

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 964

INTRODUCER: Agriculture Committee and Senator Aronberg

SUBJECT: Nicole Hornstein Act/Equine Activities

DATE: April 20, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Robinson</u>	<u>Poole</u>	<u>AG</u>	<u>Fav/CS</u>
2.	<u>Paradise</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable</u>
3.	<u>Treadwell</u>	<u>Maclure</u>	<u>JU</u>	<u>Pre-meeting</u>
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill requires minors under the age of 16 to wear helmets when riding equines in any publicly owned or controlled property. The helmet must meet the current applicable standards of the American Society of Testing and Materials for protective headgear used in horseback riding, and the helmet must be fitted properly and fastened securely upon the child's head. A trainer, instructor, supervisor, or other person may not knowingly lease or rent an equine for riding by a minor unless a helmet is provided that meets these standards.

A parent or guardian of a minor may not authorize or knowingly permit the child to violate these standards. The bill provides for punishment of violations through a noncriminal penalty (no more than \$500, plus court costs). It also provides for certain exceptions involving competitive riding during events, riding on private land, and riding while engaged in agricultural pursuits.

This bill creates section 773.11, Florida Statutes.

II. Present Situation:

Equestrian-Related Injuries

In 2006, Nicole Hornstein was thrown off a horse she was riding and hit her head on a paved area of ground. Hornstein was not wearing a helmet at the time of the accident. As a result of the fall, Hornstein lapsed into a coma for 20 days before passing away at the age of 12.

Approximately 102,904 individuals with non-fatal horse-related injuries were treated in emergency rooms throughout the United States from 2001 to 2003.¹ Most injuries occurred as a result of falling or being thrown off of the horse.² The head and neck were the most common areas of the body injured during equine-related activities.³ From 2001 to 2003, there were approximately 11,502 individuals who sustained traumatic brain injuries from horse-related accidents. The age group with the most prevalent horse-related injuries was 10-14 years of age.⁴ Many studies conclude that horse-related injuries are a public health concern, and that education and helmet usage should be promoted to reduce the risk of serious head injuries in equine activities.⁵

Liability for Equestrian-Related Injuries

Current law provides that an equine activity sponsor, an equine professional, or any other person, including a corporation or a partnership, will not be liable for an injury or death of a participant resulting from the inherent risk of equine activities.⁶ However, liability attaches to these individuals or entities if they:

- Knew or should have known the track or equipment used in the equine activities was faulty;
- Failed to make reasonable and prudent efforts to judge the ability of the participant in the equine activities;
- Are in lawful control of the land or facilities on which the equine activities take place and the injury is due totally or in part to the condition of the land;
- Commit willful or wanton disregard for the safety of the participant, resulting in the equine sponsor being partially or totally at fault; or
- Intentionally injure the participant.⁷

There are currently no obligations in Florida for equine sponsors or parents to provide helmets for minors less than 16 years of age who engage in equine activities.

¹ K.E. Thomas, et al., *Non-fatal horse related injuries treated in emergency departments in the United States, 2001-2003*, BRITISH JOURNAL OF SPORTS MEDICINE, 619 (2006).

² *Id.*

³ *Id.*

⁴ *Id.* at 620.

⁵ *Id.*

⁶ Section 773.02, F.S.

⁷ Section 773.03, F.S.

Use of Helmets in Other Contexts

In a similar context, bicycle riders under the age of 16 are required to wear helmets when riding on public property.⁸ In addition, renting bicycles to minors is prohibited unless the renter provides a helmet or verifies that the person has a helmet.⁹ A violation of this provision is a nonmoving traffic violation.¹⁰ Similarly, a person under the age of 21 is required to wear a helmet when riding a motorcycle.¹¹ A violation of this provision is a noncriminal traffic infraction.¹²

III. Effect of Proposed Changes:

This bill promotes safety in equestrian-related activities by requiring the use of helmet for riders under the age of 16 under certain circumstances. Following is a section-by-section analysis of the bill.

Section 1 declares that the act may be cited as the “Nicole Hornstein Act.”

Section 2 declares the intent of the Legislature to further promote the safety, health, and welfare of minors engaged in equestrian activities by enacting safety standards.

Section 3 creates s. 773.11, F.S., which relates to mandatory helmet usage by minors when horseback riding. Under the bill, the term “equine” has the same meaning as provided in the chapter governing equine activities. Section 773.01, F.S., defines “equine” as a horse, pony, mule, or donkey.

Minors under the age of 16 years are required to wear helmets when riding equines on any publicly owned or controlled property. The helmet must meet the current applicable standards of the American Society of Testing and Materials for protective headgear used in horseback riding, and the helmet must be fitted properly and fastened securely upon the child’s head while riding an equine upon any of the following:

- A public roadway, right-of-way, or area adjacent to a public roadway or right-of-way;
- A public equestrian trail, public recreational trail, public park, or public school;
- Any publicly owned or controlled property.¹³

A trainer, instructor, supervisor, or other person may not knowingly lease or rent an equine for riding by a minor under 16 years of age, unless a helmet is provided that meets these standards.

⁸ Section 316.2065(3)(d), F.S. The helmet must be properly fitted and fastened securely. Additionally, the helmet must meet the standards of the American National Standards Institute, the standards of the Snell Memorial Foundation, or any other nationally recognized standards for bicycle helmets adopted by the Department of Highway Safety and Motor Vehicles.

⁹ Section 316.2065(16), F.S.

¹⁰ *Id.*

¹¹ Section 316.211(1), F.S.

¹² Section 316.211(7), F.S.

¹³ These provisions are substantially similar to helmet usage by bicycle riders as delineated in s. 316.2065(3)(d), F.S.

A parent or guardian of a minor under 16 years of age may not authorize or knowingly permit the child to violate these standards. Any person who violates any provision of this section commits a noncriminal violation, punishable as provided in s. 775.083, F.S.¹⁴

This section does not apply to minors who are:

- Competing or performing during a show or event in which he or she is regarded as a competitor or participant;
- Riding on privately owned land; or
- Engaged in an agricultural practice or pursuit.

Section 4 provides that this act shall take effect October 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The exact fiscal impact to the private sector is indeterminate, but the impact will be equal to the cost of providing helmets to riders under the age of 16 for those trainers, instructors, supervisors, or other persons that are not currently providing helmets.

C. Government Sector Impact:

According to the Department of Agriculture and Consumer Services, this bill will have a small fiscal impact on the Department of Agriculture and Consumer Services for signage and revised printed materials. The cost of this activity can be managed with existing funds.

¹⁴ A person who has been convicted of a noncriminal violation may be sentenced to pay a fine up to \$500 and court costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that the required helmet must meet the “current” applicable standards of the American Society of Testing and Materials. The use of the word “current” in this context may suggest that the statute envisions capturing future revisions to the standards (e.g., whatever version is “current” at the time the statute is applied to a rider). “Because Florida courts strictly adhere to the rule that the Legislature may not delegate its authority to make laws, when material other than Florida law is incorporated in a statute by reference, only the version of that material which existed *at the time* the Legislature made the incorporation will be given effect, regardless of how general the terms of the incorporation are.”¹⁵

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Agriculture on March 27, 2008:

The committee substitute changed the penalty for a violation of any provision from a third-degree misdemeanor to a noncriminal violation, punishable as provided in s. 775.083, F.S.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁵ The Florida Senate, *Manual for Drafting General Bills*, 104 (Fifth Ed. 1999) (emphasis added).