



Consignors And Commercial Breeders Association

# Newsletter

First Quarter 2006 Volume 1, Issue 1

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*"None of us are as good as all of us."*

## Upcoming Sale Deadlines

- Keeneland Sept. Ylgs. 5/1
- FT Saratoga Open Ylgs. 5/22
- FT Texas Summer Ylgs. 5/31

## Point Of Interest

Nearly 5000 copies of the popular and frequently requested CBA booklet **Vet Work: Plain and Simple—SCOPING** have been distributed in:

- CALIFORNIA
- FLORIDA
- KENTUCKY
- MARYLAND
- NEW HAMPSHIRE
- NEW JERSEY
- TEXAS
- VIRGINIA
- WASHINGTON
- ARGENTINA
- CANADA
- DENMARK
- GERMANY
- JAPAN

## EDUCATIONAL INITIATIVES

### Vet Work: Plain And Simple

The CBA is working earnestly to make the sales scene better for buyers and sellers alike. Believing that an informed consumer is the best customer, your CBA Board is designing an on-going set of educational goals and initiatives aimed at helping all sales participants to better understand key sales issues and veterinary practices.

One such initiative involves the production and distribution of a series of booklets describing veterinary issues and procedures. The first volume titled *Vet Work: Plain and Simple -- SCOPING* was written by industry writer, Frank Mitchell, PhD, and was received with widespread interest and enthu-

siasm. The booklet features commentary by prominent sales veterinarians and was distributed at all major sales during the latter half of 2005. The booklet was also translated into Japanese by the JRA for use by members of the equine community in Japan. Copies are currently available by contacting the CBA and may also be downloaded from the CBA website - [www.consignorsandbreeders.com](http://www.consignorsandbreeders.com).

A second *Vet Work: Plain and Simple* booklet is underway on the topic of OCDs. Frank Mitchell is also writing this compendium of definitions and commentary from representatives of all sales groups, includ-

by Rob Whiteley



The cover of Volume One.

ing vets, breeders, sellers, buyers, trainers, and sales company officials. Look for Volume II before the July sale.

--- Rob Whiteley

## HOUSE BILL 446

The CBA has played a strong hand over the past several months to improve HB 446, the legislative act put forth by Jess Jackson related to ethics in the horse industry. While in full support of constructive efforts to eliminate undisclosed dual agency, the CBA nonetheless worked to modify certain sections of HB 446 to provide equal treatment and protection for the "little guy" and to define various passages more

specifically and clearly. Based on input from members and by a unanimous vote of the Board of Directors, the CBA requested that HB 446 be reviewed by a legal committee headed by Bill Hoskins from the law firm of Jackson-Kelly. Through the help of lobbyist Gene McLean, Senator Damon Thayer (Georgetown) and lobbyist Judy Taylor representing Keeneland, a number of CBA sponsored changes were passed

by Bayne Welker

on the Senate Floor to create a better bill for all of us involved in the selling of horses.

**Key Provisions of HB 446** (with CBA modifications in red):

Paragraph 3. It shall be unlawful for any person to act as an agent for both the purchaser and the seller, which is hereby defined as a dual agent, in a transaction involving the sale, purchase, or transfer of an in-



Frankfort, Kentucky

*“Individual commitment to a group effort -- that is what makes a team work, a company work, a society work, a civilization work.”*

Vince Lombardi

## House Bill 446 (continued)

terest in an equine used for racing or showing, including prospective racehorses, breeding prospects, stallions, stallion seasons, broodmares, or weanlings, or any interest therein, without (a) the prior knowledge and (b) the written consent of both the purchaser and the seller.

*\*The CBA sponsored modification allows the seller to get the **verbal consent** of the purchaser and seller **before** a sale and then obtain **written documentation after** the sale.*

Paragraph 5. Any person acting as an agent for a purchaser or seller or acting as a dual agent in a transaction involving the sale, purchase or transfer of an equine used for racing or showing, including prospective racehorses, breeding prospects, stallions, stallion seasons, broodmares, or weanlings, or any interest therein, shall upon request by the principal or principals, furnish copies of all financial records and financial documents, in the possession or control of the agent, pertaining to the transaction to the principal or principals. However, disclosure of compensa-

tion arrangements described in subsection (7) of this section shall not be required.

For purposes of this paragraph, financial records shall not include the agent or owner's work product used to internally evaluate the equine.

*\*This modification requires that **financial records only** need to be turned over to principals and eliminates a statutory subpoena of documents such as reserves, vet information and client correspondence. Our advisors considered this a very important change. This change should serve to deter attorneys from fishing an agent's records for unnecessary articles. Without this change attorneys would have unlimited rights to harass any agents about documents and information on a given horse regardless of any wrong doing by the agents involved.*

Paragraph 9. No person shall be held liable under this section unless that person has actual knowledge of the conduct constituting a violation of this section.

