In *Lawson*, the court held that a horse buggy which crashed and injured a passenger was considered an equine activity, in which the court in *Freidli* ruled the exact opposite in a similar situation. *Id.* at 372.

¹²¹ See *supra* Part III (providing examples of different states’ EALAs that provide different definitions for key terms pertaining to equine activities).

¹²² See Broome, *supra* note 12, at 294 (showing a Georgia court defined inherent risks of equine activities as those dangers or conditions which are an integral part of equine activities including, but not limited to, the propensity of the animal to behave in ways that may result in injury, harm, or death to persons on or around them).

¹²³ See Julie I. Fershtman, *The Michigan Equine Activity Liability Act: Are We Galloping in Circles?*, MICHIGAN BAR JOURNAL: ANIMAL LAW (Dec. 2013), <https://www.michbar.org/file/journal/pdf/pdf4article2309.pdf> [<https://perma.cc/QY69-ZF2P>] [hereinafter Michigan Bar Journal: Animal Law] (acknowledging the benefits of specifically defining inherent risks within EALAs). Lowering the amount equine-related litigation and providing a clearer standard for courts to follow are benefits that the author denotes. *Id.*

¹²⁴ See James C. Kozlowski, *Recreation Safety Act Immunity Limited to Inherent Risks*, GMU (Mar. 2005), <http://cehdclass.gmu.edu/jkozlows/lawarts/03MAR05.pdf> [<https://perma.cc/8JJC-Y6J2>] (showing how the removal of the definition of inherent risks from Wyoming’s EALA has led to a variety of different rulings pertaining to equine-related lawsuits).

during an equine activity due to the subjective and broad nature of the EALA standards.¹²⁵ Consequently, equine participants can bring lawsuits against equine professionals for every injury, even those that are unavoidable.¹²⁶

Also, the courts inconsistent rulings dealing with similar equine-related situations creates confusion among all parties as to the limitations of the protection provided by EALAs.¹²⁷ The holdings of both *Sapone* and *Haplern* illustrate the confusion of not giving a specific definition of inherent risks.¹²⁸ In both cases, the equine participants incurred injuries resulting from similar situations in which the equine spooked from an unfamiliar noise.¹²⁹ However, the courts came to different conclusions, one in favor of the equine professional, while the other found the equine professional liable for the equine participant's injuries.¹³⁰ The differing standards set by the decisions of these cases opens the floodgates to a high

¹²⁵ See Julie I. Fershtman, *Equine Activity Liability Acts: Recurring Issues Impacting Insurers and their Insureds*, AGRICON (2015), <https://www.irmi.com/docs/default-source/afis-handouts/equine-activity-liability-acts.pdf?sfvrsn=18> [https://perma.cc/Q22R-V5CZ] [hereinafter AgriCon] (providing multiple cases in which the equine professional was held liable for many different situations in which a court found an equine participant was not engaged in an inherent risk of an equine activity). The author claims it is easy for equine participants to play the victim and be compensated for injuries that were the result of their own ignorance or negligence. *Id.*

¹²⁶ See USEF, *supra* note 110 (discussing that the average spending habits of an equine owner or participant is \$7,200). This includes money spent on riding equipment, riding lessons, boarding fees, equine feed, and veterinary care. *Id.*

¹²⁷ See *Sapone v. Grand Targhee, Inc.*, 308 F.3d 1096, 1100 (10th Cir. 2002) (recognizing the Wyoming legislature intended to allow courts to determine the meaning of inherent risks, presuming this would assist the court in making fact specific findings for each case). However, the court goes on to discuss that the exact opposite of the legislature's intent is happening; the courts are struggling to make consistent rulings pertaining to cases that consider the EALAs. *Id.* at 1101.

¹²⁸ See *id.* at 1105 (explaining why *Sapone* was found to be participating in an inherent risk of equine activities at the time of her injuries). In this case, the court held that the EALA statute did apply, thus granting immunity to the ranch owners. *Id.* See also *Halpern v. Wheeldon*, 890 P.2d 562, 566 (Wyo. 1995) (expressing the court did not feel comfortable determining *Halpern* was partaking in an inherent risk of an equine activity when he sustained his injuries). In this case, the court held that the Wyoming EALA statute did not apply. *Id.* Both cases deal with similar situations in which the equine participant became injured, yet have two completely different outcomes. This is a perfect illustration of the disadvantages of not having a specific definition of inherent risks.

¹²⁹ See Katherine Blocksdorf, *Horses that Spook or Shy*, ABOUT.COM (Oct. 12, 2016), <http://horses.about.com/od/commonridingproblems/a/Horses-That-Spook-Or-Shy.htm> [https://perma.cc/E3KK-5U5W] (defining a spooked horse as when a horse becomes startled and jumps sideways, or takes a quick change of direction with the intention to flee the scene).

¹³⁰ See *Haplern*, 890 P.2d at 565 (holding an inherent risk of equine activities occurs only if the equine professional could not control the situation by taking reasonable steps to eliminate, alter, or control the equine).

number of equine-related lawsuits.¹³¹ As a result, the equine industry will suffer due to the amount of money spent on litigation.¹³² Recognizing the confusing standard set forth in the EALA, the court in *Halpern v. Wheeldon* found most of the equine-related litigation can be avoided if the courts were to decide as a matter of law that a particular risk is inherent in the participation of equine activities.¹³³

Following the decision of *Halpern v. Wheeldon*, Wyoming amended its EALA to eliminate the specific definition of inherent risks, resulting in Wyoming's EALA lacking the definition and a list of inherent risks, resulting in more ambiguity.¹³⁴ This amendment complicates it even more for courts to make the determination of an inherent risk of equine activities, as the rulings made by Wyoming's courts have been unpredictable.¹³⁵ The broad nature of the statute provides the court with little guidance, which make the rulings unpredictable and inconsistent.¹³⁶ Most people are not familiar with the technicalities of equine activities, making it harder to understand the inherent risks in association with equine activities.¹³⁷ Thus, the definitions of inherent risks in EALAs need to be in as specific detail as possible to help people better understand equine activities.¹³⁸

The current EALAs' inherent risk provisions are too ambiguous and make it too easy for equine participants to hold equine professionals liable for every injury incurred during an equine activity.¹³⁹ Without a specific

¹³¹ See The Equestrian Channel, *supra* note 21 (finding the equine industry pays a total of \$1.9 billion in taxes to the government).

