

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1223

2005 HOUSE AGRICULTURE

HB 1223

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1223

House Agriculture Committee

Conference Committee

Hearing Date 1--20--05

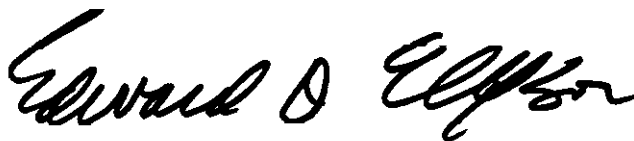
Tape Number
ONE

Side A
A

Side B

Meter #
00 TO 40.1

Committee Clerk Signature



Minutes:

VICE CHAIRMAN KINGSBURY: Committee Members, we will open on HB 1223.

The bill is relating to liability for injury or damage incurred during equine activity..

REPRESENTATIVE: SHIRLEY MEYER DICKINSON AREA: HB 1223. This bill will help control liability during equine activity. How well do we know our horses. Sometimes a horse just does exactly the opposite of what you expect. For example an experienced rider is nervous about riding a horse. The horse will pick up on the nervousness of the rider and will start dancing around and become difficult to control. The inexperienced rider will become aware that her nervousness is being picked up by the horse. Should an accident happen during this activity, the owner or stable that is in the business of renting the horse or horses stands a good chance of being liable. The premiums for the liability insurance are very high and actually not easy to obtain.. Insurance companies will write the insurance and then want to get out of the exposure. You have to limit the liability because of the astronomical premiums.

REPRESENTATIVE MUELLER: As to the entertainment business. Rodeos must post the limits or lack of liability or limits but there is still liability and the liability insurance premiums are high.

REPRESENTATIVE KREIDT: None of us can guarantee ourselves from liability. This legislation would hopefully lower premiums.

SHIRLEY MEYER: Tourist industries, riding stables, farmers and ranchers want to participate in the equine activities but again we have to limit the liability and lower the premiums. When you ride a horse you are taking your life into your own hands. Horse Behavior is not always predictable.

REPRESENTATIVE ONSTAD: Have the rider, or the responsible person sign a waiver.

REPRESENTATIVE WALL: If this bill were passed, what effect would this bill have on dubious operators?

REPRESENTATIVE MEYER: I've never experienced this. We as owners of the horses worry about our horses. On page two of the bill part "C" states " if the equine activity sponsor or the equine professional commits an act or omission that constitutes willful or wanton disregard for the safety of the participant and that act or omission causes the injury:

REPRESENTATIVE FROELICH: DISTRICT 31 Bruce Stribel wants me to give insight As to the cost of liability insurance. Bruce and some others had a wagon train for a short period of time. The liability insurance was in excess of one thousand dollars.

TOM MURPHY: I am in favor of the Bill. When we rent a horse to someone we have liability. Twelve to thirty two percent of my profit goes for liability insurance. The bill

would be a better bill if we could delete some of it. We do roping schools. Again I am at liability. We need a reasonable rate.

A LADY GAVE TESTIMONY: I am for the bill. We do roping and riding clinics. We do wagon trains. We worry from start to finish. The term bomb proof horses was used. Experienced horses. We search for experienced horses all the time We take every precaution as to safety.

REPRESENTATIVE ONSTAD: Other states, what is there situation?

THE LADY ABOVE: Some are higher and some are lower. We are about to start a Therapeutic clinic. They are beneficial. There are liability problems.

TRACY POTTER: We are in favor of trail rides. We gross \$14,000.00 per year. We pay more then one third for premiums. Ma and Pa business are hurt. The bill protects the operator.

RUFFINGER: TRIAL LAWYERS ASSOCIATION: Refer "Section one" "part two"

A participant or a participant's representative may not 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. I don't believe this bill will lower premiums.

My concern is that operators might create more problems with bill. A special exception is a special exception. There are other organizations.

REPRESENTATIVE WALL: Do actuarial studies show these losses?

RUFFINGER: Premiums are based one losses and return on investments. Neutral testimony.

Page 4

House Agriculture Committee

Bill/Resolution Number HB 1223

Hearing Date 1---20---05

REPRESENTATIVE BELTER: Section one and two,. If people are made aware of potential dangers there should be a waiver signed as to liability.

VICE CHAIRMAN KINGSBURY: Is there any more testimony in favor of 1223?

Any opposition to 1223.

WE WILL CLOSE ON HB 1223.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1223**

House Agriculture Committee

Conference Committee

Hearing Date 2---4---05

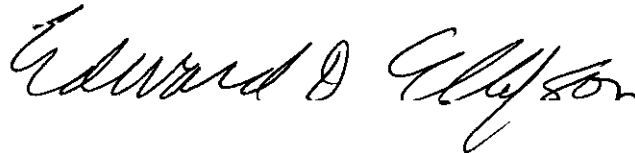
Tape Number
ONE

Side A
A

Side B

Meter #
113.6 TO 150.0

Committee Clerk Signature



Minutes:

CHAIRMAN NICHOLAS: Committee Members, we will open the hearing on HB 1223.

