

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1035 Session of
2001INTRODUCED BY L. I. COHEN, CLARK, M. COHEN, PRESTON, TRELLO AND
THOMAS, MARCH 15, 2001AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, OCTOBER 22, 2002

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for
3 international commercial arbitration; AND LIMITING CIVIL
4 LIABILITY FOR INJURY AND DEATH INCURRED IN CONNECTION WITH
5 EQUINE ACTIVITIES. <—

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Chapter 73 of Title 42 of the Pennsylvania
9 Consolidated Statutes is amended by adding a subchapter to read:

10 SUBCHAPTER D

11 INTERNATIONAL COMMERCIAL ARBITRATION

12 Sec.

13 7371. Short title of subchapter.

14 7372. Scope of subchapter.

15 7373. Definitions.

16 7374. Receipt of written communications.

17 7375. Waiver of right to object.

18 7376. Judicial involvement.

1 7377. Arbitration agreement.

2 7378. Composition of arbitral tribunal.

3 7379. Jurisdiction of arbitral tribunal.

4 7380. Conduct of arbitral proceedings.

5 7381. Making of award and termination of proceedings.

6 7382. Recourse against award.

7 7383. Recognition and enforcement of award.

8 § 7371. Short title of subchapter.

9 This subchapter shall be known and may be cited as the
10 International Commercial Arbitration Law.

11 § 7372. Scope of subchapter.

12 (a) General rule.--This subchapter shall apply to
13 international commercial arbitration, subject to any agreement
14 in force between the United States, including, but not limited
15 to, any of its territories or possessions, and any other country
16 or countries.

17 (b) Territorial application.--Except for sections 7377(b)
18 and (c) (relating to arbitration agreement), 7383(a) and (b)
19 (relating to recognition and enforcement of award), the
20 provisions of this subchapter shall apply only if the place of
21 arbitration is located within this Commonwealth.

22 (c) International character.--An arbitration shall be
23 conclusively presumed to be international if:

24 (1) the parties to an agreement, at the time of the
25 conclusion of the agreement, have their places of business in
26 different countries;

27 (2) one of the following places is situated outside the
28 country in which the parties have their places of business:

29 (i) the place of arbitration, if determined in or
30 pursuant to, the arbitration agreement; or

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed; or

(iii) the place with which the subject matter of the dispute is most closely connected; or

(3) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

(d) Interpretation of subchapter.--For purposes of subsection (c):

(1) If a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement.

(2) If a party does not have a place of business, reference shall be made to that party's habitual residence.

(3) Where a provision of this subchapter, except section 7381(a) (relating to making of award and termination of proceedings), leaves the parties with the right to determine a certain issue, the right includes the right of the parties to authorize a third party, including, but not limited to, an institution, to make that determination.

(4) Where a provision of this subchapter refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, that agreement includes, but is not limited to, any arbitration rules referred to in that agreement.

(5) Where a provision of this subchapter, other than sections 7380(h)(1) (relating to conduct of arbitral proceedings) and 7381(e)(2)(i) (relating to making of award and termination of proceedings), refers to a claim, the

provision shall also apply to a counterclaim, and where it refers to a defense, the provision shall also apply to a defense to that counterclaim.

(e) Limitation.--This subchapter shall not affect any other law of this Commonwealth by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than the provisions of this subchapter.

§ 7373. Definitions.

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

"Arbitral tribunal." A sole arbitrator or panel of arbitrators.

"Arbitration." Any arbitration, whether or not administered by a permanent arbitral institution.

"Arbitration agreement." An agreement by parties to submit to arbitration all or certain disputes which have arisen or which may arise between them of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in any form of a separate agreement.

"Court." A body or organ of the judicial system of a country.

§ 7374. Receipt of written communications.

(a) General rule.--Unless otherwise agreed by the parties:

(1) Any written communication shall be deemed to have been received if it is delivered to the addressee personally, or at the addressee's place of business, habitual residence or mailing address, or if none of these can be found after

1 making a reasonable inquiry, a written communication shall be
2 deemed to have been received if it is sent to the addressee's
3 last known place of business, habitual residence or mailing
4 address by registered letter or any other means which
5 provides a record of the attempt to deliver it.

6 (2) The communication shall be deemed to have been
7 received on the day it is delivered.

8 (b) Limitation.--The provisions of this subchapter shall not
9 apply to communications in court proceedings.

10 § 7375. Waiver of right to object.

11 A party who knows that any provision of this subchapter from
12 which the parties may derogate or any requirement under the
13 arbitration agreement has not been complied with and yet
14 proceeds with the arbitration without stating his objection to
15 such noncompliance without undue delay, or, if a time limit is
16 provided therefor, within such period of time, shall be deemed
17 to have waived his right to object.

18 § 7376. Judicial involvement.

19 (a) Extent of court intervention.--In matters governed by
20 this subchapter, no court shall intervene except where so
21 provided in this subchapter.