¹³² See The Equestrian Channel, *supra* note 21 (describing that employee and supplier spending creates jobs for 1.4 million equine-related jobs).

¹³³ See *Halpern*, 890 P.2d at 566 (furthering a decrease in the amount of litigation will decrease the amount of money spent on equine-related lawsuits).

¹³⁴ See Hansen-Stamp, *supra* note 68, at 263 (expressing the intent of Wyoming's legislature to amend the EALA was to allow the courts to make decisions based on the facts of each case and not have to worry about the evolving laws pertaining to EALAs).

¹³⁵ See *Halpern*, 890 P.2d at 566 (proclaiming frustration with the ambiguity of the lack of inherent risk provision within Wyoming's EALA). The court suggests Wyoming legislature should provide a specific list of inherent risks, but this advice was ignored. *Id.*

¹³⁶ See Luke Meier, *A Broad Attack on Overbreadth*, 40 VAL. U. L. REV. 113, 116 (2005) (explaining the overbreadth doctrine has caused confusion when determining which standard is appropriate when considering a facial challenge to a statute).

¹³⁷ See Strickland, *supra* note 22 (explaining the majority of people throughout the nation do not understand what equine activities are, including those who decide to participate in equine activities).

¹³⁸ See *supra* Part II.B.1 (discussing the importance of having specific statutory language within the three provisions of the EALAs, along with examples of states that use specific language within each of the three EALA provisions).

¹³⁹ See *supra* Part II.B.1 (reiterating the loophole created by the EALA's inherent risk provision only hurt the equine industry, allowing equine participants to recover

definition of inherent risks, courts will not have a standard to follow for deciding equine-related lawsuits.¹⁴⁰ Thus, equine participants can make a claim for every injury incurred during an equine activity, increasing the amount of time and money spent on litigation.¹⁴¹ Further, the equine industry will continue to suffer financially.¹⁴² Not only is it costly to defend against a case where the standards are unclear, but also the high amount of liability associated with equine activities will contribute to high costs.¹⁴³

To eliminate the many interpretations of the definition of inherent risks, EALAs should contain a list of what constitutes an inherent risk.¹⁴⁴ By providing a specific definition for inherent risks as well as providing a list of inherent risks, both the equine professionals and participants will have the best opportunity to gain insight on the risk allocation of equine activities.¹⁴⁵ Also, the courts will have more guidance in making decisions in equine-related cases with the help of specific statutory language.¹⁴⁶ This consistency in the courts' ruling will set a standard that will ultimately

compensation for injuries even if they caused their own injuries through their own negligence).

¹⁴⁰ See *Halpern*, 890 P.2d at 564 (expressing the frustrations of not having a specific definition for inherent risks of equine activities and suggesting Wyoming legislature adds a list of inherent risks to the definition within Wyoming's EALA).

¹⁴¹ See *Broome*, *supra* note 12, at 294 (showing a Georgia court defined inherent risks of equine activities as those dangers or conditions which are an integral part of equine activities including, but not limited to, the propensity of the animal to behave in ways that may result in injury, harm, or death to persons on or around them).

¹⁴² See *Sweet*, *supra* note 9, at 360 (expressing 460,000 people are full time employees of equine professions, with equestrian activities having a \$102 billion effect on the United States economy annually, and many of the unavoidable equine activity accidents occur often result in lawsuits).

¹⁴³ See *Sweet*, *supra* note 9, at 367 (defending the idea that specific statutory language defining inherent risks of equine activities is key to keeping the equine industry thriving). The equine industry cannot afford to see any more of an increase in equine-related litigation. *Id.*

¹⁴⁴ See *Hansen-Stamp*, *supra* note 144, at 263 (exposing the double definition of inherent risks within Wyoming's EALA, essentially allowing the courts complete discretion whether to define inherent risks broadly or narrowly).

¹⁴⁵ See *Broome*, *supra* note 12, at 304-07 (noting the importance of the duty of equine professionals to warn equine participants of the inherent risks associated with equine activities). See also *Carmel*, *supra* note 10, at 167 (finding that many states have limited or eliminated the use of the assumption of risk defense). Further, the author states that the EALAs illustrate the shift in common law from the strict liability defense, including the assumption of risk through participation in equine activities, to the current inherent risk theory. *Id.* at 168.

¹⁴⁶ See *AgriCon*, *supra* note 125 (acknowledging that there is not a lot of case law for the courts to follow because EALAs are a new concept).

help decrease the amount of litigation pertaining to equine activities.¹⁴⁷ In fact, each section of the EALAs are most effective when specific statutory language is used.¹⁴⁸ The next provision of the EALAs pertains to the exceptions from immunity against liability for equine professionals under the EALA statutes, expressing the need for a heightened negligence standard exception.¹⁴⁹

B. Exceptions Allowing Lawsuits Against Equine Professionals for Equine Participant Injuries

As addressed earlier, many EALAs contain an ordinary negligence exception that results in many frivolous lawsuits against equine professionals.¹⁵⁰ This negligence exception creates a loophole that negatively impacts equine professionals, essentially holding them liable for every injury incurred by equine participants while engaging in an equine activity.¹⁵¹ This loophole is highlighted in the court's decision in *Beattie v. Mickalich*.¹⁵² In *Beattie*, the majority held that Michigan's EALA does not abolish negligence claims, thus the court of appeals decision was reversed.¹⁵³ In his concurrence, Justice Young affirms the trial court's

¹⁴⁷ See *supra* Part IV (providing the advantages of providing a specific definition of the inherent risks of equine activities).

¹⁴⁸ See *supra* Part II.B.3 (addressing the benefits of using specific statutory language in each provision of the EALAs).

¹⁴⁹ See *infra* Part III.B.2 (discussing the challenges of the ordinary negligence exception and assessing the alternative gross negligence standard).