I will entertain a motion on HB 1223

REPRESENTATIVE KREDIT: I MAKE A MOTION FOR A DO PASS WITH AMENDMENTS.

REPRESENTATIVE BRANDENBURG SECONDED THE MOTION.

A VOICE VOTE WAS TAKEN TO MOVE THE AMENDMENTS. YES WAS THE VOTE.

REPRESETATIVE KREIDT MADE A MOTION FOR A DO PASS AS AMENDED.

REPRESENTATIVE BRANDENBURG SECONED THE MOTION.

THE ROLL WAS TAKEN. THERE WE 12 YES 0 NO 1 ABSENT

REPRESENTAIVE FROELICH CARRIED THE BILL.

CHAIRMAN NICHOLAS CLOSED THE HEARING ON HB 1223

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1223

House Agriculture Committee

Conference Committee

Hearing Date 3---17---05

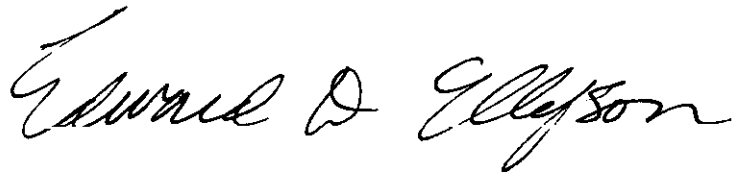
Tape Number
ONE

Side A
A

Side B

Meter #
00.0 TO 03.3

Committee Clerk Signature



Minutes:

CHAIRMAN NICHOLAS: O.K. Committee Members we will start with HB 1223. Shirley we will start with the Amendment that you are proposing.

REPRESENTATIVE SHIRLEY MEYER: {{PLEASE SEE ATTACHED AMENDMENT THAT REPRESENTATIVE PASSED OUT]] She went through the amendments. Chairman Nicholas ask asked as to the committees feelings towards the amendment.

REPRESENTATIVE FROELICH: MOVED AS TO ADOPTING THE AMENDMENT.

REPRESENTATIVE MUELLER: SECONDED

CHAIRMAN NICHOLAS: ASKED FOR A VOICE VOTE. YA'S CARRIED

CHAIRMAN NICHOLAS ENTERTAINED A MOTION ON HB 1223.

REPRESENTATIVE MUELLER MADE A MOTION FOR A DO PASS AS AMENDED.

REPRESENTATIVE FROELICH: SECONDED THE MOTION.

THE CHAIR ASKED THAT THE ROLL BE TAKEN.

Page 2

House Agriculture Committee

Bill/Resolution Number HB 1223

Hearing Date 3---17---05

**THERE WERE 11 YES 0 NO 2 ABSENT. REPRESENTATIVE FROELICH
CARRIED THE BILL. CHAIRMAN NICHOLAS CLOSED ON HB 1223.**

House Amendments to HB 1223 - Agriculture Committee 02/04/2005

Page 1, line 1, after "53-10" insert "and a new chapter to title 53"

Page 1, line 2, after "activity" insert "and during activity involving livestock"

Page 2, after line 26, insert:

"SECTION 3. A new chapter to title 53 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context otherwise requires:

1. "Activity involving livestock" means any parade, rodeo, show, sale, demonstration, fair, ride, competition, games, hunting, instruction, and any other entertainment involving spectators, participants, and livestock.
2. "Livestock" means bison, cattle, goats, llamas, sheep, and swine. The term does not include equines as defined in chapter 53-10.
3. "Participant" means any person, whether amateur or professional, who engages in an activity involving livestock, regardless of whether a fee is paid by the participant for that privilege or whether compensation is paid to the participant.
4. "Sponsor" means any person who organizes or provides the facility for any activity involving livestock.

Liability of sponsor for activities involving livestock.

1. Because livestock by their very nature can react unpredictably in a variety of situations, including those involving sound, sudden movement, an unfamiliar object, the presence of an individual, or the presence of another animal, the sponsor of an activity involving livestock is not liable for injury to or for the death of a spectator or a participant in the activity, except as provided in subsection 3.
2. Neither a spectator nor a participant, nor the personal representative of either, may maintain an action against or recover from the sponsor of any activity involving livestock for an injury to or the death of a spectator or a participant engaged in the activity.
3. Subsection 1 does not prevent or limit the liability of the sponsor of an activity involving livestock:
 - a. If the sponsor provides any equipment or tack and the equipment or tack causes the injury;
 - b. If the sponsor owns, leases, rents, or is otherwise in lawful possession and control of the land or facility upon which the spectator or participant sustains an injury because of a latent condition that the sponsor knew was dangerous;
 - c. If the sponsor commits an act or omission that constitutes willful or wanton disregard for the safety of the spectator or the participant and that act or omission causes the injury;
 - d. If the sponsor intentionally injures the spectator or the participant;
 - e. Under products liability provisions as set forth in products liability laws;
or
 - f. Under liability provisions in chapter 36-11.