22 (b) Court or other authority for certain functions of
23 arbitration assistance and supervision.--The functions referred
24 to in sections 7378(b)(3) and (4), (d)(3) and (e) (relating to
25 composition of arbitral tribunal), 7379(a)(3) (relating to
26 jurisdiction of arbitral tribunal) and 7382(a)(2) (relating to
27 recourse against award), shall be performed by the president
28 judge of the court of common pleas where the action is located.

29 § 7377. Arbitration agreement.

30 (a) Form of arbitration agreement.--An arbitration agreement

1 shall be in writing. An agreement shall be in writing if it is
2 contained in a document signed by the parties or in an exchange
3 of letters, telex, telegrams or other means of telecommunication
4 which provide a record of the agreement or in an exchange of
5 statements of claim and defense in which the existence of an
6 agreement is alleged by one party and not denied by another. The
7 reference in a contract to a document containing an arbitration
8 clause constitutes an arbitration agreement provided that the
9 contract is in writing and the reference is such as to make that
10 clause part of the contract.

11 (b) Arbitration agreement and substantive claim before
12 court.--

13 (1) A court before which an action is brought in a
14 matter which is the subject of an arbitration agreement
15 shall, if a party so requests not later than when submitting
16 his first statement on the substance of the dispute, refer
17 the parties to arbitration unless it finds that the agreement
18 is null and void, inoperative or incapable of being
19 performed.

20 (2) Where an action referred to in paragraph (1) has
21 been brought, arbitral proceedings may nevertheless be
22 commenced or continued, and an award may be made, while the
23 issue is pending before the court.

24 (c) Arbitration agreement and interim measures by court.--It
25 shall not be incompatible with an arbitration agreement for a
26 party to request, before or during arbitral proceedings, from a
27 court an interim measure of protection and for a court to grant
28 such measure.

29 § 7378. Composition of arbitral tribunal.

30 (a) Number of arbitrators.--

1 (1) The parties may determine the number of arbitrators.

2 (2) Failing such determination, the number of
3 arbitrators shall be three.

4 (b) Appointment of arbitrators.--

5 (1) No person shall be precluded by reason of his
6 nationality from acting as an arbitrator unless otherwise
7 agreed by the parties.

8 (2) The parties may agree on a procedure of appointing
9 the arbitrator or arbitrators, subject to paragraphs (4) and
10 (5).

11 (3) Failing such agreement:

12 (i) In an arbitration with three arbitrators, each
13 party shall appoint one arbitrator, and the two
14 arbitrators thus appointed shall appoint the third
15 arbitrator. If a party fails to appoint the arbitrator
16 within 30 days of receipt of a request to do so from the
17 other party or if the two arbitrators fail to agree on
18 the third arbitrator within 30 days of their appointment,
19 the appointment shall be made, upon request of a party,
20 by the court or other authority specified in section
21 7376(b) (relating to judicial involvement).

22 (ii) In an arbitration with a sole arbitrator, if
23 the parties are unable to agree on the arbitrator, he
24 shall be appointed, upon request of a party, by the court
25 or other authority specified in section 7376.

26 (4) Where, under an appointment procedure agreed upon by
27 the parties:

28 (i) a party fails to act as required under such
29 procedure;

30 (ii) the parties, or two arbitrators, are unable to

1 reach an agreement expected of them under such procedure;
2 or

3 (iii) a third party, including an institution, fails
4 to perform any function entrusted to it under such
5 procedure,

6 any party may request the court or other authority specified
7 in section 7376 to take the necessary measure unless the
8 agreement on the appointment procedure provides other means
9 for securing the appointment.

10 (5) A decision on a matter entrusted by paragraph (3) or
11 (4) to the court or other authority specified in section 7376
12 shall not be subject to appeal. The court or other authority,
13 in appointing an arbitrator, shall have due regard to any
14 qualifications required of the arbitrator by the agreement of
15 the parties and to such considerations as are likely to
16 secure the appointment of an independent and impartial
17 arbitrator and, in the case of sole or third arbitrator,
18 shall take into account as well the advisability of
19 appointing an arbitrator of a nationality other than those of
20 the parties.

21 (c) Grounds for challenge.--

22 (1) When a person is approached in connection with his
23 possible appointment as an arbitrator, he shall disclose any
24 circumstances likely to give rise to justifiable doubts as to
25 his impartiality or independence. An arbitrator, from the
26 time of his appointment and throughout the arbitral
27 proceedings, shall without delay disclose any such
28 circumstances to the parties unless they have already been
29 informed of them by him.

30 (2) An arbitrator may be challenged only if

1 circumstances exist that give rise to justifiable doubts as
2 to his impartiality or independence or if he does not possess
3 qualifications agreed to by the parties. A party may
4 challenge an arbitrator appointed by him or in whose
5 appointment he has participated only for reasons of which he
6 becomes aware after the appointment has been made.