¹⁵⁰ See *infra* Part III.B.2 (describing an example of the exact statutory language used in an EALA's negligence exception). See also *Negligence*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining negligence as "[t]he doing of what a reasonable and prudent person would not do under the particular circumstances, or the failure to do what such a person would do under the circumstances.").

¹⁵¹ See Michigan Bar Journal: Animal Law, *supra* note 123 (acknowledging the Supreme Court in *Beattie v. Mickalich* illustrates the differing opinions involving the scope of the EALA's immunities and its negligence exception).

¹⁵² See Paul W. Jackson, *Horses v. Horses: Betting Around the House*, MICH. EQUINE PARTNERSHIP (2014), https://www.michfb.com/MI/uploadedFiles/Farm_News/Content/Extras/2014%20Equine%20Supplement.pdf [<https://perma.cc/N8EU-ZFHQ>] (determining the Court's split decision was a result of the broad negligence exception in Michigan's EALA).

¹⁵³ See 784 N.W.2d 38, 39 (Mich. 2010) (illustrating the struggles the Court endured when coming to a decision pertaining to this case through the multiple dissents and concurrences when deciding if the negligence exception applied to the facts of this case). Further, this decision did not grant the equine professional immunity under Michigan's EALA even though the injury was a result of an inherent risk of equine activities. *Id.* at 41. The court of appeals in this case did not agree with the plaintiff's arguments and found that her negligence claim had no merit. *Id.* Also, the court found that Michigan's EALA applied to this situation, and immunity from liability was granted to the equine professional. *Id.* Michigan's Supreme Court reversed in a split decision, holding Michigan's EALA did not

decision to dismiss the plaintiff's claim that the negligence exception applies to this case.¹⁵⁴ Justice Young reached this conclusion by determining the "[p]laintiff cannot establish that the defendant committed human error above and beyond the inherent risk of this equine activity such that defendant increased the danger involved in the activity. . . ."¹⁵⁵ A problem that results from an ordinary negligence standard in an EALA is that this standard is the cause of the majority of equine-related litigation nationwide.¹⁵⁶ Further, this flexible standard broadens the scope for equine participants to bring suit against equine professionals.¹⁵⁷ Equine professionals are held liable for more accidents—including those that are unavoidable—under an ordinary negligence standard than a gross negligence standard.¹⁵⁸ Also, a lot of time and money is wasted on determining if the ordinary negligence standard applies.¹⁵⁹ The confusion that results from the *Beattie* decision, which almost destroyed Michigan's equine industry financially, led to the 2015 amendment to the EALA, specifically changing the ordinary negligence standard to a gross

abolish ordinary negligence claims against equine professionals for injuries incurred by equine participants during equine activities. *Id.*

¹⁵⁴ See *Beattie*, 784 N.W.2d at 42–43 (describing Justice Young's concurring opinion). When discussing his interpretation of Michigan's EALA, Justice Young states the following: "under the statutory construction doctrine known as *ejusdem generis*, where a general term follows a series of specific terms, the general term is interpreted 'to include only things of the same kind, class, character, or nature as those specifically enumerated.'" *Id.* at 42.

¹⁵⁵ *Id.* at 43. Further, Justice Young finds the negligence exception to Michigan's EALA is too narrow. *Id.* Specifically, Justice Young feels the goal of the negligence exception is not only to eliminate strict liability, but to make it impossible for equine participants to bring negligence lawsuits against equine professionals. *Id.* at 42.

¹⁵⁶ See Michigan Bar Journal: Animal Law, *supra* note 123 (stating that the negligence exception needs to be changed to the stricter standard of gross negligence for four reasons). Specifically, the four reasons are as follows: (1) the amendment would put Michigan in line with 27 other states that have a "willful/wanton" exception; (2) a "willful/wanton" standard does not create an unduly stringent liability standard; (3) it would eliminate the majority of the equine-related litigation in Michigan; and (4) a "willful/wanton" exception would provide the protection needed in order to protect Michigan's equine industry. *Id.*

¹⁵⁷ See Jerome Hall, *Negligent Behavior Should Be Excluded From Penal Liability*, 63 COLUM. L. REV. 632, 633 (1963) (explaining the difference between ordinary negligence and gross negligence). Gross negligence is a conscious act that is completed voluntarily, while ordinary negligence is when a person fails to exercise reasonable care. *Id.*

¹⁵⁸ See *id.* at 632 (finding a large increase in litigation when there is only an ordinary negligence standard instead of a gross negligence standard).

¹⁵⁹ See Michigan Bar Journal: Animal Law, *supra* note 123 (highlighting the large amount of money that is spent each year on litigation in Michigan pertaining to the ordinary negligence standard). Further, the author notes that the states that have the gross negligence standard in its EALA have significantly fewer cases litigated over equine-related situations, which helps save the equine industry. *Id.*

negligence standard.¹⁶⁰ This amendment was twenty years in the making, as the legislature was torn with this decision.¹⁶¹

Similar to the changes made by the 2015 amendment to Michigan's EALA, the problem of the open-ended negligence exception standard among most of the states' EALAs can be solved by adopting a gross negligence standard.¹⁶² Michigan's EALA amendment changed the ordinary negligence standard to gross negligence standard and tightens the scope of the equine professionals' liability for equine participants' injuries because it is a higher standard to meet.¹⁶³ A gross negligence standard would help restore the legislations' intention of providing liability protection for equine professionals.¹⁶⁴ Also, the enactment of a gross negligence standard within an EALA will not alter or disturb any of the other exceptions included within the EALAs.¹⁶⁵ Not only does a

¹⁶⁰ See MICH. COMP. LAWS § 691.1665 (2015) (providing the statutory language of the 2015 amendment to Michigan's EALA, which eliminated the ordinary negligence exception and added the gross negligence standard exception). Bills had been proposed since 2003 in attempts to eliminate Michigan EALA's ordinary negligence standard and replace it with a willful or wanton standard. *Id.* This heightened standard would be considered a gross negligence standard. *Id.*

¹⁶¹ See Michigan Bar Journal: Animal Law, *supra* note 123 (emphasizing the mixed feelings that the legislature had when deciding on changing the EALA statute's negligence standard). However, the amendment has proven to be successful in Michigan, as the amount of equine-related litigation has drastically decreased. *Id.*