Statement of liability - Warning sign. The sponsor of an activity involving livestock shall post and maintain a sign and shall include in every contract governing the activity language warning that there are inherent risks in the activity and stating that the sponsor is not liable for any injury or damage resulting from the activity except as otherwise provided in this chapter."

Renumber accordingly

HB 1223

Date: 2-4-05
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House HOUSE AGRICULTURE COMMITTEE

Committee

Check here for Conference Committee

WITH A
Amended

Legislative Council Amendment Number

Action Taken

Do PASS

Motion Made By

KREID

Seconded By

BRANDENBURG

Representatives
REP. EUGENE NICHOLAS
CHAIRMAN
REP. JOYCE KINGSBURY
VICE CHAIRMAN
REP. WESLEY BELTER

REP. M. BRANDENBURG
REP. CHUCK DAMSCHEN
REP. CHAIG HEADLAND
REP. GARY KREIDT
REP. GERALD UGLEM
REP. JOHN WALL

Yes No

Representatives Yes No

REP. TRACY BOE

REP. ROD FROELICH

REP. PHILLIP
MUELLER
REP. KENTON ONSTAD

Total (Yes)

No

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

HB 1223

Date:

2-4-05

Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House HOUSE AGRICULTURE COMMITTEE

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Move As Amended

Action Taken

DO... PASS

Motion Made By

KREID

Seconded By

BRANDON BOE

Representatives

REP. EUGENE NICHOLAS
CHAIRMAN

REP. JOYCE KINGSBURY
VICE CHAIRMAN

REP. WESLEY BELTER

REP. M. BRANDENBURG

REP. CHUCK DAMSCHEN

REP. CHAIG HEADLAND

REP. GARY KREIDT

REP. GERALD UGLEM

REP. JOHN WALL

Yes No

✓

✓

✓

✓

✓

✓

✓

✓

✓

✓

Representatives

REP. TRACY BOE

REP. ROD FROELICH

REP. PHILLIP
MUELLER

REP. KENTON ONSTAD

Yes No

✓

✓

✓

✓

Total (Yes)

12

No

0

Absent

1

Floor Assignment

FROELICH

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1223: Agriculture Committee (Rep. Nicholas, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1223 was placed on the Sixth order on the calendar.

Page 1, line 1, after "53-10" insert "and a new chapter to title 53"

Page 1, line 2, after "activity" insert "and during activity involving livestock"

Page 2, after line 26, insert:

"SECTION 3. A new chapter to title 53 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context otherwise requires:

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4. "Sponsor" means any person who organizes or provides the facility for any activity involving livestock.

Liability of sponsor for activities involving livestock.

1. Because livestock by their very nature can react unpredictably in a variety of situations, including those involving sound, sudden movement, an unfamiliar object, the presence of an individual, or the presence of another animal, the sponsor of an activity involving livestock is not liable for injury to or for the death of a spectator or a participant in the activity, except as provided in subsection 3.
2. Neither a spectator nor a participant, nor the personal representative of either, may maintain an action against or recover from the sponsor of any activity involving livestock for an injury to or the death of a spectator or a participant engaged in the activity.
3. Subsection 1 does not prevent or limit the liability of the sponsor of an activity involving livestock:
 - a. If the sponsor provides any equipment or tack and the equipment or tack causes the injury;
 - b. If the sponsor owns, leases, rents, or is otherwise in lawful possession and control of the land or facility upon which the spectator or participant sustains an injury because of a latent condition that the sponsor knew was dangerous;

- c. If the sponsor commits an act or omission that constitutes willful or wanton disregard for the safety of the spectator or the participant and that act or omission causes the injury;
- d. If the sponsor intentionally injures the spectator or the participant;
- e. Under products liability provisions as set forth in products liability laws; or
- f. Under liability provisions in chapter 36-11.

Statement of liability - Warning sign. The sponsor of an activity involving livestock shall post and maintain a sign and shall include in every contract governing the activity language warning that there are inherent risks in the activity and stating that the sponsor is not liable for any injury or damage resulting from the activity except as otherwise provided in this chapter."

Renumber accordingly

House Amendments to Engrossed HB 1223 - Agriculture Committee 03/18/2005

Page 1, line 15, remove the overstrike over "~~2~~" and remove "4."

Page 1, line 16, remove "2. A", overstrike "participant or", remove "a", overstrike "participant's representative may", remove "not", and overstrike "maintain an action against or"

Page 1, overstrike line 17

Page 1, line 18, overstrike "or the death of a participant engaged in an equine activity"

Page 1, line 19, remove "3."

Page 1, line 21, remove the overstrike over "~~2~~-" and remove "4."

House Amendments to Engrossed HB 1223 - Agriculture Committee 03/18/2005

Page 3, line 16, replace "3" with "2"

Page 3, remove lines 17 through 20

Page 3, line 21, replace "3." with "2."