7 (d) Challenge procedure.--

8 (1) The parties may agree on a procedure for challenging
9 an arbitrator, subject to the provisions of paragraph (3).

10 (2) Failing such agreement, a party who intends to
11 challenge an arbitrator shall, within 15 days after becoming
12 aware of the constitution of the arbitral tribunal or after
13 becoming aware of any circumstance referred to in subsection
14 (c)(2), send a written statement of the reasons for the
15 challenge to the arbitral tribunal. Unless the challenged
16 arbitrator withdraws from his office or the other party
17 agrees to the challenge, the arbitral tribunal shall decide
18 on the challenge.

19 (3) If a challenge under any procedure agreed upon by
20 the parties or under the procedure of paragraph (2) is not
21 successful, the challenging party may request, within 30 days
22 after having received notice of the decision rejecting the
23 challenge, the court or other authority specified in section
24 7376 to decide on the challenge, which decision shall be
25 subject to no appeal, while such a request is pending, the
26 arbitral tribunal, including the challenged arbitrator, may
27 continue the arbitral proceedings and make an award.

28 (e) Failure or impossibility to act.--

29 (1) If an arbitrator becomes de jure or de facto unable
30 to perform his functions or for other reasons fails to act

1 without undue delay, his mandate terminates if he withdraws
2 from his office or if the parties agree on the termination.
3 Otherwise, if a controversy remains concerning any of these
4 grounds, any party may request the court or other authority
5 specified in section 7376 to decide on the termination of the
6 mandate, which decision shall not be subject to appeal.

7 (2) If, under this subsection or subsection (d)(2), an
8 arbitrator withdraws from his office or a party agrees to the
9 termination of the mandate of an arbitrator, this does not
10 imply acceptance of the validity of any ground referred to in
11 this subsection or subsection (d)(2).

12 (f) Appointment of substitute arbitrator.--Where the mandate
13 of an arbitrator terminates under subsection (d) or (e) or
14 because of his withdrawal from office for any other reason or
15 because of the revocation of his mandate by agreement of the
16 parties or in any other case of termination of his mandate, a
17 substitute arbitrator shall be appointed according to the rules
18 that were applicable to the appointment of the arbitrator being
19 replaced.

20 § 7379. Jurisdiction of arbitral tribunal.

21 (a) Competence of arbitral tribunal to rule on its
22 jurisdiction.--

23 (1) The arbitral tribunal may rule on its own
24 jurisdiction, including any objections with respect to the
25 existence or validity of the arbitration agreement. For that
26 purpose, an arbitration clause which forms part of a contract
27 shall be treated as an agreement independent of the other
28 terms of the contract. A decision by the arbitral tribunal
29 that the contract is null and void shall not operate, as a
30 matter of law, to decide the invalidity of the arbitration

1 clause.

2 (2) A plea that the arbitral tribunal does not have
3 jurisdiction shall be raised not later than the submission of
4 the statement of defense. A party is not precluded from
5 raising such a plea by the fact that he has appointed or
6 participated in the appointment of an arbitrator. A plea that
7 the arbitral tribunal is exceeding the scope of its authority
8 shall be raised as soon as the matter alleged to be beyond
9 the scope of its authority is raised during the arbitral
10 proceedings. The arbitral tribunal may, in either case, admit
11 a later plea if it considers the delay justified.

12 (3) The arbitral tribunal may rule on a plea referred to
13 in paragraph (2) either as a preliminary question or in an
14 award on the merits. If the arbitral tribunal rules as a
15 preliminary question that it has jurisdiction, any party may
16 request, within 30 days after having received notice of that
17 ruling, the court specified in section 7376 (relating to
18 judicial involvement) to decide the matter, which decision
19 shall be subject to no appeal; while such a request is
20 pending, the arbitral tribunal may continue the arbitral
21 proceedings and make an award.

22 (b) Power of arbitral tribunal to order interim measures.--
23 Unless otherwise agreed by the parties, the arbitral tribunal
24 may, at the request of a party, order any party to take such
25 interim measure of protection as the arbitral tribunal may
26 consider necessary in respect of the subject matter of the
27 dispute. The arbitral tribunal may require any party to provide
28 appropriate security in connection with such measure.

29 § 7380. Conduct of arbitral proceedings.

30 (a) Equal treatment of parties.--The parties shall be

1 treated with equality and each party shall be given a full
2 opportunity of presenting his case.

3 (b) Determination of rules of procedure.--

4 (1) Subject to the provisions of this subchapter, the
5 parties may agree on the procedure to be followed by the
6 arbitral tribunal in conducting the proceedings.

7 (2) Failing such agreement, the arbitral tribunal may,
8 subject to the provisions of this subchapter, conduct the
9 arbitration in such manner as it considers appropriate. The
10 power conferred upon the arbitral tribunal includes the power
11 to determine the admissibility, relevance, materiality and
12 weight of any evidence.

13 (c) Place of arbitration.--

14 (1) The parties are free to agree on the place of
15 arbitration. Failing such agreement, the place of arbitration
16 shall be determined by the arbitral tribunal having regard to
17 the circumstances of the case, including the convenience of
18 the parties.

19 (2) Notwithstanding the provisions of paragraph (1), the
20 arbitral tribunal may, unless otherwise agreed by the
21 parties, meet at any place it considers appropriate for
22 consultation among its members, for hearing witnesses,
23 experts or the parties or for inspection of goods, other
24 property or documents.

25 (d) Commencement of arbitral proceedings.--Unless otherwise
26 agreed by the parties, the arbitral tribunal proceedings in
27 respect of a particular dispute commence on the date on which a
28 request for that dispute to be referred to arbitration is
29 received by the respondent.

30 (e) Language.--

1 (1) The parties may agree on the language or languages
2 to be used in the arbitral proceedings. Failing such
3 agreement, the arbitral tribunal shall determine the language
4 or languages to be used in the proceedings. This agreement of
5 determination, unless otherwise specified therein, shall
6 apply to any written statement by a party, any hearing and
7 any award, decision or other communication by the arbitral
8 tribunal.

9 (2) The arbitral tribunal may order that any documentary
10 evidence shall be accompanied by a translation into the
11 language or languages agreed upon by the parties or
12 determined by the arbitral tribunal.

13 (f) Statements of claim and defense.--

14 (1) Within the period of time agreed by the parties or
15 determined by the arbitral tribunal, the claimant shall state
16 the facts supporting his claim, the points at issue and the
17 relief or remedy sought, and the respondent shall state his
18 defense in respect of these particulars unless the parties
19 have otherwise agreed as to the required elements of such
20 statements. The parties may submit with their statements all
21 documents they consider to be relevant or may add a reference
22 to the documents or other evidence they will submit.

23 (2) Unless otherwise agreed by the parties, either party
24 may amend or supplement his claim or defense during the
25 course of the arbitral proceedings unless the arbitral
26 tribunal considers it inappropriate to allow such amendments
27 having regard to the delay in making it.

28 (g) Hearings and written proceedings.--

29 (1) Subject to any contrary agreement by the parties,
30 the arbitral tribunal shall decide whether to hold oral

1 hearings for the presentation of evidence or for oral
2 argument or whether the proceedings shall be conducted on the
3 basis of documents and other materials. However, unless the
4 parties have agreed that no hearings shall be held, the
5 arbitral tribunal shall hold such hearings at an appropriate
6 stage of the proceedings, if so requested by a party.

7 (2) The parties shall be given sufficient advance notice
8 of any hearing and of any meeting of the arbitral tribunal
9 for the purposes of inspection of goods, other property or
10 documents.

11 (3) All statements, documents or other information
12 supplied to the arbitration tribunal by one party shall be
13 communicated to the other party. Also, any expert report or
14 evidentiary document on which the arbitral tribunal may rely
15 in making its decision shall be communicated to the parties.

16 (h) Default of party.--Unless otherwise agreed by the
17 parties, if, without showing sufficient cause:

18 (1) The claimant fails to communicate his statement of
19 claim in accordance with subsection (f), the arbitral
20 tribunal shall terminate the proceedings.

21 (2) The respondent fails to communicate his statement of
22 defense in accordance with subsection (f), the arbitral
23 tribunal shall continue the proceedings without treating such
24 failure in itself as an admission of the claimant's
25 allegations.

26 (3) Any party fails to appear at a hearing or to produce
27 documentary evidence, the arbitral tribunal may continue the
28 proceedings and make the award on the evidence before it.

29 (i) Expert appointed by arbitral tribunal.--

30 (1) Unless otherwise agreed by the parties, the arbitral

1 tribunal:

2 (i) may appoint one or more experts to report to it
3 on specific issues to be determined by the arbitral
4 tribunal; or

5 (ii) may require a party to give the expert any
6 relevant information or to produce, or to provide access
7 to, any relevant documents, goods or other property for
8 his inspection.

9 (2) Unless otherwise agreed by the parties, if a party
10 so requests or if the arbitral tribunal considers it
11 necessary, the expert shall, after delivery of his written or
12 oral report, participate in a hearing where the parties have
13 the opportunity to put questions to him and to present expert
14 witnesses in order to testify on the points at issue.

15 (j) Court assistance in taking evidence.--The arbitral
16 tribunal or a party with the approval of the arbitral tribunal
17 may request from a competent court of this Commonwealth
18 assistance in taking evidence. The court may execute the request
19 within its competence and according to its rules on taking
20 evidence.

21 § 7381. Making of award and termination of proceedings.

22 (a) Rules applicable to substance of dispute.--

23 (1) The arbitral tribunal shall decide the dispute in
24 accordance with such rules of law as are chosen by the
25 parties as applicable to the substance of the dispute. Any
26 designation of the law or legal system of a given country
27 shall be construed, unless otherwise expressed, as directly
28 referring to the substantive law of that country and not to
29 its conflict of laws rules.

