Kentucky Journal of Equine, Agriculture, & Natural Resources Law

Volume 8 | Issue 1 Article 2

2015

Non-Uniform Statutes Governing the Sale of Horses

Frank T. Becker
University of Kentucky

NON-UNIFORM STATUTES GOVERNING THE SALE OF HORSES

*Frank T. Becker**

I. INTRODUCTION

Horses are a commonly transferred agricultural commodity. They are sold to users, which include hobbyists, riders, and owners, who then use them for breeding, showing, racing, and other competitions.

Horses may be conveyed by private sale or by auction. Auction is common with many breeds, with the auctions typically conducted by private companies that specialize in selling horses of a particular breed. A "claim" is a special type of sale and purchase.[1] Specifically, a "claim" is the ability of a prospective buyer to purchase a horse entered into a certain type of race, called a "claiming race," for a uniform price set for each of the horses in that race.[2]

A. Uniform Statutes Applicable to Horse Sales

Horses are considered goods. Thus, Article 2 of the Uniform Commercial Code (U.C.C.) generally governs the purchase and sale of horses. The U.C.C.'s rules on writing requirements, warranties, remedies, and the like therefore apply to the conveyance of horses.

Horses are often co-owned by two or more persons or entities, where each owner is said to have an "undivided fractional interest." These fractional interests, like entire horses, are generally considered goods. Syndicates such as stallion and racing syndicates are a more formalized method of fractional interest ownership, with a designated manager of the horse and the rights and obligations specified in a written syndicate agreement. Those interests are also considered goods and thus Article 2 of the U.C.C. generally governs their conveyance.

---

* Frank T. Becker is a private practitioner in Kentucky, as well as an arbitrator and Adjunct Professor of Law at the University of Kentucky College of Law. He graduated from the University of Kentucky College of Law in 1979. He is the author of the textbook Equine Law (2013).

[1] Fattorusso v. Urbanowicz, 774 N.Y.S.2d 658, 660 (App. Div. 2004).

[2] *Id.*

Certain types of equine property may not be considered goods under Article 2. Although unborn young are by definition goods, more problematic is the status of breeding rights. Breeding rights have characteristics of both goods (sperm inside the stallion) and services (the delivery of sperm), thus the sparse authority has been mixed. The court in *Kwik-Lok Corp. v. Pulse* held that breeding rights were not goods and thus not subject to Article 2 of the U.C.C.[3] The *Kwik-Lock* court noted that when sperm is removed from the stallion to be shipped for artificial insemination, the sperm might become goods subject to Article 2.[4] The courts in two cattle cases decided that contracts involving sperm in a bull were subject to Article 2.[5] However, in each case the sperm was to be removed for artificial insemination purposes.[6] Thus, under these cases, the applicability of Article 2 seems to depend on whether the sperm will ever be transported separately from an animal. This is significant to horses, as sometimes breeding occurs by artificial insemination, involving the removal of sperm, and sometimes by live cover.

The U.C.C. permits many of the statutory directives to be varied by agreement. Such variation is quite common in horse sales. Written purchase agreements may vary or supplement the default terms of Article 2. Conditions of sale of the auction company are considered contract terms that may alter the Article 2 default terms. Syndicate agreements, whose terms apply to the fractional interests, may do the same.

B. Non-Uniform Statutes Generally

Despite the enactment of the U.C.C. in all fifty states, the legislatures of several states have modified standard U.C.C. provisions or have enacted entirely separate statutes that effectively modify standard U.C.C. provisions with respect to the sale of horses.[7] Some of these modifications and statutes apply to animals or livestock generally; others apply only to horses or certain types or breeds of horses.

This article will explore non-uniform statutes in the twenty states with the highest value of horses sold according to the United States Department

---

[3] Kwik-Lock Corp. v. Pulse, 702 P.2d 1226, 1228 (Wash. Ct. App. 1985).

[4] *See id.*

[5] Lehmnah v. Am. Breeders Serv., Inc., 482 A.2d 700, 706 (Vt. 1984); Meuse-Rhine-Ijssel Breeders of Can. Ltd. v. Y-Tex Corp., 590 P.2d 1306, 1309 (Wyo. 1979).

[6] *Lehmnah*, 482 A.2d at 703; *Y-Tex Corp.*, 590 P.2d at 1306.

[7] *See generally* Donald F. Clifford Jr., *Non-UCC Statutory Provisions Affecting Warranty Disclaimers and Remedies in Sales of Goods*, 71 N.C. L. REV. 1011 (1993) (discussing the topic as it applies to warranties).

of Agriculture,[8] specifically focusing on (in order of the value of horses sold): Kentucky, Florida, Texas, California, New York, Ohio, Oklahoma, Pennsylvania, Virginia, Arizona, Colorado, Michigan, Illinois, New Mexico, Indiana, South Dakota, North Carolina, Montana, Missouri, and Nebraska. The vast majority of horses are sold in these twenty states.[9] This article will discuss the terms and applicability of such variations, the apparent purposes of such variations, and the issues that arise with the interpretation of such variations.

This Article focuses on non-uniform statutes that apply to private and public sales of horses of the type that typically occur in the previously mentioned states. Notably, some states have enacted special statutes that relate to sale of horses for slaughter, or that relate to the transfer of dead or discarded horses. These specialized types of transfers are not the focus of this article. Further, this article will not address non-uniform statutes that are not directly applicable to sales, such as those concerning financing, liens, security interests, perfection, and priorities. This article will not address non-uniform statutes that are not specifically directed to horses or livestock, such as general changes to standard U.C.C. provisions or supplemental statutes like consumer protection acts.

This article will arrange its discussion by jurisdiction, in order of the value of horses sold annually, rather than by topic. This makes it convenient to review the non-uniform rules applicable in a particular state, and as a practical matter is a more logical approach because some non-uniform statutes involve more than one topic, such as both the requirement of writing and the limitation of warranties. Since the laws of multiple states may be implicated in a transaction, this article will address the confusion that has emerged from the myriad of state-specific statutes, and their conflicting approaches.

---

[8] *See Equine-Inventory and Sales*, USDA CENSUS OF AGRIC., *available at* http://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_2_US_State_Level/st99_2_018_018.pdf (2012); *USDA Releases 2012 Census of Agriculture Findings*, AM. HORSE COUNCIL (May 22, 2014, 11:52 AM), http://www.horsecouncil.org/usda-releases-2012-census-agriculture-findings (The United States Horse Council believes that the census data is understated due to the procedure employed by the U.S.D.A.).

[9] *See Equine-Inventory and Sales*, *supra* note 8. In terms of dollar volume based on the 2012 Census, the annual sales in these twenty states was more than seventy-five percent of the total for the United States as a whole $1,043,158 out of $1,376,793 annually. *Id.*

II. SURVEY OF NON-UNIFORM SALES STATUTES BY JURISDICTION

A. Kentucky Non-Uniform Sales Statutes

1. Section 355.2-316 of the Kentucky Revised Statutes – Implied Warranties

Kentucky has enacted two significant variations to the Uniform Commercial Code applicable to horse sales. One variation modifies the U.C.C.'s implied warranty provision, while the other, enacted separately from the U.C.C., governs the requirements for bills of sale.

The earlier of these two modifications was the modification of the U.C.C. itself. This modification occurred upon Kentucky's revision of its codification of the U.C.C. in 1980.[10] Section 2-316 of the Uniform Commercial Code governs the exclusion or modification of warranties, and is so titled.[11] It generally provides the rules for determining how conduct and contractual language is to be construed as creating or negating express warranties, and how conduct and contractual language can modify implied warranties. The Kentucky legislature added the following subsection to § 2-316:

> (3) Notwithstanding subsection (2) . . .
> . . .
> (d) with respect to the sale of bovine, porcine, ovine and equine animals, or poultry there shall be no implied warranty that the animals are free from disease or sickness. This exemption shall not apply when the seller knowingly sells animals which are diseased or sick.[12]

The provision is logically misplaced. That the exception exists "notwithstanding" other methods of exclusion is illogical as it attempts to eliminate implied warranties altogether, while having no relation to effective disclaimers of implied warranties. In this instance, the drafting error is likely harmless; as will be seen with respect to Oklahoma, a similar misplacement does, in fact, cause interpretive issues. Regardless, its intended purpose is clear–it was an attempt to bring the U.C.C. closer to the traditional doctrine of "buyer beware" with respect to the sale of certain

---

[10] KY. REV. STAT. ANN. § 355.2-316 (West 2015).
[11] U.C.C. § 2-316 (2015).
[12] KY. REV. STAT. ANN. § 355.2-316(3)(d).

agricultural animals, including horses. It simply eliminates the implied warranty for such animals with respect to "disease or sickness." It carves out its own "fraud exception" where the seller knows the animal is sick.

The provision is not without ambiguity. "Disease or sickness" is not defined, and it is certainly far from clear what it envelops. Is a common chronic behavioral condition, such as "cribbing," a disease or a sickness? Is a fracture due to an accident or a "disease or sickness"? No answers to these questions exist, and surprisingly the parameters of the modification have never been tested in any appellate decision. Indeed the modification has only been quoted in one reported decision, and only for the purpose of emphasizing that a horse was purchased "as is" and without any warranties.[13]

2. *Section 230.357 of the Kentucky Revised Statutes – Requirement of A Signed Writing*

In 2004, billionaire California wine-maker Jess Jackson began buying thoroughbred horses, and purchased a large farm in Central Kentucky.[14] Concerned with what he perceived to be dubious practices in the thoroughbred business, he sued several equine professionals for fraud, and in 2006 lobbied the Kentucky legislature to pass a statute that purported to address some of these practices.[15] This statute became codified in 2007 as section 230.357 of the Kentucky Revised Statutes. As discussed below, shortly thereafter he convinced the California legislature to enact a similar statute.