Renumber accordingly

1223

Date:
Roll Call Vote #:

2-17-05

**2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.**

House **HOUSE AGRICULTURE COMMITTEE**

Committee

50265

Check here for Conference Committee

0201

Legislative Council Amendment Number

Adopt Amendments

Action Taken

Do Pass

Motion Made By

Froelich

Seconded By

Mueller

Representatives
REP. EUGENE NICHOLAS
CHAIRMAN
REP. JOYCE KINGSBURY
VICE CHAIRMAN
REP. WESLEY BELTER

REP. M. BRANDENBURG
REP. CHUCK DAMSCHEN
REP. CHAIG HEADLAND
REP. GARY KREIDT
REP. GERALD UGLEM
REP. JOHN WALL

Yes No

Representatives Yes No

REP. TRACY BOE

REP. ROD FROELICH

REP. PHILLIP
MUELLER
REP. KENTON ONSTAD

Vote
Y A's
Carroll

Total (Yes)

No

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

HB 1223

Date: 3-17-05
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House HOUSE AGRICULTURE COMMITTEE

Committee

Check here for Conference Committee

50265 0201

Legislative Council Amendment Number

AS Amended

Action Taken

DO PASS

Motion Made By

MUELLER

Seconded By

FROELICH

Representatives

REP. EUGENE NICHOLAS
CHAIRMAN

REP. JOYCE KINGSBURY
VICE CHAIRMAN

REP. WESLEY BELTER

REP. M. BRANDENBURG

REP. CHUCK DAMSCHEN

REP. CHAIG HEADLAND

REP. GARY KREIDT

REP. GERALD UGLEM

REP. JOHN WALL

Yes No

✓

✓

✓

✓

✓

✓

✓

✓

✓

Representatives

REP. TRACY BOE

REP. ROD FROELICH

REP. PHILLIP
MUELLER

REP. KENTON ONSTAD

Yes No

✓

✓

✓

✓

Total (Yes)

11

No

0

Absent

2

Floor Assignment

FROELICH

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1223, as engrossed: Agriculture Committee (Rep. Nicholas, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed HB 1223 was placed on the Sixth order on the calendar.

Page 1, line 15, remove the overstrike over "~~2~~" and remove "4."

Page 1, line 16, remove "2. A", overstrike "participant or", remove "a", overstrike "participant's representative may", remove "not", and overstrike "maintain an action against or"

Page 1, overstrike line 17

Page 1, line 18, overstrike "or the death of a participant engaged in an equine activity"

Page 1, line 19, remove "3."

Page 1, line 21, remove the overstrike over "~~2~~:" and remove "4."

Page 3, line 16, replace "3" with "2"

Page 3, remove lines 17 through 20

Page 3, line 21, replace "3." with "2."

Renumber accordingly

2005 SENATE AGRICULTURE

HB 1223

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1223

Senate Agriculture Committee

Conference Committee

Hearing Date February 25, 2005

Tape Number	Side A	Side B	Meter #
1	x		38 - 3953
1		x	273 - 550

Committee Clerk Signature



Minutes:

Chairman Flakoll opened the hearing on HB 1223, a bill relating to liability for injury or damage incurred during equine activity and during activity involving livestock. All members were present.

Representative Shirley Meyer introduced the bill. This bill will help new and existing businesses in the equine industry. It is introduced at the request of several of her constituents. The number one request each year from North Dakota Tourism is for ranchers to develop more trail riding businesses because their number one request from tourists are for recommendations for places to trail ride, places to experience the western way of life and places to experience the Badlands on horseback. Ranchers are interested in providing these experiences but are hesitant due to liability issues. Insurance costs have skyrocketed and are prohibitive. North Dakota has limited liability for injuries or damages incurred during equine activity. This bill helps clarify what an equine professional should know from what they couldn't possibly know. The stricken

language on page 2, lines 3-6 is where the problem comes in. It has been replaced with language directly from the Texas code who have more equine activity than North Dakota does. Horses are unpredictable and so are novices who are first engaging in equine activities. "Bomb proof" horses can get upset when exposed to certain novices. The house agriculture committee amended the bill to include parades, rodeos and shows. These event contribute a huge amount to local economies. More and more of these events are being faced with higher and higher costs of liability insurance. Every precaution can be taken but there are always surprises. Even with outriders, there are still runaways at the Taylor Horse Fest. The governor got hit in the head by a bit at the Taylor Horse Fest. An insurance agent told her this provision in the code could bring down insurance rates.

Senator Seymour asked who should be liable, the horse, the person riding it, the sponsor of the event. Will this bill do it.

Representative Meyer said this bill will make people aware that as hard as we try to insure their safety, horses and bucking bulls and sheep in sheep riding contests are unpredictable. That is why one provision of the bill is to require signs to that effect. The bill does not cover injuries due to faulty tack or conditions you knew were dangerous, or something done on purpose.

Senator Flakoll asked about warning signage. Are there ramifications of not having signs. What if it is not a typical rodeo venue.

Representative Meyer said it would have to be posted where entry fees are paid and at the entrance gate for the spectators.

Senator Flakoll asked if people are covered by WSI, at a sale barn.

Representative Meyer said yes.

Senator Flakoll asked if team penning would be under the auspices of rodeo.

Representative Meyer said yes. There was a person who had a trail riding business in Medora who did a wonderful job. He quit and sold his string of horses because he could not afford the liability insurance. His insurance for 3 months had gone from \$1500 to \$7500 and it was going to rise to \$13,000 the next year and he never had a claim. She doesn't know if the insurance rates will go down.

Senator Flakoll asked if horse racing would be covered.

Representative Meyer said horse racing is in another part of the code.

Senator Erbele asked about the costs of liability insurance, is it based on number of horses. When she talked to her insurance agent, how much could the premium drop.

Representative Meyer said her agent wouldn't say how much. He said they would look at a reduction in rates if this were passed.

Senator Klein said we are making an attempt to create stability and hopefully have rates go down.

Senator Urlacher asked if they would sign off on liability when they register, for example at the Taylor Horse Fest.

Representative Meyer said they already do that. The new thing would be a sign that states a horse is an unpredictable animal. This bill does not address signing a waiver.

Senator Flakoll said even if someone signed a waiver, it would not be binding.

Representative Meyer said that is her understanding.

Senator Taylor asked if section three was added in the house.

Representative Meyer said the bill was initially brought to allow ranchers to afford liability insurance and afford to have trail riding businesses. The house agriculture committee wanted to amend it to include other events that are faced with the same insurance problems. Some are looking at not having these events anymore and they contribute a lot to a local community.

Senator Flakoll asked if there is still a problem in the case of negligence.

Representative Meyer said that is absolutely correct or if the tack is faulty.

Bruce Strinden testified in favor of the bill. (meter 1720) He is a registered lobbyist with Neuman Signs but is appearing today on his own behalf. He is a volunteer with the Mandan rodeo. They carry separate insurance to protect individual members of the rodeo committee. In the past 14 years he has been active with the Mandan Rodeo, it is 126 years old. He lives on a small ranch west of Mandan where he raises registered quarterhorses and registered Herefords. This bill acknowledges the precocious nature of horses, they are a flight animal and you can't take that characteristic out of them. It places the burden on the owner of the animals and the sponsors to be sure the equipment and infrastructure are in order and to post signs. North Dakota is a rural state and all over the state we have equine and livestock events year round.

Senator Flakoll said insurance companies can be greedy.

Senator Klein said someone is still going to be liable, someone will try, the best lawyer will win.

Senator Taylor said he is inclined to agree. We live in a litigious society. This bill is clarification. It reinforces the necessity to be sure everything is done right.

Sara Otte Coleman, Director of Tourism, testified in favor of the bill. This area has a lot of demand from tourists, it is the most popular area of their web site. They are looking at other solutions too including insurance pools.

Mark Larson, an attorney in Minot, testified in opposition to the bill. (written testimony) (meter 2636) It is inappropriate for us to encourage people to visit our state then place them at risk with horses when there is no coverage for foolishness of a trail ride operator. Adjust your costs accordingly. If the demand is so high, the price will meet demand.

Senator Taylor asked if he has talked to horse folks in Texas to see how they are living with a law like this.

Mr. Larson said he took the Silver Bee Ann case with great trepidation because he thought he had a serious chance of having the case thrown out but they did something wrong. He called the American Quarter Horse Association to ask about their position on equine liability and they never called him back. That is the extent of his research on the subject. He is here because this bill ticks him off. There are very few equine responsibility cases. Many of these things are covered in other areas of the law. We already have a very high level of protection for horse operations.

Senator Taylor asked if this wouldn't be covered under the willful and wanton disregard portion of the bill on page 2 lines 15 - 17. (meter 3670)

Mr. Larson said he is already trying to prove his case under willful and wanton disregard. This bill takes complete responsibility for the selection of the horse away.

Senator Flakoll asked if this doesn't come under the holes not poles portion.

Mr. Larson said overall, yes.

Chairman Flakoll closed the hearing on HB 1223. (meter 3953)

Chairman Flakoll asked if anyone was considering any amendments.

Page 6

Senate Agriculture Committee

Bill/Resolution Number HB 1223

Hearing Date February 25, 2005

Senator Klein said he was not considering amendments. As we heard in testimony, there will be attorneys who don't like this. We are trying to create some protection for these groups who are performing a community function or to generate revenue for our tourists. He doesn't see this as so onerous. Senator Taylor had a good point when he pointed out the section that is current law that could come into play in the example in testimony today.

Senator Klein moved a do pass for HB 1223.

Senator Erbele seconded the motion.

Senator Flakoll said he ran this past his favorite attorney and she did not have any problem with it and she is a horse person too.

The motion passed on a roll call vote 5-1-0.

Senator Taylor will carry the bill.

Date: *2/25/05*
Roll Call Vote # *1*

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. *HB 1223*

Senate Agriculture

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass*

Motion Made By *Sen. Klein* Seconded By *Sen. Erbele*

Senators	Yes	No	Senators	Yes	No
Senator Flakoll	<input checked="" type="checkbox"/>		Senator Seymour		<input checked="" type="checkbox"/>
Senator Erbele	<input checked="" type="checkbox"/>		Senator Taylor	<input checked="" type="checkbox"/>	
Senator Klein	<input checked="" type="checkbox"/>				
Senator Urlacher	<input checked="" type="checkbox"/>				

Total (Yes) *5* No *1*

Absent *0*

Floor Assignment *Sen. Taylor*

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 25, 2005 9:42 a.m.