30 (2) Failing any designation by the parties, the arbitral

1 tribunal shall apply the law determined by the conflict of
2 laws rules which it considers applicable.

3 (3) The arbitral tribunal shall decide on equitable
4 principles only if the parties have expressly authorized it
5 to do so.

6 (4) In all cases, the arbitral tribunal shall decide in
7 accordance with the terms of the contract and shall take into
8 account the usages of the trade applicable to the
9 transaction.

10 (b) Decision making by panel of arbitrators.--In arbitral
11 proceedings with more than one arbitrator, any decision of the
12 arbitral tribunal shall be made, unless otherwise agreed by the
13 parties, by a majority of all its members. However, questions of
14 procedure may be decided by a presiding arbitrator, if so
15 authorized by the parties or all members of the arbitral
16 tribunal.

17 (c) Settlement.--

18 (1) If, during arbitral proceedings, the parties settle
19 the dispute, the arbitral tribunal shall terminate the
20 proceedings and, if requested by the parties and not objected
21 to by the arbitral tribunal, record the settlement in the
22 form of an arbitral award on agreed terms.

23 (2) An award on agreed terms shall be made in accordance
24 with the provisions of subsection (d) and shall state that it
25 is an award. The award shall have the same status and effect
26 as any other award on the merits of the case.

27 (d) Form and contents of award.--

28 (1) The award shall be made in writing and shall be
29 signed by the arbitrator or arbitrators. In arbitral
30 proceedings with more than one arbitrator, the signatures of

1 the majority of all members of the arbitral tribunal shall
2 suffice, provided that the reason for any omitted signature
3 is stated.

4 (2) The award shall state the reasons upon which it is
5 based unless the parties have agreed that no reasons are to
6 be given or the award is an award on agreed terms under
7 subsection (c).

8 (3) The award shall state its date and the place of
9 arbitration as determined in accordance with section 7380(c)
10 (relating to conduct of arbitral proceedings). The award
11 shall be deemed to have been made at that place.

12 (4) After the award is made, a copy signed by the
13 arbitrators in accordance with paragraph (1) shall be
14 delivered to each party.

15 (e) Termination of proceedings.--

16 (1) The arbitral proceedings shall be terminated by the
17 final award or by an order of the arbitral tribunal in
18 accordance with paragraph (2).

19 (2) The arbitral tribunal shall issue an order for the
20 termination of the arbitral proceedings when:

21 (i) the claimant withdraws his claim unless the
22 respondent objects thereto and the arbitral tribunal
23 recognizes a legitimate interest on his part in obtaining
24 a final settlement of the dispute;

25 (ii) the parties agree on the termination of the
26 proceedings; or

27 (iii) the arbitral tribunal finds that the
28 continuation of the proceedings has for any other reason
29 become unnecessary or impossible.

30 (3) The mandate of the arbitral tribunal terminates with

1 the termination of the arbitral proceedings, subject to the
2 provisions of subsection (f) and section 7382(a)(4) (relating
3 to recourse against award).

4 (f) Correction and interpretation of award and additional
5 award.--

6 (1) Within 30 days of receipt of the award, unless
7 another period of time has been agreed upon by the parties:

8 (i) A party, with notice to the other party, may
9 request the arbitral tribunal to correct in the award any
10 errors in computation, any clerical or typographical
11 errors or any errors of similar nature.

12 (ii) If so agreed by the parties, a party, with
13 notice to the other party, may request the arbitral
14 tribunal to give an interpretation of a specific point or
15 part of the award.

16 If the arbitral tribunal considers the request to be
17 justified, it shall make the correction or give the
18 interpretation within 30 days of receipt of the request. The
19 interpretation shall form part of the award.

20 (2) The arbitral tribunal may correct any error of the
21 type referred to in paragraph (1)(i) on its own initiative
22 within 30 days of the date of the award.

23 (3) Unless otherwise agreed by the parties, a party,
24 with notice to the other party, may request, within 30 days
25 of receipt of the award, the arbitral tribunal to make an
26 additional award as to claims presented in the arbitral
27 proceedings but omitted from the award. If the arbitral
28 tribunal considers the request to be justified, it shall make
29 the additional award within 60 days.

30 (4) The arbitral tribunal may extend, if necessary, the

1 period of time within which it shall make a correction,
2 interpretation or an additional award under paragraph (1) or
3 (3).

4 (5) The provisions of subsection (d) shall apply to a
5 correction or interpretation of the award or to an additional
6 award.

7 § 7382. Recourse against award.

8 (a) Application for setting aside as exclusive recourse
9 against arbitral award.--

10 (1) Recourse to a court against an arbitral award may be
11 made only by an application for setting aside in accordance
12 with paragraphs (2) and (3).

