

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE

In re: House Bill 1277, Equine Civil Liability

Stenographic record of hearing held in
Room 22 of the Capitol Annex, Harrisburg,
Pennsylvania

Tuesday, July 20, 1993, 10:05 a.m.

HON. THOMAS R. CALTAGIRONE, Chairman
HON. JEFFREY E. PICCOLA, Minority Chairman

MEMBERS OF THE COMMITTEE

Hon. Robert D. Reber, Jr.
Hon. David W. Heckler
Hon. Jerry Birmelin
Hon. Frank Yandresivits
Hon. Karen Ritter
Hon. Dan Clark
Hon. Tim Hennessey
Hon. Albert H. Masland, Jr.
Hon. Harold James
Hon. Kathy Mandarino
Hon. Andrew Carn

Also Present:

William H. Andring, Chief Counsel to Committee
Kenneth Suter, Counsel to the Committee
Mary Woolley, Counsel to the Committee
Galina Milohov, Research Analyst
Margaret Tricarico, Secretary

Reported by:
Emily R. Clark, RPR

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1 CHAIRMAN CALTAGIRONE: I would like to open up
2 today's hearing of the House Judiciary Committee dealing
3 with House Bill 1277, the equine civil liability. I would
4 like to read a brief statement into the record and we'll
5 start with our list of testifants.

6 Equine activity and interest holds an honored
7 place in the American conscience. America and horses go
8 together, along with the other such cited Americanisms as
9 apple pie, baseball and freedom of speech. Purportedly, the
10 legislation we are addressing today will enhance the general
11 public's ability to have greater access to horses and equine
12 activities because our state will put the assumption of
13 personal risk upon, for want of a better term, the equine
14 consumer.

15 The committee has made every effort to bring
16 experts with firsthand knowledge of the issues before us for
17 testimony. The insurance federation declined to send a
18 representative, citing as their reason that their board
19 agreed with the presumed risk concept of the bill. The
20 presumed risk clause is well explained in the bill analysis
21 as it relates to skiing.

22 And with that, I would like to have the prime
23 sponsor of the bill, Representative Steve Maitland, make any
24 statement that he would like to before the committee.

25 REPRESENTATIVE MAITLAND: Thank you, Mr.

1 Chairman.

2 I would like to touch on two things. First, I
3 would like to say that House Bill 1277 is a good bill for
4 your constituents. Horses can be found in every legislative
5 district in the Commonwealth. It's a very large industry.
6 170,000 head of equines are in Pennsylvania, as of June 1st,
7 1990. The southeast had the highest population, with 48,800
8 head, in Berks, Bucks, Chester, Delaware, Lancaster,
9 Lebanon, Montgomery and Philadelphia counties. The
10 southwest portion of the state had the second highest
11 number, including Allegheny, Fayette, Green, Somerset,
12 Washington, and Westmoreland counties. So this legislation
13 will benefit someone in everyone's district.

14 I feel this bill is good for Pennsylvania and
15 good for small business, but I'll pass over those points
16 because other testifiers will be going into it in more
17 detail.

18 I believe House Bill 1277 is legally sound.
19 It's based on the phrase inherent risk. Now, inherent risk
20 is not precisely defined in Blacks Law Dictionary or used as
21 a specifically defined precise legal term of art in any
22 Pennsylvania statute or court decision. But I've included
23 in my testimony the Utah court decision, Clover v. Snowbird
24 Ski Resort, in which the Utah Supreme Court had occasion to
25 construe a Utah statute giving ski resorts a limited degree

1 of liability protection against injuries arising out of the
2 inherent risks of skiing.

3 Inherent risk is clearly defined in Utah law. I
4 won't read through it for you, I have it here in my
5 testimony.

6 But I would just like to say that it's
7 interesting to note that Pennsylvania also has a statute
8 containing a similar protection for the operators of ski
9 resorts, which makes explicit reference to the inherent
10 risks of downhill skiing. In this regard, section 7102(c)
11 of the Judicial Code states that it is recognized that, as
12 in some other sports, there are inherent risks in the sport
13 of downhill skiing. As was the case with the Utah statute,
14 the Pennsylvania law was crafted to protect the
15 assumption-of-risk doctrine against erosion by the
16 comparative negligence doctrine. In fact, Pennsylvania's
17 protection for downhill skiing operations enacted an
18 amendment to our comparative negligence statute. Unlike
19 Utah law, however, Pennsylvania statute does not define
20 inherent risk.

21 While the term inherent risk could broadly apply
22 to any number of legal issues, it appears to me as though a
23 particularly common and apt use for this term is as a
24 component of any lack of legal duty and/or the existence of
25 any assumption-of-risk defense with respect to tort actions

1 predicated on negligence claims.

2 Pennsylvania courts have traditionally
3 recognized the doctrine of assumption of risk as a defense
4 against negligence lawsuits. And I provided for you a
5 discussion of a case called Mucowski v. Clark, which
6 summarizes the features of the assumption-of-risk doctrine.
7 I have that here for you.

8 And I cite a couple other cases in Pennsylvania
9 law that are relevant in the inherent risk and the
10 assumption of risk argument. They are Ott v. Unclaimed
11 Freight Company and Jordan v. K-Mart Corp.

12 So, I would just wish to thank the Judiciary
13 Committee and especially the Subcommittee on Courts for
14 hearing our testimony in support of House Bill 1277. I
15 believe that my fellow testifiers will present strong
16 evidence in favor of this bill. Horses are everywhere in
17 Pennsylvania, they're a vital part of our economy. Without
18 the vital changes in equine liability proposed in this
19 legislation, we are risking limiting business entry into the
20 equine field, the diminishment of a great form of recreation
21 and therapy, and losing out in interstate competition with
22 states that do or will have equine liability laws in place
23 now or in the future.

24 I believe we have shown sound legal basis for
25 this kind of reform in Pennsylvania law and elsewhere. I

1 hope our testimony here today will earn your support for the
2 bill. Please, let's pass the equine liability bill. Every
3 legislator in this room today has many, many constituents
4 that will thank you for it.

5 Finally, I would just like to add that this
6 language has passed the test in other states. It is law in
7 very similar forms in Massachusetts and Colorado and
8 numerous other states. I think somewhere around 17 or 20
9 other states are considering legislation of this kind.

10 CHAIRMAN CALTAGIRONE: I have a couple
11 questions, if you don't mind, because I think we would like
12 to get some of this on the record.

13 One of the questions would be, would the
14 proposed passage of this legislation automatically lead to a
15 reduction in the cost of the liability insurance for the
16 equine professionals?

17 REPRESENTATIVE MAITLAND: Automatically? I
18 don't know, sir. I would need an insurance person to tell
19 you that. I believe it has reduced rates in the states
20 where it has been passed, in Massachusetts and Colorado.

21 CHAIRMAN CALTAGIRONE: The reason why I mention
22 that is whether or not an amendment should be prepared to
23 require such a reduction in the event that becomes a problem
24 as far as liability as it relates to the insurance factors
25 concerned. That's just one area I wanted you to take a look

1 at.

2 REPRESENTATIVE MAITLAND: That's a good
3 suggestion.

4 CHAIRMAN CALTAGIRONE: The next question would
5 be, how would this legislation change the liability of the
6 equine professional in relationship to his clients?

7 REPRESENTATIVE MAITLAND: Well, as long as the
8 equine professional takes proper care to match the mount to
9 the rider, to insure that the equipment and tack and harness
10 is in good condition, that the ground is in good condition
11 and that warning signs are posted, the client has to
12 understand that he's riding an animal, which is inherently
13 risky. Horses can be spooked, they can be thrown, they can
14 be injured and perhaps even killed, but that's an intrinsic
15 and basic part of riding horses. That cannot be separated,
16 that the owner of a riding stable or a teacher, really, has
17 no control over. That's what the bill would do.

18 CHAIRMAN CALTAGIRONE: In relationship to the
19 business that we have in the state right now, it's your
20 opinion that this would help the industry, with the passage
21 of the legislation?

22 REPRESENTATIVE MAITLAND: Yes. The liability
23 insurance for equine activities is very hard to find. Where
24 it can be found, it's very expensive, and my fellows will
25 testify to that after me. And this whole issue was brought

1 to me by a constituent who used to operate riding stables in
2 Massachusetts and moved into my district, and found that she
3 couldn't do that here because of the lack of availability
4 and the cost of the liability insurance. That was the sole
5 barrier to her entrance into an industry that she really
6 loved.

7 CHAIRMAN CALTAGIRONE: And in relationship to
8 that, the other states that have laws that protect the
9 equine professionals from civil liabilities, you had cited
10 some in your testimony.

11 How well have these laws worked to protect the
12 consumer and the horse owners?

13 REPRESENTATIVE MAITLAND: I spoke to the
14 original author of the legislation in Massachusetts. I
15 can't think of her name, it's the state senator, and she
16 said that the law was relatively new, had been in for about
17 a year, but to date, there had been no problems with it.
18 There had been no complaints by the industry, by consumers,
19 or by the lawyers' lobbies, and I read recently that in
20 Colorado, this law was recently tested and upheld in the
21 Colorado supreme court.

22 CHAIRMAN CALTAGIRONE: The concern has been
23 raised regarding the surfaces upon which the horses walk,
24 run or jump. How much responsibility should the equine
25 professional be held to for problems which may arise because

1 of the condition of the prepared or natural surface upon
2 which the horse is ridden?

3 REPRESENTATIVE MAITLAND: Well, I believe they
4 should, they need to control the property where the horses
5 are being ridden, and to me, that would mean going out
6 themselves and looking it over, marking or fencing any
7 dangers, clearing any obstacles like fallen trees that might
8 come up. But you have to understand that if it rains, there
9 might be mud and that might make things slippery, and of
10 course, the stable owner couldn't be liable for that kind of
11 thing. Just normal care and caution and common sense.

12 CHAIRMAN CALTAGIRONE: Thank you.

13 Are there any questions from the members?
14 Representative Mandarino?

15 REPRESENTATIVE MANDARINO: Thank you, Mr.
16 Chairman.

17 Mr. Maitland, I just want to also, I guess,
18 reinforce the point that was made by Chairman Caltagirone
19 with regard to liability insurance. If one of the primary
20 motives for a piece of legislation like this is the high
21 cost of premiums, then I think that any legislation like
22 this being proposed should seriously consider a rollback of
23 some sort to provide that potential relief.

24 But one of the things that he just said alerted
25 me. Did I understand you to say that the Massachusetts law,

1 which is one of the laws that is in place like this, is one
2 year old?

3 REPRESENTATIVE MAITLAND: Roughly, yes.

4 REPRESENTATIVE MANDARINO: And that the state
5 that your particular constituent came from that gave rise to
6 the concept of perhaps a need like this in Pennsylvania, was
7 she from Massachusetts?

8 REPRESENTATIVE MAITLAND: Originally, yes.

9 REPRESENTATIVE MANDARINO: Okay. I guess my
10 question is, whatever the difference in their premiums were
11 between Massachusetts and Pennsylvania, can you tell us that
12 it was related to the passage of this legislation which is
13 just a year old?

14 REPRESENTATIVE MAITLAND: No, that's not the
15 case. This woman came from Massachusetts several years ago,
16 before the enactment of this law. And the situation in
17 Massachusetts had been steadily degrading as far as the
18 equine liability insurance rates, and that was part of her
19 reason for leaving Massachusetts, that and family concerns,
20 and settle in Pennsylvania. And then went about her
21 business for a while and, boy, I would like to get back into
22 horses. In the meantime, she had heard through her contacts
23 back in Massachusetts that this law had been enacted in
24 Massachusetts that was really fought for by the industry and
25 the consumer, and that it appeared to be working well.

1 So I have only hearsay that the rates were
2 decreased in Massachusetts, but I believe that to be the
3 case. Massachusetts sponsor Senator Shannon O'Brien. I
4 remember her name now.

5 REPRESENTATIVE MANDARINO: My second question
6 may be perhaps for the Chairman, if you'll indulge me for a
7 second. Is it my understanding that there is no one that's
8 going to testify from the Insurance Federation?

9 CHAIRMAN CALTAGIRONE: Yes.

10 REPRESENTATIVE MANDARINO: Have you, Mr.
11 Maitland, talked to anybody from the Insurance Federation
12 with regard to this bill?

13 REPRESENTATIVE MAITLAND: No.

14 REPRESENTATIVE MANDARINO: Then I guess I just
15 want to make one other statement with regard to the
16 Insurance Federation, and again, I understand that the memo
17 that I received was put together by the committee and not by
18 the Insurance Federation, but it stated that the Insurance
19 Federation declined the opportunity to give testimony,
20 citing that as a reason, the general assumption is that
21 riding a horse is an activity similar in risk taking to
22 skiing and therefore they have no objection.

23 REPRESENTATIVE MAITLAND: Yes.

24 REPRESENTATIVE MANDARINO: I guess my concern is
25 that the way I see it, they're not the same, for some of the

1 reasons that you alluded to in your opening testimony, that
2 we need to at least take into consideration when we're
3 examining this type of legislation, and that is, in skiing,
4 the potential for things, the risk that you assume and the
5 potential for things to go wrong are, for the most part,
6 things that are inanimate objects, whether it's the
7 equipment of your skis, the condition of the equipment of
8 your skis, which might be comparable to the equipment, of
9 the condition of tack equipment, or the weather conditions
10 which might, again, be maybe comparable to the conditions of
11 the land on which somebody is operating the horse.

12 What I don't have a feel for, and what we're
13 trying to limit against and I'm not quite sure, I want to
14 hear more testimony, is the fact that we have live animals
15 here, and the fact that live animals can get spooked and the
16 fact that we're attempting to shift the risk for the animal,
17 which isn't in the ownership or control of the person riding
18 in all cases, but in all cases, we're attempting to shift
19 the risk of the live animal that's not necessarily under the
20 control in some cases of either the owners or the rider's
21 ability. And that's a factor in here that I think we have
22 to take very serious consideration of when we look at
23 something like this. So I mean, I don't really know. I
24 want to hear more about it and learn more, but I hope that
25 we will keep that aspect of the equine activities into

1 consideration and that we'll explore that further.

2 REPRESENTATIVE MAITLAND: Sure. I would just
3 like to point out that the most experienced rider on the
4 most familiar horse still takes a risk every time they mount
5 that animal, and they know that. And we would be requiring
6 riding stables to inform the riders that you will be taking
7 a risk. We will make the effort to match your ability to
8 the mount, but under even the best of circumstances, you are
9 dealing with an animal and you assume that risk when you
10 step on that horse.

11 REPRESENTATIVE MANDARINO: Although we have, I
12 mean, I know when I go to any fairground or anything like
13 that, that it's common to have pony rides in the kiddie
14 section, and I think it's fair to say that most parents,
15 when they see the pony ride at the county fair and the rider
16 walking around in circles with the pony, that it's safe,
17 that there's an assumption there on the part of the public
18 and on the part of the person offering that ride, so to
19 speak, that activity, that this is safe to put your little
20 three- and four- and five-year-old child on.

21 And so I think that there's, this is a piece of
22 legislation that is attempting to cover a broad level of
23 skills and I just think we have to examine this really
24 carefully.