¹⁶² See *Gross Negligence*, BLACK'S LAW DICTIONARY (10th ed. 2014) (comparing the difference between gross negligence and ordinary negligence as "... [i]s one of degree and not of quality. Gross negligence is traditionally said to be the omission of even such diligence as habitually careless and inattentive people do actually exercise in avoiding danger to their own person or property"). See also *Rutecki v. CSX Hotels*, 290 Fed. App'x 537, 543 (4th Cir. 2008) (interpreting Virginia law to define gross negligence as the degree of negligence which shows an utter disregard of prudence amounting to complete neglect of the safety of another, thus throwing out the plaintiff's negligence claim); Michigan Bar Journal: Animal law, *supra* note 123 (finding that 27 other states' EALAs have adopted a gross negligence exception instead of an ordinary negligence exception).

¹⁶³ See Marc A. Wites, *Back in the Saddle Again: An Analysis of Florida's Equine Immunity Act*, 71 FLA. B.J. 18, 23 (1997) (asserting the Florida EALA intentions of the negligence exception is to provide immunity from liability of equine professionals, regardless of whether the equine participant is an "[a]vid rider or urban cowboy out for a yearly day on the ranch. . .", while only time will tell whether the Florida courts apply the act with an "even hand").

¹⁶⁴ See Michigan Bar Journal: Animal Law, *supra* note 123 (finding one of the intentions of Michigan's legislation when enacting the state's EALA was to restore the intent that had been introduced to into the legislature over 20 years ago).

¹⁶⁵ See Michigan Bar Journal: Animal Law, *supra* note 123 (reaffirming that the three other exceptions included in Michigan's EALA will not change due to the adoption of a gross negligence standard). See also MICH. COMP. LAWS § 691.1665 (2015) (providing the following three exceptions that are within Michigan's EALA: providing faulty tack or equipment, providing an equine not suitable for the particular equine participant, or exposing equine participants to dangerous and latent conditions of the land during the participation in an equine activity).

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willful or wanton standard offer protection to the professionals of the equine industry, but it will also limit the amount of equine litigation taking place nationwide.¹⁶⁶ The EALAs' notice requirements, through the means of posting signs and release forms, can also help courts determine whether a statutory immunity may apply to an equine-related lawsuit, which will ultimately help the equine industry's economic success.¹⁶⁷

C. *EALA Notice Requirements that Provide Protections to Equine Operations*

Enforcing a warning notice, specifically both in the form of a release contract and posting warning signs, has proven to be a successful way of enforcing EALAs by providing equine professionals with immunity from liability for equine participant injuries.¹⁶⁸ Due to the various court interpretations of EALAs, it is important for notice waivers to be as specific as possible.¹⁶⁹ This is because courts in the past have ruled in favor of notice waivers when the statutory language is specific.¹⁷⁰ Courts have reasoned that the more specific the statutory language is, the more likely equine participants understand the risks of participating in equine activities.¹⁷¹ The decision in *Day v. Snowmass Stables, Inc.* illustrates the importance of having a valid release form because the release form was

¹⁶⁶ See Michigan Bar Journal: Animal Law, *supra* note 123 (noting Michigan's EALA willful and wanton exception is beneficial because it does not disturb the EALA's three other exceptions or create an unduly stringent liability standard, and would offer meaningful protection to Michigan's equine industry).

¹⁶⁷ See *infra* Part III.C (analyzing the notice requirements among EALAs and highlighting the benefits of having both sign and contractual notice requirements). Specifically, the model EALA will propose both a sign and release form requirement. *Id.*

¹⁶⁸ See, e.g., *Estes v. Stepping Stone Farm, LLC*, 160 So.3d 299, 309-10 (Ala. Civ. App. 2014) (finding that due to the defendant's posted warning notice that was in compliance with the Alabama's EALA, the farm owners were immune from liability for a boy's injuries that were incurred from falling off a horse that unexpectedly became spooked); *Loftin v. Lee*, 341 S.W.3d 352, 359 (Tex. 2011) (determining the guide of the trail ride was not liable for the horseback riders injuries sustained from falling off a horse that bolted during a trail ride because the release form signed by all trail riders grants immunity to the equine corporation).

¹⁶⁹ See Kathleen Tabor, *Benefits and Liabilities of the Equine Industry*, 40 MD. B.J. 51, 54 (2007) (presenting the various standards that courts have used in the past in equine-related cases). See also Carmel, *supra* note 68, at 166-67 (acknowledging that many equine-related cases are decided on small technicalities, such as an equine professional not using the specific language for notices that are set forth by the EALA).

¹⁷⁰ See Sweet, *supra* note 9, at 362 (emphasizing the importance of using concise statutory language in order to reap the benefits of EALAs).

¹⁷¹ See Tabor, *supra* note 169, at 54 (identifying a trend in case law that indicates the courts are more likely to rule in favor of notice waivers if the language within the waiver is clear and easy to understand). Further, the author recognizes that courts appreciate when equine professionals make the effort to educate equine participants about the risks being assumed by participating in dangerous equine activities. *Id.*

too vague in this case.¹⁷² Loopholes in EALAs allow equine professionals to be found liable for every injury to equine participants, thus negatively affecting the equine industry.¹⁷³ As a result, the equine industry is suffering tremendously from the high amount of litigation arising out of situations in which the equine participant has acted in a negligent way.¹⁷⁴ Also, because of the high level of risk of participating in equine activities, the insurance premiums are astronomically high for equine professionals.¹⁷⁵ The equine industry, as a result, is at financial risk, which will negatively affect the nation's economy.¹⁷⁶ By having a higher standard, equine participants will have to meet a higher standard when proving negligence, which will provide equine professionals with more protection.¹⁷⁷

Additionally, requiring equine professionals' compliance with warning notices restrictions is an effective method of holding equine professionals accountable for their actions, with or without the

¹⁷² See 810 F. Supp. 289, 295 (D. Colo. 1993) (analyzing the first case in the state of Colorado dealing with the interpretation of the states' EALA). The court found that the release form was not valid because the statutory language used in the release form did not clearly exclude the equine professionals from the liability associated with the inherent risks of equine activities. *Id.*