13 (2) An arbitral award may be set aside by the court
14 specified in section 7376(b) (relating judicial involvement)
15 only if:

16 (i) the party making the application furnishes proof
17 that:

18 (A) a party to the arbitration agreement
19 referred to in section 7377 (relating to arbitration
20 agreement) was under some incapacity; or the said
21 agreement is not valid under the law to which the
22 parties have subjected it or, failing any indication
23 thereon, under the law of this Commonwealth;

24 (B) the party making the application was not
25 given proper notice of the appointment of an
26 arbitrator or of the arbitral proceedings or was
27 otherwise unable to present his case;

28 (C) the award deals with a dispute not
29 contemplated by or not falling within the terms of
30 the submission to arbitration or contains decisions

1 on matters beyond the scope of the submission to
2 arbitration, provided that, if the decisions on
3 matters submitted to arbitration can be separated
4 from those not so submitted, only that part of the
5 award which contains decisions on matters not
6 submitted to arbitration may be set aside; or

7 (D) the composition of the arbitral tribunal or
8 the arbitral procedure was not in accordance with the
9 agreement of the parties unless such agreement was in
10 conflict with a provision of this subchapter from
11 which the parties cannot derogate or, failing such
12 agreement, was not in accordance with this
13 subchapter; or

14 (ii) the court finds that:

15 (A) the subject matter of the dispute is not
16 capable of settlement by arbitration under the law of
17 this Commonwealth; or

18 (B) the award is in conflict with the public
19 policy of this Commonwealth.

20 (3) An application for setting aside may not be made
21 after three months have elapsed from the date on which the
22 party making that application had received the award or, if a
23 request had been made under section 7381(f) (relating to
24 making of award and termination of proceedings), from the
25 date on which that request had been disposed of by the
26 arbitral tribunal.

27 (4) The court, when asked to set aside an award, may,
28 where appropriate and so requested by a party, suspend the
29 setting aside proceedings for a period of time determined by
30 it in order to give the arbitral tribunal an opportunity to

1 resume the arbitral proceedings or to take such other action
2 as in the arbitral tribunal's opinion will eliminate the
3 grounds for setting aside.

4 § 7383. Recognition and enforcement of award.

5 (a) Recognition and enforcement.--

6 (1) An arbitral award, irrespective of the country in
7 which it was made, shall be recognized as binding and, upon
8 application in writing to the competent court, shall be
9 enforced subject to the provisions of this subsection and of
10 subsection (b).

11 (2) The party relying on an award or applying for its
12 enforcement shall supply the duly authenticated original
13 award or a duly certified copy thereof, and the original
14 arbitration agreement referred to in section 7377 (relating
15 to arbitration agreement) or a duly certified copy thereof.
16 If the award or agreement is not made in an official language
17 of this Commonwealth, the party shall supply a duly certified
18 translation thereof into such language.

19 (b) Grounds for refusing recognition or enforcement.--

20 (1) Recognition or enforcement of an arbitral award,
21 irrespective of the country in which it was made, may be
22 refused only:

23 (i) at the request of the party against whom it is
24 invoked, if that party furnishes to the competent court
25 where recognition or enforcement is sought proof that:

26 (A) a party to the arbitration agreement
27 referred to in section 7377 was under some incapacity
28 or the agreement is not valid under the law to which
29 the parties have subjected it or, failing any
30 indication thereon, under the law of the country

1 where the award was made;

2 (B) the party against whom the award is invoked
3 was not given proper notice of the appointment of an
4 arbitrator or of the arbitral proceedings or was
5 otherwise unable to present his case;

6 (C) the award deals with a dispute not
7 contemplated by or not falling within the terms of
8 the submission to arbitration or it contains
9 decisions on matters beyond the scope of the
10 submission to arbitration, provided that, if the
11 decisions on matters submitted to arbitration can be
12 separated from those not so submitted, that part of
13 the award which contains decisions on matters
14 submitted to arbitration may be recognized and
15 enforced;

16 (D) the composition of the arbitral tribunal or
17 the arbitral procedure was not in accordance with the
18 agreement of the parties or, failing such agreement,
19 was not in accordance with the law of the country
20 where the arbitration took place;

21 (E) the award has not yet become binding on the
22 parties or has been set aside or suspended by a court
23 of the country in which or under the law of which
24 that award was made; or

25 (ii) if the court finds that:

26 (A) the subject matter of the dispute is not
27 capable of settlement by arbitration under the law of
28 this Commonwealth; or

29 (B) the recognition or enforcement of the award
30 would be contrary to the public policy of this

Commonwealth.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(i)(E), the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

SECTION 2. CHAPTER 83 OF TITLE 42 IS AMENDED BY ADDING A
SUBCHAPTER TO READ:

SUBCHAPTER I

EQUINE ACTIVITY

SEC.