Module No: SR-35-3653
Carrier: Taylor
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1223, as engrossed: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO PASS (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1223 was placed on the Fourteenth order on the calendar.

2005 SENATE JUDICIARY

HB 1223

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1223

Senate Judiciary Committee

Conference Committee

Hearing Date March 29, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.0 - End

Committee Clerk Signature *Monica Solberg*

Minutes: Relating to liability for injury or damage incurred during equine activity.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Sen. Traynor discussed the history of the bill. The legislature requested that the Governor return the bill. Referred to the process being a part of "Masons Rules" Att. #1. The committee discussed why our committee had been chosen.

Testimony In Support of the Bill:

Rep. Sherley Meyer, Dist. #36 Introduced the bill (meter 216) Governor liked the bill and wanted to sign it but it had a problem on page 1, the over struck language was in the bill stating ...no participant or participant recommended may maintain an action.... The intent of the bill was never to excuse all liability. We only wanted current code clarified for this industry. The error was made at legislative council. Referred to Sub. 2 line 15.

Page 2

Senate Judiciary Committee

Bill/Resolution Number HB 1223

Hearing Date March 29, 2005

Sen. Trenbeath stated that the bill that went to the Governor had line 15-18 still in it? Yes, we amended it in the house and have brought it back again. Discussion on how it was missed and how the new amendment would effect the current bill. House Ag committee has acted on it since it was returned. **Rep. Meyer** stated that the negligence part of the bill should still remain on the bill. Discussed "posting". In the Tourism department one of the number one requests is the liability issue for the Canadian people who wish to trail ride in the Bad Lands and who is liable. They are concerned with loosing there ranches. After discussions with the Insurance Company's they referred us to this language. This language is Texas Code. **Rep. Meyer** discussed the nature of the horse as a "flight" animal. Stated liability clause already in code.

Do to the statement on line 2 has they have had problems getting insurance would not cover them. If we adopt the provision in the Texas Code. **Sen. Trenbeath** discussed that this would relieve the operator to make reasonable and prudent effort. This would relieve them of this. You may say that you do but this is different then making a law that you do not have to do it.

Rep. Meyer replied with a story. **Sen. Trenbeath** wondered why there were not any insurance reps here today stating that this law would change their industry practices. **Sen. Traynor** asked where the evidence was that the insurance company would reduce fees. **Rep. Meyer** replied that this is an effort to call there bluff. **Senator Triplett** stated the trail riders should increase rates to cover the increase insurance. Leaving a whole group of people uninsured and uninformed with no recourse in case of an accident is completely against it.

Rod Froelich, Dist 31 - This is the second time I have carried this bill. Discussed Rodeos and South Dakota Legislation. Gave an instance of a trail ride and its costs and a liability case. I believe that the way the bill is written now there is liability to the horse people.

Sen. Traynor stated that the section on info ordinary negligence this does not make the operator liable. They would have to be willful or wanton in the disregard of safety to others. That is a higher standard. As I understand this law it states that the participant who is injured through ordinary negligence, of the order of the animal, is not liable. This is on page 1 by section 2. The committee was in full agreement to this statement. Great debate on "ordinary care" definition siting examples Questioned how this would effect a spectator if a car ran over the side of the tract... Page 3 Section 3 states Participant is an body line 16, the sponsor of an activity involving livestock is not liable. The sponsor of an activity involving livestock is not liable for injury to or for the death of a spectator or a participant in the activity. Cited how in hockey on the back of a ticket writes a disclaimer. When you park in a parking garage they claim no liability for damage or theft. That is not statutory that is the owner of the building limiting their liability in exchange for you purchasing your ticket. Discussion of sign usage.

Testimony in Opposition of the Bill

Mark Larson, Minot Attorney - Gave Testimony - Att. #2.

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Senator Syverson discussed all the variables go into the rates for insurance that making this a statute probably would not have much impact. The Century Code books in the Finance and Tax room did not contain the legislation the committee was working off of. The committee will adjourn until they can refer to the books.

Senator John (Jack) T. Traynor, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 2373 1223

Senate Judiciary Committee

Conference Committee

Hearing Date March 30, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.0 - End

Committee Clerk Signature *Maura L Solberg*

Minutes: Relating to liability for injury or damage incurred during equine activity.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following Committee work:

The committee located the section in more current books. **Sen. Traynor** stated the only thing added was the underlined language. 59 10 02 passed in 1991 restricting liability. Does the bill improve the situation. Discussed liability section.