25 REPRESENTATIVE REBER: Thank you, Mr. Chairman.

1 Representative Maitland, do you have a specific
2 breakdown or do you intend to have someone testify to this,
3 there's no sense to go into it if they're going to do it at
4 a later date, as to the current cost for a standard type
5 policy of liability insurance? Is there going to be some
6 testimony to that?

7 REPRESENTATIVE MAITLAND: Yes, sir.

8 REPRESENTATIVE REBER: Okay. Moving along on to
9 a different subject. In the bill on page 2 in the
10 definitions sections, you talk about equine, of course,
11 being among other things, a horse, pony or a donkey, and
12 also that the boarding equines, including normal daily care
13 thereof, as a conduct which I assume will be covered under
14 this particular statute.

15 My question is this. On page 5 of the bill,
16 line 14, you, in essence, take out the horse race aspect.
17 This section shall not apply to horse racing as described in
18 the Horse Race Industry Reform Act.

19 My question is this. Many, many, many horses
20 are obviously turned out at times when they're not racing,
21 when they're being let down or when they're being given a
22 rest, and that, in essence, is done at a boarding equine
23 facility which includes normal daily care being given to
24 those particular animals. My question is: Are individuals
25 who engage in the activity of boarding horses that either

1 race at harness race tracks or other bred race tracks, when
2 they're in a boarding mode, would they be under this act and
3 would that language allow them to be under this act? Or do
4 we have an ambiguity there and inconsistency? What's your
5 intention, first of all, as to covering those particular
6 animals?

7 REPRESENTATIVE MAITLAND: Well, that's a point I
8 hadn't considered, but I would say that they would be
9 covered under this legislation as long as they're boarding
10 horses. Boarding horses is boarding horses.

11 REPRESENTATIVE REBER: So it's the intent of
12 your legislation that race horses would be covered when they
13 are being boarded, but when they are actively engaged in
14 racing pursuant to that section I read on page 5 --

15 REPRESENTATIVE MAITLAND: Yes.

16 REPRESENTATIVE REBER: -- then that liability
17 would not attach?

18 REPRESENTATIVE MAITLAND: Well, the point is not
19 to have this liability coverage extend to, say, jockeys or
20 race tracks, because that's a totally different part of the
21 support.

22 REPRESENTATIVE REBER: Let's do the boarding of
23 race horses right now. So it's your intention that, where
24 do we draw the line, then?

25 REPRESENTATIVE MAITLAND: What if some race

1 horses and some non-race horses were being boarded in the
2 same facility?

3 REPRESENTATIVE REBER: Which they are, which is
4 the case.

5 REPRESENTATIVE MAITLAND: Then this law should,
6 it would be my intent to cover the entire stable in that
7 case.

8 REPRESENTATIVE REBER: Let me ask you this.
9 Let's -- and many ex-race horses are riding horses.

10 REPRESENTATIVE MAITLAND: Yes.

11 REPRESENTATIVE REBER: Which I'm sure you and/or
12 your people are aware. So it's your intention during the
13 boarding phase that a race horse should be covered under
14 this particular statute.

15 REPRESENTATIVE MAITLAND: Yes.

16 REPRESENTATIVE REBER: Now, where do we draw the
17 line from this move from a lay-up situation or a turnout
18 situation or a rest situation where they're being simply
19 boarded on a daily basis, and they're not at the racetrack,
20 okay? In other words, a horse may be turned out and, you
21 know, two minutes before an accident occurs, which would
22 give rise to a cause of action. He may be being moved to a
23 track for purposes of racing on that particular day or the
24 subsequent day or some days down the road. I'm just
25 wondering where we're going to draw the line for purposes of

1 that section, and it comes back again to the section that I
2 talked about, which is subparagraph B on line 14 on page 5.

3 There just seems to be some inconsistency or
4 possible ambiguities there and I think that needs some
5 massaging. I'm not going to sit here and suggest that I
6 have a recommendation at this point in time, but in looking
7 at this, it's been troubling me and I'm just wondering if
8 you have given thought to where this paradoxical situation
9 could arise. Okay? Because obviously, race horses need
10 boarded when they're not racing, and where do you draw the
11 line? Is it activity on the racetrack the day they're in
12 the race and they're on the card? Is it when they leave the
13 back stretch and come to the paddock? Is it a point when
14 they go from the paddock to the race track and they have a
15 jockey on their back? I think there has to be given some
16 consideration to that.

17 REPRESENTATIVE MAITLAND: My first instincts
18 would be to say when they're on the grounds of the racing
19 establishment.

20 REPRESENTATIVE REBER: The licensed facility
21 under the horse race industry form, which happens to be --

22 REPRESENTATIVE MAITLAND: I would be delighted
23 to clarify that point.

24 REPRESENTATIVE REBER: Okay. I think that's
25 certainly in need of clarification.

1 I think that's all the questions I want to pose
2 to you. We'll wait and get some of the other witnesses.

3 Thank you, Mr. Chairman.

4 REPRESENTATIVE YANDRESIVITS: Thank you, Mr.
5 Chairman.

6 I have some concern about language on page 5
7 concerning the owners of land that these activities might
8 occur on. I just wonder if you could maybe clarify what
9 your intent is.

10 It says that the immunity doesn't apply to an
11 owner of land that might have a dangerous latent condition
12 which was known to the equine activity sponsor. That seems
13 to imply that he has to have actual knowledge of the
14 condition rather than either known or should have known.

15 Now, in a situation where a person, say, owns
16 land which is used for riding trails, that type of thing,
17 assuming there's a thunderstorm the night before which
18 knocks down tree branches and that type of thing, if there's
19 a branch in the middle of the trail that causes an injury to
20 someone riding on that trail, would it be your intent that
21 the owner of that property would be immune to liability
22 because he didn't actually know that the branch was there,
23 even though he maybe should have checked the property before
24 allowing people out on the trail?

25 REPRESENTATIVE MAITLAND: Well, I can't see

1 holding an owner liable if somebody rides into a branch. I
2 think that that is more geared to something like quicksand
3 or sinkholes or caverns of some kind, that the owner knows
4 that there's quicksand out there and yet they let somebody
5 go riding, anyway. That would be, of course, negligence of
6 the worst kind. But for normal weather, they should make an
7 effort to go out and make sure that everything is rideable.
8 But a thunderstorm knocking down branches, I don't see as a
9 big problem.

10 REPRESENTATIVE YANDRESIVITS: So it's your
11 intent that so long as they continually have any actual
12 knowledge of a defect, that they're to be immune.

13 REPRESENTATIVE MAITLAND: Sure. If they ride by
14 and see it, then they should get off their mount and move
15 it.

16 REPRESENTATIVE YANDRESIVITS: Thank you, Mr.
17 Chairman.

18 REPRESENTATIVE MASLAND: Just briefly, I favor
19 this bill, but I strongly believe in light of the last
20 question, that we should add the phrase, "or or should have
21 been known", because I think you're presuming too much or
22 allowing for a negligent owner to just sit back and not go
23 out and inspect the grounds, and if they take reasonable
24 precautions, I think that's the legitimate amendment that we
25 should consider, if and when we vote on this as a

1 committee. But I think the bill is a good move.

2 REPRESENTATIVE MAITLAND: The grounds should be
3 inspected, sure.

4 CHAIRMAN CALTAGIRONE: Are there any other
5 questions? Thank you.

6 REPRESENTATIVE MAITLAND: Thank you very much.

7 CHAIRMAN CALTAGIRONE: We'll next hear from Mark
8 Phenicie, Pennsylvania Trial Lawyers Association.

9 MR. PHENICIE: Honorable Chairman, committee
10 members of the House Judiciary Committee, ladies and
11 gentlemen. Thank you very much for inviting the
12 Pennsylvania Trial Lawyers Association to testify and
13 hopefully contribute to today's hearing on House Bill 1277,
14 Printers Number 1418.

15 As you undoubtedly know, the Pennsylvania Trial
16 Lawyers Association has traditionally opposed legislation
17 which would reduce or modify rights and protections given to
18 Pennsylvanians under the United States and Pennsylvania
19 Constitution. As you undoubtedly know, the right to a trial
20 by jury is an integral part of the Bill of Rights and is the
21 watchword of our association.

22 In recent years, we have noticed a significant
23 increase in introduction of what we refer to as "boutique"
24 immunity bills, such as House Bill 1277, which attempts to
25 protect certain industries, such as 1277 tries to protect

1 equine activities. Unfortunately, none of these so-called
2 boutique immunity bills serve in any way to encourage owners
3 or those seeking legislative changes to improve safety, but,
4 rather, to attempt to limit liability of the owners or
5 operators after injuries occur.

6 It is our continuing belief that the best and
7 most effective way to reduce the number of liability cases
8 is to improve safety and training of operators, rather than
9 to limit the rights of Pennsylvanians after they are
10 injured.

11 We oppose House Bill 1277 for the aforementioned
12 general reasons, as well as for some specific language
13 contained in this bill.

14 Pennsylvania has always recognized a special
15 protection and has a national reputation for the protection
16 of minor children. Under Pennsylvania law, children are
17 protected by common and statutory law in many situations,
18 including liability cases such as what we are considering
19 here today. It has been the law of Pennsylvania for decades
20 that children from birth to seven years are conclusively
21 presumed to be incapable of negligence; from the ages of 8
22 to 14, children are presumed to be incapable of negligence
23 but the presumption is a rebuttable one that weakens as the
24 14th year is approached. The most recent major court
25 decision on that was Dunn v. Teti, 280 Pennsylvania Superior

1 399.

2 Certainly, many children who engage in equine
3 activities are under this age. The impact of House Bill
4 1277 would be to abrogate the longstanding public policy
5 favoring protection of children, and obliterate a minor
6 child's protection by, in effect, legislatively declaring
7 all children capable of negligence at least in this
8 activity, but even worse, legislation essentially declaring
9 every child from 1 to 14 to have assumed the risk. House
10 Bill 1277 is one more attempt to push the concern for safety
11 from the operator to the patron.

12 Additionally, the standard of negligence which
13 requires willful and wanton should be disregarded. That's a
14 typo. For the safety of the participant, and that act or
15 omission caused the injury, is a standard that is so far
16 beyond the realm of normal immunity statutes in Pennsylvania
17 that in and of itself would be reason to oppose this
18 legislation. Indeed, this is not a volunteer or charity
19 institution, but rather, an industry for profit.

20 Parents and children must rely upon owners of
21 businesses and makers of toys to provide safe places to
22 learn recreational activities and safe toys to play with.
23 Parents and their children should have a right to rely upon
24 the equine operators to provide a safe place for them to
25 learn this activity. After all, people who profit

1 financially from this recreational sport should have safety
2 as their paramount concern.

3 Lastly, in a section that I consider
4 particularly onerous, as a standard, section 5, beginning on
5 line 17 on page 5 entitled Posting and Notification, should
6 indeed be titled Waiver of Liability. The so-called warning
7 notice specified in Section B is not a warning at all, but a
8 waiver of liability. The language mandated in the warning
9 notice does absolutely nothing to warn any spectators or
10 participants of inherent risk of equine activity, but serves
11 merely as a legal blanket to insure immunity for the owners
12 of equines. As such, this language is a deterrent to the
13 safety of participants and spectators, not a tool which will
14 reduce the number of injuries.

15 It is my understanding that the Insurance
16 Federation of Pennsylvania was invited to offer testimony
17 today at this hearing, and it is also my understanding that
18 they declined. The insurance industry and the Insurance
19 Federation of Pennsylvania have never been able to state
20 changes in liability laws can or will produce lower
21 liability premiums. If the intention of House Bill 1277 is
22 to reduce the costs of liability insurance, may we suggest
23 language that would mandate a specific rollback in rates if
24 such austere limitations are imposed. It has been the
25 experience in Pennsylvania and in other states that even if

1 limitations of rights that Pennsylvanians enjoy are passed,
2 there will be no reduction in general liability insurance
3 costs.

4 I noticed that one of the individuals who will
5 be testifying later today is Arthur Glatfelter, who is
6 listed as a stable owner. As you undoubtedly know, Mr.
7 Glatfelter has a well-deserved reputation as a giant,
8 really, a pillar of the liability insurance industry, not
9 only in Pennsylvania, but nationally. He is a renowned
10 expert in this field. Perhaps he can give you a clearer
11 indication than I can of how much, if any, reduction in
12 liability rates could be provided for the owners and
13 operators of equine activities if House Bill 1277 is
14 enacted.

15 In conclusion, therefore, let me reiterate once
16 again that we believe that the surest and certainly the
17 fairest way to insure a reduction in the number of liability
18 claims is to reduce the number of injuries, not do away with
19 the rights of people after the injuries have occurred.
20 Unfortunately, House Bill 1277 is not even neutral in its
21 application of safety provisions, but actually takes a step
22 backwards by its requirement of a warning notice that is, in
23 effect, nothing more than a waiver of liability.

24 Thank you for this opportunity to testify today,
25 Mr. Chairman.

1 CHAIRMAN CALTAGIRONE: Thank you, Mark.

2 Questions? Representative?

3 REPRESENTATIVE MANDARINO: Thank you, Mr.

4 Chairman.

5 Mr. Phenicie, I assume you've had a chance to
6 read the bill. I want to ask you a few questions about
7 language that bothers me and I would like to hear your
8 opinion that deals with the inherent risks of equine
9 activities. That language is used in the warning that you
10 referred to. It's also used in section 3 on page 4,
11 beginning at line 8, where it says: Except as provided in
12 section 4, an equine activity sponsor, an equine
13 professional or any other person, which shall include a
14 corporation or partnership, shall not be liable for an
15 injury to or the death of a participant resulting from the
16 inherent risks of equine activities, except as provided in
17 section 4. And no participant or representative shall make
18 any claim against, maintain any action against, or recover
19 from any equine activity, sponsor, equine professional, due
20 to such loss, injuries that are resulting from the inherent
21 risks.

22 And then finally, and I'm really just setting up
23 what I've been looking at, so we're on the same page here,
24 that the section, the page before that on page 3 beginning
25 at section 19, the legislation defines what it means in

1 terms of inherent risks of the equine activity, analyzes
2 that it includes such things not limited to propensity of
3 equines to behave in ways that would result in injury, the
4 unpredictability of the equine's reaction to things such as
5 sound and movements, collision with other equines, et
6 cetera.

7 I guess my question to you from a legal point of
8 view is: Do you see what we've defined or what is being
9 defined in this legislation with regard to inherent risks as
10 questions of fact or questions of law when it comes to how
11 they're presented to, in a court of law?

12 MR. PHENICIE: I think if this bill was
13 documented, it would become a question of law instead of a
14 question of fact.

15 REPRESENTATIVE MANDARINO: Currently, is it
16 considered a question of fact, for example, whether or not
17 what spooked the animal, if say, that was the fact pattern,
18 was something that was factually the responsibility of the
19 rider or factually the responsibility of the owner or
20 factually the responsibility of the horse?

21 MR. PHENICIE: It would be a question of fact
22 for the finder of fact, be that a judge or a jury.

23 REPRESENTATIVE MANDARINO: Okay. What impact,
24 if any, do you think that we have when we change what is now
25 a question of fact to something that we're defining as a

1 question of law when it comes to the risks or the
2 liability?

3 MR. PHENICIE: I think it would be the reading
4 by the judge who would hear a case like this, that the
5 legislature spoke and basically wanted the issue to be a
6 question of law instead of a question of fact. Certainly,
7 it would be a far higher standard for the injured party to
8 be able to get to court and be successful.