8395. SHORT TITLE OF SUBCHAPTER.

8396. DEFINITIONS.

8397. LIABILITY STANDARD.

8398. EXCEPTIONS.

8399. POSTING, NOTIFICATION AND PROTECTIVE HEADGEAR.

§ 8395. SHORT TITLE OF SUBCHAPTER.

THIS SUBCHAPTER SHALL BE KNOWN AND MAY BE CITED AS THE EQUINE
ACTIVITY LIABILITY ACT.

§ 8396. DEFINITIONS.

THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS SUBCHAPTER
SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
CONTEXT CLEARLY INDICATES OTHERWISE:

"ENGAGES IN AN EQUINE ACTIVITY." THE TERM INCLUDES:

(1) (I) RIDING;

(II) TRAINING;

(III) BOARDING;

(IV) LOADING;

1 (V) BREEDING;
2 (VI) PROVIDING OR ASSISTING IN VETERINARY TREATMENT
3 OF;
4 (VII) PLACING, REMOVING OR REPLACING HORSESHOES OR
5 TRIMMING HOOVES OF; OR
6 (VIII) DRIVING OR BEING A PASSENGER UPON AN EQUINE,
7 WHETHER MOUNTED OR UNMOUNTED;
8 (2) VISITING OR TOURING OR UTILIZING AN EQUINE FACILITY;
9 (3) SPONSORING AN EQUINE ACTIVITY; OR
10 (4) ASSISTING A PARTICIPANT OR SHOW MANAGEMENT AT AN
11 EQUINE ACTIVITY.

12 THE TERM DOES NOT INCLUDE BEING A SPECTATOR AT AN EQUINE
13 ACTIVITY, EXCEPT IN CASES WHERE THE SPECTATOR ENTERS AN
14 UNAUTHORIZED AREA OR AN AREA IN IMMEDIATE PROXIMITY TO THE
15 EQUINE ACTIVITY.

16 "EQUINE." A HORSE, PONY, MULE, DONKEY OR HINNY.

17 "EQUINE ACTIVITY." THE TERM SHALL BE BROADLY CONSTRUED TO
18 INCLUDE:

19 (1) EQUINE SHOWS, FAIRS, COMPETITIONS, PERFORMANCES OR
20 PARADES THAT INVOLVE ANY OR ALL BREEDS OF EQUINES AND ANY OF
21 THE EQUINE DISCIPLINES, INCLUDING, BUT NOT LIMITED TO,
22 DRESSAGE, HUNTER AND JUMPER HORSE SHOWS, GRAND PRIX JUMPING,
23 THREE-DAY EVENTS, COMBINED TRAINING, RODEOS, RIDING, DRIVING,
24 PULLING, CUTTING, REINING, TEAM PENNING, BARREL RACING, POLO,
25 STEEPLECHASING, ENGLISH AND WESTERN PERFORMANCE RIDING,
26 ENDURANCE AND NONENDURANCE TRAIL RIDING, WESTERN GAMES,
27 GYMKHANA GAMES, HUNTING, PACKING AND RECREATIONAL RIDING.

28 (2) EQUINE OR RIDER AND DRIVER TRAINING, OR TEACHING,
29 INSTRUCTING, TESTING, OR EVALUATING ACTIVITIES, INCLUDING,
30 BUT NOT LIMITED TO, CLINICS, SEMINARS, SYMPOSIUMS AND

1 DEMONSTRATIONS.

2 (3) BOARDING EQUINES, INCLUDING THEIR NORMAL DAILY CARE.

3 (4) BREEDING EQUINES, INCLUDING CONDUCTING OR ASSISTING
4 IN PROCEDURES NECESSARY TO BREED AN EQUINE BY MEANS OF
5 ARTIFICIAL INSEMINATION, NORMAL DAILY CARE AND ACTIVITIES
6 ASSOCIATED WITH BREEDING EQUINES.

7 (5) RIDING, DRIVING, INSPECTING OR EVALUATING AN EQUINE
8 BELONGING TO ANOTHER BY A PURCHASER OR AN AGENT, WHETHER OR
9 NOT THE OWNER HAS RECEIVED SOME MONETARY CONSIDERATION OR
10 OTHER THINGS OF VALUE FOR THE USE OF THE EQUINE OR IS
11 PERMITTING A PROSPECTIVE PURCHASER OF THE EQUINE OR AN AGENT
12 TO RIDE, DRIVE, INSPECT OR EVALUATE THE EQUINE.

13 (6) RIDES, DRIVES, TRIPS, HUNTS, BRANDINGS, ROUNDUPS,
14 CATTLE DRIVES OR OTHER EQUINE ACTIVITIES OF ANY TYPE, HOWEVER
15 INFORMAL OR IMPROMPTU, THAT ARE SPONSORED BY AN EQUINE
16 ACTIVITY SPONSOR.

17 (7) PLACING, REMOVING OR REPLACING HORSESHOES OR HOOF
18 TRIMMING ON AN EQUINE.