Senator Triplett made the motion to DO NOT PASS and seconded by **Sen. Trenbeath**. All members were in favor and the motion passes

Carrier: **Senator Hacker**

Date: 3/29
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1223

Senate Judiciary

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Not Pass*

Motion Made By Senator *Triplett* Seconded By Senator *Trenbeath*

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 6 No 0
Absent 0

Floor Assignment Senator *Hacker*

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 30, 2005 9:38 a.m.

Module No: SR-58-6593
Carrier: Hacker
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1223, as reengrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1223 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1223

**TESTIMONY OF MARK V. LARSON BEFORE THE
SENATE AGRICULTURE COMMITTEE**

HOUSE BILL 1223

February 25, 2005

Good morning Mr. Chairman and Members of the Committee my name is Mark Larson and I am here in opposition to House Bill 1223. I am an attorney in Minot. In addition, I am the proprietor of a boarding stable and own several horses.

I would like to voice my specific concerns with regard to House Bill 1223 and start my story by telling you about Silver Bee Anne.

Silver Be Ann was a twenty-two year old Arabian brood-mare who came to Minot, North Dakota after being purchased off the internet. The horse was bought sight unseen, but pictures had been provided. A local boarding stable, that is no longer in operation, purchased her with the plan to breed her and obtain a couple more foals from her as well as use her for riding. In fact, they planned to use Silver Bee Anne in a therapeutic riding program.

The pictures I am showing you of Silver Bee Anne are after a surgery that was performed on her. Silver Bee Anne had a form of skin cancer malignant melanoma to be exact. The veterinarian who treated her said it was the most serious case he had every seen. During the surgical removal of the cancer, the veterinarian had to quit the procedure because he was afraid he would damage the perineum which is between the anus and vulva as well as her sphincter muscle. In other words, if he continued, her colon would fall into her reproductive canal as well as cause incontinence and there would be nothing left to sew together to protect those structures. No lab tests were conducted with respect to this horse, but the veterinarian could feel additional tumors inside the rectum and pelvic girdle of the animal.

The type of cancer that Silver Bee Anne had, could in some instances, travel to the liver, pancreas, and other vital organs of the horse and ultimately to the brain. We will never know the extent of the spread of Silver Bee Anne's cancer because she died approximately a year after this first surgery. The surgery that you are seeing now was performed on November 14, 2000.

In May of 2001, Silver Bee Anne was used as a therapeutic riding horse for a 59 year old woman who had limited riding experience and had some physical disabilities. Her primary reason for riding the horse was to sustain her emotions and improve her thought processes. For no apparent reasons, Silver Bee Anne evidently blew up and bucked this lady off. She damaged her spleen and had extensive medical expenses. June 29, 2001, just over a month later, Silver Be Ann was again treated for the malignant melanoma and additional tumors were removed.

The price paid for Silver Bee Anne was not much greater than slaughter price about \$1,200.00. Silver Bee Ann was also sway backed which can cause a horse to react because of back problems.

While we will never know what caused Silver Bee Anne to blow up, I am concerned that the stable who used this horse wasn't thinking about the consumer. This was an old sick horse and the stable still put riders on her. The problem that I have with House Bill 1223 is that the stable who purchased and used this mare would have absolutely no responsibility even though it used a horse who suffered from serious health problems and also demonstrated the effects of old age.

House Bill 1223 allows an equine professional to have the ability to use a horse that really should have been retired long ago. They would have no responsibility even if they put someone on too young of a horse.

Under the current law, the standard of proof is extremely high to demonstrate that the horse owner was negligent in selecting a horse. The burden is higher than in car accident cases, its higher to a great extent than the burden of proof in a medical malpractice case. House Bill 1223 would completely erase any responsibility for the selection of an equine by an equine professional.

I should note for the committee's benefit that the term equine professional is loosely defined. Although I do not personally feel qualified to select horses for a rider and even though I have owned horses for eight or ten years, I would be considered to be an equine professional capable of avoiding liability if somebody gets injured from one of my animals that I had improperly selected.

I should also note that this bill will not affect the care of horses like Silver Bee Anne. That is to be decided under current law. You must however consider the effect on the public if there are no controls whatsoever.

The House amended this bill to include protection for rodeos. While I have no objection to the protection granted to rodeos, I think that it is essentially surplusage. Current law gives the protection sought.

Under current law, persons engaged in a rodeo have assumed the risk of injuries. It is similar to a boxing match. Boxers can not contest injuries suffered in the ring, nor can Do we now need to pass legislation regarding football, basketball, basketball, hockey or gymnastic injuries?

I, THEREFORE, URGE YOU TO REPORT THIS BILL FROM COMMITTEE
WITH A DO NOT PASS RECOMMENDATION.

March 2005

AH #1

EFFECT OF A REQUEST TO THE GOVERNOR FOR RETURN OF A BILL FOR PURPOSES OF RECONSIDERATION

This memorandum addresses the issue of the effect of a request by a house of the Legislative Assembly to the Governor for return of a bill to the Legislative Assembly for purposes of reconsideration.