9 REPRESENTATIVE MANDARINO: So do I.

10 MR. PHENICIE: I guess the best way I could
11 analogize is we were doing auto insurance a few years ago,
12 most of you were in the legislature here. One of the
13 principal issues in determining the threshold of how much of
14 an injury one had to sustain before they could bring a case
15 was in Michigan, whether or not that threshold was a
16 question of law or a question of fact. In Pennsylvania,
17 they determined that it would still be a question of fact.
18 In Michigan, there have been some decisions where it is a
19 question of law, which was a much higher standard for the
20 injured party.

21 REPRESENTATIVE MANDARINO: So if I put my
22 8-year-old child on a, took them to a horseback riding
23 stable or farm, and you know, told the ride operator that my
24 child had never been on a horse before, that this was their
25 first horseback riding experience, and they matched him

1 presumably with a horse or pony that met those skills, and
2 something happened during the course of the ride that
3 spooked the horse that threw my daughter, what we've done
4 is, we've said to me as a parent and my daughter, that you
5 don't, you can no longer come to court and present facts as
6 to whether or not that was within the, whether that what
7 we've done by changing the standard from a question of fact
8 for a jury to decide whether or not it was my daughter's
9 fault, that the horse got spooked, or something that
10 happened from the owner's part, or something that no one was
11 responsible for, we've taken that question of fact away from
12 them, because we've said in section 3 that I shall not make
13 any claim against a person based on this inherent risk of
14 the animals.

15 MR. PHENICIE: That's correct. It will take
16 away the general question of whether or not the conduct of
17 the horse or the horse operator was really relevant to the
18 injury. That's correct. This change would be made.

19 REPRESENTATIVE MANDARINO: Thank you.

20 CHAIRMAN CALTAGIRONE: Other questions?

21 REPRESENTATIVE HENNESSEY: Mr. Phenicie, by the
22 way, let me apologize for, I had to be at a breakfast this
23 morning and for that reason I was a little late in getting
24 here this morning.

25 Mr. Phenicie, directing your attention to

1 section 4, specifically section (a)(11) of the act or the
2 bill as it's properly proposed, it talks about faulty
3 equipment and it indicates that a provider will be or might
4 be liable, subject to liability if he provides faulty
5 equipment, to the extent that the faulty equipment caused
6 the injury, and I was having some difficulty trying to
7 figure out exactly where that or how that might apply in
8 this, in the situation, and what kind of factual scenario
9 the equipment itself could be said to have caused the injury
10 in total, or might there be situations where the injury
11 would be caused in part because of bad equipment and in part
12 because of the combination of other circumstances, including
13 some sort of negligence on the part of the required. It
14 just seemed to me that to some extent, we were looking at a
15 comparative negligence type of concept and yet it didn't
16 really seem to fit normal comparative negligence scenario
17 that we have in the law today.

18 Do you have any thoughts with regard to whether
19 comparative negligence is the appropriate way to describe
20 the kind of concept that's contained in that subsection?

21 MR. PHENICIE: Not being the drafter of the
22 bill, Representative Hennessey, I couldn't answer that for
23 sure. I believe that there is some attempt to find some
24 comparative negligence in that section, but as I say, I
25 wasn't the drafter or the originator of the bill.

1 REPRESENTATIVE HENNESSEY: With regard to
2 section 3 in the sense to follow up on some of what
3 Representative Mandarino had said, there is a provision of
4 the immunity here, I guess you would say, or the waiver
5 liability, and I was concerned about the situation where a
6 stable owner might in the exercise of good judgment, prevent
7 anyone from riding, given the weather conditions, for
8 example. I mean, it would seem to me to be rather careless
9 for a stable owner to allow a rider's lesson to take place
10 or to begin, with the approach of an inherent thunderstorm,
11 knowing that a thunderstorm is likely to spook a horse and
12 if it spooks a horse, someone might have some substantial
13 injury.

14 As I read the section, it would seem to insulate
15 the stable owner, even if he had done that type of thing, if
16 he had sent the young rider out in the teeth of a
17 thunderstorm, in the sense with a devil-may-care attitude
18 like, since he was immune, he wouldn't have to worry about
19 the problem, whatever the result might be.

20 Do you read the section 3 the same way I do?

21 MR. PHENICIE: Yes, that's the way I read it. I
22 think it's, whether, I'm sure this is a model bill, piece
23 taken from another state. That's usually the way we get
24 legislation of this type, and I believe that the prime
25 sponsor indicated that this was essentially based upon the

1 Massachusetts law. But I think your reading of section 3 is
2 exactly like mine, that whether by design or accident, the
3 immunity essentially requested in section 3 is far broader
4 than I think members of this committee would want to go,
5 even those that support the bill.

6 REPRESENTATIVE HENNESSEY: I don't have any
7 other questions. Thank you.

8 CHAIRMAN CALTAGIRONE: Representative Masland?

9 REPRESENTATIVE MASLAND: Reasonable minds may
10 disagree.

11 MR. PHENICIE: They always have.

12 REPRESENTATIVE MASLAND: Let me just say that I
13 respectfully disagree with the interpretations of my two
14 colleagues and you, as to the language in section 3, and I
15 think if you had a situation where a stable owner, seeing
16 the black clouds on the horizon, knowing that these horses
17 may have been spooked in the past and will be spooked
18 presently, sends somebody out into the field, that they are
19 not going to be immune. I don't read the language that way
20 at all. I think that that's -- I mean, maybe it's subject
21 to interpretation, but for the record, I want to say that I
22 disagree.

23 My personal view of this is this statute is
24 attempting to codify assumption of risk to avoid the erosion
25 of that concept in our courts, and as such, I don't think

1 that we're, as Utah case cited, doing anything radical here
2 that maybe some of you will disagree with.

3 I also want to say that I disagree with the
4 interpretation as a question of fact and a question of law.
5 Ultimately, it is going to be a question of fact, I think,
6 to decide, was this tack properly prepared? Was this rider
7 properly mixed or adapted to this horse? Did they properly
8 do all these things? Those are questions of fact. If it is
9 determined that the stable owner did, in fact, do A, B, C
10 properly, then they will not be liable. But it is still
11 going to be a question as to whether or not they did take
12 those necessary steps in the first place.

13 MR. PHENICIE: I guess our concern,
14 Representative Masland, again, would be that if the General
15 Assembly spoke to this issue, that the finder of fact, the
16 judge or whatever, would feel that the legislature was
17 essentially asking that a higher standard be there, or the
18 bill would not have been passed by the legislature. But I
19 guess that's a matter of disagreement.

20 REPRESENTATIVE MASLAND: The way I look at it,
21 the stable owner can say, I did this but they're going to
22 have to prove it. They can't just say, give some blanket
23 statement, yeah, I did everything that was necessary.
24 They're going to have to show exactly what they did, in my
25 opinion. And it is proper in those situations for evidence

1 to be presented to rebut that and say no, the stable owner
2 didn't.

3 MR. PHENICIE: I think the entire concept of the
4 bill, honestly, has a flavor of limiting liability far
5 beyond the actual language. I think that's a possibility
6 here. That would be my reading, and like I say, I guess we
7 can disagree on that.

8 REPRESENTATIVE MASLAND: And just one final
9 comment. With respect to the warning, I can somewhat agree
10 with your concern that maybe that's not as much a warning as
11 waiver, but I think that some language could be worked on in
12 that final section to make it a little bit more obvious, and
13 I think that such posting of a sign in and about stables
14 will, in fact, do a lot in terms of reducing the number of
15 injuries that do occur simply by heightening people's
16 awareness.

17 MR. PHENICIE: At first when I was going over
18 this bill to prepare for testimony today when I saw
19 specifically what the bill mandated, in the so-called
20 warning section, it reminded me basically of the small print
21 on the back of a baseball ticket, which basically said, you
22 know, you can't sue if you're hit by a pitched ball or a
23 foul ball or whatever, as opposed to saying, well, this is a
24 dangerous activity here.

25 CHAIRMAN CALTAGIRONE: Representative Reber and

1 Representative Mandarino?

2 REPRESENTATIVE REBER: Thank you, Mr. Chairman.
3 Has there been a plethora of lawsuits in
4 Pennsylvania, to your knowledge, relative to and arising out
5 of the activities that we're talking about here to be
6 limited?

7 MR. PHENICIE: I don't know of any,
8 Representative Reber.

9 REPRESENTATIVE REBER: Are you aware of any
10 reported cases on this? Because I note that Representative
11 Maitland in his memorandum and testimony noted ski cases
12 that have been reported, not necessarily in this
13 jurisdiction, but I was just curious whether we're dealing
14 with something that there seems to be an onslaught of --

15 MR. PHENICIE: I'm personally not aware of any,
16 no, sir.

17 REPRESENTATIVE REBER: Let me ask you your
18 thoughts on this. This is not an area that we, as a
19 committee, should zero in on. See if I'm correct.

20 We've heard testimony and we've heard questions
21 and answers in response to the issues surrounding acts that
22 may come from acts of God, if you will, the thunderstorm
23 scenarios, the fallen branches, things of that nature. I'm
24 personally a little bit more concerned about the fact that
25 with the liability limitation that would be forthcoming, we

1 would just have a backing down of skilled people involved in
2 the overall day-to-day operations. Let's face it, stable
3 hands aren't exactly Ph.Ds. from the Wharton School of
4 Business, or from, for that matter, the University of
5 Pennsylvania School of Veterinary Medicine. Is relatively
6 cheap, migrant, itinerant labor. It's one of the reasons
7 why I, on the floor, have argued against many of my
8 colleagues who have attempted to do away with horse racing
9 as we know it in the Commonwealth of Pennsylvania. I
10 personally think it provides a business opportunity for a
11 lot of people that otherwise would be on welfare.

12 I'm not suggesting that each and every equine
13 owner operation employs migrant labor workers, the lower
14 echelon, if you will, of the employment strata, but I am
15 concerned that with an erosion of the liability factor
16 involved, that we could have a day-to-day ongoing concern
17 for what would be normal safety operations and qualified
18 individuals.

19 Do you see that as being an undercurrent of
20 concern in this legislation? Rising to a greater magnitude
21 than what we've just generally been discussing?

22 MR. PHENICIE: I think that there's an
23 undercurrent of concern in any bill that attempts to limit
24 liability. In all candor, I think there's a, it would just
25 be a natural reaction if you were an owner or an operator of

1 an amusement park, and I know your committee has struggled
2 with that, horse farm or whatever, that if your potential
3 liability would be limited, that there would be a natural
4 human reaction to be a little less concerned about safety.
5 I think that is one of the often unspoken but genuinely
6 positive aspects of tort law throughout our country is it
7 does encourage safety as a deterrent in many ways, that
8 there is potential liability, a deterrent on safe conduct.

9 REPRESENTATIVE REBER: Are you aware of the
10 insurance premium issue that's surfacing in this particular
11 discussion? Is there a crisis as far as writing these
12 policies? And if there's a crisis in writing the policies,
13 is there also exorbitant premiums? Do you have any
14 background and knowledge on that?

15 MR. PHENICIE: I have no specific knowledge. I
16 picked up a couple copies of the testimony today,
17 Representative Reber, from other people than myself, but I
18 have not heard anything specific about that.

19 REPRESENTATIVE REBER: It seems to me from my
20 own personal reviewing of this, there are two issues that we
21 have to grapple with here: Is there a plethora of lawsuits
22 bringing about the need for this legislation, and secondly,
23 what does the empirical data bring about in the writing of
24 policies for this type of a liability? Is it available?
25 Who writes it? What are the premiums? Are those premiums

1 out of line for other types of workplace general liability
2 policies? And I think, Mr. Chairman, and members of the
3 committee, that's an area that we better zero in on, because
4 that's really the issue, as I see it, and I hope to explore
5 that, and I hope that testimony begins to surface where we
6 can see the magnitude of those particular impacting aspects
7 of this. Thank you.

8 CHAIRMAN CALTAGIRONE: Representative
9 Mandarino?

10 REPRESENTATIVE MANDARINO: Thank you, Mr.
11 Chairman.

12 I would just like to suggest that since there
13 seems to be a difference in the reading of section 3 with
14 regard to whether it would become a question of fact or
15 question of law, that that language be particularly paid
16 attention to on any consideration of redraft of the
17 legislation.

18 What continues to trouble me is language where
19 it says, no participant or participant's representative
20 shall make any claim against or maintain an action against,
21 someone based on the inherent risks. And to me, that is
22 saying you're not allowed to get in to court to show what
23 the facts are so that a jury of peers can decide whose
24 fault, if anybody's, it was. What that's saying is that
25 you're stopped from bringing a claim, and a reason that that

1 bothers me is because then as we've discussed here, there
2 are a lot of factors that when you have a seriously injured
3 person, that at least, in my opinion, they deserve to have
4 the right in Pennsylvania, at least the protection of being
5 able to recover for their injuries if it was through no
6 fault of their own. And I think that we've limited their
7 right to even come to court with language like this.

8 The other way that this limits us, we have, and
9 I can't think off the top of my head what it's called in
10 Pennsylvania law, but I thought we have a comparable to
11 basically what's called a Rule 11 in federal court, which
12 says that you, as an attorney, better have a reasonable
13 basis to bring your lawsuit, and if you don't have a
14 reasonable basis in law to bring your lawsuit, then you are
15 liable personally for damages arising out of bringing a
16 frivolous lawsuit. And I can't think, Rule 11 is federal
17 court, there's a similar --

18 MR. PHENICIE: Attorneys' fees in court cases.

19 REPRESENTATIVE MANDARINO: -- law in Pennsylvania
20 and you can be charged against this. So this is sending a
21 message that if this language is at all ambiguous, a
22 seriously injured plaintiff is going to have a hard time
23 finding somebody -- reasonable people can differ in terms of
24 whether this is a question of fact, which at least if it's a
25 question of fact, you can bring it to the court and have it

1 reviewed, or if it's a question of law that stops you from
2 even getting to the courthouse steps, then a seriously
3 injured person who may have a right to recover because the
4 accident was through no fault of their own, won't be able to
5 get to the courthouse steps because of the ambiguousness of
6 the language will stop any reasonable person from saying, I
7 can't open myself up to that potential personal liability of
8 being sanctioned by the court, if somebody down the line
9 determines that this really meant that I can't bring the
10 claim or maintain an action and I'm being prejudiced just by
11 putting the issue before the court. And so I think that
12 that's language that really needs to be looked at.

13 Thank you, Mr. Chairman.

14 MR. PHENICIE: Thank you, Mr. Chairman.

15 CHAIRMAN CALTAGIRONE: I think it would only be
16 appropriate, because we have some people that are going to
17 be testifying here today, that the members introduce
18 themselves. I forgot to do that in the beginning. And I do
19 want to congratulate Senator Heckler for being with us here
20 today.

21 But if we could start with Representative
22 Ritter, just introduce yourself for the record, because
23 we're going to have some other testifants who have no way to
24 know who's who.

25 REPRESENTATIVE YANDRESIVITS: I'm Frank

1 Yandresivits, Allentown.

2 REPRESENTATIVE HECKLER: Dave Heckler from
3 Bucks, Dauphin.

4 REPRESENTATIVE HENNESSEY: Tim Hennessey from
5 Chester County.

6 REPRESENTATIVE MANDARINO: Kathy Mandarino,
7 Philadelphia County.

8 REPRESENTATIVE MASLAND: Al Masland from
9 Cumberland County.

10 REPRESENTATIVE CLARK: Dan Clark from Juniata
11 County.

12 REPRESENTATIVE REBER: Representative Bob Reber.

13 CHAIRMAN CALTAGIRONE: Tom Caltagirone, Berks
14 County.

15 REPRESENTATIVE BIRMELIN: Jerry Birmelin, Wayne
16 County.

17 REPRESENTATIVE JAMES: Harold James, South
18 Philadelphia.

19 REPRESENTATIVE CARN: Northampton County.

20 REPRESENTATIVE PICCOLA: Jeff Piccola, Lawrence
21 and Butler County.

22 CHAIRMAN CALTAGIRONE: Thank you.

23 We would like to next move to Ben Nolt,
24 president of the Pennsylvania Equine Council.

25 MR. NOLT: Gentlemen, and let me thank you.

1 It's an opportunity to be here that I've never had before,
2 so it's a little bit different than our atmosphere at the
3 horse stable or in the college or other places so it's nice
4 to see how our tax dollars are spent. Thanks for the chance
5 to testify on behalf of the equine community.

6 We've given you some handouts that I hope you'll
7 take some home at your leisure to review, one of those being
8 the Pennsylvania Equine Profile, the industry profile.

9 I would also ask that you review my credentials,
10 and not bore you with the particulars of who I am and where
11 I come from. But as a lifelong horse person, and a resident
12 of the State of Pennsylvania, as a horse owner, rider,
13 trainer, educator and professional in the industry, I feel
14 like I can speak for my peers.

15 In trying to think of where we're coming from
16 and in light of what we've heard, I think it is easy to
17 visualize horses in a pasture or horses at a show or a
18 racetrack and those being ridden for pleasure and the other
19 activities that we've heard here this morning. Unless
20 they're part of your life or your livelihood, you might not
21 be able to see them as we see them and as we see the equine
22 industry in Pennsylvania. I hope that you can see the
23 educational, the theoretical, the therapeutic, the
24 recreational and economic aspects that are involved and the
25 role that the horse plays in the complex agricultural

1 picture in Pennsylvania.

2 My time here is to share a bit with you some
3 past history of this industry and what it means to the state
4 and why House Bill 1277 is important to us. That the horses
5 do contribute to the quality of life of thousands of
6 Pennsylvanians, from the City of Philadelphia through the
7 City of Pittsburgh and everywhere in between.

8 For those of you from the Philadelphia area,
9 I've been told in the past there's from 3,000 to 5,000
10 horses within the City of Philadelphia, realizing that the
11 City of Philadelphia has two working farms within that
12 city. So we have agricultural activity in an uncommon
13 atmosphere to those of you that might not think of farming
14 in Philadelphia.

15 Throughout the state, the industry provides well
16 over 8,000 jobs, and generates millions of dollars in our
17 economic community. Things that are vital to all of us.
18 These facts are researched and represented in our profile.
19 This was funded by Pennsylvania Department of Agriculture,
20 and although it took us three years to get it into print, we
21 feel that these facts and figures are current and
22 applicable.

23 There are 170,000 horses in the State of
24 Pennsylvania so it's not an incident here or an incident
25 there, with values in the millions, and the numbers speak

1 for themselves and I won't bore you with that information.

2 I think as we try to create a favorable
3 atmosphere for the use of horses within the Commonwealth,
4 the role of these horses and ponies in the education of
5 young people can't be overlooked. I've heard some facts and
6 figures on liability and accidents and opportunities for
7 injury and lawsuits and facts of law which I'm not familiar
8 with and the letter of law which determines that. You have
9 to think about those things.

10 But as we in the industry want to provide a safe
11 atmosphere, and that is primary concern to an equine
12 professional, we think of educating young people and we
13 think of our future. I am associated with Penn State and
14 the 4-H horse program, and have an opportunity to work with
15 between 6 and 7,000 young people from across the state and
16 all 67 counties, touching each and every area from where
17 you're from. They enjoy using horses as part of their
18 lifestyle.

19 I do dwell on youth and young people. I guess
20 that's my profession. And it's vital to me to create
21 opportunities for learning, and when something stands in the
22 way of those opportunities, I become very interested. We
23 look to the opportunity of life skills that horses can
24 create in the lives of young people, things such as
25 independence, responsibility, sportsmanship, sharing, caring

1 and concern for the environment. These are the things,
2 these are the tools that the horse is being used for, not
3 just for profit.

4 An area of expertise of which I'm involved is
5 that of the therapeutic horseback riding industry, using
6 horses as a tool in therapy for people with disabilities.
7 Knowing that the horse becomes a bridge, the horse becomes
8 an equalizer, the horse creates an opportunity for people
9 who you may not think could ride a horse, to be able to
10 enjoy that activity and receive therapeutic benefits.

11 I'm proud to say that if you've read one of
12 Governor Casey's annual proclamations declaring therapeutic
13 horseback riding week within the State of Pennsylvania and
14 his recognition of the value of that industry and what it
15 brings to the people, adults and young people of the state,
16 that we are a leader in this nation in therapeutic horseback
17 riding. And again, I would not like to see something come
18 in the way of the progress of that activity. Our state
19 council works very hard trying to secure a safe environment
20 for people with disabilities as they expand their horizons.

21 Recreationally, Pennsylvanians enjoy the
22 opportunity to commune with nature, if you will, enjoy
23 sitting on top of a horse. I would think that,
24 Representative Reber, you have some horse experience. You
25 sound like you might even own a horse or have had horse

1 experience, so I think you can feel the heartfelt nature of
2 what we mean as horse people coming to you, as to how vital
3 it is.

4 We are privileged to enjoy the State of
5 Pennsylvania on horseback. We work within all of our
6 forestry and our DER folks throughout the state to ensure
7 safe riding trails and safe atmosphere.

8 Then we come to an issue of people who cannot
9 afford to own and keep their horses and they're required to
10 go out into the industry seeking equine professionals to
11 provide them with that service. They do board their
12 horses. They keep them at commercial stables and they ride
13 them for their pleasure and enjoyment. Not only do these
14 activities contribute to the economic profile, but they do
15 serve a very viable human need.

16 And it is not uncommon to see families, the
17 whole family, out for an afternoon, and in an atmosphere
18 where we spend so much time and energy and money to recreate
19 the family atmosphere, again, I would hate to see something
20 come in the way of that progress.

21 In this age of stress release, it might do us
22 all good to go back to a quote from Thomas Jefferson who
23 advised one of his associates to ride a horse two hours a
24 day, that it helped relieve his visceral complaints.

25 We get down to the dollars and cents of it and

1 that is important to all of us and it's important to our
2 industry, that being that owners of Pennsylvania equines
3 purchase great, great quantities of supplies and services.
4 Feeds and grains and hay and bedding are utilized in great
5 quantities. As I travel the state representing the
6 industry, I do talk to the people that provide these
7 services, and any of you who come from a farm background,
8 that I don't know, but when you talk about hay and straw and
9 things like that, there are people in Pennsylvania paying
10 between \$5 and \$10 a bail for a bail of hay for a horse.
11 There's no way we could support that agricultural commodity
12 if the horse was not involved and using the commodities in
13 that way. And it goes the same with the straw and the
14 feed.

15 Trucks and trailers, and specialty vehicles, the
16 support services that are constantly purchased and licensed
17 and serviced and taxed and repaired are all involved in this
18 industry. So it's far more than what I heard for the last
19 few minutes is liability and accident and liability and
20 accident. That is a factor but it's not what we as an
21 industry are about. We're not seeking to go escape our
22 responsibility. We're seeking an opportunity to enhance our
23 industry, to make it grow, that it can continue to be a
24 viable part of Pennsylvania and that Pennsylvanians can
25 enjoy this activity for years and years to come.

1 If you get a chance and you see a horse show
2 going on, stop. Do you have any idea, maybe -- anybody own
3 a Dooley in here? A huge pickup truck that will cost you
4 between 30 and \$40,000, and you're pulling a 30 or \$40,000
5 trailer behind and you have one or two \$10,000 saddles
6 there, maybe two or three of them, 4, 5, 10, 50, \$150,000
7 horses on board? That's quite an industry. And I think
8 that I would like to see it grow and continue to become
9 better.

10 You have next to you the Farm Show Complex, and
11 if you're around in the fall and you would like to see
12 something interesting, stop by on October the 7th and see
13 probably the largest draft horse show in the northeast that
14 will have between six and seven hundred draft horses there.
15 Last year, we had 17 six-horse hitches like the Budweiser
16 hitch. They have eight but we have six-horse hitches. One
17 of those horses in a hitch is worth between 20 and \$25,000.
18 Each piece of harness on those horses is \$5,000 a piece.

19 A lot of commitment going on and we need as an
20 industry some assurance that we can go on, and take these
21 animals out into the public. And if we're negligent, we're
22 not saying we should not be safer. We're not saying that we
23 should not undergird our industry with that education. We
24 want an opportunity to let that grow and not be hindered by
25 some of the needless lawsuits that are going on.

1 You can see kids in action this fall as well at
2 the state 4-H horse show where there will be over a thousand
3 of them out there working.

4 I see House Bill 1277 when signed into law, if
5 it has to be massaged or revised or however, it comes into
6 being, helping our industry to prosper.

7 Providers of services, horse breeders, trainers,
8 riding instructors will know that if they're responsible
9 business people, and I think that's key to our industry and
10 that we need to encourage and support and continue to be
11 responsible business people, that this legislation, when
12 it's in place, will help protect our interests. Yes, we're
13 looking for some protection but we're not looking for an
14 escape.

15 I would see as I hear some discussion of the
16 House bill, we thought it was fairly clear to us and I guess
17 it's all in how you read it, that we're not looking for
18 something to protect us from being sued. That it does say
19 that anybody has a right, I've always believed as a citizen
20 that you can't take away my rights, you can't legislate away
21 my rights, that I can go and go and go until I go to the
22 highest court for satisfaction. And I hope you won't tell
23 me that I'm wrong.

24 I think that we owe it to this community, and
25 the facts and figures here speak for themselves, some

1 support to help it grow and make it prosper and be a proud
2 part of Pennsylvania as it is today.

3 I have an interest in the youth and I have an
4 interest in volunteers that work with young people on
5 horses, and I see them backing away from opportunities to
6 allow their horses to be used, to introduce new people to
7 the horse industry, for fear of a needless lawsuit. Yes,
8 there is an inherent risk and that means that this is an
9 animal that sometimes we just have no control on. But if
10 you do take your child and you as a parent put that child on
11 a pony, did not you assume some responsibility for that
12 action and activity? I as a parent do. And I think that's
13 what we're trying to help people understand.

14 And again, I say the industry is aware that it
15 must exercise all cautions, and is responsible for negligent
16 action. And the public must recognize the fact that
17 inherent risks do exist and they, in turn, must take their
18 portion of the responsibility for their actions, and I
19 believe that as we all work together, we can help undergird
20 the industry. And I request your support for the passage of
21 House Bill 1277 as it may be amended or massaged to meet our
22 legal needs. Thank you.

23 CHAIRMAN CALTAGIRONE: Thank you.

24 Questions? Representative James.

25 REPRESENTATIVE JAMES: Thank you, Mr. Chairman.

1 I just want to ask, you say House Bill 1277,
2 this would tend to make your industry grow?

3 MR. NOLT: Yes.

4 REPRESENTATIVE JAMES: And it's not growing now
5 because you don't have this bill?

6 MR. NOLT: I think we're in a real state of
7 caution. If I may borrow a quote the suit-happy nation that
8 we're in, that there are people, and you'll hear further
9 testimony from horse owners and business owners that yes,
10 they don't put the pedal to the metal as far as trying to
11 make -- because they're afraid of what would happen. You
12 don't want to lose your farm. Someone comes on your farm
13 and says, I want to buy a horse. To do that, they need to
14 ride the horse to become familiar with the horse. That's
15 the start of the whole equation. And if you feel that you
16 have to do anything other than what you would as a
17 professional to help it happen, you would just rather not do
18 it. It's not worth the risk.

19 REPRESENTATIVE JAMES: You also say that you do
20 not believe in taking away rights to sue, but won't this
21 bill do that?

22 MR. NOLT: I don't see that in the legislation.
23 It says that in this section 3, I'm not as good at flipping
24 through these things as you gentlemen are. You know, if
25 someone commits an act of omission that constitutes willful

1 or wanton disregard for the safety of the participants and
2 the act of omission caused the injury, if they intentionally
3 cause injury to a participant, I see that wide open as an
4 opportunity to protect yourself in a court of law. I don't
5 think there's any intent of the author of the bill to take
6 away a person's rights to legal pursuit. And then I would
7 hope that you would call upon our council of peers and talk
8 to me as an industry professional 40, 50 years in the
9 industry, folks like that and say, was this person guilty of
10 negligence, and I would have to look at the facts and see
11 what's going on.

12 REPRESENTATIVE JAMES: Two other points. I came
13 in a little late and I heard Representative Mandarino
14 talking about kids on ponies, riding the pony rides at
15 different functions. And I heard you mention that, too,
16 that the parent must assume some responsibility.

17 Would this mean that if, and probably you might
18 have already asked the question, if a kid is riding a pony
19 and something happened, that they can't sue?

20 MR. NOLT: I would say I would have to revert
21 back to this. If the horse or pony owner would have faulty
22 equipment or be operating in an unsafe unfenced area things
23 on terribly unsafe grounds, then I would think they're
24 negligent. If the parent would walk up there with a child,
25 and you know how little kids are, I've got two of them

1 myself, bouncing up and down, they want to ride the pony,
2 and you would place the pony in an unsafe situation, you
3 could see if the pony is not calm or cool or collected, you
4 say, oh, the kids want to ride, I see that's a balance.

5 REPRESENTATIVE JAMES: Who would place the child
6 on the pony?

7 MR. NOTE: The parents. It's up to me not to
8 put my child in a situation that I would deem harmful. Do I
9 not bear some responsibility? If it looked unsafe, if you
10 saw two or three kids being placed on ponies and they had an
11 unpleasant experience, the animals were acting up, it wasn't
12 a safe situation? If your kid insisted on going on it, I
13 would think that you as a parent, I know if my 18-year-old
14 goes out and commits a crime, they're going to come back on
15 me. If my 15-year-old goes out and commits a crime, I'm
16 responsible. If my 7-year-old goes out and commits a crime,
17 I'm responsible. So I do bear the responsibility of raising
18 my children.

19 REPRESENTATIVE JAMES: Can you just give me an
20 example of what's the frivolous lawsuit in your industry?

21 MR. NOLT: A frivolous lawsuit, it happened
22 several years ago, 10 or 15 years ago, at a public stable,
23 there was a mare and a foal, a female horse and a baby
24 horse. I'm sorry. I'm speaking in my vernacular, not
25 yours. A mama horse and a baby horse, in a fenced-in area,

1 and a visitor came up and coaxed the horse with grass to the
2 edge of the fence and the horse bit him. And he sued the
3 horse owner. The horse was happy where it was. But he
4 precipitated the situation.