The Kentucky version of the statute only applies to horses sold for more than $10,000.[16] The bulk of the statute addresses the practice of dual agency and undisclosed commissions. However, the first three substantive subsections purport to regulate the sale of horses. They read:

> (1) For purposes of this section, "equine" means a horse of any breed used for racing or showing, including prospective racehorses, breeding prospects, stallions, stallion seasons, broodmares, yearlings, or weanlings, or any interest therein.
> (2) Any sale, purchase, or transfer of an equine shall be:

---

[13] Cohen v. N. Ridge Farms, Inc., 712 F. Supp. 1265, 1269-70 (E.D. Ky. 1989).

[14] Janet Patton & Alicia Huges, *Horse Owner, Wine Maker Jess Jackson Dies at 81*, LEXINGTON HERALD-LEADER (Apr. 22, 2011), http://www.kentucky.com/news/business/article44091354.html.

[15] *See id.*

[16] KY. REV. STAT. ANN. § 230.357(10).

> (a) Accompanied by a written bill of sale or acknowledgment of purchase and security agreement setting forth the purchase price; and
> (b) Signed by both the purchaser and the seller or their duly authorized agent or, in a transaction solely relating to a season or fractional interest in the stallion, signed by the syndicate manager or stallion manager.
> (3) In circumstances where a transaction described in subsection (2) of this section is accomplished through a public auction the bill of sale requirement described in subsection (2) of this section may be satisfied by the issuance of an auction receipt, generated by the auction house, and signed by the purchaser or the purchaser's duly authorized agent. An agent who signs an auction receipt on behalf of his or her principal shall do so only if authorized in writing. When presented with such authorization, all other parties to the transaction may presume that an agent signing on behalf of his or her principal is duly authorized to act for the principal.[17]

The statute's mandate that the "sale, purchase, or transfer" of a horse be "accompanied by a written bill of sale or acknowledgement," signed by both seller and buyer is a directive the violation of which has unclear consequences. Is the sale of a horse when it does not comply with this statute void? Is it unenforceable in court? The statute does not explicitly state how it relates to section 355.2-201 of the Kentucky Revised Statutes, Kentucky's statute of frauds (adopted without alteration from section 2-201 of the Uniform Commercial Code).[18] It differs from the general statute of frauds in that it does not state that an agreement not in compliance with the mandate is unenforceable. In contrast, the statute provides that agreements for commissions are "unenforceable" under certain circumstances,[19] revealing that the drafters knew how to make an agreement unenforceable if that was their intention. Arguably, therefore, it is not a statute of frauds issue in any respect, and a transfer of a horse

---

[17] *Id.* at § 230.357(3).

[18] *See id.* In fact, KY. REV. STAT. ANN. § 371.010 encompasses statute of frauds governing non-sale-of-goods agreements.

[19] KY. REV. STAT. ANN. § 230.357(11).

without a complying bill of sale is not void and is fully enforceable, provided it is enforceable under the Article 2 statute of frauds.[20]

Failure to comply appears to only invoke the "penalties" set forth in the statute. These penalty provisions, however, would be difficult to apply to such a violation as they appear to be directed to the commission and agency portions of the statute:

> (7) Any person injured by a violation of this section shall recover treble damages from persons or entities violating this section, and the prevailing party in any litigation under this section shall be entitled to an award of costs of the suit, reasonable litigation expenses, and attorney's fees. As used in this section, treble damages shall equal three (3) times the sum of:
> (a) The difference, if any, between the price paid for the equine and the actual value of the equine at the time of sale; and
> (b) Any payment made in violation of subsection (5) of this section.
> . . .
> (11) No contract or agreement for payment of a commission, fee, gratuity, or any other form of compensation in connection with any sale, purchase, or transfer of an equine shall be enforceable by way of an action or defense unless:
> (a) The contract or agreement is in writing and is signed by the party against whom enforcement is sought; and
> (b) The recipient of the compensation provides a written bill of sale for the transaction in accordance with subsections (2)(a) and (3) of this section.
> (12) No person shall be held liable under this section unless that person has actual knowledge of the conduct constituting a violation of this section.[21]

The penalty in subsection (7) would not apply to violating the signed writing requirement; the treble "value-differential" damages are nonsensical. Therefore, the only penalty is to an agent, which under

---

[20] Although not entirely analogous, failure to comply with the transfer requirements set forth in the Kentucky automobile transfer statute, Ky. Rev. Stat. Ann. § 186.190, does not void title to the purchaser of a vehicle. Red Bird Motors, Inc. v. Endsley, 657 S.W.2d 954, 956 (Ky. Ct. App. 1983).

[21] KY. REV. STAT. ANN. § 230.357.

subsection (11) would not be able to enforce a commission agreement unless the agent provided a complying writing. Otherwise, the requirement of a signed bill of sale or acknowledgement has no legal import beyond being an unenforceable directive.

3. Section 330.210 of the Kentucky Revised Statutes – Special Auction Provisions

Kentucky, like other states, regulates auctioneers. Due to the importance of horse auctions in the state, and the tradition of permitting secret by-bidding and undisclosed reserves, Kentucky has a statute that specifically permits such practices with respect to the auction sale of horses.[22]

B. Florida Non-Uniform Sales Statutes

1. Section 335.01 of the Florida Statutes – Sale of Thoroughbreds

Chapter 335 of the Florida Statutes is entitled "Horse Sales, Shows, and Exhibitions."[23] It catalogs a variety of provisions regulating public sales of thoroughbreds and horse shows involving any breed. It enables the state Department of Agriculture to adopt rules concerning the sale of horses of any breed.

The first statute in Chapter 335 is section 535.01 of the Florida Statutes, which applies only to the public sale of thoroughbreds, requires anyone "holding, sponsoring, or conducting a public sale" of thoroughbreds to have a license issued by the Department of Agriculture.[24] This statute does not specify the criteria for obtaining a license, other than filling out an application and paying a fee. It is not limited to auction sales. Arguably, it would apply to any farm or bloodstock agent that lists thoroughbred horses (or even a single horse) for sale in a manner accessible to the public, such as on a website or magazine advertisement. It is doubtful, though, that it has been enforced in such a fashion. No case law or regulatory action offers any guidance.

---

[22] *See id.* § 330.210(1).
[23] FLA. STAT. ANN. ch. 535 (West 2015).
[24] *Id.* § 535.01.

2. *Section 535.08 of the Florida Statutes – Medicating Thoroughbred Horses Offered for Sale.*

Section 535.08(1) of the Florida Statutes attempts to curtail the medicating of thoroughbred horses before a sale. It reads:

> No person shall administer to any thoroughbred horse offered for licensed public sale at a thoroughbred horse sale any substance that is recognized as an injectable, oral, or topical medication within 72 hours of the start of the sale session in which the thoroughbred horse is offered for sale unless the person is a licensed veterinarian and the medication is therapeutic or necessary for the treatment or prevention of an illness or injury.[25]

In the event that medication is administered, a statement signed by the attending veterinarian must be filed with the sales organization.[26] The sales organization must make this information available to the buying public.[27] It permits the state veterinarian to obtain blood samples for testing by a laboratory to detect forbidden substances, much like the procedure with racehorses.[28] Violations of the statute result in misdemeanor criminal penalties, and bar "any person convicted" from "showing, exhibiting, or offering for sale at a licensed public sale any horse in this state for a period of 2 years from the date of the conviction."[29]

Two sets of issues arise: (1) under what circumstances does the statute apply and (2) what effect does the administration of a medication in violation of the statute have on the rights of the parties to the sale? In regard to the first issue, the statute would apply to public auctions, which in Florida are conducted a few times a year by Ocala Breeders Sales and Fasig-Tipton Sales Company.[30] What is not clear is whether it would apply to a sale conducted by a farm, bloodstock agent, or owner. Presumably, the horses do not qualify as being "offered for licensed public sale at a thoroughbred sale . . . ." However, as discussed above with respect to

---

[25] *Id.* § 535.08(1).
[26] *Id.* § 535.08(2).
[27] *Id.*
[28] *Id.* § 535.08(3)(a).
[29] *Id.* § 535.08(4).
[30] *See* OCALA BREEDER'S SALES CO., http://www.obssales.com/ (last visited Dec. 31, 2015); FASIG-TIPTON, http://www.fasigtipton.com (last visited Dec. 31, 2015).

section 353.01, perhaps farms, bloodstock agents, and owners should be licensed. However, no guidance exists.

The second issue is of importance to a buyer of a horse with regard to what remedies are available to that buyer if undisclosed substances are detected post-sale. The statute imposes only criminal penalties and suspensions, but is silent as to whether the purchaser has any remedies. Of course, the Uniform Commercial Code provides general remedies, and the contract of sale or conditions of sale may also provide for remedies. Though, would detection of a prohibited substance automatically be considered a defect or nonconformity that justifies a rejection, revocation, or breach of warranty remedy? Nothing in the statute would so indicate, and thus the buyer must still prove the elements of those remedies as though the statute did not exist. On the other hand, it arguably could support a nondisclosure-based claim, as it could be presumed to create a duty to speak (that is, disclose the administration of the medication), which is a required element of a claim of nondisclosure.

3. *Section 353.16 of the Florida Statutes and Rule 5H-26.001 of the Florida Administrative Codes Revised – Purchase and Sale of Horses*

In 2007, the Florida legislature added the following provision to Chapter 353:

> (1) The Department of Agriculture and Consumer Services shall examine the conditions surrounding the sale and purchase of horses and shall adopt rules pursuant to ss. 120.536(1) and 120.54 to prevent unfair or deceptive trade practices. Vertical integration of services and employees, in and of itself, shall not be considered an unfair or deceptive practice. The department's examination shall include the following: the disclosure of the legal owner and buyer of the horse and any dual agency to the buyer and seller; the disclosure of relevant medical conditions, defects, and surgeries; the conduct or alterations that could affect the performance of a horse; and the need for a written bill of sale or similar documentation.
> (2) This provision shall not apply to sales resulting from claiming races at licensed pari-mutuel facilities.

Unlike the provisions that precede it, this statute applies to all horses as well as all sales and purchases. This statute is solely enabling legislation, and itself creates no substantive mandate with respect to horse sales.