AUTHORITY TO REQUEST GOVERNOR TO RETURN BILL

The Constitution of North Dakota does not provide a process for requesting the Governor to return a bill to the Legislative Assembly after the bill has been delivered to the Governor nor does the constitution prohibit such a process. Section 12 of Article IV of the Constitution of North Dakota provides that each house is to determine its rules of procedure. Neither the House of Representatives nor the Senate has adopted a rule providing for requesting return of a bill from the Governor.

Under House and Senate Rules 801, *Mason's Manual of Legislative Procedure* governs the House and Senate in all cases in which it is applicable and is not inconsistent with the rules of the House and Senate and Joint Rules of the House and Senate.

Section 753(3) of *Mason's* provides:

If either house desires to revise an enacted bill, concurrent action of the two houses should be taken, and the motion should be one providing that a message be sent by the two houses requesting the governor to return the bill. **It is the practice in some states for one house to request the return of the bill without the concurrence of the other house.** (emphasis supplied)

Section 756(2) of *Mason's* provides:

Legislation is also sometimes recalled from the executive for further consideration. Legislation is usually recalled by a resolution, but sometimes a committee is sent to the executive for that purpose.

There appear to be no relevant decisions on this issue by the North Dakota Supreme Court. Looking at other states for authority reveals a number of cases relating to requests by the legislative body to the executive for return of bills.

The Supreme Court of Colorado has said nothing in the Colorado Constitution forbids the legislature's requesting the return of a bill in the hands of the Governor for his approval nor does the constitution inhibit reconsideration and amendment of a bill thus returned. *In re Senate Resolutions Relating to Recall of Bills*, 9 Colo. 630, 21 P. 474 (1886). See also,

Teem v. State, 79 Tex. Crim. 285, 183 S.W. 1144 (Texas 1916).

EFFECT OF RETURN OF BILL ON THE PERIOD ALLOWED THE GOVERNOR TO CONSIDER BILL

An issue may arise concerning whether the three-legislative-day period for the Governor to sign or veto a law continues to run during the time a bill has been returned to the Legislative Assembly at its request. Section 9 of Article V of the Constitution provides, in part:

While the legislative assembly is in session, a bill becomes law if the governor neither signs nor vetoes it within three legislative days after its delivery to the governor.

Although no North Dakota court decision appears to address the issue of whether the three days continue to run during the period the bill is in the possession of the Legislative Assembly, courts in other states have considered how the period is to be calculated.

In *State ex rel. Dawson v. Sessions*, 84 Kan. 856, 115 P. 641 (1911), the Supreme Court of Kansas construed a provision of the Kansas Constitution which provided: "If any bill shall not be returned within three days (Sundays excepted) after it shall have been presented to the Governor, it shall become a law in like manner as if he had signed it, unless the Legislature, by its adjournment, prevent its return, in which case it shall not become a law." The court said the words "within three days after it shall have been presented" would indicate the Governor was to have the full three days. After discussing cases that either determined the legislature was not authorized to recall a bill from the Governor or that determined the legislature was not prohibited from recalling a bill from the Governor, the court said:

It is not necessary to determine whether the Governor is bound to return a bill at the request of the Legislature or of either house, but, if he does so and the bill is again presented to him for his approval or rejection, he has the full period of three days thereafter for consideration as though it were a new bill. Verbal errors, omissions, and mistakes in enrollment make the practice of occasionally recalling bills desirable, and, in the absence of constitutional restrictions, the power must be held to exist.

The Court of Appeal, Third District, California, in *O. De Asis, v. Department of Motor Vehicles*, 112 Cal. App. 4th 593, 5 Cal. Rptr. 3d 231 (2003), considered

the issue of validity of the Chief Clerk of the Assembly retrieving an enrolled bill sent to the Governor, placing the bill in the inactive file, and reenrolling the bill a year later and sending the bill to the Governor, after which the Governor vetoed the bill. The question involved whether the Governor's failure to approve or veto the bill in a timely manner after the bill was originally sent to the Governor resulted in the bill becoming law. The court said:

[W]hen the Legislature and the Governor acquiesce in the retrieval of a bill after enrollment but before the expiration of the 30-day time period allotted to the Governor to deliberate on the bill, courts will not interfere with that decision. And since such retrieval deprives the Governor of the full period in which to deliberate on the bill, it cannot become law without the Governor's signature because the bill has not been presented to the Governor within the meaning of article IV, section 10, of California's Constitution.

CONCLUSION

Under *Mason's*, either house of the Legislative Assembly may request the Governor to return a bill for further consideration by the Legislative Assembly. Although no North Dakota court decision addresses this issue, courts in other states have upheld the authority of a legislature to request the Governor to return a bill for further consideration by the legislature. These courts also have determined that when a Governor returns a bill to the legislature on its request, the time for the Governor to act on the bill does not run because the bill is not in the Governor's possession.

Although there is judicial authority to the effect that a legislature cannot request the return of a bill and thus time periods to act on a bill continue to run, those decisions appear to focus on the lack of a constitutional provision specifically authorizing the procedure, in contrast to the cases referred to in this memorandum which allow the return of a bill to the legislature and the stopping of the time period for acting on the bill because the constitution does not specifically prohibit this practice.