5 In a riding stable situation, where you go in,
6 and nowadays they're asking you to sign forms as to your
7 level of experience, and you go in and you're with your
8 girlfriend and you create a macho situation, yeah, I can
9 ride, and they believe you and you sign this statement that
10 says, I am an advanced rider, and the minute you put your
11 foot in the stirrup, that stable owner knows that you're no
12 advanced rider, that you're blowing smoke, and you get
13 injured, automatically, I'm the horse owner and I'm
14 responsible because you told me what you were and you
15 weren't. So there's a situation that comes.

16 REPRESENTATIVE JAMES: The last thing is, you
17 said there were two farms or something in Philadelphia that
18 deal with this? Where are they?

19 MR. NOLT: I said there are two working farms in
20 the City of Philadelphia.

21 REPRESENTATIVE MANDARINO: One in my district.

22 MR. NOLT: Fairmont Park still has an extensive
23 riding program, and there is a therapeutic riding program in
24 the center city Philadelphia, Broad and something. I don't
25 know what that --

1 REPRESENTATIVE MANDARINO: That's not the one
2 that's in my district, but I have the park and agricultural
3 districts in my district and they also have a working farm
4 at the school.

5 MR. NOLT: You need to advertise your county
6 just a little more. You're an agriculture center.

7 REPRESENTATIVE JAMES: Thank you.

8 CHAIRMAN CALTAGIRONE: Thank you.

9 Representative Mandarino?

10 REPRESENTATIVE MANDARINO: Thank you, Mr.
11 Chairman.

12 Mr. Nolt, I want to go to the insurance issue,
13 because I appreciate very much the comments that you made
14 and understand that and agree with and appreciate the role
15 of horses as an industry in Pennsylvania and for
16 recreational and therapeutic and learning purposes. But the
17 reality of this, at least how I read it, is that the bill
18 we're looking at today is that's why we're focusing so much
19 on law and legal liability, et cetera, because that's what
20 this bill speaks to.

21 And I guess my question is just from your point
22 of view, and maybe you have to personalize it in terms of
23 exactly to what extent you're involved in horses and what
24 you do, but what has been your insurance experience, if I
25 can call it that, your experience in getting insurance, your

1 experience in the results of having got that insurance? And
2 if you have any knowledge of what's happening in the
3 industry, as it effects horses, I would appreciate to hear
4 your comments.

5 MR. NOLT: As a personal horse owner, as a
6 stable owner, as an operator of a therapeutic horseback
7 riding program, I have never found it difficult to obtain
8 insurance. Sometimes -- and due to the varying markets, it
9 does get expensive. My particular industry, which is that
10 of therapeutic horseback riding, key motto is safety, and
11 nationally, our insurance premiums are very low due to the
12 safety of the industry. So I don't see that as heavy as
13 it's being played.

14 The cost of the insurance, yes, to operate a
15 riding stable, a hack stable, one that rents out horses, the
16 annual premium can be as high as 30 to \$50,000 a year, and
17 that is high. You have to send that horse around the track
18 at 15 or 20 times, an awful lot of times to pay your
19 insurance premium. So that is where the problem is coming
20 in.

21 But as a personal horse owner, I've never faced
22 that problem. That's why the point escapes me that we've
23 heard insurance and liability and insurance and liability,
24 where from our standpoint, we're trying to reinforce an
25 industry to allow more people to participate, that it

1 continues to grow and be healthy rather than face
2 restrictions that will actually enable it to fade away.

3 REPRESENTATIVE MANDARINO: Are there any
4 restrictions that are on the horizons that you're worried
5 about? I know a couple times I wrote down as you were
6 talking about, you know, being cautious. You don't want
7 anything that was going to stand in the way of learning, or
8 anything that stands in the way of the therapeutic horseback
9 riding, and you used that term again when you talked about
10 families going out for a ride together, not wanting anything
11 to stand in the way.

12 I imagined that there's something in your head
13 that you're concerned that is standing in the way.

14 MR. NOLT: The use of the tool, of the horse as
15 a tool in education, we have to have the opportunity to go
16 to the farm. The farm owner or the equine professional who
17 is providing a training service, the word clinician in our
18 industry, is someone who teaches and trains others, they're
19 being very, very hesitant to share their knowledge because
20 of their taking the assumed risk.

21 If I come to your farm and you invite me to your
22 farm and I bring 10 or 12 others and we do all the things
23 we're supposed to and a horse sidled over for whatever
24 reason and steps on or bumps one of these kids, you've done
25 all you could to make it a safe situation, and then you're

1 open for a lawsuit, even though I've come on your place at
2 my own volition, I have brought these kids with me.

3 It's become a very unpleasant situation. To
4 find quality people who are willing to open their lives, so
5 to speak, to young people, to have horses around, to
6 education, to survival, to the future.

7 If I can have an opportunity to work with a
8 young person for five, six, eight, ten years, with a horse,
9 I've seen lives changed, I've seen careers directed, taken
10 from an unfriendly environment, taking youth who do not work
11 well in a normal classroom situation and offer them the
12 opportunity of using horses and animals in their education,
13 lives have been turned around. And to me, if you can reach
14 just one, that's vital. And I don't want to see this
15 hesitancy of horse owners and equine business operators not
16 wanting to open their doors to me. So that's my internal
17 heartthrob right now. I see that happening very, very
18 vividly.

19 CHAIRMAN CALTAGIRONE: Representative
20 Hennessey?

21 REPRESENTATIVE HENNESSEY: I should preface my
22 remarks by saying I used to ride horses when I was younger,
23 not often.

24 MR. NOLT: May I ask you a question before you
25 go any further? Did you have a favorable experience?

1 REPRESENTATIVE HENNESSEY: Yes. I enjoyed it
2 but as I got heavier I decided it wasn't fair to the horse.

3 MR. NOLT: We have larger horses.

4 REPRESENTATIVE HENNESSEY: I appreciate your
5 comments about how you feel the industry should meet certain
6 standards. I guess the question here today to deal with is
7 to find out whether or not this bill allows you to or says
8 that the industry should meet certain standards or in a
9 sense exception from meeting those standards.

10 For example, I see in the bill language that
11 says that an owner has to be willfully and wantonly
12 negligent or willful and wanton conduct, in order for the
13 court to say that he should be held liable. And yet, in
14 your comments you were saying that if the stable owner is
15 clearly negligent, he ought to be held liable.

16 MR. NOLT: Absolutely.

17 REPRESENTATIVE HENNESSEY: I think from a legal
18 perspective, we're talking about two different concepts
19 there.

20 As I would read the bill, it would take a person
21 who was negligent and try to insulate him from ever going to
22 court or ever being held liable.

23 MR. NOLT: I didn't see that. Here again, I
24 refer back to that section 3.

25 REPRESENTATIVE HENNESSEY: I think that's where

1 it talks about willful and wanton. I guess it's page 5.
2 Section 4(a)(3).

3 MR. NOLT: Commits an act of omission that
4 constitutes willful or wanton disregard.

5 REPRESENTATIVE HENNESSEY: Right. That.

6 MR. NOLT: Maybe I'm not understanding the
7 definition of willful and wanton.

8 REPRESENTATIVE HENNESSEY: You're saying, as I
9 understood your comments, that you felt negligence would be
10 a sufficient ground for basing liability as opposed
11 to something --

12 MR. NOLT: Is it not in any other instance?

13 REPRESENTATIVE HENNESSEY: In tort law it
14 generally is, that's generally the standard. Willful and
15 wanton can mean something different.

16 MR. NOLT: Maybe the language there needs to be
17 changed, but I don't think we're trying to escape our
18 responsibility.

19 REPRESENTATIVE HENNESSEY: You had also
20 mentioned the benefits to be gained by having horseback
21 riding as part of a therapeutic program.

22 Are you talking about therapy in the general
23 sense? Or are you talking about therapy in terms of
24 physical therapy for disabled people or handicapped people?

25 MR. NOLT: The therapeutic riding industry, if I

1 may give a little outline of that, is using horses to
2 achieve therapeutic goals for people with disabilities. And
3 in my opinion, many of us are disabled in some way or
4 another, and some of us hide it better than others. So the
5 horse becomes a tool for children who are emotionally
6 disturbed, developmentally delayed, have motor skills, let
7 alone the major disabilities that you mentioned of cerebral
8 palsy and multiple sclerosis, Down syndrome, all of those
9 things, you have mental retardation, you have the whole
10 gamut where the horse is a tool and a very, very effective
11 tool.

12 For the pure physical therapy aspect of using a
13 horse in therapy, the horse is the only thing known that
14 simulates mankind human emotion. When the rider is placed
15 on the horse at a walk, their body is receiving the same
16 input as when they're walking normally. James Brady
17 rehabbed through riding.

18 REPRESENTATIVE HENNESSEY: The question I'm
19 trying to get at is that, well, when you embark upon that
20 kind of a course of therapy, horse riding therapy, are the
21 parents, are they asked to sign releases

22 MR. NOLT: Yes, but here again, not escaping
23 negligence of the operator of the program.

24 REPRESENTATIVE HENNESSEY: I don't know what the
25 release says, but if the industry were to advertise, for

1 example, to parents of these kind of children, that unless
2 we do something which amounts to willful and wanton conduct,
3 you can't have any recourse for any of our simple
4 negligence, do you think that parents would be as inclined
5 to partake or have their children partake in that industry,
6 in that therapy?

7 MR. NOLT: I have to get personal for a moment.
8 If you are a parent of a child with a disability, and
9 especially a child with a serious disability, you will do
10 anything within your capability that you think may help your
11 child become all that you think it's capable of being. So I
12 don't think that from our industry's perspective, that of
13 therapeutic riding industry, that that is even an issue.
14 And I can go back to that by saying that we are nationally
15 regarded as a safe industry, that our incident record is so
16 low that that's why our insurance premiums are so low. So I
17 don't think that is a real fair aspect to focus on.

18 REPRESENTATIVE HENNESSEY: Whose insurance
19 industry or insurance premium is so low, the therapeutics?

20 MR. NOLT: Therapeutic riding industry.

21 REPRESENTATIVE HENNESSEY: I guess what I'm
22 looking at, that really doesn't necessarily need to be
23 confined to the therapeutic riding. It just seems to me
24 that if we exist today under a standard of negligence and
25 people know that if there is some sort of catastrophic loss

1 or injury, they at least have resort to the courts to find
2 out whether there's anyone that can help to share that
3 expense.

4 MR. NOLT: I don't think that can be denied.

5 REPRESENTATIVE HENNESSEY: If we were to adopt a
6 bill which takes away that opportunity, doesn't that have
7 some sort of a depressing effect on the industry because
8 people might not feel as free to partake in the industry if
9 they don't have any kind of safety net?

10 MR. NOLT: I would have to revert back to a
11 prior comment on education. I conduct therapeutic riding,
12 horses, if you will, of instruction for people who want to
13 become therapeutic riding instructors around the state and
14 nationally and soon to be internationally. If I'm going to
15 continue to do that, I have to open my facilities and allow
16 those people to come in who want to learn to service this
17 industry. We can't ignore the need of 43 million Americans
18 with disabilities who could, if there were enough
19 therapeutic riding programs in the United States instead of
20 just 450, we would have a larger industry. But I'm a wee
21 bit hesitant to open my doors without having people sign
22 their life away, so to speak, in documentation, in releases,
23 or even ask them to come into a tour to see if they might be
24 interested in the industry. If I want to bring a class of
25 first-year physical therapy students to my farm just to

1 expand their horizons, I'm a wee bit hesitant. I do it, but
2 I'm a wee bit hesitant.

3 REPRESENTATIVE HENNESSEY: Thank you.

4 CHAIRMAN CALTAGIRONE: Representative
5 Yandresivits?

6 REPRESENTATIVE YANDRESIVITS: Thank you, Mr.
7 Chairman.

8 I have more of a comment than a question. I
9 think the slant of your testimony has been pretty much
10 towards therapeutic riding.

11 MR. NOLT: It wasn't that way unbeknownst to me.

12 REPRESENTATIVE YANDRESIVITS: Certainly I think
13 nobody can deny that there may be certain circumstances
14 where, you know, we want to protect a certain part of this
15 industry because people provide their horses or their
16 farms. They open them up to someone like yourself that
17 wants to provide an almost volunteer kind of service or a
18 therapeutic service or something. And the legislature has
19 in the past made immunity provisions for volunteers or
20 little league and that type of thing. But I think, you
21 know, the scope of this bill is far beyond, you know, those
22 type of areas. I mean, we're just giving blanket immunities
23 to anybody that does anything, you know, with a horse, a
24 mule, pony or a donkey. We're talking about people that
25 give carriage rides? Center City Philadelphia, things that

1 are strictly for profit, and I think we're taking that
2 blanket and raising it from, we're just completely wiping
3 out the negligence standard and going to standards which is
4 almost criminal in this bill before you can have any kind of
5 recovery. So I think my comments are just that we not lose
6 sight of how far reaching this piece of legislation really
7 is, and talk about, you know, all the good things that can
8 be done with horses.

9 MR. NOLT: I think the industry bears looking
10 at, as a comment to that comment. I hope that my opening
11 statements gave you an outline of the magnitude of the
12 industry in the state and what the economic impact of it
13 is. And as a business person in Pennsylvania, I hope that
14 we look at future business activities. And I guess there's
15 a real misconception. I'm hearing, and I guess that's what
16 I'm supposed to hear, two sides, that this legislation is in
17 effect in 22 states and I'm sure it's been debated. Just
18 because it's in effect there doesn't mean it has to be in
19 effect here, I realize that. But there has to be some
20 content here that's worthy because your peers have deemed it
21 so.

22 CHAIRMAN CALTAGIRONE: Thank you.

23 I would like to have the next four testifants,
24 if you would, that would start off Bruce Rappoport, Alfred
25 Kitts, Art Glatfelter and Kathy Brown, and we'll take you

1 one, two, three, four. We'll start off with Bruce
2 Rappoport, the associate dean at New Bolton Center.

3 MR. RAPPOPORT: Thank you. My name is Bruce
4 Rappoport, I am the associate dean for administration at New
5 Bolton Center and the director of the large animal hospital
6 for the University of Pennsylvania. In addition, I'm here
7 as the treasurer for the Equine Council and a member of the
8 Brandywine Valley Driving Club which is based in the
9 Unionville area. I'm also a member of the Pennsylvania
10 Draft Horse and Mule Association.

11 I appreciate the opportunity to testify to
12 support House Bill 1277, and in the interest of time, I will
13 keep my comments brief. I would like to also call your
14 attention, I think, as Ben has, to the equine industry
15 profile which, if you haven't had a copy, will be made
16 available to you. I would suggest that the one limitation
17 in that profile is that it doesn't show what's happened to
18 the equine industry over time. It's a snapshot at one point
19 in time, it doesn't show trends. But I think it may cause
20 many of us to want to support House Bill 1277.

21 My support for House Bill 1277 is based on the
22 plight of the small business owner in the equine industry
23 and the realization that the decline of this industry has a
24 rippling effect through many segments of the agricultural
25 economy of Pennsylvania. House Bill 1277 was not designed

1 to provide relief to the racing industry, and I think you've
2 noted that this morning. But it is geared towards the small
3 business owner such as riding stables, riding instructors,
4 driving enthusiasts, and civic organizations such as 4-H
5 clubs that generate operating funds from small local
6 activities and fairs.