In 2008, the Department of Agriculture promulgated regulations pursuant to the statute.[31] The first two regulatory provisions define the purpose of the regulations ("to address unfair and deceptive trade practices surrounding the sale and purchase of horses in Florida"),[32] and to define the terms "dual agent," "horse" and "trainer."[33] For the purposes of this article, "horse" is defined (by reference to another statute[34]) as a horse, pony, mule or donkey; this is as broad a definition as is possible.

The next regulatory section, Rule 5H-26.003, briefly mandates in subsection (1): "Any sale or purchase of a horse or any interest therein in Florida shall be accompanied by a written bill of sale described in Rule 5H-26.004, F.A.C., except as provided in subsection (8)."[35] Subsection (8) permits an auction company to satisfy the bill of sale requirement with an acknowledgment of purchase. The specifics required in the writing are set out in Rule 5H-26.004, and include identifying information concerning the seller and purchaser, as well as the horse.[36] It also requires two specific certifications. The owner or the owner's agent must certify that the owner owns the horse and can convey "legal title." The purchaser is required to acknowledge that the purchaser understands that "warranties or representations" being relied upon "should be stated in writing as part of this bill of sale."[37]

Several other subsections of Rule 5H-26.003 regulate agent conduct and disclosures, including dual agents. Subsection (9) permits a horse auction company to establish what has been commonly termed a "repository," which is a location on the auction grounds that a consignor can file (and thus disclose) medical information about a horse consigned to the auction. The regulation does not itself require any specific information to be filed by the consignor, but allows the auction company to impose such a requirement.

The next subsection imposes a requirement on the seller to disclose to the purchaser if the horse has undergone any specified therapies such as shockwave therapy or acupuncture.[38] The regulation also prohibits the use

---

[31] FLA. ADMIN. CODE ANN. r. 5H-26.001 (2015).
[32] *Id.*
[33] *Id.* at r. 5H-26.002.
[34] FLA. STAT. ANN. § 773.01(2) (2015).
[35] FLA. ADMIN. CODE ANN. r. 5H-26.003(1).
[36] *Id.* at r. 5H-26.004.
[37] *Id.*
[38] *Id.* at r. 5H-26.003(10).

of an electrical or mechanical device to shock or prod a horse unless otherwise permitted by "the governing breed association, federation, or other regulatory body."[39] Since this latter provision is unrelated to the sale and purchase of a horse, the authority of the Department of Agriculture to impose such a mandate is questionable, given that the enabling statute permits it to regulate "unfair and deceptive trade practices."[40] Apparently recognizing this, the regulation requires sales companies to impose such a prohibition "while the horse is on the sales ground."[41] The next subsection returns to public auctions, requiring the auction company to publish those sales it determined were "reserve not attained" and "not sold."[42]

Subsection (12) then bounces back to the sale of all horses, mandating: "[w]hen an Owner or its agent provides any medical information in response to an inquiry from a Purchaser or its agent about the medical history of a horse, the Owner or its agent shall accurately disclose all information within its knowledge that is responsive to the inquiry."[43] Presumably, this is designed to prevent half-truths by providing incomplete information, although what is "responsive to the inquiry" could become a matter of some dispute.

Finally, the regulation concludes with a subsection defining a penalty: "A violation of any provision of Chapter 5H-26, F.A.C., resulting in actual damages to a person, shall be considered an unfair and deceptive trade practice pursuant to Chapter 501, Part II, F.S."[44] Those Chapter 501 statutes make such practices "unlawful."[45] They allow for governmental enforcement activity, and for a private right of action that permits recovery of actual damages and attorney's fees.[46] Thus, it supplements the usual U.C.C. remedies for breach of warranty and for rejection and revocation of acceptance, and supplements common-law remedies for misrepresentation and fraud. However, the failure to comply with the writing requirements or the disclosure requirements in the statute does not appear to give any right of a party to void or rescind an agreement. Like the Kentucky written bill of sale requirement, the Florida statute is not actually a statute of frauds that renders the transfer void or prohibits the enforcement of a non-complying purchase agreement. Again, aside from the unlikely event of a government

---

[39] *Id.* at r. 5H-26.004.
[40] FLA. STAT. ANN. § 535.16 (West 2015).
[41] FLA. ADMIN. CODE ANN. r. 5H-26.003(10)(b).
[42] *Id.* at r. 5H-26.003(11).
[43] *Id.* at r. 5H-26.003(12).
[44] *Id.* at r. 5H-26.003(13).
[45] *See* FLA. STAT. ANN. § 501.204.
[46] *Id.* § 501.211.

enforcement action, to a large extent the mandate of a writing is meaningless unless somehow—and it is hard to imagine how—there are damages that flow from noncompliance. Moreover, who, exactly, "violates" the regulations if a bill of sale is not conforming? The seller? The purchaser? Both? No answer can be gleaned from the statute or any regulation that mandates an act ("any sale or purchase of a horse . . . shall be accompanied by a written bill-of-sale . . . ") but does not specify who should perform that act.[47]

Does the Rule 5H-26.004 mandate of specific language and acknowledgments change or supplement any of the U.C.C. warranty provisions or rights to reject or revoke acceptance, or common-law rights under fraud and misrepresentation doctrines? If a signed bill of sale complies, the purchaser explicitly acknowledges that the purchaser understands that "warranties or representations" being relied upon "should be stated in writing as part of this bill of sale" as required by Rule 5H-26.004.[48] An argument could therefore be made that all warranties are disclaimed and no express warranties exist except those stated in the bill of sale. However, the statute stops short of so stating, and the use of the ambiguous term "should be stated in writing" in the purchaser's acknowledgement does not fully support such a proposition.[49] A better argument would be that the acknowledgement mitigates a purchaser's reliance, especially if a claim were made for misrepresentation or fraudulent nondisclosure.

Equally as uncertain in the context of a warranty, rejection, revocation, or fraud claim is the effect of a non-complying bill of sale, particularly if the purchaser's acknowledgement was not included or not signed by the purchaser. Could the purchaser then, by failure to comply with the regulation, avoid the argument noted above that warranties were disclaimed or that there was no reliance on representations that were not disclosed in the bill of sale? If so, is the seller taking advantage of the purchaser's failure to comply with the regulation? As noted above, is making sure a bill of sale complies with the regulation even the responsibility of the purchaser? No guidance is given,[50] and this joint legislative and regulatory foray into horse sale regulation serves largely to add confusion rather than clarification.

---

[47] *See* FLA. ADMIN. CODE ANN. r. 5H-26.003(1).
[48] *See id.* at r. 5H-26.004.
[49] *See id.* at r. 5H-26.003(1).
[50] *See id.* at r. 5H-26.004.

C. Texas Non-Uniform Statutes

1. Section 146.001 of the Texas Agricultural Code Annotated — Written Bill of Sale Requirement

Since 1879 Texas has required a written bill of sale to accompany the sale of certain animals, including horses (and allows recording of marks and brands for livestock "on the range").[51] The statute is now codified as Agricultural Code §146.001:

> (a) If a person in this state sells or transfers a horse, mule, jack, jennet, ox, or head of cattle, the actual delivery of the animal must be accompanied by a written transfer to the purchaser from the vendor. The written transfer must give the marks and brands of the animal and, if more than one animal is transferred, must give the number transferred.
> (b) On the trial of the right of property in an animal sold or transferred under Subsection (a) of this section, the possession of the animal without the written transfer is presumed to be illegal.
> (c) A person may dispose of livestock on the range by sale and delivery of the marks and brands, but in order to acquire title the purchaser must have the bill of sale recorded in the county clerk's office. The county clerk shall record the transfer in records maintained for that purpose and shall note the transfer on the records of marks and brands in the name of the purchaser.[52]

The statute does not mandate that any particular information be included in the bill of sale, and does not even require the bill of sale to be signed. As with the Kentucky and Florida writing requirements, the statute does not explicitly render a non-complying transaction void or voidable.[53] The reference in the second subsection that a transfer without a bill of sale "is presumed to be illegal" is not entirely clear. Does it mean, as a matter of evidence, that there is a presumption that unless the alleged purchasing

---

[51] TEX. AGRIC. CODE ANN. § 146.006 (2015) (codifying TEX. REV. P.C., ART 753 (1979)).

[52] *Id.* § 146.001.

[53] Brumley Estate v. Iowa Beef Processors, Inc., 704 F.2d 1351, 1360 (5th Cir. 1983) ("[T]he controlling issue is not whether a formal bill of cattle sale has been executed but rather what the intent of the parties was . . . .").

owner produces a bill of sale, the sale is presumed invalid? Or does it mean that the seller or purchaser, or both, have committed an illegal act, with no actual effect on the validity of the transaction?

An unreported Texas Court of Appeals case, *Gass v. Coffee*,[54] relying on reported Texas cases interpreting the predecessor statute, construed the statute as an evidentiary presumption in a dispute over ownership of a horse.[55] There, a former owner of a horse sued the possessor of the horse claiming the horse was merely lent to the possessor, not transferred to the possessor. The jury determined that there was sufficient evidence of a conveyance, and sided with the possessor. On appeal, the former owner argued that the alleged transfer violated the "statutes of frauds," including section 146.001 of the Agricultural Code. The Texas Court of Appeals stated that "[t]he effect of this statute is to create a presumption of illegality, a presumption that may be rebutted."[56] The evidence was sufficient to rebut that presumption and justify the jury verdict.[57]

2. *Section 146.001 of the Texas Business and Commercial Code Annotated—Implied Warranties*

Like Kentucky, Texas modified section 2-316 of the U.C.C. when it adopted it as state law.[58] It tacked on the following subsection (as well as others unrelated to horses): "The implied warranties of merchantability and fitness do not apply to the sale or barter of livestock or its unborn young."[59]

Also like Kentucky's modification, the intent is clearly a nod to the traditional notion that "buyer beware" applies to the purchase of livestock, including horses. Unlike Kentucky's alteration, however, Texas eliminates all implied warranties, not just those that the animal is free from disease or

---

[54] Gass v. Coffee, No. 03-00-00578-CV, 2001 WL 1045004, at *4 (Tex. App. Sept. 13, 2001).

[55] First Nat'l Bank v. Brown, 23 S.W. 862, 863 (Tex. 1892) (holding that under predecessor statute, sale of animal without written transfer is prima facie illegal but open to explanation); Swan v. Larkin, 28 S.W. 217, 217 (Tex. Civ. App 1894) (holding that the predecessor statute "is directory", and that sale of cattle without accompanying written bill of sale creates presumption that can be rebutted).

[56] *Gass*, 2001 WL 1045004, at *4.

[57] *Id.* There was no indication that the jury was instructed on the existence of the statute or the presumption. The jury was merely asked: "Do you find that SUSIE NELMS GASS and LUKE LEON COFFEE entered into a contract for the sale of the horse known as 'Durango' in exchange for the horse known as 'Ima Pasture Affair'?" *Id.* at *2.

[58] TEX. BUS. & COM. CODE ANN. § 2.316(f) (West 2015).

[59] *Id.* § 2.316(f).

sickness.[60] And unlike Kentucky, there is no exception where the seller knows of a defect or nonconformity.[61]

D. California Non-Uniform Statutes

1. Section 23801 of the California Food and Agricultural Code– Written Bill of Sale

California has two statutes that independently, and without acknowledging the existence of the other, require written bills of sale for the transfer of horses. The older of the two, section 23801 of the California Food and Agricultural Code, applies to both horses (including mules and burros) and sheep:

> A person shall not buy, sell, or accept a horse, mule, burro, or sheep, the carcass of any such animal from which the hide or skin has not been removed, or the hide or skin of such animal, unless the seller or donor gives, and the buyer or donee receives, at the time of delivery of the animal, carcass, or hide, a written bill of sale or written instrument, which states the number, kind, and brand or brand and marks of each such hide, skin, carcass, or animal, that is signed by the party that gives it.

The following statutory section makes clear that the failure to give a written bill of sale or written instrument to the buyer or done pursuant to section 23801 "does not have any effect upon either ... the validity of any sale or contract of sale" or "[t]he rights of either the buyer or done . . . ."[62]

2. Section 19525 of the California Business and Professional Code – Written Bill of Sale

In 2009, two years after Kentucky enacted section 230.357 of the Kentucky Revised Statutes, California enacted a very similar statute, section 19525 of the California Business and Professional Code, also due to

---

[60] *Compare* TEX. BUS. & COM. CODE ANN. § 2.316(f) (West 2015), *with* KY. REV. STAT. ANN. § 355.2-316(3)(d) (West 2015).

[61] *Compare* TEX. BUS. & COM. CODE ANN. § 2.316(f), *with* KY. REV. STAT. ANN. § 355.2-316(3)(d).

[62] CAL. AGRIC. CODE § 23802 (West 2015).

the efforts of Jess Jackson.[63] As with the Kentucky statute, the California statute contained two sets of mandates: the requirement of a written bill of sale to transfer a horse, and the regulation of agents and commissions. The former is the subject of this article.

The portion of the California statute requiring a signed writing to accompany the transfer or sale of a horse is nearly identical to the comparable Kentucky statutory provisions. Like the Kentucky statute, the writing requirement applies to horses "of any breed used for racing or showing." However, the California statute omitted the provision making it applicable only to horses sold for $10,000 or more; therefore it applies regardless of sales price.[64] The requirement that the written bills of sale include the purchase price, and be signed by the purchaser or seller (or auction company), is carried over from the Kentucky statute.[65]

Although the penalty provisions vary somewhat from those of the Kentucky statute, as with the Kentucky statute, the penalties appear tailored to violations of the agency regulations in the statute, and not the signed writing requirements. Therefore, again as in the Kentucky statute, the consequences of not complying with the signed writing provisions are unclear. A transfer without compliance with the statute does not appear to render the transfer void or unenforceable, although unlike section 23801 of the California Food and Agricultural Code, that is not explicitly stated.

3. *Sections 24000 through 24018 of the California Food and Agricultural Code, Chapter 8 — Regulation of Public Horse Events and Sales*

Chapter 8 of Division 11 of the California Food and Agricultural Code consists of an extensive set of statutes governing "public horse sales," as well as public equine events. A "public horse sale" is defined as "a sale that consigns a horse in exchange for money, goods, or services, excluding sales consisting solely of racing stock."[66] The obvious target is a public auction, but arguably it could also apply to a service on a publicly-accessible internet site where horses not owned by the listing service (and thus are "consigned") are listed for sale.

The central prohibition is against drugging of a horse:

---

[63] CAL. BUS. & PROF. CODE § 19525 (West 2015).

[64] *See id.*

[65] *Compare* CAL. BUS. & PROF. CODE § 19525(b)(1), *with* KY. REV. STAT. ANN. § 230.357(2).

[66] CAL. AGRIC. CODE § 24001(m).

> A trainer, owner, or both the trainer and owner, event manager, or any person who administers, attempts to administer, instructs, authorizes, aids, conspires with another to administer, or employs anyone who administers or attempts to administer a prohibited substance to a horse in violation of this chapter shall be subject to the penalties provided in this chapter that are applicable to the trainer or owner. The trainer and owner are both responsible for complying with this chapter after any course of medical therapy has been administered or prescribed by a licensed veterinarian employed by either the trainer or owner to examine and treat a horse. A licensed veterinarian who is employed by a trainer or owner to examine and treat a horse is not subject to the penalties provided in this chapter solely on account of that examination and treatment or prescription.[67]

Section 24011 mandates that a horse "that has received a prohibited substance shall not be eligible for show, competition, or sale" unless ten specific requirements have been met "and the facts requested are submitted to the department in writing."[68] The first requirement is that the medication be "therapeutic and necessary for treatment of an illness or injury."[69] The second is not a requirement for eligibility, but a mandate that a horse be withdrawn from a sale "for a period of 72 hours after a prohibited substance or NSAID is administered."[70] The third requirement is that the medication "be administered by a licensed veterinarian, the trainer, or the owner."[71] The remaining ten requirements are reporting requirements, requiring the identity of the medication, the date of the administration, the identity of the horse, and the diagnosis to be filed with manager of the sale.[72] Significantly, the statute does not place any time limit on the prohibition, nor is it limited to administration by or on behalf of the selling owner.[73] This means that if ever in a horse's life it received a prohibited substance, no matter from whom, that substance must have been therapeutic, and the full reporting of it must be made in accordance with

---

[67] *Id.* § 24006.
[68] *Id.* § 24011(a).
[69] *Id.* § 24011(1).
[70] *Id.* § 24011(2).
[71] *Id.* § 24011(3).
[72] *Id.* § 24011.
[73] *See id.*

the statute.[74] If there is a failure to comply, the horse is ineligible for public sale (and for showing and competing) in California.[75] It is doubtful that was the intent of the statute, but that is the literal meaning of it.

Adding to the confusion created by these statutes is the exclusion from Chapter 8 stated in Section 24001(d)(2) for "sales consisting solely of racing stock."[76] The term "racing stock" is not defined. Does it mean horses that are actively engaged in racing, or does it include racing prospects such as yearlings, or breeding stock such as stallions and mares? Further, the phrase "sales consisting solely" literally means that that entire sale would have to be of racing stock.[77] Thus, if "racing stock" means horses actively racing, a sale, such as what auction houses call "mixed sales," consists of both actively racing horses and breeding stock or yearlings, the entirety of the horses, including the "racing stock," would be subject to the statutory provisions. It is hard to imagine that this was intended, or if so, why it was so intended.

> Section 24016 states that no other provision in Chapter 8 shall in any way affect existing statutes governing horseracing or affect horse sales or horse auction sales when such sales are solely for the sale of racehorses or breeding stock that is used in the production of racehorses and when such sales are held or conducted on the premises of any racing association under the jurisdiction of, and with the authorization and approval of, the California Horse Racing Board.[78]

"Racehorse" is defined to mean a horse eligible to participate in a [licensed] horseracing contest in California, but not a racehorse "participating in a competition, show or sale covered by this chapter."[79] Although this provision is technically not an exclusion from Chapter 8, it merely allows other statutes to pre-empt its provisions, and is far from clearly worded. As a result, its intent appears to be to exempt from the chapter horse sales that are regulated by the racing authorities in California.[80]

---

[74] *See id.*
[75] *See id.*
[76] *Id.* § 24001(d)(2).
[77] *See id.*
[78] *Id.* § 24016
[79] *Id.*
[80] *Id.*

Section 24017 adds to the confusion of what horses are subject to Chapter 8. It states: "[t]his chapter shall not apply to any horse one year of age or less entered in any public horse sale, if public notice of the administering of any drug or medication has been given as prescribed by the secretary."[81]

Chapter 8 enables the California Department of Agriculture to promulgate regulations.[82] The Department has issued regulations requiring the registration for equine events and public horse sales,[83] governing permitted and prohibited medications before sales,[84] and testing procedures.[85] Regulations impose penalties in the form of fines and suspensions.[86]

What effect does Chapter 8, and the regulations promulgated pursuant to it have on the rights between buyers and sellers? That is, if a seller violates a medication restriction under the statue or regulation, does Chapter 8 provide any rights to the buyer that are over and above those of the U.C.C. or common law? Arguably it does not affect those rights, as no reference is made in Chapter 8 or the regulations to such private rights.[87] However, the presence of statutory obligations may create a duty to disclose, the failure of which could form the basis for a warranty, rejection, revocation, or fraudulent omission claim.

4. Section 18501 of the California Food and Agricultural Code — No Implied Warranty for Livestock

Section 18501 of the California Food and Agricultural Code states: "In the absence of an express warranty, the mere sale of livestock shall not be construed to imply a warranty of such livestock for any particular purpose."[88] This provision, although it reads as generally applicable to all horses (and other livestock), is codified under the provisions dealing with slaughtered animals.[89] A companion statute purports to eliminate the implied warranties of fitness and the implied warranty of "merchantable

---

[81] *Id.* § 24017.

