

THOMAS R. CALTAGIRONE, MEMBER
HOUSE POST OFFICE BOX 209
ROOM 106, SOUTH OFFICE BUILDING
HARRISBURG, PENNSYLVANIA 17120-0028
PHONE: (717) 787-3525

127 SOUTH 10TH STREET
READING, PENNSYLVANIA 19602
PHONE: (215) 376-1529



Handout

COMMITTEES

JUDICIARY, CHAIRMAN
MAJORITY POLICY COMMITTEE

House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

AGENDA

JUDICIARY COMMITTEE PUBLIC HEARING
House Bill 1277 EQUINE CIVIL LIABILITY

July 20, 1993 10:00 AM
ROOM 22 OF THE CAPITOL ANNEX

Prime Sponsor of the Bill
Representative Stephen Maitland

Mark Phenicie, Esq.
Pennsylvania Trial Lawyers Association

Ben Nolt, President
PA Equine Council

Bruce Rappoport, Associate Dean
New Bolton Center

Colonel Alfred Kitts
Director of Equestrian Studies
Wilson College

Art Glatfelter
Board Member of PA Equine Council
Stable Owner

Kathy Brown, President
PA Quarter Horse Assn.



HOUSE OF REPRESENTATIVES
DEMOCRATIC COMMITTEE

BILL ANALYSIS

BILL NO. HB 1277 P.N. 1418
COMMITTEE: Judiciary

SPONSOR: Maitland
DATE: May 4, 1993

Proposal: To limit the civil liability of equine providers from risks inherent to equine activities.

Existing Law: There is no statute regulating the civil liability of "equine professionals" and such. In 1980, the General Assembly amended 42 Pa.C.S.A. §7102, dealing generally with the subject of "comparative negligence", to acknowledge that the sport of downhill skiing is important to this Commonwealth and "that as in some other sports there are inherent risks in the sport of downhill skiing." The General Assembly accordingly provided that the doctrine of voluntary assumption of the risk as it applies to downhill skiing injuries and damages shall continue to exist and be applied (when appropriate) despite its enactment of the doctrine of comparative negligence in §7102. As interpreted most recently by the Court of Appeals for the Third Circuit, to the extent that the Pennsylvania Skier's Responsibility Act preserved the assumption of the risk as a defense in connection with downhill skiing, assumption of the risk is an aspect of whether the ski area operator has a duty to protect the skier from known and avoidable dangers - - thus, assumption of the risk issues need not be submitted to a jury if reasonable persons could not differ about the obvious nature of the danger. Burke v. Ski America, Inc., 940 F. 2d 95 (3d Cir. 1991).

Analysis: HB 1277 proposes the Equine Activity Liability Law which proposes to limit the liability of equine professionals, equine activity sponsors, and "any other person" as to injury, loss, damage or death resulting from any of the inherent risks of equine activities. The Bill defines "inherent risks of equine activities" as covering those dangers or conditions which are an integral part of equine activities, including but not limited to:

- 1) The propensity of equines to behave in ways that may result in injury, harm or death to persons on or around them.
- (2) The unpredictability of an equine's reaction to such things as sounds, sudden movements and unfamiliar objects, persons or other animals.
- (3) Certain hazards such as surface and subsurface conditions.
- (4) Collisions with other equines or objects.
- (5) The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within his ability.

The Bill offers extensive definitions of the phrases "equine activity", "equine activity sponsor", and "equine professional".

By Section 4, the Bill provides that its general prohibition of liability for harm resulting from any of the inherent risks of equine activity shall not prevent or limit the liability of an equine activity sponsor, equine professional or any other person if any such person (a) provided the equipment or tack and knew or should have known that the equipment or tack was faulty, and such equipment or tack was faulty to the extent that it did cause the injury; or (b) provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity and determine the ability of the participant to safely manage the particular equine based on the participant's representations of his ability, or (c) if the participant sustains an injury because of a dangerous latent condition of the property which was known to the equine activity sponsor, professional or other person and for which warning signs, as required under Section 5, were not conspicuously posted; or (d) where an act or omission constituting willful or wantoned disregard for the safety of the participant has resulted in an injury; or (e) intentionally injures the participant.

Section 5 of the Bill would require every "equine professional" to post and maintain signs containing a specifically worded warning notice in a clearly visible location in the proximity of the equine activity, to-wit:

"WARNING: UNDER PENNSYLVANIA LAW AN EQUINE PROFESSIONAL IS NOT LIABLE FOR AN INJURY TO OR THE DEATH OF A PARTICIPANT IN EQUINE ACTIVITIES RESULTING FROM THE INHERENT RISKS OF EQUINE ACTIVITIES UNDER THE ACT OF _____ (P.L. _____, No. _____), KNOWN AS THE EQUINE ACTIVITY LIABILITY LAW."

While Section 4(a)(2) of the Bill states that an equine activity sponsor, professional or other person who owns, leases, rents or is otherwise in lawful possession and control of the land and facilities upon which a participant sustains injuries because of a latent condition which was known to such sponsor, professional, etc. shall not have his liability prevented or limited if Section 5 - Mandated warning signs have not been conspicuously posted, it would seem that such sponsor, professional or whatever would be liable anyway for failing to disclose a dangerous latent condition since the Section 5 warning signs speak only to inherent risks of equine activities rather than to any specific dangerous latent condition of the land which is not disclosed to a participant.

Prepared by: Edward A. Mihalik, Esq.
House Judiciary Committee

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1277 Session of
1993

INTRODUCED BY MAITLAND, FARGO, LAUB, FLEAGLE, NICKOL, STERN,
HUTCHINSON, ARMSTRONG, WAUGH, HANNA, RUBLEY, ZUG, BUSH,
ARGALL, BAKER, JADLOWIEC, TRUE, EGOLF, PETRARCA, SCHEETZ,
STEELMAN, HARLEY AND FLICK, APRIL 21, 1993

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 21, 1993

AN ACT

1 Providing for civil liability relating to equine activities, for
2 exceptions thereto and for the posting and furnishing of
3 certain notices.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Equine
8 Activity Liability Law.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Engages in an equine activity." The term includes riding,
14 training, assisting in veterinary treatment of, driving or being
15 a passenger upon an equine, whether mounted or unmounted,
16 visiting or touring or utilizing an equine facility as part of
17 an organized event or activity, or any person assisting a

1 participant or show management. The term does not include being
2 a spectator at an equine activity, except in cases where the
3 spectator places himself in an unauthorized area or in immediate
4 proximity to the equine activity.

5 "Equine." A horse, pony, mule or donkey.

6 "Equine activity."

7 (1) Equine shows, fairs, competitions, performances or
8 parades that involve any or all breeds of equines and any of
9 the equine disciplines, including, but not limited to,
10 dressage, hunter and jumper horse shows, Grand Prix jumping,
11 three-day events, combined training, rodeos, riding, driving,
12 pulling, cutting, polo, steeplechasing, English and western
13 performance riding, endurance trail riding, gymkhana games,
14 and hunting.

15 (2) Equine training or teaching activities, or both.

16 (3) Boarding equines, including normal daily care
17 thereof.

18 (4) Riding, inspecting or evaluating by a purchaser or
19 an agent, an equine belonging to another, whether or not the
20 owner has received some monetary consideration or other
21 things of value for the use of the equine or is permitting a
22 prospective purchaser of the equine to ride, inspect or
23 evaluate the equine.

24 (5) Rides, trips, hunts or other equine activities of
25 any type, however informal or impromptu, that are sponsored
26 by an equine activity sponsor.

27 (6) Placing or replacing horseshoes or hoof trimming on
28 an equine.

29 (7) Providing or assisting in veterinary treatment.

30 "Equine activity sponsor." An individual, group, club,

1 partnership or corporation, whether or not the sponsor is
2 operating for profit or nonprofit, which sponsors, organizes or
3 provides the facilities for an equine activity, including, but
4 not limited to, pony clubs, 4-H clubs, hunt clubs, riding clubs,
5 school- and college-sponsored classes, programs and activities,
6 therapeutic riding programs, stable and farm owners and
7 operators, instructors and promoters or equine facilities,
8 including, but not limited to, farms, stables, clubhouses, pony
9 ride strings, fairs and arenas at which the activity is held.

10 "Equine professional." A person engaged for compensation in
11 any of the following:

12 (1) In instructing a participant or renting to a
13 participant an equine for the purpose of riding, driving or
14 being a passenger upon the equine.

15 (2) In renting equipment or tack to a participant.

16 (3) In providing daily care of horses boarded at an
17 equine facility.

18 (4) To train an equine.

19 "Inherent risks of equine activities." Those dangers or
20 conditions which are an integral part of equine activities,
21 including, but not limited to:

22 (1) The propensity of equines to behave in ways that may
23 result in injury, harm or death to persons on or around them.

24 (2) The unpredictability of an equine's reaction to such
25 things as sounds, sudden movements and unfamiliar objects,
26 persons or other animals.

27 (3) Certain hazards such as surface and subsurface
28 conditions.

29 (4) Collisions with other equines or objects.

30 (5) The potential of a participant to act in a negligent

1 manner that may contribute to injury to the participant or
2 others, such as failing to maintain control over the animal
3 or not acting within his ability.

4 "Participant." Any person, whether amateur or professional,
5 who engages in an equine activity, whether or not a fee is paid
6 to participate in the equine activity.

7 Section 3. General provisions.

8 Except as provided in section 4, an equine activity sponsor,
9 an equine professional or any other person, which shall include
10 a corporation or partnership, shall not be liable for an injury
11 to or the death of a participant resulting from the inherent
12 risks of equine activities and, except as provided in section 4,
13 no participant nor participant's representative shall make any
14 claim against, maintain an action against or recover from an
15 equine activity sponsor, an equine professional or any other
16 person for injury, loss, damage or death of the participant
17 resulting from any of the inherent risks of equine activities.

18 Section 4. Exceptions.

19 (a) General rule.--Nothing in section 3 shall prevent or
20 limit the liability of an equine activity sponsor, an equine
21 professional or any other person if the equine activity sponsor,
22 equine professional or person:

23 (1) (i) provided the equipment or tack and knew or
24 should have known that the equipment or tack was faulty,
25 and such equipment or tack was faulty to the extent that
26 it did cause the injury; or

27 (ii) provided the equine and failed to make
28 reasonable and prudent efforts to determine the ability
29 of the participant to engage safely in the equine
30 activity and determine the ability of the participant to

1 safely manage the particular equine based on the
2 participant's representations of his ability.

3 (2) Owns, leases, rents, has authorized use of or is
4 otherwise in lawful possession and control of the land or
5 facilities upon which the participants sustained injuries
6 because of a dangerous latent condition which was known to
7 the equine activity sponsor, equine professional or person
8 and for which warning signs, under section 5, have not been
9 conspicuously posted.

10 (3) Commits an act of omission that constitutes willful
11 or wanton disregard for the safety of the participant and
12 that act of omission caused the injury.

13 (4) Intentionally injures the participant.

14 (b) Horse race meeting.--This section shall not apply to a
15 horse race meeting as described in the act of December 17, 1981
16 (P.L.435, No.135), known as the Race Horse Industry Reform Act.
17 Section 5. Posting and notification.

18 (a) Posting requirements.--Every equine professional shall
19 post and maintain signs which contain the warning notice
20 specified in subsection (b). The signs shall be placed in a
21 clearly visible location in the proximity of the equine
22 activity. The warning notice specified in subsection (b) shall
23 appear on the sign in black letters, with each letter to be a
24 minimum of one inch in height. Every written contract entered
25 into by an equine professional for the providing of professional
26 services, instruction or the rental of equipment or tack or an
27 equine to a participant, whether or not the contract involves
28 equine activities on or off the location or site of the equine
29 professional's business, shall contain in clearly readable print
30 the warning notice specified in subsection (b).

1 (b) Content of notice.--The signs and contracts described in
2 subsection (a) shall contain the following warning notice:

3 WARNING: Under Pennsylvania law, an equine professional
4 is not liable for an injury to or the death of a
5 participant in equine activities resulting from the
6 inherent risks of equine activities under the act of
7 , (P.L. , No.), known as the Equine
8 Activity Liability Law.

9 Section 6. Effective date.

10 This act shall take effect in 60 days.