7 In the Pennsylvania industry profile, it notes
8 that in 1990, the equine industry generated over \$427
9 million in economic benefits within the State of
10 Pennsylvania. Obviously, if there are fewer horses, there
11 will be less feed sold, less equipment sold, obviously less
12 veterinary fees, which concerns me greatly. Less capital
13 improvements. These are economic impacts that stretch
14 beyond the horse owner. They relate to the farmers in
15 Pennsylvania, the equipment sales people in the communities,
16 the training and ability of veterinarians to earn an income,
17 and the opportunity for the banking industry to generate
18 funds by loaning money for capital improvements to horse
19 owners.

20 Those of us in the equine industry are saddened
21 and concerned over the increasing urbanization and
22 suburbanization of Pennsylvania and the effect that that
23 growth has on opportunities for residents of Pennsylvania to
24 become familiar with and have contact with equine
25 activities. Many people, and I'm sure that everybody

1 sitting here probably grew up to develop a love and
2 understanding of horses, started out by probably having
3 their first contact at a local 4-H fair or a pony ride or a
4 riding stable in their areas. Through this contact, they
5 developed an interest in horse ownership, and grew up to
6 become a contributing member to the equine community.

7 Unfortunately, the opportunities for new people
8 to become acquainted in the hands-on fashion with horses
9 continue to decline, and while there are many reasons for
10 this decline, when I discuss them with the people in the
11 equine business, one of the common threads is the cost of
12 liability insurance and their fear of losing their farm. In
13 many cases, the small boarding stable that may also provide
14 riding instruction, may be breaking almost even after,
15 rather than getting ahead, and in some instances, falling
16 behind because of the increasing costs of protecting their
17 assets. These small operators can protect and control their
18 costs but they don't control their insurance expenses, even
19 though those small operations can sometimes be in a very
20 good position to control their liability exposures.

21 My reading of House Bill 1277 does not indicate
22 that people in the equine marketplace are relieved of their
23 obligations towards being responsible individuals. They're
24 still responsible for the liability insurance associated
25 with negligent conduct. More importantly, House Bill 1277

1 recognizes that horses and activities associated with horses
2 contain certain risks as a result of the unpredictable
3 nature of these large animals. I would suggest to you that
4 very similar situations exist in our youth-oriented sports
5 activities, such as peewee baseball, midgit football, ice
6 hockey, and baseball. However, because the people involved
7 in these sports are familiar with the potential for injury,
8 the inherent risks for these more common sports are
9 generally accepted.

10 On the other hand, because they do not have and
11 in many cases will never have any level of familiarity with
12 horses, they conclude that there is no risk to any
13 activities involving horses and that these large lovable
14 animals are absolutely predictable and controlable, much
15 like the horses that they see on the carousels. In reality,
16 those of us that make our living working with these animals
17 fully recognize that they are the most ingenious and in many
18 instances devious animals with which we will ever deal, and
19 that you must accept the responsibility of paying attention
20 when you're working with them.

21 I would suggest to you that it is a level of
22 familiarization that causes people to react much more
23 negatively when their child falls off a ride at the pony
24 ride than if they break their leg playing peewee baseball.
25 Much of the early education of veterinary students at the

1 University of Pennsylvania is geared toward teaching
2 students how to handle horses. I will add they're probably
3 not competent to be stable hands, but we do work with them.
4 For the most part, these students are familiar with dogs and
5 cats and know the risks of handling those because they grew
6 up with them. Unfortunately, they do not bring the same
7 level of knowledge when it comes to horses.

8 As I mentioned in the beginning of my remarks,
9 I'm also very concerned about the declining market in the
10 equine industry. If we cannot continue to induce and
11 educate people about horses, the demand for horses will
12 decline. The effects of this could have a troubling
13 economic impact for many of the citizens of Pennsylvania.

14 I do not believe that this act alone will save
15 the equine industry, but I do feel that the cost and
16 difficulties in obtaining liability coverage for many small
17 owners is a barrier to either their growth or their
18 continuance. In the general economic climate with which we
19 are all familiar, I think that there is every responsibility
20 to assist in creating an environment that allows for
21 economic stability and growth. Passage of House Bill 1277
22 will assist in creating that positive climate for the equine
23 industry and help in keeping jobs for those that support the
24 equine industry.

25 I appreciate the opportunity to speak on behalf

1 of the House Bill 1277 and I will invite any questions that
2 you have.

3 CHAIRMAN CALTAGIRONE: Thank you. I would like
4 to just continue on with the other testifiers to have
5 testimony for the record and then we'll open it up for
6 questions.

7 COL. KITTS: Thank you, Mr. Chairman. My name
8 is Alfred Kitts. I'm director of the equestrian studies
9 department of Wilson College in Chambersburg, Pennsylvania.
10 I would fit the category of a professional horseman. I've
11 been a resident in the state since 1971. I've given you
12 generally my background. I did not include in there that I
13 served my country for 33 years for which I'm very proud.

14 I stated interests which I believe are essential
15 to us in the industry, but it is of particular concern to me
16 because quality people who are involved in this industry
17 throughout the Commonwealth are leaving it. We're concerned
18 about our industry because the adverse effect of
19 uncontrolled liability has. This is why we're here. Other
20 states have enacted legislation to help us, and we hope that
21 House Bill 1277 will do the same.

22 I would like to point out that we do not, we do
23 not seek to protect any individuals who are negligent in
24 their operations or in their activities. We do not seek an
25 exclusion from responsibility for our efforts in the

1 equine-related activities. We do seek reasonable
2 consideration for risks involved.

3 One of the first expressions I learned about
4 horses was told to me by my dad's groom, and over time I
5 found it to be true. He said, if you're going to mess
6 around with horses, you must recognize that you're going to
7 be kicked, you're going to be bitten, you're going to be
8 stepped upon, and you're going to be thrown. All of these
9 have happened to me and I've been very fortunate in the
10 injuries that I've suffered: Mostly sprains, a few bruises,
11 a few cracked bones, and a number of concussions. My point
12 is, when one is involved with horses, there are risks which
13 one must take. There are risks which one must recognize.
14 There are risks which one should expect. None of us wants
15 to experience injury either personally or for one of our
16 clients, but we must realize the possibility of injury is
17 very real and can be catastrophic. It is part of the
18 business in dealing with horses. I can cite for you, if you
19 like, qualified horsemen who have been seriously injured.

20 Again, may I state, we do not seek the full
21 protection from negligence. We seek reasonable
22 consideration of the rights involved. There are individuals
23 who pursue liability cases and involve a business in a long,
24 involved examination of his operation. This becomes very
25 expensive in both time and money. Publicity can be

1 devastating. Adequate and real recognition of the involved
2 risk would reduce these concerns.

3 May I clearly state that we are concerned with
4 the client who may be injured. We do not feel that he or
5 she should be unprotected. We do believe they should be
6 protected and that they should seek adequate medical
7 protection for themselves. And we found in the business
8 that not all medical policies cover athletic injuries and we
9 so advise our clients. We also advise our clients of the
10 inherent risks involved.

11 We need a balance to help us in our industry,
12 and we believe that this bill is a great step in that
13 direction. We're concerned about uncontrolled liability.
14 Today, our only recourse is to seek insurance that we hope
15 will protect us in the event of injury to a client. It is
16 not my intent to criticize insurance companies. Like those
17 of us in the equine industry, they're trying to operate at a
18 profit. The costs, however, are overwhelming to many.
19 Overwhelming to far too many. The net result is that
20 quality people involved in the equine industry are leaving
21 it because they cannot afford to protect themselves
22 adequately.

23 Generally, this type of insurance is called
24 riding academy insurance. It offers protection to those
25 equine activities defined within the bill. One can't get a

1 ballpark figure on the cost, it's too involved. When I was
2 notified that I would have the opportunity to speak before
3 you, I called some of the companies and I could not get a
4 ballpark estimate even though I described to them the
5 facilities which I ran.

6 Before going to Wilson College, I taught at my
7 farm in Newville, Pennsylvania. I had insurance. Its
8 adequacy is debatable because I could only afford \$300,000
9 protection. The cost was staggering to us as we started.
10 One-third of our insurance cost covered our house, our
11 belongings, our horses, our vans, our tractors, our feed,
12 almost everything. Two-thirds of that cost was liability.

13 If I may, I would like to give you some fairly
14 recent figures. These are from last year and relate to
15 Wilson College. At Wilson, we run a full program with both
16 school horses and private horses. We teach riding from
17 beginners to advanced riders, both on the flat and over
18 fences. We have horse shows, events, clinics, almost
19 anything that the equine activity does except handicapped
20 riding. Our costs have been reduced because the insurance
21 company covers the entire college for all its activities and
22 consequently gives us reductions in our area of interest.

23 We are protected with a one million dollar
24 liability package with a five million dollar umbrella. The
25 cost to us, to the college, is \$8,212. Well, what does that

1 mean? That means I must teach 685 students just to pay for
2 the insurance cost. Or to make it a little closer to the
3 pocketbook, we have to handle at least 60 students a month
4 just in order to pay our insurance.

5 Many in the equine industry cannot afford
6 adequate coverage and they get out. Some stay in, without
7 adequate coverage, hoping that nothing will happen. If you
8 run a good program, your chances of injury are indeed
9 reduced. I no longer teach at my farm because of cost. I'm
10 aware of others in the industry who have left it because
11 they can't afford it, and they are quality people, not
12 run-of-the-mill people.

13 The Commonwealth is losing high calibre
14 equestrian professionals because of unreasonable liability.
15 This results in our younger and less experienced people
16 being deprived of their full potential as equestrians.

17 This bill offers adequate liability protection
18 for the dedicated equine professionals who are trying to
19 represent the Commonwealth, and I would ask you to consider
20 it, all of the aspects of it and how it affects the industry
21 and the people of the Commonwealth. Thank you.

22 MR. GLATFELTER: I'm Art Glatfelter with the
23 well-deserved reputation as a pillar of the liability
24 insurance industry that Mr. Phenicie referred to, and I
25 resent that very much. I've been fighting his operations

1 for the last eight years because I've had the privilege of
2 chairing a tort coalition trying to get some tort reform
3 passed, and they're on the same kick they've always been on,
4 that is, this is nothing about an insurance industry
5 program, and when they got off of us, they went on to the
6 tobacco industry. And the truth of the matter is, they're
7 trying to pad their own pocket.

8 But I want to tell you that I, if anything, am a
9 well-deserved pillar for the liability insurance industry.
10 I happen to own and operate the second or third largest
11 privately owned insurance agency in the country. And if you
12 talk to all the insurance company presidents that I've dealt
13 with over the last 45 years, I think they'll tell you that I
14 am anything but one of their boys, because I have told most
15 of them that they don't know anything about selling
16 insurance, and I think I've developed that reputation.

17 So that whole comment of his and the trial bar
18 is just absolutely absurd.

19 I am not even here to try to do something about
20 the insurance aspect, but I note from the questions that
21 were asked that you're going to have some questions for me
22 and I would like to have a chance to respond to that.

23 I would first like to tell you a little bit
24 about my background and why I am so concerned about this. I
25 just spent a fair amount of time, as some of you know that,

1 working on the worker's comp situation. Again, not to help
2 the insurance industry but to help the clients that I have,
3 that I have, as I told you, the largest agency in
4 Pennsylvania, and I don't have any companies coming in there
5 asking me to write worker's comp coverage because they tell
6 me that they could put their money at better risk than
7 writing worker's comp insurance on liability on horse
8 stables.

9 This has absolutely nothing to do with insurance
10 per se. But I can tell you that we insure farms all across
11 this country. We operate in 49 states, and I didn't intend
12 to get into this at all until I heard some of these
13 questions, but we insure horse farms from one end of this
14 country to the other and they're almost exclusively breeding
15 farms. We do not insure, because we can't find a market for
16 them, we do not insure livery stables. We do insure
17 education, schooling, where you teach people to school or
18 boarding stables. Because the risk is just too great, and
19 the people could not begin to pay the premiums.

20 So I think you ought to realize that most of the
21 stables in this country, in this state, that are other than
22 those associated with, most of the people that do have
23 insurance or organizations like Wilson College and some of
24 the large hotels that have a large book of insurance to
25 offer a company and, therefore, they will pick up the

1 liability insurance on that small incidental livery or horse
2 operation, but somebody that's involved in strictly renting
3 horses or training people with horses, it's almost
4 impossible.

5 I can tell you that boarding stables, now,
6 ballpark, will be somewhere around \$3.50 for every hundred
7 dollars of payroll, and where there's riding instruction,
8 they get about 13 cents on every dollar for a half million
9 dollar limit, and schooling horses, when you school people
10 on horses, rather, at the very minimum is about \$2.30 per
11 horse.

12 Now, we don't write much of that insurance
13 because I wouldn't know where to get it. We would have to
14 go into the excess surplus lines market, and I represent the
15 largest companies in this country and I can't get any of
16 them to write any liability insurance on a horse farm. So
17 I'm not here to try to help my agency. But I am very
18 concerned about all the small businesses in this state, and
19 why I fought so hard on the worker's comp, and I'm concerned
20 about all the people in this society that would like to ride
21 horses that can't.

22 I'll give you a little bit of personal
23 experience and tell you what I've -- it bothers me to see
24 what's happening to this society of ours.

25 In 1940 I was 15 years of age and shot by my

1 closest friend with a rifle. Totally accidental. Now, if
2 that happened today, very likely parents would be suing
3 parents. The parents, my parents would be suing parents of
4 that young man that was my closest friend. We didn't.

5 While I was in the hospital recovering, my
6 father and brother drowned in the Susquehanna River because
7 the Philadelphia Light & Power opened up the locks down
8 there on a very windy day and they couldn't hear the little
9 whistle. Now if you go across that dam, you see massive
10 lights, it looks like an airport. He would be alive or
11 lived a lot longer. He was 40 years of age. My brother was
12 11.

13 My mother was asked by, told by a lot of people
14 to sue. She didn't sue because she felt it was a risk that
15 my father took going out there in a boat.

16 Shortly after I got out of the Marine Corps I
17 was riding a friend's horse and was kicked by a horse that
18 he was on and broke my leg and I almost lost the leg. Found
19 out later that the reason the horse kicked is because he was
20 bitten by a snake. And the horse I was on ran off with me
21 down through the woods and my foot was dangling with my
22 Marine Corps combat boot on it, nothing but muscles.

23 Today, it's almost impossible, I believe, with
24 these people that sit here and tell you these crazy stories
25 and put billboards up and say, if you're in an accident,

1 call us because we can get you some money. That's about how
2 bad it's gotten, that if you're injured, somebody ought to
3 pay. We are removing the responsibility for peoples' own
4 action and I think that is totally wrong.

5 Now, I operate a horse farm. I have operated a
6 horse farm for 18 years, raising Pacifeno horses, but it is
7 a breeding farm. We probably have 25 or 30 4-H
8 organizations in our barn every year that we put on
9 demonstrations for, and we used to allow them to ride the
10 horses, a few of our better-trained horses. Turned out that
11 we have had even those young people, when you say, are you
12 an experienced rider? And they all say yes.

13 I saw this one day, my horse trainer had
14 probably 10 people in the arena riding and he just went out
15 in the ring and said stop, I want all of you off of these
16 horses. And he said, now, I'm going to put this young
17 lady -- they were absolutely almost runaway inside an indoor
18 ring. He put this young lady, who was probably the youngest
19 of the group, on every one of those horses, and did an
20 absolutely beautiful job.

