

Colorado Horse Development Authority
Irons in the Fire
The Ranch, Loveland, CO
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2014 Legislative, Regulatory, and Ballot Issues in Colorado

COLORADO HORSE COUNCIL
LEGISLATIVE AND REGULATORY COMMITTEE

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2014 Issues

- ❖ House Bill 1280 – amending the agricultural recreation limited liability statute
- ❖ Citizen initiatives sponsored by HSUS re care of livestock and cruelty statutes – “accepted animal husbandry”
- ❖ Change in Colorado brand inspection fees
- ❖ Amendment 68 – expanded limited gaming at horse racetracks

H.B. 1280 Agtourism

Equine (and Llama) Limited Liability Statute

§ 13-21-119, C.R.S. (1990)

Why passed: Promote equine and llama activities by limiting (not eliminating) civil liability related to the inherent risks those activities

The statute does NOT limit liability for negligent acts; this is what a signed contract releasing liability attempts to do.

Does not apply to horse racing industry

H.B. 1280 Agtourism

Equine Limited Liability Statute

Definitions:

“Engages 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 any person assisting a participant or show management.

NOT: spectator, unless spectator goes into unauthorized area in proximity to equine activity

“Equine activity” is very broad, non-exclusive list

“Inherent risks of equine activities”: means those dangers or conditions which are an integral part of equine activities or llama activities, as the case may be, including, but not limited to . . .

H.B. 1280 Agtourism

Equine Limited Liability Statute

Definitions:

“Participant” means any person, whether amateur or professional, who engages in an equine activity . . . whether or not a fee is paid to participate in such activity

“Equine activity sponsor” means an individual, group, club, partnership, or corporation, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for, an equine activity, including but not limited to . . .

“Equine professional” means a person engaged for compensation in instructing a participant or renting to a participant an equine for the purpose of riding, driving, or being a passenger upon the equine; or in renting equipment or tack to a participant.

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Equine Limited Liability Statute

Limited Liability:

“an equine activity sponsor, an equine professional, . . . a doctor of veterinary medicine, 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,

EXCEPT as provided in subsection (4) of this section, no participant . . . shall make any claim against . . . an equine activity sponsor, an equine professional, . . . a doctor of veterinary medicine, or any other person for injury, loss, damage, or death of the participant resulting from any of the inherent risks of equine activities . . .”

H.B. 1280 Agtourism

Equine Limited Liability Statute

Exception to Limited Liability if the sponsor or professional –NEGLIGENCE AND INTENTIONAL CONDUCT:

(I)(A) Provided the equipment or tack, and **knew or should have known** that the equipment or tack was faulty, and such equipment or tack was faulty to the extent that it did cause the injury; or

(B) Provided the animal and **failed to make reasonable and prudent efforts** to determine the ability of the participant to engage safely in the equine activity, . . . and determine the ability of the participant to safely manage the particular animal based on the participant's representations of his ability;

(II) Owns, leases, rents, or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a **dangerous latent condition which was known to the equine activity sponsor**, equine professional . . . and for which warning signs have not been conspicuously posted;

(III) Commits an act or omission that constitutes **willful or wanton disregard for the safety** of the participant, and that act or omission caused the injury;

(IV) **Intentionally injures** the participant.

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H.B. 1280 Agtourism

Equine Limited Liability Statute

"Equine Professional" -- Required Language for Written Contracts and Signs:WARNING

Under Colorado 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, pursuant to section 13-21-119, Colorado Revised Statutes.

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H.B. 1280 Agtourism

Agricultural Limited Liability Statute

§ 13-21-121, C.R.S. (2003)

More broadly provides limited liability to hosts of any agricultural recreation activity for entertainment, pleasure, recreation, or education.