¹⁷³ See *Frank v. Mathews*, 136 S.W.3d 196, 201 (Mo. Ct. App. 2004) (recognizing that the equine participant was in the wrong, but still not being able to grant the equine professional immunity under Missouri's EALA because of the vague language used in the release form). Further, the court found the release form invalid for not following the specific language set forth by Montana's EALA, thus finding the riding instructor liable for a beginner equine participant's injuries after mishandling a crop. *Id.* The equine professional was found liable for an injury that resulted from the equine participant's own negligence. *Id.*

¹⁷⁴ See *The Most Litigated Areas of Equine Law – What Every Horse Owner Should Know*, CATANESE & WELLS: A LAW CORP. (Apr. 2, 2014), <http://www.cataneselaw.com/equine/the-most-litigated-areas-of-equine-law-what-every-horse-owner-should-know/> [<https://perma.cc/58VW-UJAZ>] (acknowledging one of the most litigated area of equine law is for the equine professionals being found liable for equine participants' injuries). Further, the author noted other areas of equine law include lease agreements, breeding contracts, syndication agreements, purchase and sale agreements, installment sale agreements, equine real estate and ranch matters, tax planning, equine insurance claims, and corporations and partnerships. *Id.*

¹⁷⁵ See *Insurance for Stable Owners*, EQUISEARCH (June 18, 2002), <http://www.equisearch.com/article/equinsurest2167> [<https://perma.cc/48AU-3K6N>] (finding equine professionals take on a large amount of liability in an industry in which there is a modest financial gain). Further, the author notes that the majority of equine participants lack the skills and knowledge to avoid dangerous situations associated with equine activities. *Id.*

¹⁷⁶ See SHARON EASTWOOD, ANNE-LISE RIIS JENSEN, & ANNA JORDON, *BUSINESS MANAGEMENT FOR THE EQUINE INDUSTRY*, BLACKWELL PUBLISHING (2006) (discussing that the nation needs the equine industry to survive to keep the economy thriving).

¹⁷⁷ See *id.* (highlighting the importance of keeping equine-related litigation as low as possible to keep the equine industry afloat).

involvement of negligence.¹⁷⁸ At the same time, having both a release form and posted sign requirements can protect equine professionals from an equine participant bringing a claim for failure to inform the participant of the inherent risks associated with equine activities.¹⁷⁹ The assumption of risk defense would be precluded by EALAs having notice requirements, considering one of the main elements of this defense is the risk is known by the equine participant when partaking in equine activities.¹⁸⁰ By having both a written contract and signage requirement, both the equine participant and professional will have the best opportunity to be informed of the limitations of liabilities in the inherent risks of equine activities.¹⁸¹ Also, requiring both release forms and posted signs of notice of liability in EALAs will more accurately balances the risk allocation among all of the parties to deter negligence by providing as much information about the inherent risks of equine activities as possible.¹⁸² This requirement, along with the amendments suggested earlier, will also help ensure that equine activities will continue in the future.¹⁸³

¹⁷⁸ See *Kush v. Wentworth*, 790 N.E.2d 912, 918 (Ill. App. Ct. 2003) (ruling the release form invalid for not following the specific language set forth by the by Illinois's EALA notice requirements). *But see* *Lawson v. Dutch Heritage Farms, Inc.*, 502 F. Supp. 2d 698, 710 (Ohio 2007) (demonstrating the court's application of Ohio's EALA, in which Dutch Heritages Farm, Inc. prevails because of their compliance with the statute's warning notice requirements). The comparison between the two cases shows how beneficial it is for equine professionals to comply with the state's EALA notice requirements.

¹⁷⁹ See *Carmel*, *supra* note 10, at 195-96 (stressing the importance of the power of subjective persuasion having notice requirements has over the courts, showing trends of courts' rulings in favor of the equine professional if both a written contract and sign notice requirement have been followed).

¹⁸⁰ See *Carmel*, *supra* note 10, at 195 (addressing the importance of the equine participants' awareness of the inherent risk that is consumed when participating in equine activities is the entire purpose of EALAs having a notice requirement).

¹⁸¹ See *infra* Part IV.B (illustrating the benefits of having both written contracts and posted signage requirements within the EALAs). Specifically, these requirements provide both the equine participants and professionals the opportunity to be aware of the inherent risks of equine activities. *Id.* Also, these requirements will benefit the equine participants just as much as the equine professionals. *Id.*

¹⁸² See *Carmel*, *supra* note 10, at 158-59 (explaining one of the main intents of the EALAs is to benefit the horse industry by making it more profitable and insurable through limited liability). See also Karen A. Blum, *Saying Neigh to North Carolina's Equine Activity Liability Act*, 24 N.C. CENT. L.J. 156, 164 (2001) (articulating the purpose for the promulgation of North Carolina's EALA is to protect equine professionals engaged in equine activities from the high cost of liability insurance, which is also supported by the high statistics on equine activity related injuries).

¹⁸³ See *supra* Parts III.A & III.B (giving a specific definition of inherent risks and enacting a gross negligence standard would be effective provisions for a model EALA). See also *Carmel*, *supra* note 68, at 157 (reaffirming one of the intentions of the states' EALAs is to benefit the equine industry, while creating the safest environment possible).