21 It took him about three minutes to see that
22 these wee people were not being honest. This is what the
23 problem is with people at all these facilities, that people
24 come up there and tell you they're experienced riders and
25 you put them on a horse and the minute they put their foot

1 in the stirrup, you pretty well know that they aren't. So
2 we have a very, very controlled operation. We don't even
3 put people on horses that want to buy one unless we are
4 convinced they know what they're doing, or we put them under
5 very controlled conditions where we're almost leading that
6 horse around. It has just gotten that bad.

7 I personally, my farm, I have a budget of a
8 quarter of a million dollars just to operate, between
9 supplies and payroll, a quarter of a million dollars. I
10 will never live long enough to make any money on it, but the
11 reason we do it is because my wife and I both love horses.
12 And we show these Pacifenos all across the country and right
13 now are fortunate enough to have the national champion
14 stallion now in our barn that was raised in our farm.

15 So people do this out of real love of animals.
16 Now, whether it's dogs, horses, birds, whatever. But there
17 are a lot of 13- or 14-year-olds and as a matter of fact,
18 7-year-olds that want to ride horses, and people are scared
19 to death to put them on a horse unless they know they're
20 very well trained. And I don't know where they're going to
21 go to get this training to get the experience.

22 So all we're asking is that you say to people
23 that they understand there's an inherent risk in getting on
24 a horse, or even walking behind a horse. We tell people in
25 our barn when we have open houses and all these groups in,

1 we have signs all over the place, do not put your hands in
2 the stalls. Well, it's almost to a young person almost like
3 an invitation, they've got to. And we've never had anyone
4 hurt on our farm in 18 years. But that could happen
5 tomorrow because we just cannot control people that well.
6 And I don't see why an owner of a facility like that that
7 makes every attempt to operate it properly, and when we go
8 out to insure a farm, I guarantee you we inspect that very
9 carefully before we will ever even quote the thing. I don't
10 care if it's in Missouri or Pennsylvania.

11 Not all these crazy thing happen that people try
12 to make you believe. The truth of the matter is that most
13 of the people that are renting out horses have no insurance
14 at all. So if you want to help the public, do something to
15 try to get them in a position where they can buy insurance.
16 And they would buy insurance if they could buy it at a
17 reasonable rate.

18 The question was asked here awhile ago, and I
19 remember the governor asked me that some years ago for tort
20 reform, is what it's going to do for insurance premiums. I
21 said, not a damn thing. Not initially, because you don't
22 write liability insurance and collect premiums today and pay
23 the claims in that year. Maybe a year, 5 or 10 years down
24 the road. Well, you're still paying losses on premiums you
25 collected in 1992. So there's no way the insurance industry

1 could tell you the rates are going to come down
2 immediately. One reason being they're going to wait to see
3 if it's tested in court and find out if it's constitutional
4 before they would ever attempt to do that.

5 But I can assure you of my 45 years in the
6 business that the minute insurance curves get close to the
7 point of making a profit, you can bet they're going to be
8 out there beating each other over the head. And if you
9 don't believe that, come down and look through my files for
10 a day and I think I can show that to you.

11 I think it's a pure and simple matter of trying
12 to help an industry that has a lot to offer to families and
13 children and people that love horses and love animals, but
14 can't get the benefit of it because of this crazy situation
15 we have in the legal system.

16 MS. BROWN: Ladies and gentlemen, my name is
17 Kathy Brown. I've been born and raised in Pennsylvania, and
18 I've operated horse farms or training stables in other
19 states, and came back to Pennsylvania to operate a farm with
20 my parents in Bellefonte, Pennsylvania.

21 I am active, as several others here are, with
22 the Pennsylvania State 4-H horse program, currently
23 chairperson of the state 4-H horse program development
24 committee, and we're proud to have between six and seven
25 thousand young people enrolled in that program across the

1 State of Pennsylvania.

2 I also have been very active in the quarter
3 horse industry across this country but primarily in
4 Pennsylvania. I currently serve as president of the
5 Pennsylvania Quarter Horse Association. We have a
6 membership of close to 2,000 people right now. I've been on
7 their board of directors since the middle '70s. We have a
8 very large youth, very large and active youth association
9 and we now have an amateur association as well which deals
10 with adult amateurs.

11 In Pennsylvania, according to your Pennsylvania
12 Equine industry profile, we have over 28,000 registered
13 quarter horses in Pennsylvania. And these figures were
14 compiled by the American Quarter Horse Association and deals
15 with the number of registered horses in Pennsylvania. Their
16 stated value is over \$71 million. And I thought today I
17 would talk, my focus would be on the numbers of quarter
18 horses and the impact of that industry and so forth.

19 But I think that I need to speak to the fact
20 that many of those quarter horse people are much like we
21 are, we being my mother now and myself, in that we are very
22 small operations. We currently operate in Bellefonte a
23 small boarding riding lesson facility. I currently am
24 boarding 17 head of horses and currently working with 14
25 students. So it's a very small facility.

1 I think we are the business that is being most
2 hard hit by this liability insurance question. We currently
3 have a gross income from our business of about \$24,000. We
4 are currently paying over \$4,000 just in our insurance. The
5 only way I could get an affordable liability insurance
6 package for my business was to include in that package the
7 entire farm, all of the buildings on it, the vehicles that
8 we drive, the horse trailers that we own, and the horses
9 that we own. To just pick up a liability package itself, we
10 couldn't find it. Even Mr. Glatfelter's insurance agency
11 wouldn't insure us because they don't insure boarding and
12 training facilities. So we had to go and look through the
13 market, and it's a very difficult commodity to come by. I
14 am not as fortunate as Mr. Nolt said, he's had no difficulty
15 in finding it. I have had difficulty.

16 Currently, approximately a little over
17 one-third, I'm sorry, of the insurance bill that we pay is
18 geared, is just the liability package that we have. And
19 that's only a \$500,000 coverage. I've personally feel a
20 little bit uncomfortable with \$500,000, certainly with the
21 way most litigation goes today, that \$500,000 is
22 insufficient coverage. But that's what I can afford.

23 Right now, the liability package that I have is
24 about \$15 of it is just the property. That when we were
25 talking about whether the land was unsafe to ride on and

1 that kind of thing, well, all that liability, that only
2 costs me \$15. The rest of that cost, the thousand dollars
3 covers the horses, my lessons, my professional ability as an
4 instructor.

5 So that as you can see, it's not the inanimate
6 objects that cause the expense in here, it's by adding that
7 horse. I do not want legislation that allows me to be
8 grossly negligent and get away with it. I want legislation
9 that says this horse is a risk and you as a parent
10 understand that it's a risk and I'm going to tell you it's a
11 risk, because I can't control him 100 percent of the time.

12 I, like Mr. Glatfelter, when I have a rider come
13 in who has never been on a horse before, try to put him in
14 the most controlled environment I possibly can do. And if I
15 can control what goes on between his two ears, I wouldn't
16 need to worry about whether I'm testifying here today
17 because I would be the richest person in the world, because
18 I could control all of those horses. But we can't. We just
19 want someone else to accept some of the responsibility for
20 this animal, his behavior. I want you to understand that
21 there is some risk there when I put your child up on that
22 horse.

23 I no longer advertise in the local paper if I
24 have a horse for sale because I can't control the John Q.
25 Public that comes to my farm and says, I'm an experienced

1 rider, and then I find out that he rode twice in some hack
2 stables down the road. And he's an experienced rider, all
3 right; he almost got on backwards. I can't control that.
4 What I do now is I rely on professional, other professionals
5 recommending I've got a client that has a horse or, excuse
6 me, that wants a horse. So they'll recommend my horse to
7 them and we'll work back and forth together that way. I'm
8 afraid any more to just solicit the public to come buy a
9 horse.

10 I take exception to the fact that in the comment
11 that was made that in Pennsylvania that we must be able to
12 rely upon owners of businesses and makers of toys to provide
13 safe places to learn and recreational activities and safe
14 toys to play with. We would like, ladies and gentlemen, for
15 these horses to no longer be considered toys. I would like
16 the people to understand that this is a live animal. I
17 would like parents to understand that this is not a dog. If
18 you want a dog, buy a dog. It is a horse. And because of
19 that, there are certain inherent risks in being around him.

20 We would just like the protection that we feel
21 is necessary for our continued growth. We would like the
22 protection of that inherent risk and understanding.

23 The other thing that I will add is that I've
24 watched my business decline, or I've watched me draw in, as
25 it were, the parameters of my business, because of the

1 cost. I used to carry, I used to have my own riding horses,
2 my own, excuse me, school horses that I had there on the
3 farm. When it started costing me \$600 a year to put
4 liability insurance on one pony, and almost \$800 a year to
5 put insurance on one lesson horse, and I charge \$25 an hour
6 for a private riding lesson, it doesn't take very long to
7 figure out how long I have to teach on that given horse just
8 to pay the insurance policy.

9 The insurance that I carry now is just on
10 horses, on riding lessons that I conduct with riders on
11 their own horses. So that the insurance company feels that
12 the parent or the owner is accepting some of the risk by
13 owning their own horse.

14 So I've watched my own business shrink because
15 of the costs. And we do, I ask you to support House Bill
16 1277 because I feel that by adding that word inherent, those
17 words inherent risk in there, that it will help protect
18 those of us that are small businesses. Thank you.

19 REPRESENTATIVE MANDARINO: Thank you, Mr.
20 Chairman.

21 I have a number of questions and some of my
22 earlier questions got answered as the panelists came down
23 the line so I'll try to limit them. But I want to preface
24 my remarks by saying that I, too, understand the inherent
25 risks of horses. I actually grew up around horses, and not

1 riding them, but going to the paddocks and the stable and
2 cleaning and walking race horses, and so I understand the
3 risks that come with being around large animals such as
4 horses and were taught those risks by my family and by those
5 that had responsibility for the horses as they introduced
6 them to me.

7 I guess that goes to my first question, and Mr.
8 Kitts, I think actually you put it very well, from my
9 perspective, when we're talking about warning people and
10 having them understand what the inherent risks are, when
11 you're dealing with an animal such as a horse, and I wrote
12 down your words, people need to understand that the risk of
13 injury is real, that they can be kicked, stepped on, bitten
14 or thrown by a horse. And then I read the kind of warning
15 that we propose to let people know about when we're talking
16 about legislation, and it says that the warning is: An
17 equine professional is not liable for injury to or death of
18 the participant resulting from the inherent risks of the
19 equine activities.

20 I guess my question would be, if we're looking
21 at changing the warning, why don't we also look at the same
22 kinds of warnings that we give in other industries that
23 says, you know, please be advised that the risk of injury
24 from a large animal such as a horse is very real and that
25 horses can kick, step on, bite, whatever, and tell people

1 what the risks are, because there's a two-way responsibility
2 here in terms of informing people of the real risks, because
3 the city kid who you want to encourage to know what horses
4 are about and you want to encourage people who have never
5 been around them to know, it's one thing to say let's
6 encourage them by not making me assume the risk. It's
7 another thing to say let's let them know what the risks are
8 that they're assuming. So I want to put that out there as
9 an appropriate thing to consider with regard to a warning of
10 people, warning them of exactly what it is that is an
11 inherent risk.

12 I guess the other thing that I heard everybody
13 talk about is a problem with honesty, of riders
14 misrepresenting themselves in terms of their experience.
15 And again, I think that we need to, when we think about
16 those things, think about, is it really an issue of honesty
17 or is it really an issue of definition. Is it a person who
18 is an experienced horse owner and rider going to define
19 experienced in a different way than a city kid coming out to
20 learn about horseback riding. And so isn't there a little
21 bit of responsibility like Ms. Brown talked about, in terms
22 of testing a person to see if what they say is experienced,
23 equals experienced in your mind. And I think whenever we're
24 talking about any activities that we're introducing to the
25 general public and to the general consumers, that we all

1 have a responsibility not only to the people providing that
2 service but the lawmakers to make sure that people
3 understand the risks that they're taking and what they're
4 getting involved in.

5 And so I would throw those out, again, as things
6 that we need to keep in mind when we're looking at
7 legislation like this.

8 I have a specific question, Mr. Rappoport, and
9 you had said that we are seeing a decline, and again, I'm,
10 if I'm wrong, correct me, in what you said, but you just
11 defined how large the industry was in Pennsylvania, and said
12 that we are seeing a decline in the industry partly because
13 of, though not fully, but partly one of the factors was the
14 cost of insurance, and then you mentioned that people who
15 have horses can do things. They have an ability to control
16 actions that lead to liability. And I guess what I'm asking
17 is can you propound on that more in terms of what it was
18 that you meant?

19 MR. RAPPOPORT: What I'm referring to is that
20 the type of small stable where they maybe have 10 or 12
21 horses and they don't have large crowds and if they want to
22 restrict people from going through their barn, they are more
23 able to do that than a large public stable. We were talking
24 earlier of one of the issues of, you know, when the horse
25 being at the track versus being in lay-up form. When a

1 horse is at the track, you can't go see that horse. I mean,
2 they're under lock and key, basically, with security
3 guards. You have to have credentials to get access to
4 them.

5 You come over to the farm show in January or to
6 the Kile show in October, you can walk in and see 5, 600
7 horses all under one roof with almost no restrictions, other
8 than the one that if someone is standing there next to that
9 stall can restrict you from. That's what I'm talking
10 about. A small operator can control their operation. You
11 get a large operation like a show, it's much more difficult
12 to try and restrict people from getting access to them to do
13 something improper.

14 REPRESENTATIVE MANDARINO: But the prohibitive
15 cost of insurance, either the cost of insurance being so
16 high or the availability of the insurance being unavailable
17 because nobody wants to rent because of the risk, is more on
18 a smaller operator; is that what you understanding was?

19 MR. RAPPOPORT: The impact is more on the
20 smaller operators. I think if a large business and you can
21 afford, or the company will write your equine package as
22 part of your larger business, the impact of that cost is
23 maybe not as noticeable as opposed to a small operator where
24 their insurance costs might be 25, 30 percent of their whole
25 operation.

1 REPRESENTATIVE MANDARINO: And if I understood
2 Ms. Brown, your testimony, that was the only way you were
3 able to get insurance was to have it as one piece of a total
4 insurance package.

5 MS. BROWN: Total package, yes.

6 MR. GLATFELTER: I would like to add to that
7 the other reason she got it was because it was her, and
8 people that came there knew that she ran a good operation.
9 Insurance companies don't just write insurance by mail, not
10 on operations like that.

11 MS. BROWN: No, no. We have to go through an
12 inspection process, filling out quite a lengthy application,
13 go through an inspection process, and I was privileged to
14 see her inspection and at the bottom where it says, exposure
15 to risk, and she has minimal written down. I like to think
16 we do run that kind of an operation. Am I going to say that
17 everyone is like that? I wish I could, but no. But I think
18 that those of us that are out there trying to do it right
19 are trying to keep that word down there at the bottom,
20 minimal, because that keeps our insurance affordable.

21 REPRESENTATIVE MANDARINO: Mr. Glatfelter, did I
22 understand correctly that you do write insurance in states
23 other than Pennsylvania?

24 MR. GLATFELTER: 49 states.

25 REPRESENTATIVE MANDARINO: Have you seen any

1 difference, whether it's through your agency or the industry
2 as a whole, in being willing to write insurance in any of
3 the other 22 states that have this kind of legislation that
4 we're considering? Is theirs more affordable, and is the
5 coverage more available because of this kind of
6 legislation?

7 MR. GLATFELTER: I honestly can't answer that
8 because it's fairly, it's so new. In addition to that, we
9 are really specialists and we write breeding farms and we
10 write foundries and things like that. We are not in the
11 market for this and that's why we couldn't handle hers. If
12 we wrote a lot of them, then that's the secret to insurance,
13 is large numbers, but I don't know that I can tell you this.

14 I have seen this take effect in the other tort
15 liability areas, that were passed in the states of
16 Washington, and Maine and North Carolina, Michigan, where
17 they did pass and particularly in the State of Washington
18 some years ago, some meaningful tort reform, and within two
19 years' time you can see the difference in the rates. And
20 I'm talking about horse farms, now. I'm talking about
21 manufacturing, wholesale, retail operations.

22 So I don't think there's any question that in
23 time, it would have that effect because of the experience in
24 the insurance industries. Right now, they're operating at
25 about a 117 percent combined ratio. If it wasn't for their

1 investment income, they would all be out of business, and I
2 don't understand why they're still out trying to beat each
3 other half to death, but they are very competitive and more
4 competitive than I've seen it in 45 years and they know
5 they're losing money in the process. So they're rolling
6 money is what they're doing, but they're not doing well and
7 there's a lot of insurance companies and there will be more
8 of them one of these days. They'll come back to full
9 sanity.

10 But I don't think that you have to worry about
11 the insurance industry overcharging unless you have a lock
12 on something, and I don't know any that does.

13 REPRESENTATIVE CLARK: I have a question for Mr.
14 Glatfelter. In Pennsylvania, there isn't any case law or
15 law for strict liability; if you come on a farm and ride a
16 horse and you have an accident, the insurance company is
17 automatically going to pay a lot of money or the farm owner
18 is going to pay you a lot of money. Where are those, are
19 there documented losses or where are those losses that the
20 insurance companies are afraid to issue from?

21 MR. GLATFELTER: The companies that were writing
22 it had such a bad loss ratio they just quit. So the only
23 people who are doing it now are the specialty markets and
24 they're getting high premiums and getting spread across the
25 country. So it's not -- it virtually is strict liability.

1 REPRESENTATIVE CLARK: When did that come about
2 in the industry?

3 MR. GLATFELTER: The last 20 years. When the
4 lawyers started advertising on billboards, that's when it
5 started.

6 REPRESENTATIVE MANDARINO: That's what we've got
7 to fix.

8 REPRESENTATIVE CLARK: I have misgivings,
9 because the cure to Pennsylvania and small businessmen's
10 problems are with the billboard advertisers that are as
11 opposed to going industry by industry by industry looking
12 at, you know, how can we take this strict liability that is
13 being imposed, or, you know, or the courts are, you know,
14 maybe handing down decisions. What I'm trying to figure out
15 in the insurance business, do you go out there and you say,
16 oh my God, there's a horse, I'm sure he's going to hurt
17 somebody, I'm sure he's going to bite somebody, I'm sure
18 he's going to kick somebody, and therefore, there is one
19 high premium? Or when did the insurance industry start to
20 decide is there a perception of lawsuits, they see the
21 billboards or there are actual losses, were there actual
22 frivolous suits being paid and filed, et cetera, and when,
23 I'm trying to figure out when this market closed and what
24 the reasons were.

25 MR. GLATFELTER: Combination of those. When the

1 history gets bad enough, they back out of it. Anything that
2 starts to go sour, they just say we can invest our money in
3 other areas. And that could happen to the property right
4 now. All of a sudden the companies are trying to back off
5 of property risk because of what you see in the hurricanes
6 in Florida, they're trying to get out of Florida. And
7 they're like every other business, if they can't make a
8 profit, they're going to go out of business. They rolled
9 the market and prices likewise.

10 What's really happened is that in, and I have
11 probably about as long a history in this business, active,
12 as anybody I know, 45 years, that I can see this develop
13 over the years, and it's developed because that segment of
14 the bar association, the trial lawyers, and I call them the
15 billboard attorneys, really telling people day after day on
16 television and billboards, that if you -- there's one down
17 in York County that just says the name of the lawfirm, says
18 automobile accidents. What does that say to you? If you're
19 involved in an automobile accident, come see us because we
20 know we can get you some money.

21 REPRESENTATIVE CLARK: Then you're telling me
22 that the insurance companies will look at a case and they
23 will settle it? Or is it insurance companies are afraid
24 that if it goes to court, a judge won't be able to control
25 it, the lawsuit, and it will be a big award? Or a lot of

1 those things, some of those things or the whole?

2 MR. GLATFELTER: It's the whole. If you had an
3 opportunity to settle a claim for half a million dollars and
4 don't do it and it goes to court and the award is a million
5 dollars and the people are sitting there with a half million
6 dollar limit, you know who is going to pay that half a
7 million dollars, the insurance company. So they're caught
8 in both ways. And they've got to look at it and see, read
9 the case, see how, what they think their chances are and
10 even to the extent of who the lawyers are on the other
11 side. If they're very, very experienced in this area,
12 they're more likely to, and that's why they advertise it
13 heavily.

14 REPRESENTATIVE CLARK: Thank you.

15 CHAIRMAN CALTAGIRONE: Mr. Masland?

16 REPRESENTATIVE MASLAND: Thank you, Mr.
17 Chairman. I hate to talk and run but I've got to get back
18 to Carlisle by one o'clock and that could be difficult with
19 a 55-mile-an-hour speed limit.

20 I do want to thank you all for coming here to
21 testify, and I offer my assistance with Steve and staff in
22 terms of drafting some revisions because I think some things
23 can be worked on. I sketched out some stuff for the
24 warning.

25 But I do want to cite one thing that was in your

1 written testimony, Mr. Glatfelter, and because of the
2 emotional aspect of this and Mr. Phenicie's testimony, I
3 know you really went off the script, but there was one thing
4 you said, and we could talk forever about billboards and I
5 would be happy to talk to you about that later, but the one
6 thing you had in here which I thought was very important to
7 be part of the record was this, on page 3, one of the most
8 serious developments in our society during the past three
9 decades is the belief that one should no longer have to be
10 responsible for their own actions. That's really what this
11 comes down to, in my opinion, and I would like to thank
12 Steve for the thoughtfulness that went into this bill, and
13 again, I would be happy to work with you.

14 CHAIRMAN CALTAGIRONE: Representative Reber?

15 REPRESENTATIVE REBER: Mr. Glatfelter, do you
16 possibly have or are you privy to information that would
17 give us hopefully all, but if not all, any of the
18 following: A compendium, if you will, of reporting cases in
19 Pennsylvania, on the liability issue related to the issue
20 we're talking about?

21 MR. GLATFELTER: Oh, sure.

22 REPRESENTATIVE REBER: Secondly, the amount of
23 claims that have been in essence filed, with carriers right
24 in Pennsylvania relative to this kind of issue and whether,
25 in fact, they've led to award or they've been settled out,

1 to give us some kind of feel as to actually how many
2 carriers have had to respond to claims, have had to respond
3 also to ultimate jury awards or court awards, if you will.
4 That may be difficult to do, but if we could have some
5 imperical data, it certainly makes it much much easier to
6 allay some of the concerns that have been expressed by
7 different people and certainly will be expressed by this
8 committee when we meet as a whole.

9 MR. GLATFELTER: You're correct. It's awfully
10 hard to get, but cases that were filed and tried in court
11 and settled we could get and I would be very happy to do
12 that. But insurance companies are reluctant to put out any
13 information they don't have to, even to people like me, that
14 represent them.

15 REPRESENTATIVE REBER: I've had that experience
16 even when they've been under subpoena to do that so I
17 understand what you're saying.

18 Let's just move in a different direction.
19 There's something that I've sat here and as I listened to
20 it, everyone is talking about inherent risk, and recognizing
21 inherent risk. Isn't there also an obligation of someone
22 that operates in a profession which has inherent risks
23 included with it, to take some higher standard of
24 responsibility, to take some additional concerns? And I
25 have a hard time getting over that hurdle.

1 The reason I say that is it's my understanding
2 under current law in Pennsylvania with comparative
3 negligence as it is, if we have an individual that comes in
4 and falsifies his ability to ride, a good defense counsel
5 and certainly those high-priced defense counsels that all
6 these insurance companies employ that drive up the premiums
7 in Pennsylvania, certainly know how to cross-examine that
8 plaintiff who has misrepresented his ability which in part
9 was responsible or in total was responsible for the injury
10 that occurred.

11 I just tend to think there's a lot of red
12 herrings floating around here, you know, in this case, and I
13 prefer to call a spade a spade on some of these things and
14 have some dialogue on it. I'm just wondering how it's
15 gotten out of hand, if it's gotten out of hand and that's
16 the reason why I asked for imperical data on the issue.

17 MR. GLATFELTER: If it's gotten out of hand, I
18 think because a case that gets before a jury just
19 automatically believes an insurance company is going to pay
20 for it.

21 REPRESENTATIVE REBER: A case that gets before a
22 jury ought to be readily ascertainable as far as the
23 imperical data on that. And I can appreciate where a
24 settlement of claims that didn't go to a verdict is going to
25 be rather difficult to extrapolate. But a reported case and

1 jury awards and/or, you know, award by a judge without a
2 jury, that ought to be relatively attainable.

3 And when I've asked this question before and to
4 use, I found it to be kind of novel by Mr. Phenicie, the
5 boutique syndrome type of things that we're seeing on
6 immunities, that have been requested, I'm always amazed at
7 the amount or the lack thereof, I should say, of data that
8 comes forward when we really get down to number crunching
9 time as far as awards, as far as reported cases, as far as,
10 frankly, incidences that have, on occasion the issue that
11 have occasion had the issue to come before it.

12 I paid the premiums, too, in the horse area. I
13 do have some background and knowledge in it and I empathize
14 and appreciate, but I'm going to tell you, when you deal in
15 areas where there is risk, I think you have to assume some
16 of that risk yourself, for operating in that occupation.

17 MR. GLATFELTER: I think you're absolutely
18 correct. We're not trying to get protection from these
19 people for everything that happened. A good insurance
20 agent, a good insurance company when they're insuring some
21 organization like that, will go out and literally see what
22 kind of practices they have.

23 I also have been involved with and own a
24 shooting preserve, quail and pheasant. And I guarantee you
25 that when somebody comes there, we, number one, will not let

1 them more than two guns go out at a time. We have somebody
2 tell them before they go out exactly how they're going to
3 operate. And if they don't, we're going to ask them to
4 leave.

5 The same thing is true of people coming to my
6 horse farm. My trainers are so very experienced and they
7 could detect this. We take them into an indoor arena and
8 they'll talk to them and they will put them on the horse and
9 they won't move the horse. So when they move, they're
10 pretty -- we didn't, early on we didn't do that because we
11 didn't realize, you know, that people stretch the truth.
12 But I guarantee you, when they get on a horse today, they
13 have been instructed, they've been watched. And before we
14 would let them go outside that barn, you can be sure that
15 they're going to be relatively certain that these people
16 understand what they're doing on that horse and understand
17 how a horse should respond.

18 So they do have that responsibility to exercise
19 care, to see that they have made it as safe as they possibly
20 can. But that does not protect somebody from going out on a
21 horse that they've not been on before and they're a little
22 jittery and a pheasant goes up and the horse bolts and/or
23 they drive it down a highway, I tell people.

24 REPRESENTATIVE REBER: Let's use that example.
25 Where, then, does negligence lie to the defendants, to Kathy

1 Brown? Where does negligence lie?

2 MR. GLATFELTER: I think that everybody that is
3 predictable it lies. But you cannot predict what a horse is
4 going to do when a pheasant goes up, you cannot predict what
5 a horse is going to do when the rider tries to stop it along
6 the road and doesn't realize that even though they've had
7 experience, if they haven't ridden on a road, that the horse
8 you stop is likely to back right out onto the road.

9 Now, when you're riding on a trail, when I take
10 people out, friends, I say, do not come up behind this horse
11 closer than one horse length. Because, you know, horses
12 that you've ridden for years and years, you would never
13 imagine, but once in a while, the female horses get a little
14 out of shape and they'll kick at a stallion now coming up
15 behind them. And the people that do this all the time
16 realize, so I just tell them stay away. Now, I can't
17 predict that they're not going to do it, but I could tell
18 them not to do it.

19 That's what I'm talking about, exercising care.
20 And all you can do is instruct them as well as you can and
21 hope that they listen and they got the message.

22 REPRESENTATIVE REBER: Thank you.

23 CHAIRMAN CALTAGIRONE: Any other questions?

24 Representative Hennessey?

25 REPRESENTATIVE HENNESSEY: Just if I can follow

1 up on that. In theory, then, perhaps what Representative
2 Reber was asking you, there shouldn't be any award because
3 there's no discernable negligence on the parts of the horse
4 owner or the stable owner or whoever? I understand the
5 practice. The results might not be that clearcut.

6 MR. GLATFELTER: I'm sorry, I'm not sure I got
7 the question.

8 REPRESENTATIVE HENNESSEY: I think what Bob was
9 asking you is, you know, if there's a standard of care that
10 a horse owner has to abide by. But in the situation which
11 is totally unpredictable, a pheasant flying up, spooking the
12 horse and somebody gets hurt, I think we probably could all
13 agree that no award should be entered against the horse
14 owner in that situation.

15 MR. GLATFELTER: That's really all we're asking.

16 REPRESENTATIVE HENNESSEY: At least in theory.
17 Now, in practical application, perhaps it changes. That's
18 one of the things I wanted to comment on. I don't know that
19 I have any questions, but it seems to me, Mr. Chairman, that
20 throughout the course of the morning, we've heard speaker
21 after speaker say that we don't want to be relieved of
22 negligence or of the results, the results of our own
23 negligence, and yet, the bill as I see it would seem to do
24 that unless there's willful and wanton conduct or willful --
25 it seems to me there's a scale of near inadvertent simple

1 negligence going through gross negligence, recklessness up
2 to a willful and wanton failure to do something, willful and
3 wanton omission, I guess, is the standard the bill has.

4 What we've heard is a whole panel of people
5 saying that they don't want to be relieved to the extent
6 that the bill would seem to relieve them, but perhaps there
7 is some need or some relief from some other level of failure
8 or omission, and perhaps the committee could look into that
9 and maybe Representative Maitland wants to look at that and
10 see whether or not the bill should be massaged, as somebody
11 said, in that fashion.

12 CHAIRMAN CALTAGIRONE: I absolutely agree. I
13 think that if we can come up with some amendments that can
14 address some of the concerns that have been raised by both
15 members and some of the testifants, that we might be able to
16 come up with something that we might be able to deal with
17 when we get back to the session in September and try to
18 address this bill and some worthy amendments.

19 With that, we'll adjourn the hearing for today,
20 and I want to thank everybody for participating. And if you
21 have any additional information as was requested, that you
22 share with this committee, we certainly would appreciate it,
23 if you could just send it to me.

24 (Whereupon, the hearing was concluded at
25 12:31 p.m.)

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2 evidence are contained fully and accurately in the notes
3 taken by me on the within proceedings, and that this copy is
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