Examples of coverage: corn mazes, u-pick farms and orchards, 4-H activities, rodeo stock producers allowing young bull riders to try out bulls, sorting, roping and tie down practice, cutting and penning, ranch rodeo

These are NOT considered "tourism"

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H.B. 1280 Agtourism

H.B. 1280 to amend Ag Liability Statute

To add "agtourism" as a protected activity

Problem: it narrowed, rather than broadened, activities that currently enjoy limited liability. (Renamed "agricultural recreation" to "agritourism")

AND, it created risk of conflict and possibly even superseding protections under the Equine Limited Liability Statute, especially if the activity falls under both the Ag and the Equine statute (had a different requirement for signage and limitations to liability)

Unintended consequences

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H.B. 1280 Agtourism

H.B. 1280 to amend Ag Liability Statute

Colorado Horse Counsel LRC put boots on the ground

Kathie Riley and lobbyist Danny Williams, and others worked with the bill sponsor, stakeholders, bill drafters

Made revisions to meet the goals of the bill AND protect existing laws

This was not a simple task. Many hours and meetings.

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Citizen Initiatives

Colorado Animal Welfare Laws

Two statutory schemes in Colorado:

- ❖ Cruelty to Animals, §§18-9-201 to -209, C.R.S. – Criminal
- ❖ Animal Protection Act, §§ 35-42-101 to 115, C.R.S. – Administrative

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Citizen Initiatives

Criminal cruelty defined § 18-9-202(1)(a), C.R. S.

overdrives, overloads, overworks, torments, deprives of necessary sustenance, unnecessarily or cruelly beats

Torture, killing, mutilation, substantial risk of death, maiming
abandonment

allow to be housed in a manner that results in chronic or repeated serious physical harm, carries or confines in or upon any vehicles in a cruel or reckless manner

or otherwise mistreats or neglects any animal

fails to provide it with proper food, drink, or protection from the weather consistent with the species, breed, and type of animal involved

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Citizen Initiatives

“Accepted animal husbandry practices”

Nothing in this part 2 shall affect accepted animal husbandry practices utilized by any person in the care of companion or livestock animals or in the extermination of undesirable pests as defined in articles 7, 10, and 43 of title 35.

§ 18-9-201.5(1), C.R.S. (criminal)

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Citizen Initiatives

Initiatives to alter/add to these laws

Who?

Why?

“low hanging fruit” / slippery slope

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Citizen Initiatives

Initiative 97 (statutory amendment)

Nothing in this part 2 shall affect accepted animal husbandry practices utilized by any person ~~in the care of companion or livestock animals or~~ in the extermination of undesirable pests as defined in articles 7, 10, and 43 of title 35.

§ 18-9-201.5(1), C.R.S. (criminal)

Would not change the civil enforcement statute

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Citizen Initiatives

Initiative 98 (constitutional amendment)

Section 17. Protection of and prevention of cruelty to livestock animals. (1) Use of accepted animal husbandry practice is not a negation. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, IT IS NOT A NEGATION TO THE ELEMENTS OF THE OFFENSES LISTED IN PART 2 OF ARTICLE 9 OF TITLE 18, C.R.S. THAT A LIVESTOCK OR COMPANION ANIMAL WAS TREATED IN ACCORDANCE WITH AN ACCEPTED ANIMAL HUSBANDRY PRACTICE.

Note: the heading specifies “livestock,” text includes “companion”

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Citizen Initiatives

Initiatives 99 & 100 (statutory & constitutional)

Makes it a crime to dock the tail of a bovine, except if done for a therapeutic purpose and done by a veterinarian “using suitable instruments and under hygienic conditions.”

“IT IS NOT AN AFFIRMATIVE DEFENSE TO AN ALLEGED VIOLATION OF THIS SECTION THAT THE TAIL OF ANY BOVINE WAS DOCKED AS AN **ACCEPTABLE ANIMAL HUSBANDRY PRACTICE**.”

“IT IS NOT A NEGATION TO THE ELEMENTS OF THE OFFENSES LISTED IN PART 2 OF ARTICLE 9 OF TITLE 18, C.R.S., THAT THE ANIMAL WAS TREATED IN ACCORDANCE WITH AN **ACCEPTED ANIMAL HUSBANDRY PRACTICE**.”