Overall, issues are present in the states' current EALAs within each of the three provisions of the statutes that create ambiguous standards for courts to follow.¹⁸⁴ These ambiguous standards allow equine participants to take advantage of equine professionals, resulting in many frivolous lawsuits arising out of equine-related situations.¹⁸⁵ In addition, the states have various forms of EALAs, causing ambiguity for the courts because of the complete discretion given through the EALA standards and creating confusion among all parties.¹⁸⁶ As a result, litigation pertaining to equine activities is consistently on the rise, causing insurance rates to dramatically increase for equine professionals due to the high level of risks of equine activities.¹⁸⁷ The equine industry is suffering economically from the amount of money spent on litigation and settlements to equine participants, and as a result, the future of equine activities is in jeopardy.¹⁸⁸ In order to save the equine industry from extinction, a model EALA is necessary to provide equine professionals with adequate protection from the liability of injuries incurred during the participation of equine activities by providing uniformity among each states' EALA.¹⁸⁹ Part IV of this Note proposes provisions for a model EALA for states to adopt, setting standards that are clear for everyone to understand.¹⁹⁰

IV. CONTRIBUTION

Uniformity among EALAs is necessary to ensure that equine participants have the best opportunity to know their rights and limitations

¹⁸⁴ See *supra* Part III (highlighting the ambiguous standards that courts have followed under EALAs and discussing the different rulings of the courts from past equine-related cases). Specifically, this section focuses on the definition of inherent risks, the negligence exception, and the notice requirements both through release forms and posted signs. *Id.*

¹⁸⁵ See *supra* Part III (reiterating the consequences of the many vague standards among the EALAs that allow equine participants to take advantage of the system).

¹⁸⁶ See *supra* Part I (discussing the need for uniformity among the states' EALAs because the current statutes contain a lot of differences, which causes confusion among all parties).

¹⁸⁷ See *supra* Part I (reiterating that the consistent rise in insurance rates for equine professionals and the amount of money being handed over to litigation has taken a toll on the equine industry, which has provided society with many different benefits both economically and socially).

¹⁸⁸ See *supra* Part II (discussing the need for changes to be made to current EALAs to make sure equine activities will continue in the future). It has been proven that even with the high level of risks associated with participating in equine activities, people are still willing to partake in these equine activities. *Id.* Thus, steps must be taken to save the equine industry from tanking. *Id.*

¹⁸⁹ See *infra* Part IV (explaining the author's proposed provisions for a model EALA for the states to adopt to create uniform standards for equine-related cases).

¹⁹⁰ See *infra* Part IV (proposing provisions pulled from successful EALAs to create a model EALA for the states to adopt in order to protect the equine industry).

on liability.¹⁹¹ The inconsistencies and ambiguity among current EALAs creates confusion in equine-related lawsuits.¹⁹² Because each state has different EALA provisions, both equine professionals and participants struggle to understand their limitations and immunities under the EALAs.¹⁹³ As a result, the EALAs are not effectively protecting equine activities from many equine-related lawsuits.¹⁹⁴ The goal of the proposed model EALA is to balance the risk allocation among parties to deter negligence and to ensure that equine activities continue.¹⁹⁵ First, Part IV.A proposes three provisions for a model EALA.¹⁹⁶ Second, Part IV.B offers commentary on the proposed legislation.¹⁹⁷

A. Proposed Legislation

A new statutory framework will resolve current issues that EALAs create in the equine industry today by promoting uniformity.¹⁹⁸ The current statutory language among the majority of the EALAs' sections is inadequate, and the states should enact the proposed EALA because the new sections protect equine professionals and ultimately make the profession stronger.¹⁹⁹ First, Part IV.A.1 implements the inherent risk

¹⁹¹ See *supra* Part III (stressing the importance and benefits of having uniformity among all the EALAs for both equine professionals and equine participants).

¹⁹² See AgriCon, *supra* note 125 (pointing to common confusion among EALAs).

¹⁹³ See *Liability Under "The Equine Activity Liability Act"*, ROSENFELD INJURY LAWYERS (Oct. 24, 2016), <https://www.rosenfeldinjurylawyers.com/liability-under-the-equine-activity-liability-act.html> [<https://perma.cc/UT36-YMH2>] (reiterating that even the courts get confused with what standard to follow when dealing with equine-related cases).

¹⁹⁴ See Timothy White, *Equine Activity Statutes Aren't Bulletproof When it Comes to Protecting Yourself*, THE CHRONICLE OF THE HORSE (Nov. 18, 2009), <http://www.chronofhorse.com/article/equine-activity-statutes-arent-bulletproof-when-it-comes-protecting-yourself> [<https://perma.cc/JRY7-PC72>] (discussing that no EALA grants total immunity from liability for equine professionals and that the equine industry is suffering from the large amount of civil litigation that has been taking place).

¹⁹⁵ See *Illinois Equine Activity Liability Act*, ZIPP TO COURT (Oct. 24, 2016), <http://zipptocourt.com/uploads/ZippToCourtEquineLiability.pdf> [<https://perma.cc/VXQ5-JCFH>] (finding one of the purposes of the EALA is to promote the economic benefits that derive from equine activities, along with limiting the amount of civil liability of those involved in equine activities).

¹⁹⁶ See *infra* Part IV.A (proposing provisions for a model EALA that will provide equine professionals and participants with the most effective opportunity to know rights and limitations of the liability involved with equine activities).

¹⁹⁷ See *infra* Part IV.B (commenting on the proposed provisions of the EALA and responding to anticipated counterarguments).

¹⁹⁸ See *infra* Part III (analyzing the issues and ambiguities that the current EALAs create in the equine industry to this day).

¹⁹⁹ The proposed amendments are italicized and are the contribution of the author. All provisions for the model EALA are pulled from some of the most effective EALAs in different states throughout the country and provide equine professionals protection from the liabilities associated with the inherent risks of equine activities. No state has ever combined

definition that should be included within the general purpose section.²⁰⁰ Second, Part IV.A.2 addresses the gross negligence exception that should replace the ordinary negligence exception to the protection provided to equine professionals by the EALAs.²⁰¹ Third, Part IV.A.3 describes the notice requirements that EALAs should include through both warning signs and release forms.²⁰² The provisions are comprised of current state EALAs that have successfully and fairly protected equine professionals in equine-related cases in the past in order to create the most practical standard for both the equine professional and participant.²⁰³

1. Inherent Risks Definition in the General Purpose Section

(1) “Inherent risk of an equine activity” means a danger or condition that is an integral part of an equine activity, including, but not limited to, any of the following:

(a) The propensity of an equine to behave in ways that may result in injury, death, or loss to persons on or around the equine;

(b) The unpredictability of an equine to behave in ways that may result in injury, death, or loss to persons on or around the equine;

(c) Hazards, including, but not limited to, surface or subsurface conditions;

(d) A collision with another equine, another animal, a person, or an object;

(e) The potential of an equine activity participant to act in a negligent manner that may contribute to injury, death, or loss to the person of the participant or to other persons, including, but not limited to, failing to maintain control over an equine or failing to act within the ability of the participant.²⁰⁴

all these provisions into one model statute, which allows this proposal to be unique because it is the most innovative way to protect equine professionals.