[82] *Id.* §§ 24000-24018 (West, Westlaw through urgency legislation through Ch. 807 of 2015 Reg. Sess. and Ch. 1 of 2015-2016 2nd Ex. Sess.).

[83] CAL. CODE REGS. tit. 3, § 1280.1 (2015).

[84] *Id.* § 1280.8.

[85] *Id.* § 1280.7.

[86] *Id.* § 1280.10.

[87] *See* CAL. FOOD & AGRIC. CODE §§ 24000-24018.

[88] *See id.*

[89] *See id.*

quality," but expressly for "the sale of livestock for slaughter."[90] A federal court applying California law held that the statute did not apply to the purchase of a show horse, and further held that it may have been effectively repealed by the enactment of the U.C.C., given its general repealer provision.[91] Therefore, despite its broad literal wording, the provision should have no effect on the U.C.C. rights of buyers and sellers of horses except for slaughter.

E. New York Non-Uniform Statutes

New York has not enacted any statutes that alter the U.C.C. with respect to the sale of horses.

F. Ohio Non-Uniform Statutes

1. Section 1302.29 of the Ohio Revised Code

Like Kentucky and Florida, Ohio tacked on a partial exclusion of implied warranties for certain livestock to its version of section 2-316 of the U.C.C.[92] It reads:

> (4) with respect to the sale of livestock between merchants, except sales of livestock for immediate slaughter, both of the following apply:
> (a) there is no implied warranty that the animal is free from disease.
> (b) there is an implied warranty that the seller has no knowledge or reason to know that the animal is not free from disease at the time of sale and that he has complied with all state and federal health rules applicable to the animal.[93]

In application, this negation of certain implied warranties is not broad enough to include all horse sales. First, it only applies "to the sale of

---

[90] *Id.* § 18502.

[91] *See* O'Connor v. Judith B. and Roger C. Young, Inc., No. C-93-4547 DLJ, 1995 WL 415138 (N.D. Cal. 1995). *See also* 4 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, § 74 (10th ed. 2005).

[92] *See* OHIO REV. CODE ANN. § 1302.29(C)(4) (West 2015).

[93] *Id.*

livestock between merchants . . . ."[94] Unlike the implied warranty of merchantability in section 2-314 of the U.C.C., which applies if the seller is a merchant, both the seller and the buyer must be "merchants" for the limitation to be applicable: "'Between merchants' means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants."[95] The definition of "merchant" may exclude the casual or occasional buyer of horses:

> Merchant means a person who deals in goods of the kind or otherwise by the person's occupation holds the person out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by the person's employment of an agent or broker or other intermediary who by the agent's, broker's, or other intermediary's occupation holds the person out as having such knowledge or skill.[96]

Thus, the experience of a bloodstock agent, representing the buyer, may qualify the buyer as a merchant, even if the buyer is not experienced.[97]

Moreover, like the Kentucky modification, the exclusion of implied warranties only applies to the horse being free of disease (Kentucky's was "disease or sickness" [98]).[99] Thus, the same ambiguity exists: does "disease" include a chronic condition? Does it include an injury? A non-obvious defect in conformation? As with the Kentucky statute, no judicial guidance has been forthcoming.

Finally, the exclusion is tempered by the last subparagraph, creating a limited warranty that the seller has no knowledge or reason to know that the animal is not free from disease, and that the seller "has complied with all state and federal health rules applicable to the animal."[100]

---

[94] *Id.*
[95] *Id.* § 1302.01(A)(7).
[96] *Id.* § 1302.01(A)(5).
[97] *See id.*
[98] KY. REV. STAT. ANN. § 355.2-316 (West 2015).
[99] OHIO REV. CODE ANN. § 1302.29(C)(4)(a).
[100] *Id.* § 1302.29(C)(4)(b).

2. *Section 947.01 of the Ohio Revised Code – Bill of Sale for Branded Livestock*

Ohio has one limited bill of sale requirement pertaining to the sale of horses—the requirement that a seller of livestock "with a brand" provide the purchaser with a written bill of sale.[101] Such bill of sale is "prima-facie evidence of the conveyance of title."[102] Although "livestock" is defined to include horses,[103] it is unlikely that many horse in Ohio are branded. "Brand" means an identification on the hide by a hot iron or other humane method, which is registered with the state, and thus would not seem to include a lip tattoo of the type commonly used to identify horses.[104]

G. *Oklahoma Non-Uniform Statutes*

1. *Title 12A section 2-316(3)(d) of the Oklahoma Statutes Annotated – Implied Warranties*

Oklahoma modified its version of section 2-316 of the U.C.C. to limit implied warranties of merchantability and fitness with respect to livestock.[105] However, it excepted horses from that modification.[106] The exception reads:

> (3) Notwithstanding subsection (2)
>
> . . .
>
> (d) the implied warranties of merchantability and fitness do not apply to the sale or barter of livestock or its unborn young, provided that seller offers sufficient evidence that all state and federal regulations pertaining to the health of such animals were complied with; provided, however, that the implied warranties of merchantability and fitness shall apply to the sale or barter of horses.[107]

The modification remains important to horse sales because, if read literally, the provision actually eliminates the ability to exclude or modify

---

[101] *Id.* § 947.04.
[102] *Id.*
[103] *Id.* § 947.01(B).
[104] *Id.*
[105] *See* OKLA. STAT. ANN. tit. 12A, § 2-316(3)(d) (West 2015).
[106] *See id.*
[107] *Id.*

implied warranties in connection with the sale of horses.[108] With respect to horses, the provision states that "[n]otwithstanding subsection (2) . . . the implied warranties of merchantability and fitness shall apply to the sale or barter of horses.[109] Subsection (2) provides the contractual mechanism for excluding or modifying implied warranties.[110] Thus, because of the literal wording, "notwithstanding" those exclusions or modifications, the implied warranties of merchantability and fitness continue to exist.[111] Also ambiguous is whether subsection (3)(d) trumps subsection (3)(a) (allowing implied warranties to be disclaimed by an "as is" expression), subsection (3)(b) (exclusion of implied warranties by examination), or subsection (3)(c) (exclusion of implied warranties by course of dealing, or course of performance or usage of trade).[112]

It is unlikely this literal reading was the intended interpretation construction of this modification, and is probably an artifact of careless drafting. However, an argument could be made that it was the intended construction because if the drafters had intended merely to carve out horses from the exclusion in subsection (3)(d), they could simply have provided that it applies to "the sale or barter of livestock, except horses . . . ." Instead, the drafters affirmatively stated that the implied warranties existed, and thus they exist "notwithstanding" otherwise effective exclusions under subsection (2).[113] Despite the statute being in effect for decades,[114] and Oklahoma being a leading horse-selling state,[115] no published judicial decision provides any guidance.

H. Pennsylvania Non-Uniform Statutes

Pennsylvania has not enacted any statutes that alter the Uniform Commercial Code with respect to the sale of horses.

I. Virginia Non-Uniform Statutes

Virginia has not enacted any statutes that alter the Uniform

---

[108] *See id.*
[109] *Id.*
[110] *See id.* § 2-316(2).
[111] *See id.* § 2-316(3).
[112] *See id.* § 2-316.
[113] *See id.* § 2-316(3).
[114] *See id.* § 2-316.
[115] *See USDA Releases 2012 Census of Agriculture Findings*, AM. HORSE COUNCIL (May 22, 2014, 11:52 AM), http://www.horsecouncil.org/usda-releases-2012-census-agriculture-findings.

Commercial Code with respect to the sale of horses.

J. Arizona Non-Uniform Statutes

1. Section 3-1291 of the Arizona Revised Statutes – Bill of Sale Requirement

Section 3-1291 of the Arizona Revised Statutes succinctly states: "Upon the transfer of livestock . . . delivery of the animals shall be accompanied by a written and acknowledged bill of sale from the vendor to the purchaser."[116] "Livestock" is defined to include horses.[117]

In *Milner v. Colonial Trust Co.*, the Arizona Court of Appeals addressed whether a transfer without a bill of sale is necessarily void.[118] The dispute was over ownership of a horse.[119] The trial court held that the lack of a written bill of sale was fatal to the alleged transferee's claim of ownership.[120] The Court of Appeal disagreed:

> Milner contends that the trial court interpreted A.R.S. § 3–1291 too broadly and that it should not be interpreted to mean that there can be no effective transfer of livestock ownership without a bill of sale. We agree. Section 3–1291 states only that "[u]pon the sale or transfer of livestock, delivery of the animals shall be accompanied by a written and acknowledged bill of sale from the vendor to the purchaser." The statute does not provide that a transfer of livestock without a bill of sale is ineffective or incomplete. The plain language of the statute merely imposes an obligation on the vendor of livestock to provide a bill of sale to the purchaser upon delivery of the livestock. Although the statute obligates the vendor to provide a bill of sale, and the purchaser is entitled to expect one, its absence does not void the transfer.[121]

The court further supported its conclusion by looking to another statute, which provides that in an action for unlawful possession of

---

[116] ARIZ. REV. STAT. ANN. § 3-1291 (West 2015).
[117] *Id.* § 3-1201.
[118] Milner v. Colonial Trust Co., 6 P.3d 329, 331 (Ariz. Ct. App. 2000).
[119] *See id.*
[120] *Id.* at 330.
[121] *Id.* at 332.

livestock, a bill of sale is considered prima facie evidence of ownership of livestock, necessarily implying that lack of a bill of sale is not fatal to a claim of ownership.[122] Clearly, therefore, failure to comply with the bill of sale statute does not render a transfer of a horse void or unenforceable.