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Citizen Initiatives

Initiatives 101 & 102 (statutory & constitutional)

Makes it a crime to dock the tail of a bovine; to tether in a manner that prevents lying down, standing up, turning around freely; to transport or accept delivery of non-ambulatory dairy cattle without veterinary treatment or humane euthanasia first.

"IT IS NOT AN AFFIRMATIVE DEFENSE TO AN ALLEGED VIOLATION OF THIS SECTION THAT THE ANIMAL WAS KEPT IN ACCORDANCE WITH AN ACCEPTED ANIMAL HUSBANDRY PRACTICE."

"IT IS NOT A NEGATION TO THE ELEMENTS OF THE OFFENSES LISTED IN PART 2 OF ARTICLE 9 OF TITLE 18, C.R.S., THAT THE ANIMAL WAS TREATED IN ACCORDANCE WITH AN ACCEPTED ANIMAL HUSBANDRY PRACTICE."

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Citizen Initiatives

The concerns

Removing "accepted animal husbandry" from the criminal statute – would have opened door to criminal charges for widely accepted and supportable practices.

CHC LRC tracked these initiatives and discussed how to address, but ultimately did not have to

Raises a question that will not be going away: What is the proper forum for addressing practices in the livestock industries that are "accepted" but there is disagreement? These are not simple issues of "you know it when you see it."

Whether there is a need to be more proactive, e.g., tail docking in the dairy industry - Farmers Assuring Responsible Management ("FARM")

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Brand Inspection Fees

Amendment to Fees Rule, CCR 1205-6

October 2014: Brand Board adopted increases to brand inspection fees, effective January 1, 2015 (last fee increase was 2005, nearly 10 years ago)

Why: Long term drought → dramatic reduction in cattle herd size → decreased inspection revenue → if fees do not go up, Brand Board out of money by end of 2016 before the next assessment period

Key changes re horses:

- Minimum horse inspection fee changed from \$15.00 to \$35.00
 - Does not include/affect the \$3.00 assessment for the CHDA
- Horse permanent travel card changed from \$25.00 to \$35.00

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Amendment 68 – Racetrack Casinos



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Amendment 68 – Racetrack Casinos

Amendment 68

Limited gaming at Colorado racetracks (Arapahoe Park).

Tax revenue → state K-12 schools (bypassing the general fund).

The balance of adjusted gross proceeds retained by the track.

Allowed local government to impose impact fees.

Supported by several horse associations:

- CHRA; RMQHA; CTBA; CHC

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Amendment 68 – Racetrack Casinos

Amendment 68

Marketed to the public as a funding source for K-12 education, a greater (double) % of revenue than the current casinos are required to pay

Condemned as a get-rich scheme by an out-of-state company (the same company that owns Arapahoe Park) trying to save its ailing racetrack, combined with a sense of a desire to keep gambling out of the potentially impacted surrounding communities

What was it to the horse industry? A way to grow racing and purses sizes, preserve/grow a segment of the Colorado horse industry, become a competitive draw for out-of-state racing competitors that go to other tracks instead

This has precedent elsewhere – 12 other states with forms of limited gaming at racetracks

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Is Amendment 68 indicative of a bigger problem?

Cost-prohibitive nature of industry participation

In racing, Hollywood Park closed last year

Suffolk Downs in Boston closing this year because the state rejected expanded limited gaming

Colorado Horse Park for sale, some want it turned into a state park (Kentucky Horse Park is state-owned)

Will turning to public funding / government support work?

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Discussion

Limited liability, animal welfare, cost of doing business – these are all live, continuing issues.

1. How closely do you watch for legislative (e.g. HB 1280), regulatory (e.g. brand fees), and ballot (e.g. HSUS initiatives) activities that may impact you or your business? Where do you turn for this information?
2. If you needed to become involved in addressing these activities, how would you become involved?

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