²⁰⁰ See *infra* Part IV.A.1 (presenting the inherent risks provision to the general purpose section of the proposed model EALA).

²⁰¹ See *infra* Part IV.A.2 (illustrating the proposed gross negligence exception for the exceptions to equine professional’s protection within the EALA).

²⁰² See *infra* Part IV.A.3 (providing the model EALA’s provision for the notice requirement’s section, which will include written contracts and signage requirements).

²⁰³ The proposed amendments are italicized and are the contribution of the author. The model EALA is comprised of current states’ EALA provisions to create the fairest EALA.

²⁰⁴ The author models this provision of Ohio’s EALA because it uses specific statutory and comprehensive language. See OHIO REV. CODE § 2305.321 (7) (2016) (presenting the original language of Ohio’s EALA’s inherent risks definition).

2. Gross Negligence Exception

Liability not prevented or limited; conditions.

~~(d) If the person is an equine activity sponsor or equine professional, commits a negligent act or omission that constitutes a proximate cause of the injury, death, or damage.~~

(d) If the person is an equine activity sponsor or equine professional, and commits an act or omission that constitutes a willful or wanton disregard for the safety of the participant, and that is a proximate cause of the injury, death, or damage.²⁰⁵

3. Notice Requirements for Warning Signs and Release Forms

Warning notice to be posted.

(a) This chapter does not apply unless an equine activity sponsor or an equine professional posts and maintains in at least one (1) location on the grounds or in the building that is the site of an equine activity a sign on which is printed the warning notice set forth in section 12 [IC 34-4-44-12] of this chapter. (b) A sign referred to in subsection (a) must be placed in a clearly visible location in proximity to the equine activity. (c) the warning notice on a sign referred to in subsection (a) must be printed in black letters, and each letter must be at least one (1) inch in height.²⁰⁶

Warning notice to be included in written contracts

(a) If there is a written contract, this chapter does not apply unless the written contract entered into by an equine professional for: (1) The providing of professional services; (2) The providing of instruction; or (3) The rental of: (A) Equipment or tack; or (B) An equine; to a participant contains in clearly readable print the warning notice set forth in section 12 [IC 34-4-44-12] of this chapter. (b) The

²⁰⁵ The proposed changes are indicated by adding language in italics and deleted content is crossed off. See Michigan Equine Activity Liability Act, M.C.L. § 691.1665 (2015) (providing the specific language of the amendment enacted to Michigan's EALA).

²⁰⁶ The author referred to Indiana's EALA statutory provision pertaining to notice because this section of Indiana's EALA is very specific, while at the same time requiring both written contracts and signage requirements within the section. See IND. CODE § 34-4-44-11 (1995) (giving the requirements that Indiana's EALA uses in regards to notice signs).

*warning notice required by subsection (a) must be included in a written contract described in subsection (a) whether or not the contract involves equine activities on or off the location or site of the equine professional's business.*²⁰⁷

Warning notice

*The warning notice that must be printed on a sign under section 10 [IC 34-4-44-10] of this chapter and included in a written contract under section 11 [IC 34-4-44-11] of this chapter is as follows: WARNING: UNDER INDIANA LAW, AN EQUINE PROFESSIONAL IS NOT LIABLE FOR AN INJURY TO, OR THE DEATH OF, A PARTICIPANT IN EQUINE ACTIVITIES RESULTING FROM THE INHERENT RISKS OF EQUINE ACTIVITIES.*²⁰⁸

B. Commentary

The proposed provisions for a model EALA consists of statutory language that is very specific and provides the most protection.²⁰⁹ The model EALA will decrease the number of frivolous lawsuits against equine professionals by promoting uniformity and encouraging the

²⁰⁷ See IND. CODE § 34-4-44-11 (1995) (stating that there is a notice requirement in the form of a contract as well as on signs). By having two notice requirements, equine participants have more opportunities to have the knowledge of all the risks associated with equine activities. Indiana's EALA is a great example of a successful EALA because it has proven to provide equine participants in past cases protection if the equine participants follow all the specific directions presented in the notice requirements provision.

²⁰⁸ See *id.* § 34-4-44-12 (expressing the specific language needed on the signs consistent with Indiana's EALA).

²⁰⁹ See *supra* Part IV.A (providing the provisions proposed within the model EALA and providing the specific language within each provision of the EALA sections). By providing a specific definition of inherent risks in the first provision of the proposed EALA, courts will have a set standard to follow when determining if an equine-related case resulted from an inherent risk of equine activities. This provision will help decrease inconsistency in courts' rulings when determining what constitutes an inherent risk. The second provision of the proposed EALA, the gross negligence exception, will tighten the scope of equine professional's liability for equine participant's injuries resulting from an equine activity. This stricter standard will create a higher standard for equine professionals to qualify for the exception from immunity granted by EALAs. The third provision for the model EALA, requiring both written release forms and signage notice, will provide the equine participant with the best opportunity of awareness about the assumption of risk taken when participating in equine activities. Overall, notice that is unclear is not effective notice. Thus, it is crucial that the EALA provisions are drafted with clear, comprehensible statutory language to create a sensible, unified standard among the states' EALA.

deterrence of negligence.²¹⁰ But, the proposed EALA will still hold equine professionals accountable for negligent conduct.²¹¹

Critics may feel there is not a need for an EALA, arguing an “omnibus recreational” statute covering sport and recreational activities in general would be more appropriate than having so many specific statutes similar to the EALAs.²¹² Critics also argue that the current protections offered by EALAs are derived from common law, so the EALAs essentially serve no purpose.²¹³ In response to the critics, the inherent risks and unpredictability of equine activities are much higher than other sports.²¹⁴ This higher risk results in a higher standard of care needing to be applied to equine activities.²¹⁵ Thus, a heightened level of protection is necessary for equine professionals because of the unpredictable dangers of equine activities.²¹⁶

²¹⁰ See *supra* Part III (explaining the multiple reasons why states would benefit from enacting the model EALA).