*\*This important paragraph prevents agents with no knowledge of a violation of conduct from being held liable under this statute.*

The CBA was the only consistent voice trying to make sure that HB 446 applied to all horsemen, large and small alike. Unfortunately, the CBA's efforts to fully support "the little guy" in every case did not win out as the following wording was retained in the final bill:

The provisions of this section shall not apply to the sale, purchase, or transfer of an equine used for showing if the sale, purchase or transfer does not exceed ten thousand dollars (\$10,000).

The bill was signed into law by Governor Ernie Fletcher on March 28, 2006. Each and every CBA member is encouraged to thank Senator Thayer ([dthayer@ntra.com](mailto:dthayer@ntra.com)) and lobbyist Judy Taylor ([jtaylor@keeneland.com](mailto:jtaylor@keeneland.com)) for their efforts to effectively present and support our CBA sponsored improvements to the bill.

—Bayne Welker



## CBA Officers

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## MANDATORY DISCLOSURE OF PERIOSTEAL ELEVATIONS (PE) AND TRANSPHYSEAL BRIDGES (SCREWS & WIRES) by Mark Taylor

The CBA has been actively working to help the Sales Integrity Task Force (SITF) sort out the complex issues related to mandating disclosure of PEs and transphyseal bridges. Meanwhile, implementation of mandatory disclosure has been postponed until it has been determined whether it is important enough to a broad spectrum of buyers to warrant the cost and tremendous amount of data collection required to keep accurate records.

In 2004, the SITF launched an initiative to eliminate undisclosed "dual agency" related to equine sales transactions. The scope of the initiative, however, was broadened to encompass many other areas, including mandatory disclosure of PEs and transphyseal bridges in the sales repository. Corresponding changes to the conditions of sale were recommended that allowed for the return of a horse to the seller if these procedures had been performed and were not

disclosed.

Individuals who served on the SITF during its formative phase volunteered their time and accomplished a great deal in a very short time. Their recommendations were designed to effect changes that would give buyers added confidence during a time of negative publicity. One such recommendation was made that voluntary disclosure would be encouraged for 2004 foals, and mandatory disclosure would begin with the foal crop of 2005. However, as a result of the tight time-line for inquiry and discussion leading up to this recommendation, members of the SITF were unable to thoroughly survey a sample of breeders and consignors to determine the feasibility of a mandatory disclosure policy. In addition, the SITF did not have sufficient time to survey buyers to see how important this issue is to the full range of buyers. This was important to do, as buyers rarely ask consignors about these

procedures, even though they have always been free to ask and remain free to ask if procedures have been performed.

In the months following the SITF's initial recommendation, members of the CBA organizing committee received valuable in-put and questions from numerous breeders and consignors regarding the complexities and inequities of mandatory disclosure. It became readily apparent that this new policy would necessitate the creation and maintenance of a costly and multi-layered database to establish an accurate history throughout a horse's entire sales life. In addition, many questions were raised regarding responsibility and liability related to the possibility of much litigation if records were not maintained in a perfectly accurate and seamless fashion. The concerns focused on who should be responsible and liable for accurate documentation, tracking, and reporting: Should the vets (cont. p.4)



*"In unity there is strength."*

Aesop

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**BOARD OF DIRECTORS**  
Upcoming Meeting Schedule

April 27 - May 25 - June 29



## PERIOSTEAL ELEVATIONS (PE) & TRANSPHYSEAL BRIDGES (SCREWS & WIRES) (continued)

be responsible? Should it be the breeder? Should it be the consignor? Should it be the pin-hooker? Should it be the sales companies? And who should be held liable for omissions and errors and be named in litigation? Furthermore, the fact that in many cases these procedures are completely undetectable added concern that the recommendation could not be implemented equitably.

In June of 2005, the SITF agreed to hear the concerns that had been articulated by members of the breeding and consigning community. To their credit, the leadership of the SITF recognized that many unwanted problems might arise by rushing to implement this recommendation without further research and preparation. The decision was made, therefore, to

postpone mandatory disclosure until the foal crop of 2006, or later.

After several subsequent meetings, subcommittees were formed by the SITF to study legal, veterinary, and database problems associated with implementing mandatory disclosure of limb alignment procedures. CBA members were asked to serve on each of the committees. After reports were gathered from each subcommittee, it was decided by the SITF that an extensive survey should be conducted of a large group of buyers to determine if this disclosure issue is of great importance to them. The CBA board recently recommended several changes to the survey in an effort to make it as unbiased and meaningful as possible. At the time of this writing we

are still waiting to hear an exact timeline for conducting the survey.

While the final outcome on the mandatory disclosure issue is still to be determined, the CBA has clearly shown that it is fully committed to getting input from its diverse group of members. The synergy created by many competitors in the marketplace coming together for a common goal has been very powerful. The old adage "none of us are as good as all of us" is a motto very evident in our early development as a trade organization.

We will continue to keep members posted on developments related to the mandatory disclosure of limb alignment procedures as they become available.

— Mark Taylor



*The CBA works democratically on behalf of every consignor and commercial breeder, large and small, to provide representation and a constructive, unified voice related to sales issues, policies, and procedures. The Association's initiatives are designed to encourage a fair and expanding marketplace for all who breed, buy or sell thoroughbreds.*

## Consignors And Commercial Breeders Association

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TO: