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TESTIMONY  
OF  
HOWARD F. MESSER  
BEFORE THE  
HOUSE JUDICIARY COMMITTEE  
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After practicing almost 20 years as a personal injury trial lawyer, I have yet to handle a roller skating rink case. I have called five of the largest personal injury firms in Allegheny County and have found one case which was settled for \$4,750.00. I keep asking myself - what is the problem?

After a review of H.B. 469, I find that this bill will not accomplish its intended purpose and will severely restrict the rights of small children and even spectators that come to the rink and do not skate. Let me give you a few examples to illustrate how much of an impact H.B. 469 will have on children.

Under Pennsylvania law children are protected by common and statutory law in many situations, including premises liability cases such as roller skating rinks which we are considering here. It has been the law of Pennsylvania for decades that children from birth to 7 years are conclusively presumed to be incapable of negligence. From the age of 8 to 14 children are presumed to be incapable of negligence but the presumption is a rebuttal one that weakens as the 14th year is approached. Dunn v. Teti 280 Pa. Super. 399, 421 A.2d 782 (1980). The public policy behind the law is simple and right. Children are our most valuable resource. Children are ours to love, cherish and protect. We teach them to one day become independent functioning citizens and voters. We educate them to provide future scientists, writers, computer operators and steelworkers. We also encourage them to take part in sports and other recreational activities that allow them to play with other children and get exercise. We all want our children to be happy, healthy and safe.

The impact of H.B. 469 would be to abrogate the long-standing public policy favoring protection of children and obliterate a minor child's protection by not only legislatively declaring all children capable of negligence but, even worse, legislatively declaring every child from 1 to 14 to have assumed the risk of any injury resulting from the activities of roller skating.

H.B. 469 is an attempt to push the concern of safety from the operator to the patron. The attempt begins in the "Definition" section of the bill. A "Roller Skater" is defined as an individual wearing roller skates in a roller skating rink. This includes minor children as well as adults. When we skip to "Duties of Roller Skaters," Section 5 of H.B. 649, we find that children (roller skaters) are to comply with the same rules as adults, i.e.

- 1) Maintain reasonable speed and course.
- 2) Heed all posted signs and warnings.
- 3) Maintain a proper lookout to avoid other skaters and objects.
- 4) Accept the responsibility for knowing the range of his own ability to negotiate the intended direction of travel and for skating within limits of ability.
- 5) Refrain from acting in a manner which may cause or contribute to the injury of himself or another person.

In addition in Section 6 all roller skaters have assumed the inherent risk of roller skating injuries which result from incidental contact with other roller skaters or spectators,

injuries which result from falls caused by loss of balance and injuries which involve objects or artificial structures properly within the intended path of travel of the roller skater.

Remember most skaters are minors from ages 4 to 18. The chances are that most skating sessions cover a wide range of activities and many different ages and levels of skating experience. But when the operator announces "all skate" every man, woman and child can be on the rink at the same time. What chance does a 6 year-old have of knowing and appreciating his risk of coming into "incidental contact" with a 16 year old. Do we really want to enact a piece of legislation that places a child in the position of protecting himself from injury in a public place? Remember, operators do not require experience for entry to the rink and the patrons are business invitees who pay to participate!

Parents and children must rely upon owners of businesses and makers of toys to provide safe places to play and safe toys to play with. Parents and their children should have a right to rely upon the operator of a rink to provide a safe place to skate and to provide safe skates if the child rents them. After all, people who profit from this recreational sport should have safety as their paramount concern.

Let's now turn a critical eye toward H.B. 469 to see if the operators have set forth new duties for themselves or whether they seek to reduce or eliminate duties that exist under the law.

Under Subsection 4, "Duties of Operators," the section itemizes 13 "responsibilities" but fails to require that operators bear responsibility. Whereas "roller skaters shall maintain reasonable control of his speed and course at all times" (Section 5), operators shall "to the extent practicable" follow the 13 rules of responsibility set forth in Section 4.

In Section 4 of H.B. 649 we see a clever attempt to overrule current law by a few choice words in strategic places. Implicit in the listing of the 13 rules in Section 4 is the suggestion that the duties recited are new or unique or better than current law. In fact, except for number 1 and 2, which are new because the Act is new, none of the other 11 duties are "new" and none are unique. Most set duties at standards lower than existing law.

Items 3, 4, 5, and 6 all set forth standards for operators holding their premises open to the public which, in my opinion, are significantly lower than currently required. The law in Pennsylvania in regard to premises liability is clear. Business invitees are owed the highest duty of care, Rippee v. Grand Valley Manufacturing Co., 762 F. 2d. 25 (1985). Operators, if this legislation is enacted, would reduce their responsibility to all ages and quality of skaters.

By local ordinance and in order to comply with Department of Labor and Industry fire and panic regulations, rink operators are already required to install and inspect fire extinguishers, provide reasonable security in parking areas, inspect emergency lighting and keep exit lights and service lights on at all times.

It should go without saying that operators should comply with all state and local safety codes. Thus, Section 4 does nothing to further the safety of the "roller skaters" and only serves to reduce the responsibility of the operator.

The law of premises liability in Pennsylvania is and has been predictable. There is no need for change. The operators are really after limited immunity from claims. In order to pass the immunity protection offered by H.B. 469 the common law of Pennsylvania as it applies to children and some adolescents will be obliterated. On balance, we should heed the advise of the Pennsylvania Supreme Court when it declares that a person who enters a business place to spend his money therein has a right not to expect that he will be entering the wild and unrestrained turbulence of "the Crazy House" at an amusement part. Regelski v. F.W. Woolworth, Co. of Pa., 423 Pa. 524, 225 A.2d 561 (1967).

If you enact H.B. 469, rink operators may maintain their own "Crazy House" with impunity.

Respectfully Submitted,



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