K. Colorado Non-Uniform Statutes

1. Section 35-54-101 of the Colorado Revised Statutes – Bill of Sale Requirement for Livestock

Article 54 of Title 35 of the Colorado Revised Statutes sets forth requirements for a bill of sale for transfer of livestock.[123] Section 101 provides:

> No person, whether as principal or agent, shall sell or otherwise dispose of any livestock, nor shall any person, whether as principal or agent, buy, purchase, or otherwise receive any such livestock, unless the person so selling or disposing of any such livestock gives, and the person buying, purchasing, or otherwise receiving any such livestock takes, a bill of sale, in writing, of the livestock so sold or disposed of, or so bought, purchased, or otherwise received.[124]

Section 102 states the penalty: failure to comply is a misdemeanor.[125] Section 103 sets forth the content required for a bill of sale.[126] In the case of horses, it requires that the "age, color, and sex, with special markings, including all iron brands carried" be described, and that the buyer and seller sign the bill of sale, including their addresses.[127] Section 104 requires any person to produce the bill of sale "on reasonable request to any person inquiring therefore . . . ."[128] Section 105 provides that a person who sells or offers to sell livestock for which no bill of sale (or power of attorney) is

---

[122] ARIZ. REV. STAT. ANN. § 3-1308 (2015).
[123] *See* COLO. REV. STAT. ANN. § 35-54-101 to -106 (West 2015).
[124] *Id.* § 35-54-101.
[125] *Id.* § 35-54-102.
[126] *Id.* § 35-54-103.
[127] *Id.*
[128] *Id.* § 35-54-104.

provided by the owner is guilty of theft, unless that person can prove he was the actual owner or acted under the direction of the actual owner.[129]

The familiar question arises: does a conveyance of a horse that does not conform to Article 54's bill of sale requirement convey actual title? Fortunately, the Supreme Court of Colorado addressed this question directly, albeit in the context of cattle, in *Cugnini v. Reynolds Cattle Co.*[130] In that case, cattle dealers Duane and Pat Cugnini bought cattle from a ranch.[131] However, the bill of sale the Cugnini's obtained did not conform to Article 54 because it did not contain some of the required information and was not signed by the buyer.[132] The Cugninis then entered into an agreement to sell the cattle to a dealer named Jerry Russell, who instructed the Cugninis to ship the cattle to another ranch.[133] Again, the bill of sale was deficient.[134] Russell then sold the cattle to one Reynolds, who owned a feedlot next to the ranch, again without a conforming bill of sale.[135] Russell failed to pay, and the Cugninis went to the ranch and retrieved the cattle.[136] The ranch owner elicited the sheriff and re-retrieved the cattle.[137] A lawsuit against the ranch and Reynolds for conversion followed, which resulted in a counterclaim for trespass.[138]

The trial court ruled that Reynolds converted the cattle because the bill of sale did not comply, and therefore title never transferred.[139] It further ruled in favor of the ranch on the trespass claim.[140] The conversion claim was reversed on appeal, and the Colorado Supreme Court affirmed the reversal.[141] The court acknowledged that neither the sale to Russell nor the sale to Reynolds complied with Article 54.[142] The court, however, noted that non-compliance with the bill of sale statute was not fatal to the transfer of title, noting that even the statute uses the term "owner" in connection with a transferee receiving livestock without a conforming bill of sale.[143] The court stated that because the bill of sale statutes "do not necessarily determine when valid title to cattle passes, we must look to

---

[129] *Id.* § 35-54-105.
[130] Cugnini v. Reynolds Cattle Co., 687 P.2d 962 (Colo. 1984).
[131] *Id.* at 963.
[132] *Id.* at 963, 965.
[133] *Id.* at 963.
[134] *Id.*
[135] *Id.*
[136] *Id.* at 964.
[137] *Id.*
[138] *Id.* at 963, 964.
[139] *Id.* at 964.
[140] *Id.*
[141] *Id.* at 963, 964.
[142] *Id.* at 965.
[143] *Id.*

other sources of law to resolve the present dispute."[144] The court specifically noted that passage of title was governed by the U.C.C., and that principles of harmonious construction determined that the U.C.C. provisions controlled over the bill of sale statutes.[145] Ultimately, under the U.C.C., title transferred to Reynolds, as he was a buyer in the ordinary course of business from one entrusted with the cattle, and thus the action for conversion must fail.[146] *Cugnini*, as the Supreme Court of Colorado noted in its decision, is consistent with rulings of courts in other jurisdictions that preceded it.[147]

2. *Section 35-55-101 of the Colorado Revised Statutes – Brand Inspection*

Article 55 of Title 35 of the Colorado Revised Statutes generally regulates "public livestock markets," and specifically requires a consignor to show a bill of sale "signed by the recorded owner of the brand or no brands . . . ."[148] Otherwise, the livestock is treated as if the consignor has not shown ownership, and thus, presumably (although not explicitly), may not be sold. "Livestock" is defined to include horses. It applies if the seller sells at a "public livestock market." That term is broadly defined as follows:

> "Public livestock market" means any place, establishment, or facility, commonly known as a livestock market, conducted or operated for compensation or profit as a public livestock market, consisting of pens, or other enclosures, and their appurtenances, in which live horses, mules, cattle, burros, swine, sheep, goats, and poultry are received, held, or assembled for either public or private sale. The person, partnership, or corporation owning or controlling premises defined as a public livestock market shall be compensated for the use of the premises and the

---

[144] *Id.*

[145] *Id.*

[146] *Id.* at 968.

[147] *See id.* at 965 (citing Wolf v. Schaben, 272 F.2d 737 (8th Cir.1959) (applying Nebraska law); Brumley Estate v. Iowa Beef Processors, Inc., 715 F.2d 996 (5th Cir. 1983) (applying Texas law); Atwood Chevrolet-Olds, Inc. v. Aberdeen Mun. School Dist., 431 So.2d 926 (Miss. 1983); Bendfeldt v. Lewis, 30 N.W.2d 293 (Neb. 1948); American Lease Plans, Inc. v. R.C. Jacobs Plumbing, Heating & Air Conditioning, Inc., 260 S.E.2d 712 (S.C. 1979); Island v. Warkenthien, 287 N.W.2d 487 (S.D. 1980); Wilson v. Burrows, 497 P.2d 240 (Utah 1972).

[148] COL. REV. STAT. ANN. § 35-55-112(1) (1998).

> services performed in handling the livestock in connection with the sale.[149]

In the context of horse sales, this would encompass auction horses, but arguably also encompasses any farm or other operation that sells horses for others. Therefore, such a farm or operation is required to obtain a bill of sale from the consignor as a condition of selling. The statute does not state how this obligation is imposed where the consignor is the breeder of the horse, in which event no bill of sale would likely exist.

L. Michigan Non-Uniform Statutes

1. Section 287.726a of the Michigan Statutes – Sale of Horses Requires Negative EIA Test

Although regulation of the movement of livestock, including horses, throughout the United States commonly requires certain health certifications, Michigan imposes such a requirement on the sale of horses.[150] Section 726a of the Animal Industry Act prohibits the change of ownership of a horse (or any member of the Equidae family) unless the horse had a negative test for equine infectious anemia within the past twelve months.[151] The Act also requires the change of ownership to be accompanied by a veterinary certificate to that effect.[152] Nothing in the provision seems to indicate that a transfer in violation of the provision is void.

M. Illinois Non-Uniform Statutes

1. Chapter 810 Section 5/2-316 of the Illinois Statutes – Exclusion of Implied Warranties

Illinois joined several other states in modifying section 2-316 of the Uniform Commercial Code by adding the following:

> (3) Notwithstanding subsection (2)...
>
> . . .

---

[149] *Id.* § 35-55-101(2).
[150] MICH. COMP. LAWS § 287.726a (2015).
[151] *Id.*
[152] *Id.*

> (d) the implied warranties of merchantability and fitness for a particular purpose do not apply to the sale of cattle, swine, sheep, horses, poultry and turkeys, or the unborn young of any of the foregoing, provided the seller has made reasonable efforts to comply with State and federal regulations pertaining to animal health. This exemption does not apply if the seller had knowledge that the animal was diseased at the time of the sale.[153]

This exception is almost identical to the one in Oklahoma, discussed above, but adds that the exception does not apply if the seller had knowledge of the illness. As in Kentucky, the exception is illogically placed under subsection (3), which commences with the "[n]otwithstanding subsection (2)" language, a drafting error that, unlike a similar one in Oklahoma, is likely harmless.

Illinois, like Kentucky, made the exception inapplicable to a seller with knowledge.[154] Does this mean that the seller must have actual knowledge, or would "reason to know" suffice? No guidance exists. Additionally, as with the Ohio exception, the exception is contingent on compliance with state and federal health regulations, although in Illinois only "reasonable efforts" need be made.

2. *Illinois Diseased Animal Act – Selling Diseased Animals*

Section 21 of the Illinois Diseased Animals Act provides, among other things, that anyone who, "knowing that any contamination or contagious or infectious disease exists among his animals" sells any animal "so contaminated or diseased" is guilty of a petty offence, and shall "forfeit all right to any compensation for any animal of property destroyed under provisions of this Act."[155] For a horse buyer, this would create a separate cause of action in addition to U.C.C. and common-law remedies, but only where the disease led to the horse being destroyed.

---

[153] 810 ILL. COMP. STAT. 5/2-316(3) (1982).
[154] *Id.* at 5/2-316(3)(d).
[155] 510 ILL. COMP. STAT. 50/21 (2007).

3. *Illinois Infectious Anemia Control Act – EIA Disclosure upon Sale of Horse*

A veterinary certificate confirming that a horse has tested negative for equine infectious anemia within the past twelve months is required by Illinois for the sale of a horse (12 months of age or older).[156] As with the similar Michigan statute, there is no indication that a sale that is not in conformity is void.

N. New Mexico Non-Uniform Statutes

1. *Chapter 77 of the New Mexico Statutes – Branding and Bills of Sale*

In western states like New Mexico, where open ranges are more common, statutes exist that govern the branding of livestock. Chapter 77 of the New Mexico Statutes requires all livestock to be branded, with certain exceptions. One exception is for horses where the owner has a registration certificate from a registered breed association.[157] Thus many horses, although by no means all horses, are exempt.

Chapter 77 also requires a written bill of sale for any purchase or sale, and the bill of sale must meet certain criteria.[158] The bill of sale must "fully describe the livestock, and such description shall include marks, brands and all other identification."[159] By statutory mandate, the selling owner "guarantees to defend the title against all lawful claims."[160] This mandate cannot be taken literally, because if a claim were lawful it would not be amenable to a defense. Therefore, it is presumable that it was meant to mandate the indemnity of a buyer who did not receive clear title.

The penalty for violating the bill of sale requirement does not appear to include an automatic voiding of title. Rather, the failure to possess a bill of sale serves as a presumption that the possessor of the horse stole the horse, and the horse can be immediately impounded. If proof of ownership is not forthcoming in fifteen days, the impounding officials can sell the horse.[161]

---

[156] 510 ILL. COMP. STAT. 65/4.2 (1997).

[157] N.M. STAT. ANN. § 77-9-3(A) (2015).

[158] *Id.* § 77-9-21(A).

[159] *Id.* § 77-9-22(A).

[160] *Id.*

[161] *Id.* § 77-9-23(B). Due to presumably poor statutory drafting, the statute technically requires the purchaser or possessor to impound the horse: "A person who has purchased or received or has in his possession any livestock either for himself or another and who cannot produce proof of ownership . . . shall have the livestock impounded."

A registration certificate from a breed registry can serve as proof of ownership.[162]

O. Indiana Non-Uniform Statutes

1. Section 15-17-15-1 of the Indiana Statutes – Prohibition Against Selling Diseased Animals

Indiana has several statutes dealing with diseased animals, one of which contains a provision that states: "a person may not sell an animal that the person knows or suspect has an infectious or contagious disease."[163] This applies to all animals, including horses.[164] Although nothing in the statute suggests that a transfer of a horse with a known or suspected disease is void, this prohibition would serve to create a duty on the part of the seller, satisfying a requisite for a non-disclosure claim by a buyer of a diseased horse.

2. Section 15-19-6-17 of the Indiana Statutes – Bill of Sale for Branded Livestock

Indiana requires that a person selling branded livestock, including branded horses, execute a written bill of sale.[165] The bill of sale must include the signature and "residence" of the seller, the name and address of the purchaser, the description of the horse or horses, and the brand.[166] The failure to do so apparently does not void the conveyance, but such bill of sale "is prima facie evidence of the conveyance of title" of the horse conveyed.[167]

P. South Dakota Non-Uniform Statutes

1. Chapter 40-20 of the South Dakota Codified Laws – Bill of Sale Requirement

South Dakota Codified Laws Chapter 40-20 generally regulates the

---

[162] N.M. STAT. ANN. § 77-9-22(D) (1999).
[163] IND. CODE. § 15-17-15-1 (2008).
[164] *Id.* § 15-17-2-3.
[165] *Id.* § 15-19-6-17.
[166] *Id.*
[167] *Id.*

movement of livestock, including horses, within the state, as well as the movement of livestock for export from the state, or from certain counties in the state.[168] It requires brand inspection in certain circumstances for such movement.[169] It provides that branded or unbranded livestock may be "transferred by means of an authorized bill of sale without a brand inspection."[170] The bill of sale must meet criteria, as established by regulation, and a copy of the bill of sale must be filed with the Brand Inspection Board.[171] The sole regulation requires that the bill of sale include the name and address of the buyer and seller, as well as a description of the brand and a certification that the brand is registered with the State Brand Board, and must be witnessed by two witnesses.[172] The regulation does not set forth any exception for the sale of unbranded livestock, as is explicitly permitted in the statute.

As a practical matter, the bill of sale requirement may apply to the sale of horses in many counties in South Dakota. It is unclear how the seller of an unbranded horse would comply, given the regulatory requirement of a brand certification. However, it does not appear that a non-complying transfer would necessarily be void or unenforceable.

Q. North Carolina Non-Uniform Statutes

1. Section 106-400 of the North Carolina General Statutes – Sale of Diseased Animals Prohibited

Article 34 of the North Carolina statutes governs animal diseases.[173] Section 106-400 prohibits the sale or transportation of "any animal affected with a contagious animal disease, unless permitted by the State Veterinarian . . . ."[174] A sale not in compliance may result in the quarantine of the animal.[175] Clearly this applies to the sale of horses, publicly or privately. However, it is unclear as to whether or not this creates a warranty that the animal is free from a contagious animal disease, whether that warranty can be disclaimed, and whether there is liability to others whose

---

[168] *See generally* S.D. CODIFIED LAWS § 40-20-26.2 (2002).
[169] *Id.*
[170] *Id.*
[171] *Id.*
[172] S.D. ADMIN. R. 12:10:02:19 (1998).
[173] N.C. GEN. STAT. § 106-304 (2001).
[174] *Id.* § 106-400 (2001).
[175] *Id.*

animals become infected. The mandate seems to apply regardless of whether the seller knows or has reason to know of the contagious disease.

2. *Sections 106-413 and 106-414 of the North Carolina General Statutes*

Under the statutory provisions dealing with public livestock markets, but apparently not limited to horses or other livestock sold in such markets, North Carolina included two statutes prohibiting the sale of an animal with a contagious disease.[176] The first, section 106-413, mandates:

> No person or persons shall sell or offer for sale, trade or otherwise dispose of any animal or animals that are affected with a contagious or infectious disease, or that the owner or person in charge or a livestock inspector or an approved veterinarian has reason to believe are so affected or exposed; provided, however, that upon written permission of the Commissioner of Agriculture or his authorized representative it shall be lawful to sell, trade, or otherwise dispose of such animals for immediate slaughter at a plant with State or federal meat inspection. The provisions of this Article, including those regulations adopted by the North Carolina Board of Agriculture, shall apply to all animals sold or offered for sale on any public highway, right-of-way, street, or within one-half mile of any public livestock market, or other public place; provided, that the one-half mile provision shall not apply to animals raised and owned by a bona fide farmer who is a resident of the State of North Carolina and sold or offered for sale by him.[177]

The first sentence appears to create a blanket prohibition, not limited to sales at public livestock markets. The following sentence curiously states that "the provisions of this Article" applies to sales located in certain public places.[178] Presumably, the sentences are to be read together, meaning that the broad prohibition in the first sentence does not apply to private horse sales on private property.

---

[176] *See* N.C. GEN. STAT. § 106-413 (2001); *id.* § 106-414 (2001).
[177] *Id.* § 196-400.
[178] *Id.*

That statutory provision is followed by the following:

> No cattle, swine, or other livestock with visible symptoms of a contagious or infectious disease shall be transported or otherwise moved on any public highway or street in this State except upon written permission of the Commissioner of Agriculture or his authorized representative. The burden of proof to establish the health of any animal transported on the public highways of this State, or sold, traded, or otherwise disposed of in any public place shall be upon the vendor. Any person who shall sell, trade, or otherwise dispose of any animal affected with, or exposed to, a contagious or infectious disease, or one he has or should have reason to believe is so affected, or exposed, shall be civilly liable for all damages resulting from such sale or trade; provided that, nothing in this section shall prevent an individual who owns or has custody of sick animals from transporting sick or dead animals to a disease diagnostic laboratory operated or approved by the North Carolina Department of Agriculture and Consumer Services if reasonable and proper precautions to prevent the exposure of other animals is taken by the owner or transporter thereof.
>
> It shall be a Class 1 misdemeanor to remove before slaughter any ear tag, back tag, or other mark of identification approved by the Commissioner of Agriculture for identifying animals for disease control purposes unless prior written authorization has been obtained from the State Veterinarian or his authorized representative.[179]

The first sentence deals solely with transportation, and is a prohibition applicable to "cattle, swine, or other livestock," although the remainder of the provision, including that dealing with sales, uses the broader term "animal."[180] Regardless, it appears to apply to the sale of horses. Unlike the preceding section, it is not limited to sales in public places. It provides that the seller who sells any animal "affected with or exposed to a contagious or infectious disease" is civilly liable for "all damages resulting from such sale

---

[179] *Id.* § 106-414.
[180] *Id.*

or trade . . . ."[181] The provision is applicable whether or not the seller knows or has reason to know of the disease or exposure. Indeed, the liability to third parties is clearly contemplated. There is no reason a buyer could not make a claim under this provision if the animal the buyer purchased was diseased. It is unclear, however, whether any disclaimers of warranty or negating language under the Uniform Commercial Code would avoid that liability. In other words, the statute may create strict liability that cannot be disclaimed, and without regard to privity with the seller.

R. Montana Non-Uniform Statutes

1. Section 30-2-316 of the Montana Code Annotated – Implied Warranties

Montana modified its version of U.C.C. section 2-316 to partially exclude implied warranties for certain animals, including horses.[182] "[I]n sales of cattle, hogs, sheep, or horses, there are no implied warranties, as defined in this chapter, that the cattle, hogs, sheep, or horses are free from sickness or disease."[183] Like the Kentucky modification, the Montana statute only excludes implied warranties as to sickness or disease, terms that may not be clear with respect to some problems with a horse.[184] Unlike Kentucky, no exception is carved out for situations in which the seller has knowledge of the sickness or disease prior to sale.[185]

2. Section 81-3-201 of the Montana Code Annotated. – Inspection and Bill of Sale Requirement

Montana requires all livestock, defined to include horses,[186] to be inspected by a state stock inspector before being sold or even moved to the possession of the intended buyer.[187] The exceptions are very few, and include transfer to a family member and change of ownership without the

---

[181] *Id.*
[182] MONT. CODE ANN. § 30-2-316 (2009).
[183] *Id.*
[184] *Id.*
[185] *Id.*
[186] *Id.* § 81-3-201(3).
[187] *Id.* § 81-3-211.

livestock changing premises.[188] Violating this provision is a misdemeanor, [189] but no language indicates that the transfer itself is void or voidable.[190]

The provision also implicitly requires a bill of sale for the transfer because it requires a bill of sale to be presented to the livestock inspector as part of a change of ownership inspection.[191] The Department of Livestock is entitled to a copy of the bill of sale, and a fee.[192] Again, nothing indicates that a non-complying sale is void or unenforceable.[193]

S. Missouri Non-Uniform Statutes

1. Sections 400.2-316 and 277.141 of the Missouri Statutes — Exclusion of Implied Warranties

Missouri also modified its version of section 2-316 of the Uniform Commercial Code with respect to implied warranties. Subsection five of section 400.2-316 reads:

> A seller is not liable for damages resulting from the lack of merchantability or fitness for a particular purpose of livestock he sells if the contract for the sale of the livestock does not contain a written statement as to a warranty of merchantability or fitness for a particular purpose of the livestock.[194]

The provision contains several ambiguities because it does not simply provide that there are no implied warranties with respect to livestock.[195] Instead, it provides that a "seller is not liable for damages" if the contract for the sale "does not contain a written statement as to a warranty of merchantability or fitness . . . ."[196] Presumably, the latter phrase means that there must be an express warranty for those "implied" warranties to be the basis for liability. However, this does not seem necessary, given that express warranties stand alone and are conceptually different than implied warranties.

---

[188] *Id.*
[189] *Id.* § 81-3-231(2).
[190] *See id.*
[191] *Id.* § 81-3-210.
[192] *Id.*
[193] *Id.*
[194] MO. REV. STAT. § 400.2-316(4) (1980).
[195] *See id.*
[196] *Id.*

Equally unclear is the meaning and intent of the phrase "shall not be liable for damages."[197] Does this mean that such implied warranties exist? Although they cannot form the basis for liability for damages, could they become the basis for another remedy, such as rejection or revocation of acceptance? Presumably that was not the intent of the legislature, despite the unnecessary verbiage. The only published decision providing guidance on this matter is a decision of the Missouri Court of Appeals reversing a judgment against a seller of ostriches based on the implied warranty of fitness.[198] In the opinion, the court stated that because the contract did not contain a written statement as to any warranty of merchantability or fitness, "there was no implied warranty."[199] Missouri included nearly identical language in its Livestock Marketing law:

> If a contract for the sale of livestock does not contain a written statement as to a warranty of merchantability or fitness for a particular purpose, the seller is not liable for damages resulting from the lack of merchantability or fitness for a particular purpose of the livestock sold under the terms of that contract.[200]

This provision appears to neither add nor subtract from the modification of U.C.C. section 2-316.[201] Of course, it contains the same ambiguities.

T. Nebraska Non-Uniform Statutes

1. Nebraska Livestock Brand Act – Bill of Sale Requirement

Nebraska's Livestock Brand Act[202] includes a requirement that any transfer of livestock, defined to include horses,[203] "be accompanied by a properly executed bill of sale in writing. . . ."[204] The requirements for the bill of sale are quite specific:

---

[197] *Id.*
[198] Surface v. Kelly, 912 S.W.2d 646, 651 (Mo. Ct. App. 1995).
[199] *Id.*
[200] *See* MO. REV. STAT. § 277.141 (1980).
[201] *See id.*
[202] NEB. REV. STAT. § 54-170 (2014).
[203] *Id.* § 54-183.
[204] *Id.* § 54-1,116.

> Bill of sale means a formal instrument for the conveyance or transfer of title to livestock or other goods and chattels. The bill of sale shall state the purchaser's name and address, the date of transfer, the guarantee of title, the number of livestock transferred, the sex of such livestock, the brand or brands, the location of the brand or brands or a statement to the effect that the animal is unbranded, and the name and address of the seller. The signature of the seller shall be attested by at least one witness or acknowledged by a notary public or by some other officer authorized by state law to take acknowledgments. For any conveyance or transfer of title to cattle subject to assessment imposed pursuant to the federal Beef Promotion and Research Order, 7 C.F.R. part 1260, for which the purchaser is the collecting person pursuant to 7 C.F.R. 1260.311 for purposes of collecting and remitting such assessment, the bill of sale shall include a notation of the amount the purchaser collected from the seller or deducted from the sale proceeds for the assessment. A properly executed bill of sale means a bill of sale that is provided by the seller and received by the purchaser.[205]

Another section states that if unbranded livestock, inspected under the Livestock Brand Act or other provision, are shipped or sold, the seller "may be required to establish his or her ownership" by exhibiting to the Nebraska Brand Committee a bill of sale.[206] If not, the livestock "may be sold" but the selling agent "shall hold the proceeds of the sale" until ownership is established.[207] If ownership of the livestock cannot be established within sixty days, then the proceeds have to be paid to the Committee to be put into an "estray fund."[208] It is certainly far from clear how this relates to the typical sale and purchase of horses, but it appears to only be effective if the Nebraska Brand Committee demands to see proof of ownership.[209] Regardless, it emphasizes the importance of a written bill of sale for livestock, including horses.

---

[205] *Id.* § 54-172.
[206] *Id.* § 54-1,118.
[207] *Id.*
[208] *Id.* § 54-1,118.
[209] *Id.*

A bill of sale is also needed if an agent conducts the sale.[210] Section 54-1,123 provides:

> No person, other than the owner of the livestock, shall sell or offer for sale or trade or otherwise dispose of any livestock unless the person so offering has the bill of sale, a power of attorney from the owner of such livestock authorizing such sale, or other satisfactory evidence of ownership. A violation of this section is a Class III felony.[211]

Nebraska obviously does not take kindly to selling livestock, including horses, without a bill of sale, as evidenced by the severity of the penalty – a Class III felony – which is equal to that of a burglary in that state.[212] Regardless of the risks of not having a properly executed bill of sale, nothing in the statutes indicate that the conveyance is void or unenforceable for that reason.[213]

III. CONFLICT OF LAWS CONSIDERATIONS

Where the horse, seller, and buyer are all located within the same jurisdiction, equine sales transactions are, of course, not always entirely intrastate. The horse, seller, and buyer may all be located in different states, and the entire purchase may be handled through mail or electronically.

With regard to the actual validity of a purchase and sale of a horse, a conflict among jurisdictions will not be a significant problem. This is because, although the states vary considerably in the requirements for a written bill of sale and its contents, failure to comply does not affect the validity and enforceability of the conveyance. However, a conflict may occur in regard to whether implied warranties apply to the horse sold. As a practical matter, particularly if lawyers are involved in crafting the documents, such warranties will be effectively disclaimed. Moreover, the U.C.C. permits parties, within reason, to choose applicable law.[214]

Certainly many horse sales are conducted without formal legally-tightened documentation. Some are not documented in writing at all. It is easy to imagine a scenario in which conflict with regard to the existence of

---

[210] *Id.* § 54-1,123.
[211] *Id.* § 54-1,123.
[212] *Id.* § 28-507.
[213] *See id.* § 54-1,123.
[214] U.C.C. § 1-301 (2008).

implied warranties may arise when a disgruntled buyer detects a defect or disease after the purchase. Suppose a seller located in Texas (no implied warranties for livestock), negotiates with a buyer located in Missouri (no liability for breach of implied warranties on livestock), to sell a horse located in California (implied warranties exist). Immediately after purchase, the horse is shipped to Kentucky (no implied warranties for sickness). The horse turns out to be lame from a pre-sale undisclosed condition. The buyer sues for breach of implied warranty in California. What law—that is, which version of the "Uniform" Commercial Code—does the California court apply?

No reported decision involving implied warranties as applied to horses, or even livestock, addresses this issue. The U.C.C. itself—with respect to Article 2 which had the expectation that such conflicts would not arise—helps only so far as section 1-301(b) provides guidance, and even that section has not been enacted in every state. Although a thorough discussion is beyond the scope of this article, Section 188 of the Restatement (Second) of the Conflicts of Laws[215] sets out the factors to be considered in resolving a conflict where the parties have not specified applicable law in the contract. The location of the subject matter—the horse in this instance—is only one factor. However, with regard to a contract for the sale of chattel—and thus a horse—Section 191 of the Restatement elevates the importance of such location: "The validity of a contract for the sale of an interest in a chattel and the rights created thereby are determined . . . by the local law of the state where under the terms of the contract the seller is to deliver the chattel unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 to the transaction and the parties, in which event the local law of the other state will be applied."[216]

In the foregoing hypothetical, even though the horse was shipped out of California, the horse was delivered to the buyer, and thus the contract was performed, in California. Thus, the most appropriate answer is that the law of the place of delivery of the horse to the buyer—in this case California—should generally apply. However, because the rule as set forth in the Restatement is subject to some flexibility, given the "unless...some other state has a more significant relationship" clause, a definitive statement that the law of the place of delivery of the horse to the buyer governs, cannot be made as a universal rule. Thus, if for instance, the horse in the above hypothetical had been regularly boarded and trained in Texas,

---

[215] RESTATEMENT (SECOND) OF THE CONFLICTS OF LAWS § 188 (1977).
[216] *Id.* § 191.

but delivered in California while there briefly for a race, then arguably Texas has a more significant relationship to the transaction and Texas law should apply. This therefore demonstrates that although most conflicts can be resolved by the general rule, that will not always be the case.

IV. CONCLUSION

With respect to the sale of horses, the Uniform Commercial Code has been modified or supplemented by other statutes in several states where significant horse sales occur. Generally, these non-uniform variations and statutes change the existence of implied warranties and mandate a written bill of sale to accompany a horse transfer. Furthermore, Kentucky, Florida, and California have recently enacted significant additional requirements concerning writings and disclosures in connection with the sale of horses, but these enactments have raised several unanswered questions concerning their effect on the rights and obligations of buyers and sellers. California also added an elaborate set of pre-sale medication proscriptions.

With regard to the writing mandate, however, it appears that although failure to observe the mandate may cause practical problems or even potential liability, it does not necessarily void the transfer or render it unenforceable. Regardless, those involved in horse sales should consult the law of the state or states involved in the transaction so that compliance, with often very technical requirements, is accomplished.

The variation among the states also causes problems with determining which law applies. This is particularly concerning with regard to the existence or non-existence of implied warranties. Generally, the guidance given by conflicts of law principals would mandate the application of the laws of the state where the horse is delivered to the buyer, although there may be circumstances where the law of another state would be more appropriately applied. In the case of implied warranties, the conflict can be resolved by careful drafting of sale documents to include a choice of law provision.