

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG**, on March 2, 1993, at
8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: Rep. Jody Bird (D)

Members Absent: No members absent

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 140, SB 37
Executive Action: None.

HEARING ON SB 140

Opening Statement by Sponsor:

SEN. JACK REA, Senate District 38, Three Forks, explained that
the purpose of SB 140 is to assist courts and juries in defining
the circumstances under which persons responsible for equine

activities may be found liable for damages to persons harmed in the course of equine activities.

Proponents' Testimony:

Pat Melby, Attorney, Montana Horse Council. Mr. Melby compared horseback riding to skiing and snowmobiling. It is an activity that many people from other states and countries come to Montana to participate in. And like skiing and snowmobiling, it's not without risk and injuries to the participant. Over the years, the responsibility for horseback riding has become very confused resulting most often in the sponsor of some type of horse activity being liable for injury, even when that injury was not caused by the negligence of that sponsor. This has resulted in increased inaccessibility to insurance and higher insurance premiums for these activities and is slowly putting equine activities out of business.

The purpose of SB 140 is similar to the Skiers and Snowmobilers Responsibility Act. It would define the responsibilities of the equine activity sponsors as well as participants. While the equine sponsor would still be liable for injuries caused by negligence, participants would be responsible for injuries that are caused by risks inherent in equine activities.

The purpose clause in section 1 is very important. This clause is necessary because it gives direction to the courts. The last sentence of section 1 very clearly states that an equine activity sponsor is liable for negligent acts.

The following proponents presented written testimony:

SEN. KENNETH MESAROS, Senate District 21, Cascade EXHIBIT 1
Louis Vero, E Bar L Ranch, Greenough EXHIBIT 2
S.B. Sias, Ten Mile Drivers, Helena EXHIBIT 3
Chuck D. Cavill, private citizen EXHIBIT 4
Doug Hammill, D.V.M., Old West Adventures, Whitefish EXHIBIT 5
Sandra Jankowski, 4-H riding instructor EXHIBITS 6 a-b
Kelly Flynn, Montana High County Cattle Drives EXHIBIT 7
Jesse Armitage, Flying D. Ranch EXHIBIT 8
Kelly Kelsey, Nine Quarter Circle Ranch EXHIBIT 9
Larry Holmquist, Eagle Mount, Bozeman EXHIBIT 10
Al Lien, representing the Gallatin Saddle and Harness Club and
the Montana Draft and Mule Association, Bozeman EXHIBIT 11
Ellen Hargrave, Hargrave Cattle & Guest Ranch, Marion E
EXHIBITS 12 a-z

Opponents' Testimony:

Russell Hill, Executive Director, Montana Trial Lawyers
Association, presented written testimony. EXHIBIT 13

Questions From Committee Members and Responses:

REP. TOOLE asked Ms. Hargrave if any insurance companies have given statistical evidence about what effect this bill would have on their rate policies. She quoted a February 1991 article from the magazine Equis saying, "Since 1989, we've allowed a credit for tort reform. We want to encourage more, but we allow up to 10 percent tort reform, and part of that is definitely for equine tort reform." The state of Colorado does get 10 percent tort reform right now. This information is included in Ms. Hargrave's testimony. See EXHIBIT 12b.

REP. TOOLE asked Roger Graham, Executive Director, Independent Insurance Agencies, if there will be any change in the accessibility or availability of policies if this bill is enacted. Mr. Graham pointed out he does not represent insurance companies; he represents the agents throughout the state. There is an initial 10 percent discount being offered by participating insurance groups. The 10 percent initial fee is subject to actual experience as the law takes effect, and that may or may not be tested by the court system. It is difficult to give precise premium information until there is some experience.

REP. TOOLE asked if it is possible to include a performance improvement clause in the bill. Mr. Graham said the reason this bill was initiated and is being pursued so vigorously is because owners are facing liabilities and risks for things beyond their control. The system is being used against the owners because of the cost of defending themselves in court. Horse owners and professionals sometimes are forced to settle, or their insurance companies make that choice for them, when, in fact, they won their negligence action and should not be liable. Mr. Graham had personally seen documentation of insurance rates from people in Colorado with reductions of 10 to 30 percent. That's an immediate benefit and advantage to horse owners. SB 140 balances out the two parties' risks and responsibilities.

REP. BROWN asked Mr. Melby whether horse owners had considered posting a warning provision in areas where people are riding, such as those used at ski resorts. Mr. Melby said that is a good idea, but not realistic. It would be virtually impossible to post warning signs everywhere people ride horses whether it be private or public land. And if that becomes a requirement, simply the failure to post the sign could cause negligence, and it doesn't add anything to the protection of the participant.

REP. BROWN asked why participants are not required to sign a document before riding that puts the responsibility on them. Mr. Melby believes what REP. BROWN suggested is valid and makes sense; however, signs and documents don't add any protection.

Just as skiers have to follow the Skiers Responsibility Code on ski hills, REP. BROOKE thought that riders should have to purchase a ticket in order to ride. This ticket would have

essentially the same guidelines as the Skiers Responsibility Code. Mr. Melby said the notice at ski areas is different than riding horses. The Skiers Responsibility Act requires that ski areas post a notice of the code that's published by the National Ski Area Association. There is no code of conduct for participants in equine activities that could be similar to that. REP. BROOKE said there's enough language in the bill that gives direction to what a participant in equine activities is responsible for. Mr. Melby is not saying it can't be done, but there is a world of difference between the operation of equine activities and ski areas where there is one particular area to get on a lift, and familiar areas where warning signs are posted. REP. BROOKE's suggestion would be very difficult to implement.

REP. RUSSELL asked Mr. Hill if there are any federal statutes that may be comparable to this bill. Mr. Melby was not aware of any federal legislation that deals specifically with tort liability in a state district court.

Mr. Hill made it clear to the committee that MTLA's proposed amendment would not require horse owners to post notice. The MTLA believes it's relevant that the skier and snowmobile liability statutes in Montana require that posting of notice. But posting notice is simply an alternative way to make sure that people are aware of the risks they're supposedly assuming. The amendment does the same thing without requiring notice. This was discussed in the Senate proceedings, and the proponents of the bill did not approve amendment. The amendment is taken verbatim from the purpose clause of the bill; it's consistent with what all the supporters of the bill intend the bill to do, and it accurately states the negligence standard.

REP. VOGEL asked Mr. Hill how adequate notice would be posted. He doesn't feel it's realistic. Mr. Hill said simply put an amendment into the inherent risk that clarifies exactly what the bill says is its purpose in section 1. See EXHIBIT 13.

Closing by Sponsor: None

HEARING ON SB 37

Opening Statement by Sponsor:

SEN. TOM TOWE, Senate District 46, Billings, said it has become quite apparent that there's a void in the law which needs to be filled. Following, intimidating, harassing and threatening where there is no actual physical touching, battery or assault is currently not a crime; but it can be very devastating. In 1989, five women in Orange County, California, were murdered, and each had been stalked in advance of the murder. In Wyoming, a woman was murdered after being stalked. In Montana, several incidents have received wide publicity of people who have been stalked.

Intimidation and threatening behavior has an enormous effect, and yet, it is not an offense. SB 37 corrects that situation. This bill makes it a crime to stalk.

There are four elements to the offense of stalking. 1) It must be purposely or knowingly done; 2) it must cause another person substantial emotional distress or reasonable apprehension of bodily injury or death; 3) it must be done repeatedly; and 4) it must harass, threaten or intimidate the person.

The offense is not difficult; the problem is the exemptions of the bill. This bill is patterned after the 1990 California statute. California was the first state to pass a stalking bill, and since then, 30 states have passed a stalking law. In many of the states, there is an exemption. California has an exemption for constitutionally protected activity. There is also an exemption for organized labor activity.

SEN. TOWE said people throughout Montana were asking for further exemptions, including private investigators, investigative reporters, journalists, Right-to-Life organizations, and the Worker's Compensation Fund. When these people approached the bill drafters, the drafters felt this was the wrong approach to the bill. The Senate subcommittee suggested including a statement of intent that the legislature doesn't want to prohibit constitutionally protected activity; therefore, anything that is constitutionally protected is not subject to this statute. Perhaps by stating that as a statement of intent, it is not necessary to actually put a "laundry list" of exemptions in the bill. The intent of the bill is on page 2, lines 1-8.

The first offense is misdemeanor, a one-year prison term or a \$1,000 penalty or both; the second or subsequent offense would be a felony. If there's a violation of a restraining order, the first offense could be a felony, and that would be with a five-year felony or \$10,000 fine or both. The convicted person may be sentenced to pay all medical counseling and other costs incurred by the victim as a result of the offense. The counseling costs, probably the biggest item in terms of dollar amounts involved, could be assessed to the defendant.

A provision has been added to include a restraining order. There is a specific amendment to the family law section that says for stalking purposes, the victim does not have to be related to the stalker. A conviction may, for prior conviction purposes, be a conviction from another state, and forfeiture of bond is the same as the conviction.

In the event that a stalker is released from prison, there is a provision on page 9, lines 14-19 to the effect that, if a person is released on bail, the court must cause an attempt to be made to notify the alleged victim or victim's parents as soon as possible. The bail schedule is not permissible for a stalker. The stalker has to go through the Justice of the Peace or to

District Court to determine how much the bail can be, as done in domestic abuse matters.

With regard to notification, **SEN. FRED VAN VALKENBURG**, Senate District 30, Missoula, believed the wording was awkward and could cause difficulty, and **SEN. TOWE** has proposed an amendment to correct that concern. The amendment says that rather than the attorney being held responsible, the court will be held liable to cause an attempt to be made to call the victim. **SEN. TOWE** distributed a petition for the stalking bill consisting of 1,300 names and the National Conference of State Legislators Legisbrief summarizing stalking bills enacted throughout the country. **EXHIBITS 14 and 15.**

Proponents' Testimony:

REP. RANDY VOGEL, House District 86, Billings, is a Billings police officer who has been involved in many of these cases. He said that stalkers generally intimidate younger people, particularly females, and are generally related to the victim.

Doreen and Scott Pabich, South Side Task Force and parents of stalked daughter, said it has been a year since Ms. Pabich's daughter has been stalked. She emphasized the fact that the stalker would let her daughter know that he was not going to leave and would continue to stalk her.

Greg Hoppe, Montana Magistrates Association, said this bill will allow the courts to bring jurisdiction to protect and serve the citizens upon jurisdiction.

Bill Ware, Chief of Police, Helena, added that SB 140 will make law enforcement proactive in being able to prevent an assault rather than reactive as in the law today.

Rodney L. Garcia, South Side Task Force, Billings, provided written testimony. **EXHIBIT 16**

Jim Smith, Montana Psychological Association, said that many psychologists work with both the perpetrators and the victims of this offense. He said people who stalk are severely disturbed, and the people to whom this is done are severely traumatized.

John Conner, appearing on behalf of the Attorney General's office and the Montana County Attorney's Association (MCAA), stated that the MCAA requested its own draft of a stalking law which was introduced by **SEN. VAN VALKENBURG**, but the request was withdrawn in preference to **SEN. TOWE'S** bill. MCAA supports the amendments in the bill now. Concerns have been voiced about the notice provision and the fact that it may create an unconstitutional presumption. **Mr. Conner** has studied the issue and doesn't believe that's the case. There was also a concern voiced in the Senate about the fact that legitimate organizations might be

forced into situations where they might be prosecuted for an otherwise legitimate activity under the terms of this bill. Mr. Conner said the statement of intent addresses that concern, and quite frankly, Mr. Conner said prosecutors don't have the time to prosecute cases other than legitimate criminal cases.

Amy Pfeifer, Women's Law Section of the State Bar of Montana, said that the Women's Law Section recognizes the need for these protections and urges the House's support of the bill as amended by the Senate.

Arlette Randesh, Montana Right To Life, urged the consideration of an amendment specifically exempting pro-life activity. Right To Life is concerned that the abortion providers of Montana will use stalking laws to stifle pro-life sidewalk counseling. SEN. TOWE has heard the pro-lifers' objections and believes that the wording and intent of SB 37 is sufficient to cover their concerns. Ms. Randesh doesn't believe it is. She urged an adoption of a specific amendment excluding lawful pro-life activities from being construed as stalking.

Laurie Koutnik, Executive Director, Christian Coalition of Montana, said that, although everyone recognizes the need for this very important protection, Christian Coalition also recognizes that some clarification needs to be done on the bill. Ms. Koutnik has received calls from various organizations throughout the state, and the callers asked if this bill would include pro-life activities in the state. Some of the concern came after articles that appeared in newspapers throughout the state covering reaction of this bill's passage through the Senate, in which it mentioned how it will affect pro-life activists picketing abortion clinics. This gives pretence to those who believe there is a hidden motive to this bill. Ms. Koutnik is concerned that abortion advocates will attempt to portray all direct action of pro-life activities as harassment. She asked the committee to consider an amendment in the regard to Senate 37 to keep this as honest, stalking measure.

Sharon Hoff, Montana Catholic Conference (MCC), stated that MCC stands in support of SB 37 and would also like to encourage the committee to ensure that the statement of intent is strong enough to clarify that pro-life activities can take place legitimately and that they are protected.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. WHALEN asked SEN. TOWE if SB 37 was put into a Senate subcommittee and who the members were. SEN. TOWE said he was asked to serve, as were SEN. EVE FRANKLIN, Senate District 17, Great Falls; SEN. STEVE DOHERTY, Senate District 20, Great Falls;

and SEN. MIKE HALLIGAN, Senate District 29, Missoula. REP. WHALEN asked if it was true there were no Republicans on that subcommittee, to which SEN. TOWE responded that SEN. LORENTS GROSFIELD, Senate District 41, Big Timber, had been invited but didn't attend. Non-legislative members present included Mr. Conner and Ms. Pfeifer. SEN. TOWE said the subcommittee drafted the proposed amendments which were discussed on the Senate floor. He doesn't feel the makeup of the committee or the presence of the people at that committee really reflected too much on the bill's outcome, as everyone carefully drafted the bill.

REP. WHALEN asked whether or not the people from Montana Right To Life organization were present or had any input into the amendments attached to the bill in the Senate subcommittee. SEN. TOWE answered that he doesn't recall that they were present at the subcommittee meeting. REP. WHALEN asked whether SEN. THOMAS KEATING, Senate District 44, Billings, had attempted to offer an amendment with regard to specific exemptions to the statute, and those were voted down. SEN. TOWE told REP. WHALEN that he should be aware that at the time the subcommittee was set up, a number of comments were about problems with the "laundry list" of exemptions. There were already three exemptions in the bill, as well as several other organizations that asked to be included in the bill, all very legitimate, but the subcommittee was convinced they would be asked to add more. By the time the bill got to the Governor's office, it would have had a huge laundry list of exemptions. The subcommittee suggested that the best way to handle this issue was to add a statement of intent to the effect that this bill doesn't intend to get into constitutionally protected areas. REP. TOWE indicated that some labor leaders had already indicated they were unhappy with being included as an exempted part of the bill, and they preferred not to be singled out.

REP. WHALEN asked SEN. TOWE whether it was his intention to have the bill apply to any pro-life activities, and SEN. TOWE said no.

REP. BROOKE asked Mr. Smith if there is a connection between psychological clinics and pro-life organizations. Mr. Smith said there is no connection between the Psychological Association and the pro-life counseling that goes on in front of clinics. Beyond that, the state of Montana licenses and regulates over a hundred professions; to the best of his knowledge, pro-life counseling of the kind discussed in today's hearing is not licensed or regulated by the state of Montana.

REP. WINSLOW expressed her concern that SB 37 has turned into a pro/anti-abortion debate, and she doesn't think that's what should be discussed in this hearing. She asked SEN. TOWE how activities, such as those described by Ms. Randesh, would be exempted from the bill. SEN. TOWE said that the pro-life community shouldn't be concerned; he called the committee's attention to page 2 and read the four elements of offense of stalking. The pro-life community is worried that their "sidewalk

counselors" may be considered threatening and considered harassing, but in order to be guilty of the offense, they must purposely and knowingly cause emotional distress. He assumed these counselors were not doing that nor was that what they're intended to do. They're intended to simply pass out brochures to ask if people entering the clinic understand the alternatives. In **SEN. TOWE'S** opinion, this is legitimate, non-threatening behavior and does not cause emotional distress.

REP. WINSLOW asked **SEN. TOWE** how many times, for example, somebody would have to follow, intimidate by phone or by mail, etc. in order for there to be a stalking conviction. **SEN. TOWE** said the word "repeated" means more than once.

REP. GRIMES referred to page 2, lines 12-15, exemption penalty. He said that language was eliminated and replaced on page 4, lines 10-14, and asked, specifically, what the language "actual notice" on line 12 means. **SEN. TOWE** said that, when the bill was originally introduced, that was another element of the offense. As an added protection, the offender has to be warned that he has to stop stalking, and warned it is harassing behavior. If the person continues harassing behavior, only then can the victim prosecute. The Senate moved that concept out as an element, and put it in as a presumption on page 4. Actual notice means notice that the stalked person does not want to be contacted or followed.

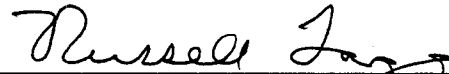
REP. GRIMES referred to page 2, line 3 and said the word "chill" is foreign and asked if **SEN. TOWE** would be opposed to making the language stronger with the intent to not violate constitutionally protected rights. **SEN. TOWE** said that language is taken directly out of the United States Supreme Court decisions. The concept of "chilling" constitutional rights is a concept well-known in this country, and that means, in effect, causing people to back down in the exercise of their rights because they're afraid they might be prosecuted.

Closing by Sponsor:


SEN. TOWE hoped that the discussion would not detract from the real essence of the bill. There is a void in the law which needs to be filled. He cautioned the committee against the laundry list of exemptions. He stated that he believes SB 37 will work well they way it is drafted now.

ADJOURNMENT

Adjournment: 12:00 p.m.



REP. RUSSELL FAGG, Chairman



BETH MIKSCHKE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE 3-2-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993
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EXHIBIT 1
DATE 3-2-93
SB 140

MONTANA STATE SENATE

January 8, 1993

Montana Horse Council

To Whom It May Concern:

I want to relay a personal experience that occurred on my ranch that may relate to pending legislation.

Several years ago when we were branding calves, I had several friends attend to watch the associated activities. After all the work was completed one of these "friends", without permission from me, placed his young daughter on one of my ranch horses. She didn't know how to ride. The result was that the girl fell off and the horse accidentally stepped on her creating serious injury to her lower leg.

After some major medical bills accumulated, the "friend" who wasn't even invited and the one who placed the girl on the horse without permission, acquired a lawyer and with a lawsuit pending, my insurance compensation settled out of court. This did not result in out-of-pocket expense for me, yet it undoubtedly increases insurance premiums.

I hope this experience will help in testimony in pending legislation.

Respectively submitted,

A handwritten signature in cursive script that reads "Senator Ken Mesaros".

Senator Ken Mesaros

EXHIBIT 1
DATE 3-2-93
SB 140

STATEMENT FOR SUPPORT OF SB 140

Defining Legal Responsibilities of Participants in
Equine Activities

My name is Louis Vero from Greenough. I am representing a dude ranch in the Garnet Range on the west side of the divide. I support SB 140.

I hope it is obvious that in an operation like ours, and not only around horses, safety is a priority in our responsibilities to our guests, employees and ourselves. In over 50 years of operation, we've not had a claim against us. Yet, three years ago our liability insurance premium was multiplied 10 times. That was when I learned the definition of litigious in describing the nature of our country.

Generally, I would hope this bill would address that litigious nature and change it to one of responsibility for ourselves. Specifically, I can see this bill helping to lower our operating costs.

Testimony of S. B. Sias
in support of **Senate Bill 140**
March 2, 1993

I am S. B. Sias. My address is 1120 Mill Road, Helena. I have lived in the Helena valley for 50 years and have been involved in horse related activities during those years. I am currently a member of the Ten Mile Driving Club and the Helena Trail Riders. Both of these organizations participate in community service programs. The past few years we have had to discontinue them as we cannot afford the liability insurance. In most cases we do not charge for our services. In some instances, we accept donations and the money received is put back into community projects. A few of the programs we have had to cancel are:

1. Kids Santa Claus rides during holidays
2. Weddings
3. Participation in parades in Helena and East Helena
4. Wagon rides during a three day cowboy poetry gathering
5. Horse and carriage rides during the local art walk
6. Educational exhibition of horses and wagons for local schools to promote agricultural awareness.

I ask that you approve Senate Bill 140. Thank you!

Called & talked to get permission to use for testimony 1/15/93

rec'd 1/18/93

Chuck D. Cavill

8:50 AM

805 Swamp Creek Road

(Cavill)

Plains, Mt. 59859

OKAYED

EXHIBIT 4

DATE 3-2-93

SB 140

Jodie Bird

Representative Dist. 52

Dear Jodie, I am writing you concerning a bill called L. C. 19 the "horsemens safety act". The bill defines the risks and responsibilities of both parties in equine activities. My wife and I are looking at starting a trail ride, pack trip business in Sanders county. One of the major costs of starting this business is liability insurance. (around \$4,000 for a 4 month operating season for 8 - 10 horses)

This bill would and should lower insurance rates for businesses like ours plus do the same for arena owners and ranchers who like to have friends come out and ride but feel they must have liability insurance to do so.

This bill will at least clarify the party who is responsible in times of accidents, etc...

In closing, I favor the "horsemans safety act" and hope that you will too.

Thanks; Chuck D. Cavill
826-4491

Chuck D. Cavill

Rep Jim Seayles - FYI
Seat # 27

L. Vrs. Ins.

Ins will drop if passed

J. Bird

Doc Hammill's

OLD WEST ADVENTURES

~~January 20, 1993~~ March 2, 1993

Ladies and Gentlemen of the Montana ~~Senate~~ House:

Horses have been my lifelong passion and the subject of my three rewarding careers in Montana - veterinarian, equine and horse farm consultant, and operator of the horse activities and old west programs at The Big Mountain Ski and Summer Resort in Whitefish. Currently, we transport around 10,000 guests a year with trail and pony rides, and horsedrawn wagons and sleighs at The Big Mountain.

I come to you today in support of senate bill 140* as a representative of many Montana horse professionals and individual horse owners. 100% of Montana horse people that I have talked with about this bill support it, want it, and need it.

Horse owners and professionals in Montana currently face risks and liability that are undefined, inequitable, and which must be shared by those who want to participate in equine activities. This suppresses the enthusiasm, growth, development and economy of our industry. It promotes a negative, fear-of-unreasonable-lawsuit atmosphere. Senate bill 140 clearly and thoroughly defines and balances each party's risks and responsibilities in a realistic and equitable way.

* I can assure you that the majority of people engaging in equine activities as participants in Montana are willing to assume their reasonable share of the inherent risks and responsibility. They want freedom of choice to select from a greater array of horse activities. In addition to Montana residents, they come to us from all over the world (all 50 states and over 30 foreign countries in my business alone) and they want to experience Montanas western heritage. To most that means, among other things, horses. They return year after year, they become better riders, they want more advanced horse experiences as they progress. Many simply want to ride at the level they do with their own horses at home.

However, options are currently limited. Although horse owners and providers are very willing to accept reasonable risks and liabilities, many are unable or unwilling or uncomfortable accepting risks and liability that go so far beyond what they can influence and control. No matter how good a job we do, how careful we are, how good our horses and equipment are, we cannot avoid unrealistic claims.

It is especially tragic that many qualified horsemen and women and certified instructors are afraid to share their knowledge, skills and expertise because of the level of liability, risk and insurance rates they currently face. Horse programs which compare to hunter safety and drivers training are therefore suffering. With willing instructors such programs have the potential to improve safety records, reduce accidents and create a new generation of horse experts.

The ski industry has legislation comparable to Senate bill 140 which has reduced unrealistic claims (and the associated wasted resources, money and court time), softened insurance rates and led to expanded insurance choices and sources. Comparable horse liability legislation in Colorado and other western states has resulted in the same positive results for horse owners, providers and participants in those states.

Senate bill 140 can give all parties the same advantages in Montana. Horse people on all levels want it and need it. It is well researched, well written, fair-to-all-parties legislation. I implore you to approve Senate bill 140, without amendments, without delay.

Respectfully,

Douglas Hammill D.V.M.

Doug Hammill D.V.M.

January 17, 1993

EXHIBIT 6(a)

DATE 3-2-93

SB 140

Honorable Chairman and Members of the Senate Judiciary Committee:

Two of our three children are Native American and both experienced severe frustrations as adolescents in school as the result of learning disabilities, adoption issues, and coping with their minority status. After experiencing a sort of living hell with our oldest son during his high school years, someone very wise strongly recommended that we get our daughter involved with horses when she too started to show signs of trouble in her sophomore year. Now that I own a horse, I humbly realize what two strangers risked when they allowed her to use their horses for 4H lessons. No one should have to risk so much in trying to help someone else. I strongly believe that the mutual love between my daughter and the weanling filly that she raised saved her life from the years of confusion that continue to plague her older brother. Please support Senate Bill 140 so that others may benefit from a relationship with these magnificent creatures, and so that I personally may be able to pass on such an experience to some other child or adult in need without having to worry about losing everything we own. We need this law so that children may receive lessons, so that landowners can allow horse people to cross their land, and so that stables can board and lease horses to residents and tourists alike - all without fear of unfounded lawsuits.

In addition I would like to refer you to the attached writeup which appeared in the current issue of my national breed magazine. Bob Miller is an example of the best that Montana has to offer and he should be allowed to operate this wonderful enterprise without undue liability hindrances, just as the ski industry does since the passage of the ski liability bill. We simply must stop making it so difficult for businesses like this one which are so beneficial to Montana's image (and to our economy) to locate and operate successfully here.

Respectfully submitted

Sandra S. Jankowski

Sandra S. Jankowski



EXHIBIT 6 (b)
 DATE 3-2-93
 SB 140

Of particular interest . . .



comment . . .
 "Wouldn't this make a great prize?!"
 . . . quickly became a reality. Filming for the segment was scheduled for mid-December, with a 90% probability that it will air January 20, 1993.

Miller sent video footage of vacationers

uled for July 16, 1993 at the Ellington Agricultural Center State Fairgrounds. The Honorary Chairman for the event is music industry giant and community leader Buddy Killen.

"This is a wonderful opportunity for Tennessee Special Olympics. We believe this show can grow to become a premier event in Nashville in the years to come," said Dan Surface, Director of Development for Tennessee Special Olympics. "We are truly excited about our association with the TWHBEA and the commitment from such an outstanding community leader as Buddy Killen."

Tennessee Special Olympics is celebrating 25 years of offering year-round sports training and athletic competition for children and adults with mental retardation. In 1992 alone, Tennessee Special Olympics helped more than 12,000 athletes develop physical fitness and participate in the sharing of gifts, skills and friendship.

WALKING HORSE PACK TRIP FEATURED AS PRIZE ON WHEEL OF FORTUNE!

Tennessee Walking Horses will flat walk into the homes of approximately 14 million Americans on January 20, 1993 as part of one of two trips offered on the popular game show, *Wheel Of Fortune*.

Last summer, Sam Robertson, Executive Vice President of Hollywood-based Game-Show Placements, Ltd., and his wife accompanied her brother and sister on a Montana pack trip vacation. The sister, Nadine Symons, is an accomplished photo journalist with the well known *Horse and Horseman* publication who has provided *Voice* with photos for *Foto Finale*.

The group chose for their guide licensed outfitter Robert E. Miller of Great Falls, Montana, a former TWHBEA director who uses Tennessee Walking Horses exclusively for his wilderness pack trips.

Robertson, a non-horseman, fell in love with the "Big Sky" mountain country and was impressed with the smooth-riding, even tempered vehicles that provided the transportation.

What began probably as an off-hand

aboard walking horses, accompanied by color separations from the *Voice* files to prepare the 10 second promotional spot.

This generous donation on the part of Miller Outfitters makes possible what the TWHBEA has long hoped for, but couldn't afford . . . national exposure.

So, grab your calendar and local programming guide and circle January 20th and *Wheel Of Fortune* in red!

NEW ONE-DAY SHOW IN NASHVILLE TO BENEFIT TENNESSEE SPECIAL OLYMPICS

The TWHBEA and Tennessee Special Olympics have joined forces to establish a new one-day show in Nashville!

The event is sched-



43

For Ellen Hargrave

My name is Kelly Flynn and I am here representing Montana High County Cattle Drives Inc. We are a group of ranchers and outfitters from Broadwater County who decided to pitch in together to run two cattle drives. We started inquiring in the fall prior to our June drives about acquiring insurance. Early that fall, we had an insurance quote of around \$2,200. for \$500,00 in liability insurance. Several months later we went to fill in the details and pay for the insurance and the insurance cost quote was \$7200. We thought that was a little high for our 31 clients and we did alot of investigation into alternate insurance choices. We finally were able to obtain insurance from another carrier for just over \$5200. Is that high? We feel that this insurance cost is excessive and we support this legislation which will hopefully lower these costs.

NAME: Jesse Armitage
TITLE: Horse Division Supervisor
REPRESENTING: Flying D Ranch
Gallatin Gateway, MT

I am here in support of Senate Bill 140 on behalf of the Flying D Ranch and myself. The Flying D Ranch operates an outfitting business for big game, consequently, we have clients who choose to hunt on horseback. We also, on a limited basis, take guests for horseback rides and allow non-profit groups and clinics to use our facilities and horses.

As horse division supervisor, I have the responsibility of matching clients with prospective mounts. All the horses on the ranch have been screened and selected on amiability and performance. The tack and equipment used are of the highest quality and are kept in excellent condition at all times. Our clients and groups are always accompanied by a competent horse person.

The above practices are essential for the safety of our clients, guests, and the reduction of personal and ranch liability claims. Although safety is a high priority, there are times when, as you well know, horses behave in ways that are not acceptable or predictable. These actions are out of the control of the person or persons managing the horses.

My personal feeling, and that of the management of the Flying D, is that a bill such as S-140 is necessary and in the best interest of landowners, horse owners, trainers, farriers, veterinarians, and anyone that is associated with horses in Montana. The bill in no way indicates that negligence is acceptable, but only protects the average Montana horse person and property owner.

Another area of concern for the Flying D Ranch is the use of facilities, especially indoor corrals, by persons other than employees. This would include, groups like Eagle Mount. Eagle Mount provides therapeutic activities for disabled people, allowing them the opportunity to ride horses for therapy and fun. I'm sure the volunteers conducting the Eagle Mount program share our concerns regarding the liabilities involved with any horse-related activities. Senate Bill 140 could help clarify where liabilities begin and end, and afford some protection for those involved in such civic-minded endeavors.

On a more personal basis, I hold horse training clinics involving people riding their own horses under my direction. My attorney at one point suggested that I should not own any real or personal property to avoid liability suits. On his advice I transferred all titled property into my wife's name, which was not only expensive but kept me from voting in school elections. I have since corrected this problem, but if legislation such as Senate Bill 140 had been in force at that time, I would not have been forced to transfer the titles just to protect myself.

I feel strongly that passing S-140 will enhance the economy and well being of Montanans.

DATE 3-2-93
SB 140



Nine Quarter Circle Ranch

5000 TAYLOR FORK ROAD
GALLATIN GATEWAY, MONTANA 59730



In the Gallatin and
Yellowstone country
of the Montana
Rockies.



Visit the

BIG SKY

Country

Ranch Telephone (406) 995-4276
Home Telephone (406) 586-4972

Kim & Kelly Kelsey

Jan. 11, 1993

Shirlee Wirth
P.O. Box 5233
Helena, MT 59601

Dear Shirlee:

Thank you very much for your phone call as well as your update on the Horsemen's Safety Act. Since I most likely won't be able to be present when it reaches the Senate Judiciary Committee, I wanted to take this opportunity to write to you and ask you to place this letter in the records for us. We very much support the Horsemen's Safety Act and feel that it would add some needed stability and predictability to the horse and the people who utilize them. We do not feel that this Bill exempts anyone who handles horses from showing due care and diligence while around them and assisting others to enjoy horses at the same time. However, I do feel that it will help to inform those who engage in horseback activities that there are potential risks involved in being around horses and that they are accepting some of those risks when they voluntarily choose to do so.

We very much appreciate your time and effort in putting this Bill before the Legislature and we'll hope for a successful outcome.

Sincerely,

Kim and Kelly Kelsey

P.S. I'm real sorry to be absent during this most important time and hope that you and Ellen and others will be able to "pinch-hit" for us. Again, many thanks and we'll talk to you before long.

HOUSE OF REPRESENTATIVES

WITNESS STATEMENT

PLEASE PRINT

NAME LARRY HOUNDJUST BUDGET _____

ADDRESS 6901 GOLDEN STEIN LANE, BOZEMAN, MT 59715

WHOM DO YOU REPRESENT? EAGLE MOUNT

SUPPORT V S.B.140 OPPOSE _____ AMEND _____

COMMENTS: We work extensively with the disabled in a hippo therapy, horse program. We use many volunteers. We train our volunteers and clients, with safety first but we need some relief from unjustified liability issues with horses.
After testimony - please note that horses cannot read or write but have a mind of their own. Also not every activity is for cost so tickets are not sold.

House Judiciary Committee
Beth Miksche, Secretary
Montana State Capitol Station
Helena, Montana 59620

March 5, 1993

Good Morning:
Representative Fagg Chairman; Representatives:

I am Al Lien, Bozeman, Montana, testifying on behalf of the Gallatin Saddle and Harness Club and the Montana Draft and Mule Association.

The Gallatin Saddle and Harness Club actively represents the horse interest in the Bozeman area since 1947. The group provides the horse interest with educational training and safety workshops, horse shows, precision riding, parades, and cooperates with special interests such as the therapeutic riding program at Eagle Mount. With the exception of a minor mishap or two the club has an accident free record.

The Montana Draft Horse and Mule Association represents some 200+ members who own, show interest in, or actively participate in driving horses. It was a Montana Draft Horse and Mule Association member that took the Billings Horse Trolley car to Washington D.C. to President Clinton's inaugural parade. This was Montana's entry.

However large or small, the horse is a significant part of Montana's economy. These two organizations would like you to consider Senate Bill 140 and recommend passage without amendment.

Thank you,



Al Lien

Testimony before House Judiciary Committee

Ellen Hargrave
Hargrave Cattle & Guest Ranch
300 Thompson River Road
Marion, MT 59925

When Governor Racicot addressed the people in his state of the state talk he

spoke of a need to approach problems with fairness and honest purpose.

You've seen that there is a problem.

The horse people of Montana have come before you, from far and near, from all walks of life with honest purpose, asking you to address this problem with a bill that has been fine tuned over several months.

You've heard testimony this morning about money, insurance, lost opportunities, perceived liability and fear, but again the Governor summed it up best when we briefed him on this legislation - this lack of definition

of risks and responsibilities - creates a "division of community."

We put out or forgo some things to live in this great state - with many blessings returned. What we should not have to live under is the unnecessary fear of losing all you have worked for when you are not at fault.

You are Representatives of the people and, have a rare opportunity to make a difference far past your terms - in our sense of community.

EXHIBIT 140
DATE 3-2-93
SB 140

S.B. 140 HORSEMEN'S SAFETY ACT INDEX

and N Ranch & Rocky Mountain Equestrian Center

Quarter Circle Guest Ranch, support

ude Ranch Blackmail

ain Facility, Unfair suit

Mesaros - Personal experience

Mountain Ranch, Unfair payment

a

rance

Law Resulted in 10% Premium Reduction

ne Ranch, Colorado, 10% reduction

alley Ranch, Foster, 12% reduction

in Ranch, 10% reduction

Lazy J Guest Ranch, Colorado Positive effect of Law

ng River Ranch, Colorado, Guest understand inherent risks of sport

River Ranch, Colorado, More Insurance Markets at Less Cost, 30% reduction

EXHIBIT #12(b)

DATE 3-2-93

SB-140

28. 28. Handicapped Riding Project Cancelled due to Fear
Missoula Back Country Horsemen,
30. Oregon Law, Edginton : Need for
Insurance Availability and Affordability
32. "Understanding Oregon's Bill" magazine article explaining Oregon's law
33. (cont) "No One Should Relax Their Safety Precautions, Because of the
b Bill - Prevention is Still Better Than Cure."
34. Montana Dept. of Livestock - Minimum number of Horses in Montana, Implied
Economic Impact
36. (cont)
39. Equine Community Economic Contribution Nationwide - Fact Sheet

EXHIBIT #12(b)
DATE 3-2-93
SB-140

42. Kids and Horses Belong Together Sandra Jankowski
43. Outfitted Horse Trip Donation, importance of Horse Outfitting, Wheel of Fortune
Donation - Horse Industry Exposure
44. No Wagon Trains Will Roll
45. Spanisk Creek Ranch, Colorado, Inherently Risky Sport These Horses

DATE 3-2-93

We the undersigned do Petition ^{SB 140} the members
of each house of the MONTANA Legislature
to pass Senate Bill No. 140.
Must be 18 and over to sign.

Signature	Address
1. Tom Wick	Sidney Mont.
2. Victoria Skiridge	Clare, Mt. 59217
3. Donald Disher	Sidney mt. 59270
4. Russell Demark	Sidney mt. 59270
5. Pamela Stagers	Sidney, Mt. 59270
6. Pat Wick	Sidney Mt. 59270
7. Irvin Lee	Walford City -
8. Craig Lee	Lavage, mt.
9. Richard Dalt	Sidney, mt.
10. Tom Baldock	Sidney, mt.
11. W. J. Ford	Sidney, Mt.
12. John R. Peterson	Sidney Mont
13. D. Lynn Windinger	Fallon, MT
14. William J. Davidson	Clarendon, MT
15. Ed V. West	Sidney, MT
16. Russell Johnson	Sidney, mt.
17. Don Nilsson	Lodge, Mont.
18. Duane Ullman	Fairfax mt.
19. Dave Crowley	Bainbridge mt.
20. Dora Ferguson	Bainville, MT
21. James Johnson	Sidney, MT
22. W. J. Ford	Sidney, mt.
23. Roy Lee	Lavage Mt
24. Jim Wick	Sidney mt
25. W. J. Ford	Lodge, mt.
26. W. J. Ford	Sidney, mt.
27. W. J. Ford	Sidney, mt.

We the undersigned do Petition the members
of each house of the MONTANA Legislature
to pass Senate Bill No. 140.
Must be 18 and over to sign.

Signature	Address
1. Dennis Buchanan	Sidney mt
2. [unclear]	Sidney mt.
3. [unclear]	Rt. 1 Box 3664B Sidney Mt.
4. [unclear]	Sidney Mt
5. [unclear]	Sidney MT
6. Bernice Kappeler	Rt 1 Box 165 Sidney, MT.
7. [unclear]	Lambert
8. [unclear]	[unclear]
9. [unclear]	Sidney, Mont
10. [unclear]	Sidney Montana
11. [unclear]	Lambert
12. [unclear]	Sidney mt
13. [unclear]	Sidney mt
14. [unclear]	Sidney, MT
15. [unclear]	Sidney, Mont
16. Gladys Tibbets	Sidney, Mt.
17. [unclear]	Sidney Mt.
18.	
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27.	

We the undersigned do Petition the members
 of each house of the MONTANA Legislature
 to pass Senate Bill No. 140.
 Must be 18 and over to sign.

Signature	Address
1. Donald Jensen	Rt. Box 3001 Sidney MT 59270
2. Kelly Boyd	
3. Kipula Dunlap	Rt. Box 1450 Laurel MT
4. W. E. Johnson	310 So Central Sidney
5. John Johnson	810 7th Ave SW Sidney
6. Peter Johnson	210 2nd Ave SW Sidney
7. Kathleen Burdoff	Pickell MT 59359
8. Helen Olmsted	P.O. Box 251 Sidney
9. Russell Thornton	Lambert MT.
10. A. Albanick	222 2nd Ave NE Sidney
11. Michael L. Pederson	1002 16th NW Sidney MT
12. John Will	222 6th St SE Sidney MT
13. Marilyn Olson	Rt Box 2234 Sidney
14.	
15.	
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We the undersigned do Petition the members of each house of the MONTANA Legislature to pass Senate Bill No. 140.

EXHIBIT # 12(C)

Must be 18 and over to sign.

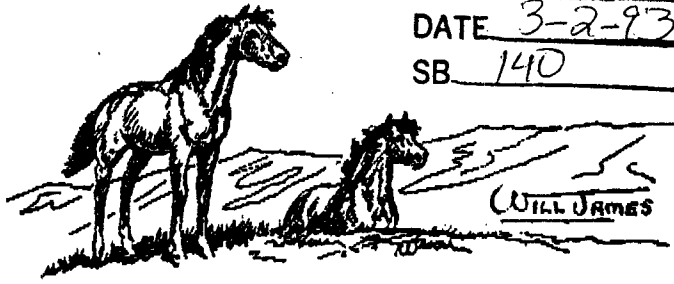
DATE 3-2-93

SB-140

Signature	Address
1. Shelley Campbell	Route 1 Box 3101 Pinedale, MT 59270
2. Forrest Brown	S. Rte Box 2044 Pocola, MT 59255
3. Carrie Fiskel	RR1 Box 1156 Fairview, MT
4. Julie Waskedek	Rt. 1, Box 3058 Sidney, MT 59224
5. Jan Waskedek	RR1 Box 3058 Sidney, MT
6. Maryanne Luttrell	HCR 276 Box 7 Wheatly, MT
7. Teri Luttrell	HCR 276 Box 7 Wheatly, MT
8. Selma 221 Malaga	4114 1/2 Hillside Rd Sidney, MT
9. Mary Ann	Rt. 1 Box 3648 Sidney
10. Linda	111 1st St Sidney
11. Eileen Swaley	Rt 2 Box 2161-1 Sidney
12. Linda Swenson	Bureau Rt 865241 Sidney
13. Anita A. Schatz	HCR 57 Box 4114 Sidney, MT
14. Marda E. Mitchell	920 11st St Sidney, MT
15. W. L. Lauridsen	Box 491 Sidney, Mont
16. Judy Lauridsen	Box 491 Sidney, Mont
17. Shirley M. Lindholm	611 9th Ave SW P.O. Box 493 Sidney, Montana 59270
18. Linda E. Lindholm	611 9th Ave SW P.O. Box 493 Sidney, MT 59270
19. Carmen M. Simoxis	2096 Ave SE Sidney, MT 59270
20. Nancy Dulake	HCR 9 Box 5263 Sidney, MT 59270
21. Pamela Johnson	HCR 9 Box 5263 Sidney, MT
22. Jack Kappes	RR-1 Box 165 Sidney, MT
23.	
24.	
25.	
26.	
27.	

EXHIBIT 12 (d)
DATE 3-2-93
SB 140

Rm 312-1A



ELKHORN RANCH

TO: Montana State Capitol
ATTN: HOUSE JUDICIARY COMMITTEE - SB 140
FAX: 1-444-4800
FROM: Elkhorn Ranch
Linda G. Miller
FAX: 406-995-4291 (voice contact necessary)
DATE: March 2, 1993
RE: Senate Bill 140 Horseman's Safety Act
PAGES: 1 (including cover)

On behalf of the Elkhorn Guest Ranch, I am asking for your support of Senate Bill 140, the Horseman's Safety Act.

This bill will not relieve us of any negligence but will reduce the risk of frivolous suits as well as require people to assume at least part of the responsibilities and risks involved in horseback riding. By having participants accept part of the risk, there is every indication that skyrocketing insurance costs will stabilize. These costs are so out of perspective, that small operations specializing in horseback riding, an activity that embodies the western heritage, are faced with closing or under insuring.

For Montana, its economy, its people and its heritage, I urge you to support this equine liability limitation law.

BACK COUNTRY HORSEMEN

OF MONTANA

P.O. Box 5431
Helena, MT 59604

EXHIBIT 12 (e)

DATE 3-2-93

SB 140



March 2, 1993

SENATE BILL 140 EQUINE LIABILITY

Mr. Chairman, Ladies & Gentlemen of the House Judiciary Committee.
I am Bill Maloit, Issues Chairman for the Back Country Horsemen Of Montana.

The Back Country Horsemen Of Montana is incorporated under the laws of the State Of Montana as a Non-Profit Educational Corporation.

We have Chapters at Kalispell (Flathead), Polson (Mission Valley), Libby (Cabinet), Plains (Sanders County), Eureka (Tobacco Valley), Missoula, Hamilton (Bitter-Root), Conrad (East Slope), Great Falls (Charlie Russell), Helena (Last Chance), Bozeman (Gallatin Valley and Billings (Greater Yellowstone).

We are affiliated with the Back Country Horsemen of America with State Organizations in Montana, Idaho, Washington, California, Nevada, Wyoming, Oregon, New Mexico, Utah and Colorado. The movement has spread to the Canadian Provinces.

Our credibility is firmly established in Public Land Management discussions. Educational programs and field service work with the Land Management Agencies are the key components to our success and expansion.

As experienced users of horses and mules in Montana's Roadless Back Country and Wilderness Areas we are knowledgeable there are hazards and risk involved. We advise and educate members and interested publics at our activities and meetings. Some of our members are equine professionals and passage of this Act will eliminate fear of unjust law suits.

The Back Country Horsemen of Montana support passage of Senate Bill 140.

I ask that this letter be included in the hearing testimony.
Thank you for your consideration.

Sincerely,


Bill Maloit

Issues Chairman



LONE MOUNTAIN RANCH

P.O. Box 160069 • Big Sky, MT 59716
Phone (406) 995-4644 • FAX (406) 995-4670

SENATE BILL 140 TESTIMONY

March 2, 1993

by

**Robert L. Schaap, Lone Mountain Ranch
Big Sky, Montana**

Horses are big business in Montana. Lone Mountain Ranch is only one of many guest ranches in Montana, and our business, alone, employs 70 full-time staff with well over \$1 million in payroll. Our industry is important to Montana's economy.

The business climate in Montana is harsh. Montana laws significantly increase the every-day cost of doing business in our state, thus placing Montana's business community at a competitive disadvantage with other states. To earn comparable profits, Montana businesses must charge their customers more than businesses in other states charge to provide the same service. Equine liability is one of several areas in which Montana businesses such as mine are at a competitive disadvantage.

Falling from a horse in our state is analogous to winning the Montana lottery! Two years ago, immediately after receiving riding skills training, one of our guests fell from a stopped, perfectly behaved horse and broke her hip. To avoid court costs, our insurance company settled with this woman for \$27,113 even though we were not negligent! This guest even had personal health insurance that covered much of her costs. To add insult to injury, she had a good enough experience with us that she attempted to make reservations to return the following year!

Suits and settlements, such as this, where no negligence is involved, add to the cost of liability insurance paid by every horse-related business. Our liability insurance last year was \$28,185 which is a very major operating expense. High insurance costs, resulting from liberal liability laws, are passed on to the customer in the form of higher prices. Higher insurance prices in Montana make it more difficult to compete with similar businesses in states like Colorado that have more balanced liability laws.

Our insurance carrier has indicated that our rates would, in fact, be reduced if Montana adapts a bill to limit equine liability. (Copies of letters attached)

I urge you to help level the playing field. Pass Senate Bill 140 and take a big step toward making Montana a better place to do business. Thank you for your consideration.

GILLINGHAM & ASSOCIATES, INC.

January 15, 1993

Mr. Robert Schaap
Lone Mountain Ranch
North Forkland Road
BIG SKY MT 59716

RE: EQUINE ACTIVITIES - LEGISLATIVE DECLARATION - EXEMPTION FROM
CIVIL LIABILITY

Dear Bob:

Gillingham & Associates, Inc. has recently completed a liability insurance program for outfitters, guides and dude ranches, kicking off in thirteen states February 1st. The insurance company providing coverage is the Gulf Insurance Company, Best rated A+8 and in terms of size, one of the top 25 insurance companies in the U.S.

Designing a specialty insurance program for your industry has taken nine months and hundreds of man hours. The research involved was extensive. As you have experienced, insurance companies are not standing in line to underwrite equine activities. I have interviewed several hundred outfitters, guides and dude ranch owners, and have heard the same statement as many times: "When you put a green rider on a 1200 pound animal that by its very nature is a flight animal in lieu of a fight animal, accidents can and will occur. The majority of accidents are not a result of negligence but of circumstances that may cause the animal to react in such a way to injure its rider."

Several states have passed laws limiting liability related to equine activities. The Colorado law has resulted in the reduction of insurance rates for outfitters, guides and dude ranches in Colorado and has increased the availability of coverage in Colorado. When I underwrite an identical risk in Colorado verses Montana, it goes without saying that I prefer the Colorado risk and will offer better terms, conditions and rates as a result of the new Colorado law.

As a Program Manager, underwriting equine activities on behalf of insurance company, I can factually state that a law such as Colorado 13-21-117, introduced to Montana, will reduce insurance rates and increase the number of insurance companies competing for your and your industries business.

Sincerely,



Thomas S. Gillingham

TSG:mcw

THE SWALES AGENCY

INSURANCE · ALL LINES

EXHIBIT 12 (F)

DATE 3-2-93

SB-140



January 18, 1993

Robert Schaap
Lone Mountain Ranch
P.O. Box 69
Big Sky, Montana 59716

Regarding: Horse Liability Law

Dear Bob:

When Colorado passed it's horse liability act, it certainly gave leeway to extra benefits for people in the horse business. It also encouraged insurance companies to peruse lower rates. One of the many benefits we have derived from the Colorado law, has been that it enables us as an agency to write our preferred ranches and horse related businesses with a standard insurance market, not only does this give each insured more comprehensive coverage, but in our case, we have a guarantee that this market will stay in this type of business for 5 years. (We are on our second term of a 5 year commitment, needless to say, by having a well structured horse liability law, it certainly would give each insured more stability with his insurance needs.) In addition, the Colorado law seems to have done away with a lot of nuisance claims.

I want to wish you the best of luck in obtaining some type of legislation that will benefit your industry.

Sincerely,

A handwritten signature in cursive script that reads "Maureen Gray".

Maureen Gray
President

MG/jr

Established dude ranch family, since 1945, capacity 70 people. Lot of people ridden safely for years.

Man and family of wife and two children came in , 1991
Booked for ten days, he expressed himself as being an excellent, experienced rider and horse owner. Man said he owned 8 horses at home. He asked for and got an advanced horse.

He went out in morning and got along alright, in afternoon Owner/Operator was on a ride that was parrelling the one he was on.

Man fell off horse.

He said he took his hat off, and slapped it against his leg, horse started to run he was a very heavy man - weighed 250-300 pounds. He fell off.

He sprained leg on horse.

I walked him, and my & his horse, back to ranch. He seemed to be all right, just didn't want to be on horse. At that time didn't seem to blame the horse.

He laid down for a while. He eventually got uncomfortable during the night. Went into town to a doctor. Results - he had internal bruising , but no treatment advised by doctor. Might have broken ribs. Did not tape chest.

He and family stayed here another 8-9 days. His had continued to ride for the whole length of stay. He had not ridden any more; fished and used ranch facilities. Left. When he left it was under good terms, we shook hands, both said sorry we had problem.

He had no animosity. He left, paid his full bill. In about a week, when we cashed check, he had stopped payment. I telephoned him. "What's the deal?" "I've talked to lawyer," man said, "and he said we shouldn't have to pay for stay with unsafe conditions on your ranch." 10-14 days later four page letter - bemoaning fact we had an unsafe operation and unsafe horses. Our horses should take the hat being slapped against it's side OK. We ran that by our insurance people, possible lawsuit coming. They replied -"he accepted your services & not paying is wrong. We don't have any problem defending you in a lawsuit, go ahead and try to collect bill." Insurance people said it was coercion . We decided not to pursue the \$2500 - \$3000.00 bill. Wasn't worth the legal ramifications, not that we were wrong. It involved a heavy mental strain, right in the middle of our busy , income producing season. Might get \$2000, but have to spend \$2000 to defend ourselves.

This was the first time for this type of action on this ranch.

Dude Rancher, Eastern Montana

Training facility, owner - operated for 15 years. Professional horse woman with 50 school horses, lessons daily for 25-30 student weekly.

Man, who was a physician and student of horse training facility for two years, brought his own horse in to ride.

Was riding with daughter who was on a "school horse" (horse owned by the facility).

Man's own horse kicked out at other horse, hit daughter knee, knee was broken.

Lawsuit ensued.

\$50,000 was demanded.

Insurance company, Rhulens of New York, settled out of court for \$27,000.

Submitted by:
Cheryl Ziabon
450 Thompson River Road
Marion, MT 59925

EXHIBIT 12 (h)
DATE 3-2-93
SB 140



LONE MOUNTAIN RANCH

P.O. Box 160069 • Big Sky, MT 59716
Phone (406) 995-4644 • FAX (406) 995-4670

TESTIMONY OF ROBERT L. SCHAAP, LONE MOUNTAIN RANCH-BIG SKY PERTAINING TO SENATE BILL 140 JANUARY 20, 1993

The business climate in Montana is harsh. In many ways, hostile-to-business Montana laws unreasonably increase the cost of doing business in our state, thus placing our business community at a competitive disadvantage with other states. To earn comparable profits, Montana businesses often have to charge their customers more than their competition in other states to provide the same service.

Liability is one of several areas in which Montana businesses such as mine are at a substantial disadvantage. If someone falls from a horse in Montana and is injured, one of their first thoughts surely must be that of winning the national lottery!

One of our guests fell from a stopped, perfectly behaved horse two years ago and broke her hip. To avoid court costs, our insurance company settled with this woman for \$27,113 even though we were not at fault and she had personal health insurance that covered much of her costs! Suits and settlements, such as this, where no negligence is involved, add to the cost of liability insurance paid by every horse-related business. This, of course, increases the cost of doing business, and these costs are passed on to the customer in the form of higher prices. Higher prices in Montana make it more difficult to compete with similar businesses in states like Colorado with realistic liability laws.

I urge you to help level the business playing field. Pass Senate Bill 140 and take a big step toward making Montana a better place to do business.

Thank you for your consideration.

EXHIBIT 12(1)
DATE 3-2-93
SB 140

J. R. Swales

THE SWALES AGENCY
INSURANCE-ALL LINES



As per phone conversation with Maureen Gray,
President, The Swales Agency:

"Because of the Colorado Senate Bill 90-84 ; Frontier Insurance has directed the Swales Insurance Agency, of Colorado Springs, to apply a committment made in a Chandler, Arizona, December 1990 conference, by President Peter Rhulen, Rhulen Insurance Group:

"a reduction in premium on all Colorado ranch holders that are members of the Colorado Dude & Guest Ranch Association; at least equivalent to a 10% reduction on all saddle animal premiums. Or a 5% discount across the board.

Re: Swales Agency
Maureen Gray
2860 S. Circle #2108
Colorado Springs, CO 80906
1-800-747-4679
719-597-7575

January 30, 1991



EXHIBIT 12(J)
DATE 3-2-93
SB 140

Montana State Horse Council
P.O. Box 5233
Helena, MT 59601

4 January, 1993

Dear Mrs Hargraves,

I hope my letter will help you enlighten people in Montana to the need for legislation, much like what we have passed here in Colorado. To give background we were having our liability insurance cancelled mid summer, at the hight of our tourist business, or ranchers being sued by guests who had fallen off horses at their ranches. There was even one case where a woman was riding her horse across a ranchers land without permission, and she fell off and a law suit followed.

Since the new legislation was passed two years ago there have been no awards given. Our insurance has come down by 10%. Our guests all read signs and are verbally warned that anyone who climbs on a horse in Colorado does so at their own risk. We have never had anyone state to us that they had a problem with this new legislation. In fact we have had many people from other States tell us that they wished their States would have similar laws. The days of not being able to get insurance are over in this State. Many companies now want our business, and even our fire insurance is coming down in price.

Here in Colorado tourism is a major part of our economy. The horse, and the person on the horse are a strong selling point for people coming to Colorado. Without the legislation we have passed we might have lost this most important amenity for our guests.

Sincerely

Antidotal testimony for Montana Horse Council

Dude Ranch: LOST VALLEY RANCH
Address: RT 2 SEDAWA, CO 80135
Phone: 303-647-2311 Fax: 303-647-2315
Owners: BOB/KAREN FOSTER

How has horse liability legislation in your state affected you? Please provide the following as testimony for a Montana Equine Liability Bill that, simply put, says the rider has to assume an inherent risk and the horse owner must be grossly negligent to be held liable.

- A. Has your state legislation made securing insurance easier? yes no
- B. After your state passed horse liability legislation, did this open up more insurance markets for you? yes no
- C. Have your insurance premiums changed? Give \$ amounts if possible Our insurance rates decreased 12% directly because of the passage of Colorado's bill
- D. Do you have better insurance coverage now than before the legislation? yes no
- E. Has the legislation changed your level of safety awareness? yes no
- F. Does your insurance company require signed releases? yes no
- G. Has your Ranch atmosphere changed as a result of having added liability protection? not necessarily - I just sleep better @ night
- H. Have any guest not returned as a result of the law? yes no
- I. Have you had any injury settlements over \$20,000. ? yes no
how many How many years of operations?
- J. Have you had any nuisance threats of injury litigation? Example: (A guest wants his bill reduced due to an injury.) Approx. how many. No!!

K. What are the most positive results you have experienced from the liability law for your Ranch. What should be told to the Montana legislators. ~~Lower insurance rates, shared risk w/ our customers when riding, increased our educational and training, an wranglers and guests~~
Signature Ranch owner or representative: Robert Foster

Antidotal testimony for Montana Horse Council

Dude Ranch: Skyline Guest Ranch
Address: Box 67 Telluride, CO 81435
Phone: 303-728-3257 Fax: 303-728-6728
Owners: Dave & Sherry Farny

How has horse liability legislation in your state affected you? Please provide the following as testimony for a Montana Equine Liability Bill that, simply put, says the rider has to assume an inherent risk and the horse owner must be grossly negligent to be held liable.

A. Has your state legislation made securing insurance easier? yes no

B. After your state passed horse liability legislation, did this open up more insurance markets for you? yes no

C. Have your insurance premiums changed? Give \$ amounts if possible lowered 10%

D. Do you have better insurance coverage now than before the legislation? yes no

E. Has the legislation changed your level of safety awareness? yes no

F. Does your insurance company require signed releases? yes no

G. Has your Ranch atmosphere changed as a result of having added liability protection? we can have a much better riding program

H. Have any guest not returned as a result of the law? yes no

I. Have you had any injury settlements over \$20,000. ? yes no
how many How many years of operations?

J. Have you had any nuisance threats of injury litigation? Example: (A guest wants his bill reduced due to an injury.) Approx. how many. No

K. What are the most positive results you have experienced from the liability law for your Ranch. What should be told to the Montana legislators. The guests like the new law

Signature Ranch owner or representative: Dave Farny

Antidotal testimony for Montana Horse Court SB-140Dude Ranch: Bar Lazy J Guest RanchAddress: P.O. Box N, Parshall, Co. 80468Phone: 303-725-3437

Fax: _____

Owners: Larry & Barbara Harmon

How has horse liability legislation in your state affected you? Please provide the following as testimony for a Montana Equine Liability Bill that, simply put, says the rider has to assume an inherent risk and the horse owner must be grossly negligent to be held liable.

A. Has your state legislation made securing insurance easier? yes no

B. After your state passed horse liability legislation, did this open up more insurance markets for you? yes no

C. Have your insurance premiums changed? Give \$ amounts if possible lower for '93

D. Do you have better insurance coverage now than before the legislation? yes no

E. Has the legislation changed your level of safety awareness? yes no

F. Does your insurance company require signed releases? yes no

G. Has your Ranch atmosphere changed as a result of having added liability protection? NO

H. Have any guest not returned as a result of the law? yes no

I. Have you had any injury settlements over \$20,000. ? yes no
how many ___ How many years of operations? 5 yrs.

J. Have you had any nuisance threats of injury litigation? Example: (A guest wants his bill reduced due to an injury.) Approx. how many: 0

K. What are the most positive results you have experienced from the liability law for your Ranch. What should be told to the Montana legislators. greater peace of mind as a Dude ranch owner!

Signature Ranch owner
or representative: Larry & Barbara Harmon

Antidotal testimony for Montana Horse Council

Dude Ranch: _____

Address: _____

Phone: _____

Owners: _____

The Fryingpan River Ranch
32042 Fryingpan Rd, Mauditt, CO 81642
303-927-3570 Fax: *303-927-9943*
Tim Rea

How has horse liability legislation in your state affected you? Please provide the following as testimony for a Montana Equine Liability Bill that, simply put, says the rider has to assume an inherent risk and the horse owner must be grossly negligent to be held liable.

A. Has your state legislation made securing insurance easier? yes no

B. After your state passed horse liability legislation, did this open up more insurance markets for you? yes no

C. Have your insurance premiums changed? Give \$ amounts if possible NO

D. Do you have better insurance coverage now than before the legislation? yes no

E. Has the legislation changed your level of safety awareness? yes no

F. Does your insurance company require signed releases? yes no

G. Has your Ranch atmosphere changed as a result of having added liability protection? NO

H. Have any guest not returned as a result of the law? yes no

I. Have you had any injury settlements over \$20,000. ? yes no
how many ___ How many years of operations? ___

J. Have you had any nuisance threats of injury litigation? Example: (A guest wants his bill reduced due to an injury.) Approx. how many. NO

K. What are the most positive results you have experienced from the liability law for your Ranch. What should be told to the Montana legislators. Courts accept and understand the inherent risks of riding

Signature Ranch owner
or representative: _____

Tim Rea

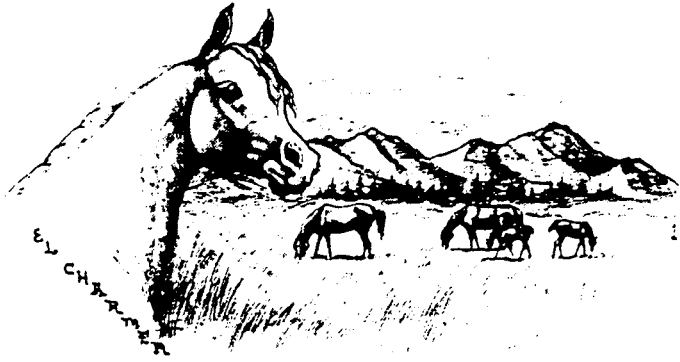
Antidotal testimony for Montana Horse Council

Dude Ranch: Wind River Ranch
Address: PO Box 3410
Phone: 303-586-4212 Fax: 303-586-5775
Owners: Rob & Jene Irwin

How has horse liability legislation in your state affected you? Please provide the following as testimony for a Montana Equine Liability Bill that, simply put, says the rider has to assume an inherent risk and the horse owner must be grossly negligent to be held liable.

- A. Has your state legislation made securing insurance easier? yes X no
B. After your state passed horse liability legislation, did this open up more insurance markets for you? yes X no
C. Have your insurance premiums changed? Give \$ amounts if possible Down about 30%
D. Do you have better insurance coverage now than before the legislation? yes X no
E. Has the legislation changed your level of safety awareness? yes no X
F. Does your insurance company require signed releases? yes X no
G. Has your Ranch atmosphere changed as a result of having added liability protection? No
H. Have any guest not returned as a result of the law? yes no X
I. Have you had any injury settlements over \$20,000.? yes no X
how many How many years of operations? 20
J. Have you had any nuisance threats of injury litigation? Example: (A guest wants his bill reduced due to an injury.) Approx. how many. 0
K. What are the most positive results you have experienced from the liability law for your Ranch. What should be told to the Montana legislators. We now have more markets at less cost

Signature Ranch owner or representative: [Handwritten Signature]



Mt. View-NBD Arabians

• Marie Welch • Norm & Donna Brown
8167 North County Road 11
Wellington, Colorado 80549

Shirlee Wirth
Montana Horsemen's Council
P.O. Box 5233
Helena, MT 59601

January 8, 1993

Dear Shirlee,

The Colorado Equine Civil Liability Act of 1990 has been very beneficial to our family in obtaining adequate and reasonably-priced liability insurance for our horse operation. We were being refused sufficient coverage until we sent a copy of the Liability Act to the insurance company headquarters. Previous to the passage of this act, we were insured by an agriculture oriented company which started putting numerous restrictions on our coverage to the point that it was practically worthless.

Without this act, we feel we would have ended up paying a significantly higher premium for the coverage we currently have, assuming we would have even been able to afford such coverage. I am certain there are several similar cases in Colorado although I do not have specific knowledge of them.

It should be recognized that the Liability Act does not eliminate a horse owner's responsibility for gross negligence, but rather recognizes the inherent risks of equine activities. This is analogous to the skier who also faces certain inherent risks as he/she glides down the slope.

There is another element to the Equine Civil Liability Act. With the passage of this measure, the Colorado Legislature recognizes the importance of the horse industry and has demonstrated a willingness to take steps to preserve the future of horse ownership and equine activities in Colorado.

Good luck to you and the Montana Horsemen's Council.

Sincerely,

Norm Brown
Immediate Past President, Colorado Horsemen's Council

cc Dave Campbell
Connie Diedrichs
Bette Heller



EXHIBIT 12 (m)
DATE 3-2-93
SB 140

January 15, 1993

Mrs. Ellen Hargraves
Montana Horse Council
Box 5233
Helena, MT 59604

Fax #: 406-443-7322

Dear Mrs. Hargraves:

Several lawsuits were threatened but were never filed. We believe this occurred because the lawyers became aware of Colorado Senate Bill 84 and determined they were either frivolous or unwarranted. SB84 has provided some much needed protection for the fine guest ranches in Colorado.

Sincerely,

Wright M. Catlow
Executive Director
Colorado Dude and Guest Ranch Association

WMC:dlo

EXHIBIT 12(n)
DATE 3-2-93
SB 140

Hoiness LaBar Insurance, Inc.

2323 2ND AVENUE NORTH - P.O. BOX 30638
BILLINGS, MT 59107-0638
(406) 245-6511 • FAX (406) 245-9887

January 15, 1993

Senate Judiciary Committee
Legislature of The State of Montana
Helena, MT 59601

RE: Bill #LC19

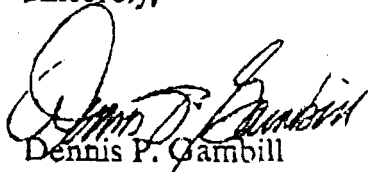
Gentlemen:

I have reviewed the draft copy of Bill #LC 19. "An Act limiting tort liability for equine activity sponsors and equine professionals."

Passage of this bill will certainly allow for broader availability of proper insurance coverage and more realistic costs for those involved in equine activities and equine professionals. Please give your support to passage of Bill #LC19.

Thank you.

Sincerely,



Dennis P. Gambill
Regional Bond Administrator/
Account Executive

DPG/df

GILLINGHAM & ASSOCIATES, INC

EXHIBIT 12 (0)
DATE 3-2-93
SB 140

January 15, 1993

Mr. Robert Schaap
Lone Mountain Ranch
North Forkland Road
BIG SKY MT 59716

RE: EQUINE ACTIVITIES - LEGISLATIVE DECLARATION - EXEMPTION FROM CIVIL LIABILITY

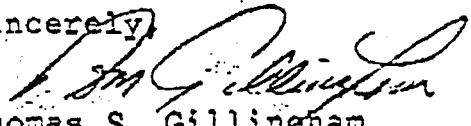
Dear Bob:

Gillingham & Associates, Inc. has recently completed a liability insurance program for outfitters, guides and dude ranches, kicking off in thirteen states February 1st. The insurance company providing coverage is the Gulf Insurance Company, Best rated A+8 and in terms of size, one of the top 25 insurance companies in the U.S.

Designing a specialty insurance program for your industry has taken nine months and hundreds of man hours. The research involved was extensive. As you have experienced, insurance companies are not standing in line to underwrite equine activities. I have interviewed several hundred outfitters, guides and dude ranch owners, and have heard the same statement as many times: "When you put a green rider on a 1200 pound animal that by its very nature is a flight animal in lieu of a fight animal, accidents can and will occur. The majority of accidents are not a result of negligence but of circumstances that may cause the animal to react in such a way to injure its rider."

Several states have passed laws limiting liability related to equine activities. The Colorado law has resulted in the reduction of insurance rates for outfitters, guides and dude ranches in Colorado and has increased the availability of coverage in Colorado. When I underwrite an identical risk in Colorado verses Montana, it goes without saying that I prefer the Colorado risk and will offer better terms, conditions and rates as a result of the new Colorado law.

As a Program Manager, underwriting equine activities on behalf of insurance company, I can factually state that a law such as Colorado 13-21-117, introduced to Montana, will reduce insurance rates and increase the number of insurance companies competing for your and your industries business.

Sincerely,

Thomas S. Gillingham

TSG:mcw

EXHIBIT 12(p)
DATE 3-2-93
SB 140

I would like to speak in favor of bill #LC19 which is "An act limiting tort liability for equine activity sponsors and equine professionals."

I represent the Diamond N Ranch and the Rocky Mountain Equestrian Center. Our facility is the designated location for the Rocky Mountain College Equestrian Program as well as a private training business. In addition we sponsor numerous clinics, special events, summer camps, as well as a lesson program.

In the years that we have been in business, we have never had a serious accident with any of our programs. The horses that are used in the various programs at the ranch are screened very carefully, but equally as important are the caliber of our instructors.

We searched for almost two years to find an affordable insurance policy that would cover the clinics, special events, summer camps and our lesson program. Rates that we were quoted for our activities ranged from \$7000.00-\$20,000.00 for a yearly premium.

Many small equine professionals operate without adequate insurance simply because they cannot afford the premiums. This does not protect either the professional or the general public.

There are inherent risks involved in riding horses as well as working around them. LC #19 defines the fact that "there are dangers or conditions that are an integral part of equine activities and defines those conditions." Perhaps even more importantly, this bill has a provision that specifically allows the participant in an equine activity adequate recourse if the activity sponsor or professional has been negligent and again defines those conditions. It is my feeling that LC#19 protects both the consumer and the equine professional.

Montana is truly the "Last Best Place", and horses are part of that mystique. It is my feeling that LC#19 is a tremendous benefit for the equine industry in Montana. I urge you to think positively and vote "yes" for this bill. The states of Virginia, Tennessee, Colorado, Oregon, Wisconsin are part of a group of states that have realized the need for this type of legislation. Montana could be seen as a leader by enacting this bill.

EXHIBIT 12 (Q)
DATE 3-2-93
SB 140

January 12, 1993
Mary Legge
1523 Florence Ave.
Eau Claire, WI 54703
715-834-6641

Montana Outfitters & Guides Association
P.O.Box 9070
Helena, Montana 59604

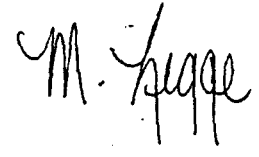
Dear Sirs,

Late last fall of '92 I called and spoke with your representative looking for a Nat'l Association. She informed me that your Association is the only major functioning Association for Outfitter-Guides.

I am considering starting a non-traditional Outfitter-Guide service in Wisconsin. I will provide everything but the personal articles. This won't be a hunting trip, more of a glorified camping trip. Horses will carry the major equipment and the customer will backpack in their personal gear. It will more of a getaway/nature appreciation trip.

Please accept my check for membership in your Association. I would appreciate any information that you might feel is relevant. What I am having real problems with is insurance. The companies I've been able to locate are ones that deal with canoe and ski/resort groups. Because of this I am having difficulty getting my horses and their horse related problems insured. How are your members covered? Do you have any insurance companies that you'd recommend? Thank you for your time and consideration.

Sincerely,
Mary Legge





STAN STEPHENS
GOVERNOR

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE

OFFICE OF THE DIRECTOR
AGRICULTURE/LIVESTOCK BLDG.
CAPITOL STATION
HELENA, MONTANA 59620-0201

EXHIBIT 12(r)
DATE 3-2-93
SB 140

TELEPHONE:
AREA CODE 406
444-3144

FAX 406-444-5409

EVERETT M. SNORTLAND
DIRECTOR

December 2, 1991

Leo & Ellen Hargrave
Hargrave Cattle & Guest Ranch
Thompson River Valley
Marion, MT 59925

Dear Mr. & Mrs. Hargrave:

In response to your letter addressing the need for "individual assumption of risk" legislation for Montana, we couldn't agree with you more. This is an issue that deserves consideration by Montana's next legislative session.

I encourage you to continue to work with your local legislators to introduce a bill to the 53rd Legislative Assembly. This would be the most effective means to get this type of legislation passed. We in turn will work with those legislator for appropriate legislation.

Another suggestion is to work through your contacts in the insurance profession. Their industry has an organized effort to introduce and promote legislative issues, and may be helpful.

The involvement of operators such as yourself is a key element in motivating your legislators to address this issue. This issue encompasses much more than agricultural concerns.

Thank you for participating in Montana AgTours. If we can be of further assistance to you through any of our other programs, please let us know.

Sincerely,

A handwritten signature in cursive script that reads "Everett".

E. M. Snortland
Director

To Whom It May Concern Jan 14 1992

This letter is in regards to S.B. 140 (The Horseman's Safety Act). I support the Bill, I have been a full time farrier in the Great Falls Area for 23 years. I am President of the Montana Professional Horseshoers Assn. Inc. and am on the Board of Directors of the American Farriers Assn. of which we are a Chapter member.

I have been in contact with the membership of the M.P.H.A. and we as a professional organization support this Bill as it has been written.

Sincerely

Steve Eastman
President M.P.H.A. Inc

Montana Professional
Horseshoers Assn. Inc.
32 Windsor Lane
Great Falls, MT 59404

EXHIBIT 12(+)
DATE 3-2-93
SB 140

7125 Highway 3 N
Billings, MT 59106
January 16, 1993

To Whom It May Concern:

As President of the Montana Quarter Horse Association, I represent approximately 17,000 households throughout our state who own nearly 90,000 American Quarter Horses. These people participate in a variety of activities involving horses. The range of equine usage in Montana includes: competitive trail riding, 4-H (the horse and related topics is the most popular 4-H project in the United States), high school rodeo, dude ranches, hunting pack trips, polo, racing, breeding, horse showing, ranching, barrel racing, cutting, dressage, roping, combined training and team penning.

The passage of Bill LC 0019 would benefit all of our state's equine participants by defining the risks involved when participating in horse activities and by also better defining the horseman's level of responsibility in case of accident or injury. The professionals and facilities offering our citizens and Montana's visitors the opportunity to enjoy the variety of horse activities provided here will also greatly benefit from this bill because it assists in stemming the constant escalation of liability insurance rates and the filing of nuisance suits.

Without this type of legislation being enacted in Montana's behalf, the thousands of people who enjoy horses throughout this state lack a reasonable definition of what constitutes prudent effort when enjoying and participating in equine activities. This legislation will also better define each citizen's responsibility both to himself and to others.

Sincerely,

William C. Bormes, President

" No more disabled folks ridin' and smilin'

EXHIBIT 12 (u)
DATE 3-2-93
SB 140

Backcountry Horsemen - Missoula Chapter
Disabled Rides Project Cancelled

Summitt is an organization that has a program called 'Mountain Dog' where the disabled feel the exhilaration of a ski slope or the back of a horse - with the help of special friends.

In 1987 the Missoula Chapter of the Backcountry Horsemen started taking these people out of their wheel chairs & onto a horse for a few brief minutes a week. Here's the story as told by Gwen Thibodeau who was one of these special volunteers.

"We would go to a small community arena and let them ride. They'd sit on the horse while we lead them. For the ones that couldn't move their legs there would be a side walker on each side of the person. Sometimes we did "exerciscises" done by disabled professionals , such as 'touch the head now' or 'touch the tail'.

"It was one night a week for 20-25 different people. It was really appreciated by the folks who participated. We did it for about 4 years, probably serviced about 50-60 different people.

"When we first started working with them we were under the insurance policy of the Community Hospital, then couple years down the road- we were no longer covered under the Community umbrella. A lawyer told us they did not have insurance that would cover us for liability."

"Our chapter discontinued the project because the Backcountry Horsemen could not afford insurance; we couldn't even find out if it was even available. "

"It was a good thing. Their eyes just lite up at this opportunity. I ran into a lady in the grocery store once and she rushed up,

"Oh, I remember you, how come you aren't doing that (horse lessons) any more? My husband enjoyed it so much."

"It was a good thing, for us all."

Gwen Thibodeau
1850 Marshall Canyon Road
Missoula, Mt 59802

Montana Horse Council
PO Box 5233
Helena, Montana

To whom it may concern:

I am writing to discuss the rationale behind the successful passage of the Equine Liability Bill in Oregon.

As chair of the Oregon Horsemen's Association's Legislative Committee, I was pleased to play a role in the passing of HB2650 in 1991.

Our committee was struck by the fact that Oregon's Horsemen had reached a crisis state when it came to obtaining liability insurance. From 4H to backyard horse shows to breeders, to trainers and casual horsemen, the message was the same: Average people couldn't get or couldn't afford liability insurance.

Because there was no limit on the degree of liability on horse related accidents in this state, insurance companies were bailing out of touching anything related to horses. Many horse owners thought they were covered under "Homeowners", until they had a claim. A common scenario was to have the agent come out and check for increased evaluation of a clients holdings and see a horse on the property. Within a few days a cancellation notice would arrive with no accident or claim ever had occurred.

As a result of the limited options for insurance and the exorbitant prices, under which it could sometimes still be obtained horse enthusiasts either folded their horse operation or ran bare.

With prices quoted as high as \$500 for one day "special event" insurance, little shows and exhibitions often calculated that they wouldn't even make \$500 in profits and couldn't come close to cost/benefits balance. The results were very bad news for the horse industry in Oregon- An industry conservatively estimated to be worth at least \$7,000,000.

Our committee, in concert with a couple of other very helpful groups, began blitzing the horse community and, related businesses with letters proposing a change and asking for support of a Inherent Risk Insurance Bill.

The Bill was drafted by a local lawyer/horseman and the speaker of the Oregon House was approached to act as its sponsor.

Ultimately four letters were sent to a total of 12,000 households. These letters called for financial help to hire a lobbyist and pay for

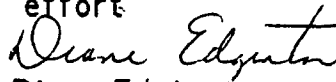
printing, as well as letters and phone calls campaigns timed at critical intervals in the Bill's lifetime.

Phone trees advised people of hearing dates and hearing rooms were filled to overflowing with interested horse folks.

When the Bill reached an impasse, persons who could influence further progress were contacted by at least a hundred constituents urging forward motion.

In the fall of 1991, Governor Roberts signed the Bill into law. Thus insuring that those who put themselves in close proximity with these big animals take a greater responsibility for their action and possible injury. Asking the courts to apply the concept of inherent risk when they decide an award in horse related cases, should substantially reduce the size and incidence of these awards. Ultimately it is believed that our work will be rewarded by insurance companies realizing that they can now afford to write horse policies again and at an affordable cost. We await testing in court to make this a reality.

Good luck on your
effort



Diane Edgington

Oregon Horsemen's

Legislative Chairman

Understanding Oregon's Horse Bill

HB 2650 is explained in laymen's terms

*By Lee D. Kersten
Attorney at Law*

A

fter tremendous work by many individuals and groups, HB 2650 — The Horse Bill — passed the Oregon House of Representatives, the Oregon Senate and was signed by Governor Barbara Roberts on Aug. 6, 1991.

The final bill, a product of much negotiation and compromise, does not look much like the original bill introduced in the House at the request of the Horse Council of Oregon. However, it still contains most of the initial concepts.

The bill is divided into seven sections. This article will explain each of those sections:

Section 1

The first section states the purpose of the bill and provides for certain state policies relating to horses and liability. It provides that the purpose of the bill is "... to assist courts and juries in defining the circumstances under which those persons responsible for equines may and may not be liable for damages to other persons harmed in the course of equine activities."

This section also provides for inherent risk protection which means there is no

liability when damage is caused solely as a result of inherent risk. The Act provides for three separate situations where inherent risk protection will apply. They are where the inherent risk is: (1) reasonably obvious, (2) expected, or (3) necessary to the person injured.

This language reflects the agreement that in order to be an inherent risk, the risk must be one which is generally known. The statutory language requires that the risk be reasonably obvious, expected, or necessary to the person injured. Thus, the horse owner's knowledge is not relevant. This means that the more horse experience the participant has, the more risks should be held to be inherently obvious.

On the other hand, someone with a mental impairment or no exposure to horses may not have a good understanding of what risks are reasonably obvious and would not be precluded by the reasonably obvious language from suing for damage caused by an inherent risk.

Protection is provided in these situations by the use of the phrase "necessary to the person injured." This phrase would cover someone who has insufficient horse

experience to recognize risks which should be reasonably obvious but who engages in a horse activity which creates risks which are necessary to the person injured. An example of this would be someone with no horse experience who rents a horse to ride in an arena, whose horse stumbles, and is therefore injured. While the injured person had insufficient knowledge to expect that stumbling is a reasonably obvious risk, it was necessary for the participant to ride in the arena and thus the protection of the Act should apply.

The last subsection of section 1 provides that persons responsible for equines, or responsible for the safety of those persons engaged in equine activities, will still be liable if they are negligent and cause a foreseeable injury. For example, if you

relating to rides, trips, hunts, or other equine activities of any type, however informal or impromptu.

There was concern during negotiation of this aspect of the Act that protection be extended to all equine owners, not just equine professionals and professional activity sponsors such as are protected in the Colorado bill. When subsections (2) (e) and (3) of section 2 are combined, then the protection of the Act extends to individuals engaging in equine activities of any type however informal or impromptu.

Subsection (4) defines equine professional as someone who for compensation is instructing, or renting horses, equipment or tack to a participant.

Subsection (5) defines participant. Participant includes both amateurs and

bill not apply to any injury or death arising out of a race as defined in ORS 462.010. This is accomplished by subsection (2) (a). This exception applies only to mutual racing, such as Portland Meadows.

The protection of the bill will not be available if there is a willful or wanton disregard for the safety of the participant and such disregard caused the injury. This is sometimes called "gross negligence."

The protection will not apply if there is an intentional injury to the participant.

The protection will not apply under the product liability provisions in Oregon statutes. Thus, manufacturers, distributors, sellers, or lessors of a product will have their liability for defective products determined under existing law.

The protection will not apply to the sale of a drugged horse.

Section 4

This section contains three more exceptions to the liability protection. The first exception is for persons who provide tack or equipment, fail to reasonably and prudently inspect the tack or equipment, and the tack or equipment is a cause of the injury. To obtain protection when you are providing tack or equipment be sure you reasonably and prudently inspect your tack and equipment.

Liability protection is not available when you provide the equine and you fail to make reasonable and prudent efforts to determine the ability of the participant to safely ride, or safely manage the equine, or to determine the ability of the equine to behave safely with the participant.

Generally, this requires that you make some effort to match the horse to the rider. If you reasonably inquire as to the participants' ability, know the behavioral characteristics of your animals, and match the two accordingly, you should be protected under the bill.

Another exception to protection under the bill is if you control the land or facilities upon which the participant sustained injuries and the injuries were caused because of a dangerous hidden condition which was known or should have been known to you and for which you did not conspicuously post warning signs. For example, if you know the rails on the end of your arena are rotten, you need to fix them. In the interim, you need to post a sign on them warning that they may present a danger. This provision follows existing law where land owners are required to warn about or make safe hidden dangerous conditions on their land.

Section 5

This section provides protection for veterinarians and farmers. It was originally deleted when the bill went to the Senate but was able to be restored during negotiations. It provides that veterinarians and farmers may have people assisting them sign a release waiving their right to sue for injury or death. This protection will not extend to gross negligence or intentional misconduct, but will protect against inherent risks and mere negligence.

Section 6

This section of the bill makes it clear that it will not affect any person's right to

workers' compensation benefits.

Section 7

This section provides that it will become effective for accidents occurring on or after the effective date of the Act.

In summary

The bill contains many important protections for horse people. Unlike the Colorado bill, it is not restricted to professionals. Unlike the Washington bill, it contains an inherent risk provision.

It also provides that releases may be obtained and that they are valid. This is an important feature. Persons engaging in equine activities which are repetitive in nature — such as riding lessons, boarding, show sponsors — should obtain a release suitable for continuing use. All others should consider the protection afforded by releases and determine if they are appropriate for use.

No one should relax their safety precautions because of the bill. Prevention is still better than cure. However, those who do use care in their equine activities should experience significant protection in the event an accident should occur.

Those who have had problems with exclusions or unavailability of insurance should contact their insurance agent once the bill is enacted as major insurers have indicated the bill will favorably impact their underwriting.

Thanks to all the persons and groups who worked on the bill, Oregon horse people now have a way to address equine insurance problems and liability concerns. Take advantage of your rights by using releases and acting safely and responsibly.

No one should relax their safety precautions because of the bill. Prevention is still better than cure.

walk a group of school children directly behind a long line of mares in heat, you will probably be liable if one of the mares kicks a child. Although a kick is an inherent risk, it is unreasonable to walk a group of children immediately behind a long line of mares in heat.

Section 2

This section provides definitions for the remaining liability sections of the Act. Subsection 1 defines equine.

Subsection 2 defines equine activity. Equine activity includes shows, fairs, competitions, performances, parades, any of the equine disciplines, training, grooming, teaching, boarding, riding and inspecting or evaluating an equine belonging to another. Importantly, it also includes rides, trips, hunts or other equine activities of any type however informal or impromptu that are sponsored by an equine activity sponsor. This is an important definition because when combined with the definition of equine activity sponsor, it extends the protection of the Act to individuals.

Subsection (3) defines equine activity sponsor. This definition includes those that would commonly be expected such as stables, arenas, 4-H clubs, riding clubs, etc. However, it also includes "an individual." Inclusion of the word individual is important because it relates to the definition of equine activity in subsection (2) (e)

professionals. However, participant does not include a person who is purely a spectator. Substantial negotiation occurred over this definition. The original House bill included spectators as participants. This was deleted when the bill was worked on in the Senate Judiciary Committee. An attempt was made to redefine spectator to differentiate between "active" and "passive" spectators. However, this differentiation was not able to be placed in the final version of the bill. Thus, spectators should be required to remain in areas in which their safety can be ensured. If a spectator is injured in an equine activity, general rules of negligence will apply rather than HB 2650.

Section 3

This section contains the other important limitation of liability provisions. It provides that, except as set out below, an equine activity sponsor (remember that as discussed above this phrase includes an individual) or an equine professional shall not be liable for injury or death of a participant arising out of the riding, training, driving, grooming or riding as a passenger on an equine. This is the heart of the Act, as it provides for this protection ("... shall not be liable...") in all but a few excepted situations.

Due to technical reasons, the racing industry requested that the provisions of this

About the author

Lee D. Kersten is an Eugene attorney specializing in agricultural, taxation and business law practice. His practice provides the variety of legal services required by businesses and individuals engaged in transactions, especially those involving agricultural operations. Kersten, who is certified to practice law in Oregon and California as well as the federal court system, has an MBA Agribusiness degree.

Kersten was very instrumental in securing passage of HB 2650. He testified at the first hearing before the House Judiciary Civil Law Subcommittee. Later, he made numerous trips to Salem, without compensation, to negotiate changes in the bill in order to secure its hearing by the Senate Judiciary Committee.

Individuals, businesses and organizations that would like a liability waiver written for their use to comply with provisions of the bill are urged to contact Kersten. His knowledge of HB 2650 will facilitate that process.

Lee D. Kersten
260 Country Club Rd., Suite 210
Eugene, OR 97401
Phone (503) 345-4312
Fax (503) 345-7027

DEPARTMENT OF LIVESTOCK

EXHIBIT 12 (W)
DATE 3-2-93
SB 140



MARC RACICOT, GOVERNOR


PO BOX 202001

STATE OF MONTANA

BRANDS ENFORCEMENT DIV. 406-444-2045
ANIMAL HEALTH DIV. 406-444-2043
BOARD OF LIVESTOCK - CENTRALIZED SERVICES 406-444-2023
MEAT, MILK & EGG INSPECTION DIV 406-444-5202

HELENA, MONTANA 59620-2001

January 14, 1993

TO: Ellen Hargrove
FROM:  Jack Sedgwick, Administrator
Brands Enforcement Division
Montana Department of Livestock
RE: Information on horses

As per our phone conversation of January 14, 1993. The Montana Department of Livestock collected per capita taxes on 67,369 head of horses at \$1.58 per head in the calendar year of 1991.

During the calendar year of 1991, there were 9765 horses through our livestock auctions in Montana.

During the calendar year of 1991 there were 35,282 horses brand inspected in the State of Montana.

Enclosed are the counties and the number of horses inspected which may give some indication as to the area with the larger populations.

TOTAL HORSE INSPECTIONS FOR 19

HORSE

Beaverhead	825
Big Horn	925
Blaine	554
Broadwater	280
Carbon	1,200
Carter	452
Cascade	2,075
Chouteau	490
Custer	557
Daniels	78
Dawson	296
Deer Lodge	119
Fallon	445
Fergus	684
Flathead	925
Gallatin	1,520
Garfield	311
Glacier	1,384
Golden Valley	93
Granite	157
Hill	684
Jefferson	418
Judith Basin	313
Lake	1,403
Lewis & Clark	928
Liberty	106
Lincoln	209
Madison	828
McCone	217
Meagher	194
Mineral	107
Missoula	1,324
Musselshell	362
Park	876
Petroleum	155
Phillips	289
Pondera	626
Powder River	444
Powell	376
Prairie	140
Ravalli	1,361
Richland	202
Roosevelt	545
Rosebud	527
Sanders	222
Sheridan	341
SilverBow	209
Stillwater	833
Sweetgrass	484
Teton	848
Toole	3,456
Treasure	105
Valley	255
Wheatland	201
Wibaux	411
Yellowstone	<u>1,913</u>
TOTALS	35,282



Information Service

THE FACTS SPEAK FOR THEMSELVES

Agriculture is the nation's largest industry, with assets totaling approximately \$1 trillion. Assets in the agriculture sector of the economy are equal to about 70% of the capital assets of all manufacturing corporations in the United States.

The equine community is a large and viable part of America's agriculture. Horses are a \$15.2 billion industry. This is approximately 16% of the gross national product (GNP) of the Agriculture Forestry and Fisheries section of the U.S. economy. In comparison with specific sectors of the manufacturing sector, this industry is 83% of the GNP of the textile mill products sector, and 65% of the lumber and wood products sector. It equals the combined output of the tobacco and leather products industries.

According to the American Veterinary Medical Association's 1988 research study, there are 6.6 million total equine in the United States. Previously, the Economic Impact of the U.S. Horse Industry study conducted by Peat, Marwick and Mitchell and released in 1987 by the American Horse Council, stated there were 5.25 million economically productive equine.

The horse industry is made up of a diverse group of approximately 1 million owners and participants ranging from those who utilize the horse as a business and investment to those who choose to spend their leisure time riding, driving or contributing as a volunteer.

Horse owners account for roughly \$13 billion in annual investment and maintenance expenditures. This would indicate a significant contribution to the feed grain industry, and tack and equipment manufacturers and retailers.

Horse sports draw more than 110 million spectators annually. Attendance at U.S. race tracks exceeds 70 million each year and annual wagering on horse races surpasses \$13 billion.

According to the Parks and Recreation Travel Statistical Abstract-1989, produced by the United States Bureau of Census, 20.3 million people visit national parks each year with 8.5% of those participating in horseback riding. In addition, from the Third Nationwide Outdoor Recreation Plan's Demographic and Recreation Trend Analysis, out of 32 selected activities, horseback riding is 27th and shows a 15% growth trend per year.

EXHIBIT #12 (W)
DATE 3-2-93
SB-140

Horse exports account for foreign sales of approximately \$200 million annually.

There are 7000 sanctioned horse shows each year with thousands of local unsanctioned events. Horse shows generate \$223 million per year with rodeos contributing \$104 million.

On the state level, California's horse industry generates the most dollars with a total GNP of \$2 billion annually, followed by New York's \$1.3 billion and Texas' \$1 billion.

According to estimates established in the 1987 Economic Impact of the U.S. Horse Industry survey, Quarter Horses are the largest registered breed of horse in America with 1.8 million. In addition there are 620,000 Arabians; 535,000 Thoroughbreds; 258,000 Appaloosas; 150,000 Standardbreds; 147,000 Paints; 127,000 Morgans; 92,000 Tennessee Walking Horses; 89,000 Saddlebreds; 76,000 purebred ponies; 52,000 mules and donkies; 23,000 Palominos; 20,000 Pintos; 15,000 Pasos; 357,000 other purebreds and 844,000 non purebred.

In 1989 there were 219,488 youths involved in horse projects through 4-H programs.

EXHIBIT 12 (X)
DATE 3-2-93
SB 140

DIAMOND N RANCH

ROCKY MOUNTAIN EQUESTRIAN CENTER

FAX 406-652-6013

BOB AND PENNI NANCE

406-656-5912 OR 406-652-7191

January 19, 1993

To WHom It May Concern:

I would like to speak in favor of bill #LC19 which is "An act limiting tort liability for equine activity sponsors and equine professionals."

I represent the Diamond N Ranch and the Rocky Mountain Equestrian Center. Our facility is the designated location for the Rocky Mountain College Equestrian Program as well as a private training business. In addition we sponsor numerous clinics, special events, summer camps, as well as a lesson program.

In the years that we have been in business, we have never had a serious accident with any of our programs. The horses that are used in the various programs at the ranch are screened very carefully, but equally as important are the caliber of our instructors.

We searched for almost two years to find an affordable insurance policy that would cover the clinics, special events, summer camps and our lesson program. Rates that we were quoted for our activities ranged from \$7000.00-\$20,000.00 for a yearly premium.

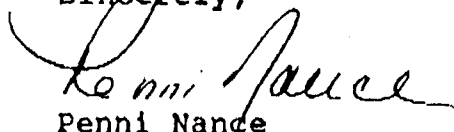
Many small equine professionals operate without adequate insurance simply because they cannot afford the premiums. This does not protect either the professional or the general public.

There are inherent risks involved in riding horses as well as working around them. LC #19 defines the fact that "there are dangers or conditions that are an integral part of equine activities and defines those conditions." Perhaps even more importantly, this bill has a provision that specifically allows the participant in an equine activity adequate recourse if the activity

sponsor or professional has been negligent and again defines those conditions. It is my feeling that LC#19 protects both the consumer and the equine professional.

Montana is truly the "Last Best Place", and horses are part of that mystique. It is my feeling that LC#19 is a tremendous benefit for the equine industry in Montana. I urge you to think positively and vote "yes" for this bill. The states of Virginia, Tennessee, Colorado, Oregon, Wisconsin are part of a group of states that have realized the need for this type of legislation. Montana could be seen as a leader by enacting this bill.

Sincerely,



Penni Nance

Penni Nance

EXHIBIT 12(v)
DATE 3-2-93
SB 140

To: Senator Jack Rea 1-444-3036
From: Hallie Rugheimer
Date: January 19, 1993
Re: Senate Bill 140 (Horseman's Safety Act)
Fax copies to: 1-444-4105 Attention:
Senator Eve Franklin
Senator Steve Doherty
Senator Sue Barlett
Senator Chet Blaylock
Senator Bruce Crippen

I would like to add my name to the long list of supporters for the bill being proposed through the Montana Horse Council and Montana State Legislature.

Through the bill, I feel there is protection and yet responsibility for the private horseman. At the same time it includes responsibilities of the equine business. It should make insurance more affordable for the manager of horse events and businesses. There should be an economic benefit to small businesses in the horse industry which are part of Montana's past and should be into the future.

Under the definitions section, I would add a point not covered in the original draft copy but hopefully included by the time it makes to the bill stage. A concern from us that are in the business of working with student learners and apprentices in our schools/institutes. There needs to be a different designation than "equine professional" as defined in the LC0019 (Draft) definitions, section, "a person engaged for compensation in ...". The working student/apprentice students need to have their own definition. They may not yet be compensated in the journey to being a wage earning professional. They are in the teaching arenas as student learners under the guidance of a director/overseer or master teacher. They should be gaining the status of instructor but may be limited by experience. A definition to the designation student learner/working student or apprentice student is therefore appropriate.

Antidotal testimony for Montana Horse Council

Dude Ranch: Brush Creek Ranch
Address: Sioux Falls Wyoming
Phone: 307/327-5241 ~~(303/595-4195)~~ Fax: _____
Owners: Egner Caldwell

How has horse liability legislation in your state affected you? Please provide the following as testimony for a Montana Equine Liability Bill that, simply put, says the rider has to assume an inherent risk and the horse owner must be grossly negligent to be held liable.

A. Has your state legislation made securing insurance easier? yes ___ no ___

not yet pending
drafted per Colorado language

B. After your state passed horse liability legislation, did this open up more insurance markets for you? yes ___ no ___

C. Have your insurance premiums changed? Give \$ amounts if possible _____

D. Do you have better insurance coverage now than before the legislation? yes ___ no ___

E. Has the legislation changed your level of safety awareness? yes ___ no ___

F. Does your insurance company require signed releases? yes ___ no ___

G. Has your Ranch atmosphere changed as a result of having added liability protection? _____

H. Have any guest not returned as a result of the law? yes ___ no ___

I. Have you had any injury settlements over \$20,000. ? yes ___ no X
how many ___ How many years of operations? ___

J. Have you had any nuisance threats of injury litigation? Example: (A guest wants his bill reduced due to an injury.) Approx. how many? 1 (not horse injury.)

K. What are the most positive results you have experienced from the liability law for your Ranch. What should be told to the Montana legislators. Horseback riding is inherently risky and it is possible to be injured where no negligence has occurred

Signature Ranch owner or representative: [Signature]

Antidotal testimony for Montana Horse Council

Dude Ranch: Triangle Ranch
Address: Moore Wyo, 83014
Phone: 307-733-2183 Fax: 307-733-8685
Owners: Louise Bertsch, Harold, John & Donald Turner

How has horse liability legislation in your state affected you? Please provide the following as testimony for a Montana Equine Liability Bill that, simply put, says the rider has to assume an inherent risk and the horse owner must be grossly negligent to be held liable.

A. Has your state legislation made securing insurance easier? yes__no

B. After your state passed horse liability legislation, did this open up more insurance markets for you? yes__no

C. Have your insurance premiums changed? Give \$ amounts if possible no

D. Do you have better insurance coverage now than before the legislation? yes__no

E. Has the legislation changed your level of safety awareness? yes no__

F. Does your insurance company require signed releases? yes no__

G. Has your Ranch atmosphere changed as a result of having added liability protection? no

H. Have any guest not returned as a result of the law? yes__no

I. Have you had any injury settlements over \$20,000. ? yes__no
how many__ How many years of operations? 65

J. Have you had any nuisance threats of injury litigation? Example: (A guest wants his bill reduced due to an injury.) Approx. how many. 56

K. What are the most positive results you have experienced from the liability law for your Ranch. What should be told to the Montana legislators. The law has helped settle some issues in liability suits.

Signature Ranch owner or representative: Louise Bertsch

Montana Trial Lawyers ASSOCIATION

Directors:

- Wade Dahood
Director Emeritus
- Monte D. Beck
- Thomas J. Beers
- Michael D. Cok
- Michael W. Cotter
- Karl J. Englund
- Robert S. Fain, Jr.
- Victor R. Halverson, Jr.
- Gene R. Jarussi
- Peter M. Meloy
- John M. Morrison
- Gregory S. Munro
- David R. Paoli
- Paul M. Warren
- Michael E. Wheat

Executive Office
#1 Last Chance Gulch
Helena, Montana 59601
Tel: 443-3124

March 20, 1993

Officers:

- Thomas J. Beers
President
- Monte D. Beck
President-Elect
- Gregory S. Munro
Vice President
- Michael E. Wheat
Secretary-Treasurer
- William A. Rossbach
Governor
- Paul M. Warren
Governor

Rep. Russell Fagg, Chair
House Judiciary Committee
Room 325, State Capitol
Helena, MT 59624

RE: SB 140

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to SB 140, which alters the liability of equine activity sponsors and equine professionals. The Senate Judiciary Committee addressed MTLA's concerns with numerous amendments to the bill, and MTLA acknowledges the good-faith efforts by supporters of SB 140 to achieve a compromise bill agreeable to all parties. However, MTLA continues to oppose SB 140 for the following reasons:

1. MTLA believes that a bill which, consistent with the title of SB 140 (page 1, line 9), genuinely defines without limiting the liability of equine activity sponsors and equine professionals could clarify for many horse owners that they are not liable in the absence of negligence. However, MTLA believes that SB 140 as currently drafted merely invites litigation over the extent of liability, despite the insistence by proponents of SB 140 that the bill will not immunize "equine activity sponsors" and "equine professionals" from liability for negligence, and despite media reports to the same effect. (See Attachment 1) MTLA disagrees that Montana law imposes strict liability upon horse owners. And MTLA believes the following amendment to SB 140, taken verbatim from the purpose clause of the bill (page 1, lines 23-24), is essential to clarify the liability of horse owners: Page 4, line 15.

Following: "are"

Strike: "an integral part of"

Insert: "or should be reasonably obvious, expected, or necessary to persons engaged in"

2. Proponents cite similar equine immunity statutes approved by Colorado in 1990 as the model for SB 140. However, Colorado's equine-liability statutes include important notice requirements that SB 140 avoids, notice requirements designed specifically to address the same problem with "inherent risks" as MTLA's suggested amendment. (See Attachment 2)

3. Proponents cite Montana's skier-liability and snowmobiler-liability statutes as models for SB 140. However, each of those statutes imposes notice requirements that SB 140 avoids, notice requirements designed to address the same problems with "inherent risks" as MTLA's suggested amendment. (See Attachment 3) Moreover, unlike downhill skiers and snowmobilers who can exercise virtually complete self-control over the dangers inherent in a static landscape, inexperienced horseback riders and spectators encounter animals which are large, quick, and powerful.

MTLA believes that the "equine activity sponsors" and "equine professionals" insulated by SB 140 understand horses better than anyone, certainly better than most of their paying clients. Yet the bill allows them to define "risks inherent in equine activities" without a corresponding requirement that they inform their clients of those inherent risks. The bill, in essence, blurs the fundamental distinction which Colorado's equine-liability statute and Montana's skier-liability and snowmobiler-liability statutes all make between inherent risks and forseeable, avoidable risks.

MTLA readily admits that individuals in a free society are entitled to make decisions for themselves and to willingly, knowingly accept the risks of dangerous behavior. MTLA believes, however, that existing Montana law protects that right and the consequences that flow from that right better than SB 140 does unless the bill includes an amended definition of "risks inherent in equine activities" or unless it imposes notice requirements on Montana horse owners.

Thank you for considering these comments. If I can provide additional information or assistance, please notify me.

Respectfully,



Russell B. Hill
Executive Director

EXHIBIT #13
DATE 3-2-93
SB-140

ATTACHMENT 1

Proponents and perhaps the general public apparently assume that horse owners are now strictly liable for injuries caused by their horses and should be liable only when they are at fault:

* Bob Schaap, owner of Lone Mountain Ranch at Big Sky, testified as a proponent of SB 140 that, "Right now, falling off a horse in Montana is like winning a lottery." Schaap also testified that he's been sued only once in 16 years, and his insurance company paid nearly \$27,000 "when there was no negligence."

* SB 140 makes "horse riders liable for their own injuries unless there was negligence on the part of the provider" (Helena Independent Record, January 21, 1993);

* Under SB 140, "a rider injured by someone else's horse can collect damages only if the horse owner acts negligently" (Great Falls Tribune, January 21, 1993);

ATTACHMENT 2

"(5)(a) Every equine professional shall post and maintain signs which contain the warning notice specified in paragraph (b) of this subsection (5). Such signs shall be placed in a clearly visible location on or near stables, corrals, or arenas where the equine professional conducts equine activities if such stables, corrals, or arenas are owned, managed, or controlled by the equine professional. The warning notice specified in paragraph (b) of this subsection (5) shall appear on the sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an equine professional for the providing of professional services, instruction, or the rental of equipment or tack or an equine to a participant, whether or not the contract involves equine activities on or off the location or site of the equine professional's business, shall contain in clearly readable print the warning notice specified in paragraph (b) of this subsection (5).

(b) The signs and contracts described in paragraph (a) of this subsection (5) shall contain the following warning notice:

WARNING

Under Colorado Law, an equine professional is not liable for an injury to or the death of a participant in equine activities resulting from the inherent risks of equine activities, pursuant to section 13-21-120, Colorado Revised Statutes."

ATTACHMENT 3

"23-2-733. Duties of operator regarding ski areas. Consistent with the duty of reasonable care owed by a ski area operator to a skier, a ski area operator shall:

(1) mark all trail grooming vehicles by furnishing the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the ski area;

(2) mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snowmaking operations and located on ski trails;

(3) maintain one or more trail boards at prominent locations at each ski area displaying that area's network of ski trails and the relative degree of difficulty of the ski trails at that area;

(4) post a notice requiring the use of ski-retention devices;

(5) designate at the start of each day, by trail board or otherwise, which trails are open or closed and amend those designations as openings and closures occur during the day;

(6) post in a conspicuous location the skier responsibility code that is published by the national ski areas association and that is current on April 4, 1989; and

(7) post a copy of 23-2-736 in a conspicuous location."

"23-2-736. Skier's conduct--inherent risks. (1) A skier has the duty to conduct himself at all times so that he avoids injury to himself and others and to be aware of the inherent risks of the sport.

(2) A skier:

(a) must know the range of his ability and safely conduct himself within the limits of that ability and his equipment so as to negotiate any section of terrain or ski trail safely and without injury or damage. A skier must know that his ability may vary because of trail changes caused by weather, grooming changes, or skier use.

(b) shall maintain control of speed and course so as to prevent injury to himself or others;

(c) must abide by the requirements of the skier responsibility code that is published by the national ski areas association and that is current on April 4, 1989; and

(d) shall obey all posted or other warnings and instructions of the ski area operator.

(4) A skier must accept all legal responsibility for injury or damage of any kind to the extent that the injury or damage results from risks inherent in the sport of skiing. Risks inherent in the sport of skiing are:

(a) variations in skiing terrain, including surface and subsurface snow or ice conditions naturally occurring or resulting from weather changes, skier use, or grooming or snowmaking operations;

(b) bare spots and thin snow cover caused by limited snowfall, melting, wind erosion, skier action, grooming, or unconsolidated base;

(c) forest growth on designated trails;

(d) skiing in an area not designated as a ski trail;

(e) clearly visible or plainly marked improvements or equipment;

(f) clearly visible or plainly marked mobile equipment and attachments, whether moving or stationary, used by the ski area operator; and

(g) avalanches, except on open, designated ski trails." [emphasis added]

"**23-2-651. Purpose.** The legislature recognizes that there are inherent risks in the sport of snowmobiling that are essentially impossible for a snowmobile area operator to eliminate but that should be known by a reasonable and prudent snowmobiler. . . ."

"**23-2-653. Snowmobile area operators--duties--restriction on liability.** (1) The person responsible for the maintenance of or operation of a snowmobile area shall mark all trail maintenance vehicles and furnish the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the snowmobile area."

"**23-2-654. Snowmobiler's assumption of responsibility--duties.** (1) A snowmobiler assumes the risk and all legal responsibility for death or injury to himself or other persons or property that results from the risks inherent in the sport of snowmobiling. The assumption of the risk includes but is not limited to death or injury caused by the following: variations in terrain, surface or subsurface snow or ice conditions, cornices, avalanches, poor visibility, bare spots, rocks, trees, other forms of forest growth or debris, and plainly marked trail maintenance equipment." [emphasis added]

EXHIBIT # 14
DATE 3-2-93
X SB-37

March 2, 1993
Exhibit #14
Senate Bill No. 37

Exhibit #14 is a petition and signatures in support of SB 37 (a child stalking law). The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

by
Donna Hunzeker

January 1993

EXHIBIT Volume 1, No. 4 15
DATE 3-2-93
SB 37

Stalking Laws

States have enacted "stalking" laws to punish people who repeatedly watch, follow, harass or threaten someone with physical harm or death. Stalking laws criminalize these activities and give police recourse before an attack takes place.

*Restraining orders
inadequate*

States passing stalking laws determined there were inadequate provisions in existing law to protect stalking victims. In drafting and considering laws, legislatures in many states heard about victims who were brutally attacked and sometimes killed after enduring months and even years of threats and intimidation. Civil restraining or protective orders were nearly always in place but inadequate to deter the stalker from committing an act of violence. A third of female murder victims in 1990 were slain by husbands or boyfriends, according to the FBI.

*Twenty-nine states
with stalking laws*

Twenty-nine states now have stalking laws. California passed the first in 1990, creating (and coining) stalking as a crime. States enacting similar laws in 1992 were: Alabama, Colorado, Connecticut, Delaware, Florida, Hawaii, Kansas, Idaho, Illinois, Iowa, Kentucky, Louisiana, Massachusetts, Mississippi, Nebraska, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia and Wisconsin.

States with stalking measures pending on November 1, 1992, include Michigan, New Jersey and Pennsylvania. Other states, including Texas and Indiana, are preparing legislation to be introduced in 1993.

In other states, laws called something other than stalking have similar intent and purpose. Since 1987, Minnesota has had trespass and harassment laws on the books to apply to stalking situations that include "intent to harass, abuse or threaten." Minnesota law also has felony penalties for "terroristic threats" which can apply to stalking situations. Similarly in Maine, "terrorizing" is a Class D or Class C crime when threats of violence are made. Arizona created misdemeanor classifications of harassment last year.

*Stalking defined,
classified*

States typically have defined stalking as willful, malicious and repeated following and harassing of another person. Most stalking laws require that the perpetrator make a "credible threat of violence" against the victim, and in many states, it includes threats against the immediate family of the victim. Many provisions require that the victim have "reasonable fear of death or great bodily injury."

The 1990 California measure was enacted following the murders of five Orange County women the year before. In each case, the victim had been stalked and threatened and had a temporary restraining order against her assailant. The California measure was hailed by victims' and women's groups, and had support from the entertainment community because of cases in which celebrities are stalked and threatened by obsessed fans.

Nineteen states have both misdemeanor and felony classifications of stalking with up to one year of jail typical for first offenses. Tougher penalties of up to three, five and even six years often apply to second or subsequent stalking offenses. Enhanced penalties also apply in 18 states where a stalker violates a protective order.

In some states with a felony stalking provision, bail can be established to increase the likelihood or duration of detention of alleged stalkers. Stalking laws in Iowa, Ohio and Illinois deal more specifically with the bail issue.

Constitutionality

Stalking laws in Florida and Ohio provide for warrantless arrest of alleged stalkers. Defense attorney groups and others have questioned the appropriateness, if not constitutionality, of warrantless arrest of stalkers, but other observers point out that such provisions in domestic violence laws have been found permissible.

A report last fall by the federal Congressional Research Service discussed whether some state stalking laws are too vague to be constitutional. In particular, that report questioned constitutionality of state laws in which following and harassing are considered stalking without also requiring credible threats of violence.

The U. S. Congress last year approved legislation under which the National Institute of Justice will work with states to monitor constitutionality and other outcomes of state stalking laws. Model provisions will be developed to help states adapt or enact laws.

STALKING CRIME CLASSIFICATIONS

Felony only:	Delaware, Florida, Illinois
Misdemeanor only:	Colorado, Kansas, Hawaii, Utah, South Carolina, West Virginia
Both Felony and Misdemeanor crimes:	California, Connecticut, Idaho, Iowa, Kentucky, Louisiana, Massachusetts, Mississippi, Nebraska, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Virginia, Washington, Wisconsin.

(Where both felony and misdemeanor classifications can apply, felony treatment is generally for when a protective order is violated and for second or subsequent stalking convictions.)

Selected References

Thomas, Kenneth B. *Anti-Stalking Statutes: Background and Constitutional Analysis*. Washington, D.C.: Congressional Research Service, Library of Congress, September 26, 1992.

Resnick, Rosalind. "States Enact 'Stalking' Laws." *The National Law Journal* (May 11, 1992): 3 and 27.

Contacts for Further Information

Donna Hunzeker
NCSL
(303) 830-2200

SOUTH SIDE NEIGHBORHOOD TASK FORCE

BILLINGS, MONTANA

Chairman
Rodney Garcia
259-7812

Vice Chairman
Stephen Bradley

March 2, 1993

House Judiciary Committee

Good Morning, I am Rodney Garcia, Chairman of the South Side Neighborhood Task Force of the City of Billings.

The South Side Task Force which was formed in 1977, has worked as neighbors to rebuild the older part of the City of Billings. And I must say, we have been very successful. But lets get to the issue at hand. Anti-Stalker laws are being demanded nation wide. It is our desire that the House Judiciary Committee and the House of Representatives concur with the Montana Senate in the passage of Senate Bill 37. Presently California reports to having 142 cases since 1990 with 37 cases still pending. As according to Lt. John Lane of the L.A.P.D. As of today, according to Federal Agent Greg Hoenchen, who is with the Federal Bureau of Investigation, their are no National Statistics. Congressman Joseph Kennedy is offering a bill to Congress. Which will help define and enforce states stalking laws, with Federal support. This bill will be before Congress in 1993. With the eyes of the Nation on Montana, this August body, has a unique opportunity to show a leadership role in the support of this important bill before this committee. The South Side Task Force continues to support Senate Bill 37 as presented to you from the Senate. We urge you to reject any amendments in reference to exemptions of any organization wishing so. To conclude I would like the record to show that letters of support have been submitted from the North Park Neighborhood Task Force, North Elevation Neighborhood Task Force with 3,000 petitions of support due to the efforts of Jill Port and the Yellowstone Valley Parent-Teachers Association Council.

Thank you for this opportunity to address this committee.

Sincerely,



Rodney L. Garcia, Chairman

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE T. Towe BILL NO. SB 37
DATE March 2, 1993 SPONSOR(S) T. Towe

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Eate Cholewa	MT Women's Lobby	X	
MAXINE HOMER	DISCIPLES OF CHRIST Women MT. Christian Church	X	
Barb Lancaster	self	X	
SHARON HOFF	MT Catholic Congress	X	
Gary Sell	Sidney High School	X	
Craig Gethardt	Sidney High	X	
BILL WARE, Helena Chief of Police	City of Helena MT. Asso. of Chiefs of Police	X	
Amy Pfeifer	Women's Law Section	X	
John Connor	ATTORNEY GENERAL & MT. CITY ATTYS ASSN	X	
Troy McCoee	Montana Police Protective Assoc.	X	
CRAIG L HORPE	MT MAGISTRATES ASSN	X	
MICHAEL S MIZENKO	MT. STATE Bldg + Construction Council MT ST. ASSO. OF Plumbers + Pipefitters	X	
Marc Korting	Self	X	
Stacey Dutch		X	

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ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

JUDICIARY - House

COMMITTEE

BILL NO. SB 37

DATE ~~3-29~~ 3/2/93

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jim Smith	Mt. Psych. Assoc.	✓	
Kelly Vollbath	Self	X	
Doreen DeLoach	SS. Task force	✓	
Scott Patrick	Fathe		
Laurie Kostrik	Christian Coalition of ME	✓	
Arlette Korman	Prevention Rights to life	✓	
XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	X	
MAXINE HENRY-	SS Task force	X	
KARA RICHIE	"	X	
STEVEN RICHIE	"	X	
KRYSTAL HUST	"	X	
JG HUST	"	X	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary

COMMITTEE

BILL NO. *SB 140*

DATE *March 2, 1993* SPONSOR(S)

J. Rea

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Pamela Barrows	Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jim Gundersen	Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Russell B Hill	Mont Trial Lawyers	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Card Torgerson	Montan Stockgrowers Montan Wool Growers	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DAN RITTER	MT CHAMBER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
JAMIE DOGGOTT	Laticy Rural Develop Comm	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LAURENCE PETERSEN	Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ken Hanson	Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gail Breckbank	Dept of Commerce	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Michael A. Wagner	Hyland Wolfen Ranch	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephan Smith	Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kerry Holmquist	Page MT	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kate Feltz	Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Erin Jennie	Kids	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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Judiciary

COMMITTEE

BILL NO.

SB 140

DATE March 2, 1993

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
MYRTA ORHOLT-MASON	50 ADVISCT- TEN MILE DRIVERS	X	
Regena Drostko	Self		
Brad Griffiths	Mt Horse Council	X	
MARCY SCHOTTLE	(MSHSA) MT Horse Council	X	
Doug Hammill, Whitefish	Self, Other Horse Owners, Old West Adventures Big Mountain Resort	X	
Ann Walton-Taylor, Helena	Early Dawn Ranch	X	
Molly Ferrie, Helena		X	
Karen Post Bellings	Family Farm	X	
John Frank		X	
Roger Tippy	Mt Veterinary Medicine Assn.	X	
Don Youngberg	MT Prim Equine	X	
Jay Straff			
Kelly Lyons	Rancher	X	
Deborah Wagner	Rancher MHC	X	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

COMMITTEE Judiciary BILL NO. SB 140
 DATE March 3, 1993 SPONSOR(S) J. Rea
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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Randy Stodard st route Box 32 Conrad, MT 59424	Montana Farmers Union		
Leila Brown Box 31 Geraldine, MT 59446	Montana Farmers Union		
Delisa Protsman Geraldine Mt. 59446	Montana Farmers Union		
Jodie Johnson Brady mt. 59416	Montana Farmers Union		
Christina Martinez Geraldine, MT 59446	Montana Farmers Union		
Nadine Thisselle Conrad MT 59425	Montana Farmers Union		
Ben Peterson Ben Peterson Box 8 Judith Gap, MT. 59453	Montana Farmers Union		

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 140
 DATE March 2, 1993 SPONSOR(S) J. Rea
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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Annie Reid #31 Bridger View Trl. Cl. Bozeman	self	✓	
LARRY BAILEY 1400 Story Mill Rd. Boz	Institute for Equestrian Education	✓	
112 Guilham 27901 Norris Rd #59 Bozeman MT 59715	self	✓	
Hallie Rughzimer	Institute for Equestrian educ. 1400 Story Mill Rd.	✓	
R.D. (DENNY) IRWIN 7717 Good Hill Rd Bozeman, MT 59715	SELF	✓	
HELEN PILCHER - HELGUT	SELF	✓	

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HOUSE OF REPRESENTATIVES
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Judiciary

COMMITTEE

BILL NO. SB 140

DATE March 2, 1993

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Leslie Armitage BZN	Fly D & Self	X	
Rusty Hebel Encis	mt. DRAFT Horse & M/ @ Ass.	X	
Louis VERO GREENOUGH	E BAR L RANCH	X	
Allan Lien	Gallatin Saddle & Harness Club	X	
DAVE AVER FRENCHCREEK	MILL CREEK STABLES	X	
Mary Annner for Frenchtown	7th St. & 1st St.	X	
John Conter	Conter Spotted Ass. Ranch	X	
Bill Maloit	Back Country Horsemen OF MONTANA	X	
Bonnie J Morgan	Ten Mile Drivers	X	
Betty G. Eschenburg	" " "	X	
Pat Melby	Mont. Horse Council	✓	
DOUG AVERILL	FLATHEAD LAKE LODGE	✓	
KEVIN BARROWS	"		
Judy Hagan	Helena Valley	✓	

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Judiciary COMMITTEE BILL NO. SB 140
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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
SB bias 1120 mill Rd Helena	Ten mile Drivers	✓	
John Patricia Welch	Ten Mile Drivers ✓	✓	
George & Dorothy Miller	Absaroke, Mt.	✓	
Allie Jacobsen	Columbus mt	✓	
Harold Adams	Ten Mile Drivers	✓	
Ray Pace	Helena Trail Riders	✓	
Marilyn Jacobsen	Columbus mt 59019	✓	
Daniel V. Collings	Ten mile Drivers Helena, MT.	✓	
Honnie M. Collings	Ten mile Drivers Helena MT	✓	
SARAH BOWLES 601 HWY 12 GARDENBURG, MT	MONTANA 4-H HORSEMANSHIP	✓	
Shelby White	self	✓	
Georgette Sorlach	self	✓	
Les Graham	Self + Mont Bodoo ASSNS	✓	
Bob Schaepp	Love Mtn Ranch	✓	

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DATE Judiciary COMMITTEE Rea BILL NO. SB 140
 DATE March 3, 1993 SPONSOR(S) _____

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Sandy Jenkowski	myself & daughter	✓	
Russ Ritter	Wash Corp	✓	
Tim Sayles	HD #61	✓	
Stacey Possich			
Mike Foster	HD 32	✓	
Liz Smith	HD 48	✓	

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