²¹¹ See *supra* Part I (reiterating that both equine professionals and participants will have the best opportunity to know of their rights and limitations of the protections that EALAs provide).

²¹² See Merryman, *supra* note 107, at 134 (opining the idea of building a sound framework of general tort principles instead of having various sport specific statutes, including the EALAs). Further, the author expresses that hockey, baseball, and skiing are sports besides equine activities that have sport specific limited liability statutes, all using similar standards. *Id.* at 136–37. See also *Omnibus*, MERRIAM WEBSTER (Oct. 30, 2016), <https://www.merriam-webster.com/dictionary/omnibus> [<https://perma.cc/U5TW-DFJQ>] (defining “omnibus” as a compilation of previously released works on one theme).

²¹³ See Merryman, *supra* note 107, at 147 (“[t]he best way to learn the law applicable to specialized endeavors is to study general rules.”). The author argues that the comparative negligence doctrine provides enough protection for the equine professionals and reiterates that there is not a need for an EALA. *Id.*

²¹⁴ See Tabor, *supra* note 169, at 54 (explaining the level of unpredictability in equines’ reactions to things such as sudden movements, loud noises, or unfamiliar objects are considered inherent risks of equine activities). Further, the author emphasizes that relying on a 1,000 pound animal that cannot communicate creates a higher danger level than participating in other sports, thus calling for a higher standard of care. *Id.* at 55. See also Strickland, *supra* note 22 (finding that one injury occurs for every 100 hours of horseback riding). Also, one injury occurs for every five hours for jumping equines and one injury for every hour of cross-country eventing. *Id.* Further, the equine activity fatality rate is one in 10,000 riders. *Id.*

²¹⁵ See Tabor, *supra* note 169, at 52 (appreciating the substantial impact on the nation’s economy that the equine industry has on our society today and throughout the past years).

²¹⁶ See McEvoy, *supra* note 62, at 214 (raising the fact that at the time Connecticut enacted an EALA, 95% of all equine activity related injuries were not the horse’s fault, but simply from the “plain stupidity” of the equine participants). Further, Connecticut felt immunity needed to be given to equine professionals to avoid being liable for these types of situations. *Id.*

Many critics also feel a model EALA is unnecessary.²¹⁷ However, a model EALA will help increase overall awareness of the high level of risks involved with participation in equine activities and of rights and limitations of both the equine participant and professional.²¹⁸ This model statute will limit the amount of time and money invested in EALA litigations.²¹⁹ Also, the gross negligence standard will help decrease the amount of frivolous lawsuits against equine professionals because it is a higher standard to meet.²²⁰ Ultimately, this model EALA balances the risk allocation among all parties, and will help deter equine professionals from negligence and ensure that equine activities continue in the future.²²¹

V. CONCLUSION

Returning to Eli and Buckingham Ranch, Eli realizes that he cannot solely rely on the protection of Wyoming's EALA. Eli acknowledges he must do everything he can to educate all equine participants of the inherent risks of equine activities. With Wyoming's adoption of the model EALA, Eli feels more comfortable with the protection provided by the EALA. The signs and release forms will help eliminate the defense that equine participants are unaware of the inherent risks associated with equine activities. Eli is aware that using the specific statutory languages within the signs and release forms will help ensure immunity granted by Wyoming's EALA. Eli recognizes that to have protection under Wyoming's EALA, he must be up to date with the provisions of the statute.

As illustrated in the Eli and Buckingham Ranch hypothetical, uniformity among the states' EALAs is necessary to ensure that equine participants and professionals have the best opportunity to know of their rights and limitations on liability. Thus, a model EALA is needed to create uniformity among the states' EALAs. Containing provisions from the

²¹⁷ See Tabor, *supra* note 169, at 54 (arguing the current states' EALAs are sufficient within each state).

²¹⁸ See Terence Centner, *Equestrian Immunity and Sport Responsibility Statutes: Altering Obligations and Placing Them on Participants*, 13 VILL. SPORTS & ENT. L.J. 37, 50 (2006) (acknowledging that communication about the inherent risks of equine activities between equine participants and professionals is essential).

²¹⁹ See Carmel, *supra* note 10, at 196 (concluding EALAs help decrease the money spent on litigation associated with equine activities and encourages more spending on equine activities to keep the equine industry afloat).

²²⁰ See *supra* Part II.B (weighing the benefits of the gross negligence standard exception compared to the pitfalls of the ordinary negligence exception).

²²¹ See Adam P. Karp, Yovonne C. Ocrant, & Steven R. Bonanno, *Recent Developments in Animal Tort and Insurance Law*, 46 TORT TRIAL & INS. PRAC. L.J. 163, 184 (2011) (reiterating that EALAs are necessary to ensure the future success of the equine industry).

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most effective EALAs that have been previously analyzed, the model EALA will help eliminate the ambiguity and inconsistencies among the current EALAs. Also, the model EALA will set a narrower standard for courts to follow, reducing the number of frivolous lawsuits against equine professionals. Ultimately, the model EALA will balance the risk allocation among all parties involved in equine activities to deter negligence and to ensure that equine activities will continue. Because of the economic benefit that the equine industry brings, equine professionals deserve the most effective protection provided by an EALA to ensure the equine industry continues to thrive.

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* J.D. Candidate, Valparaiso University Law School (2018); B.S., Business Management and Marketing, University of South Carolina (2014). First, I would like to thank my parents, Leroy and Vickie Kopf, for everything you do for me. Your unconditional love and encouragement means more to me than you will ever know. Second, I want to thank my brother, Jake Kopf, for your unwavering support. You always know how to make me laugh when I need it the most. Third, I want to thank my Law Review mentor, Abby Busler, for providing me with endless feedback and suggestions on multiple drafts of this Note. I appreciate all of your hard work in making this Note publishable. Fourth, I want to thank Professor Huss for her guidance throughout law school and for always pushing me to be my best. I would not have made it through law school without you all, and I am forever grateful.