19 (8) PROVIDING OR ASSISTING IN VETERINARY TREATMENT OR
20 MAINTENANCE CARE OF AN EQUINE.

21 "EQUINE ACTIVITY SPONSOR." AN INDIVIDUAL, GROUP, CLUB,
22 PARTNERSHIP OR CORPORATION, WHETHER OR NOT THE SPONSOR IS
23 OPERATING FOR PROFIT OR NOT FOR PROFIT, WHICH SPONSORS,
24 ORGANIZES OR PROVIDES THE FACILITIES FOR AN EQUINE ACTIVITY,
25 INCLUDING, BUT NOT LIMITED TO, PONY CLUBS, 4-H CLUBS, HUNT
26 CLUBS, RIDING CLUBS, DRIVING CLUBS, SCHOOL-SPONSORED AND
27 COLLEGE-SPONSORED CLASSES, PROGRAMS AND ACTIVITIES, THERAPEUTIC
28 RIDING PROGRAMS, STABLE AND FARM OWNERS AND OPERATORS,
29 INSTRUCTORS AND PROMOTERS OF EQUINE FACILITIES, INCLUDING, BUT
30 NOT LIMITED TO, FARMS, STABLES, CLUBHOUSES, PONY RIDE STRINGS,

1 FAIRS, TRAINING FACILITIES, SHOW GROUNDS AND ARENAS AT WHICH THE
2 ACTIVITY IS HELD.

3 "EQUINE PROFESSIONAL." A PERSON ENGAGED FOR COMPENSATION IN
4 ANY OF THE FOLLOWING:

5 (1) TRAINING, TEACHING, INSTRUCTING, TESTING OR
6 EVALUATING A PARTICIPANT, OR RENTING TO A PARTICIPANT AN
7 EQUINE FOR THE PURPOSE OF RIDING, DRIVING OR BEING A
8 PASSENGER UPON THE EQUINE.

9 (2) RENTING EQUIPMENT OR TACK TO A PARTICIPANT.

10 (3) PROVIDING DAILY CARE OF HORSES BOARDED AT AN EQUINE
11 FACILITY.

12 (4) TRAINING, TESTING OR EVALUATING AN EQUINE.

13 "HARM." INJURY, WHETHER RESULTING IN DEATH OR OTHERWISE, OR
14 DEATH.

15 "HELMET." PROPERLY FITTING PROTECTIVE HEADGEAR WITH A
16 CORRECTLY ADJUSTED SAFETY HARNESS THAT MEETS OR EXCEEDS THE 1999
17 AMERICAN SOCIETY FOR TESTING AND MATERIALS STANDARD (F1163-99)
18 FOR PROTECTIVE HEADGEAR USED IN HORSE SPORTS AND HORSEBACK
19 RIDING AND DISPLAYING THE SAFETY EQUIPMENT INSTITUTE (SEI) SEAL.

20 "INHERENT RISKS OF EQUINE ACTIVITIES." THOSE DANGERS OR
21 CONDITIONS WHICH ARE AN INTEGRAL PART OF EQUINE ACTIVITIES,
22 INCLUDING, BUT NOT LIMITED TO:

23 (1) THE PROPENSITY OF EQUINES TO BEHAVE IN WAYS,
24 INCLUDING BOLTING, BUCKING, BITING, KICKING, SHYING,
25 STUMBLING, REARING, RUNNING, FALLING OR STEPPING ON PERSONS,
26 THAT MAY RESULT IN HARM TO PERSONS ON OR AROUND THEM.

27 (2) THE UNPREDICTABILITY OF AN EQUINE'S REACTION TO SUCH
28 THINGS AS SOUNDS, SUDDEN MOVEMENTS AND UNFAMILIAR OBJECTS,
29 PERSONS OR OTHER ANIMALS.

30 (3) CERTAIN HAZARDS SUCH AS SURFACE AND SUBSURFACE

1 CONDITIONS.

2 (4) COLLISIONS WITH OTHER EQUINES OR OBJECTS.

3 (5) THE POTENTIAL OF A PARTICIPANT TO ACT IN A NEGLIGENT
4 MANNER THAT MAY CONTRIBUTE TO HARM TO THE PARTICIPANT AND
5 OTHERS, SUCH AS FAILING TO MAINTAIN CONTROL OVER THE ANIMAL
6 OR NOT ACTING WITHIN THE PARTICIPANT'S ABILITY.

7 "PARTICIPANT." ANY PERSON, WHETHER AMATEUR OR PROFESSIONAL,
8 WHO ENGAGES IN AN EQUINE ACTIVITY, IF SUCH PERSON IS EITHER 15
9 YEARS OF AGE OR OLDER OR IS UNDER 15 YEARS OF AGE WITH
10 PERMISSION FROM A PARENT OR GUARDIAN TO ENGAGE IN AN EQUINE
11 ACTIVITY, WHETHER OR NOT A FEE IS PAID TO PARTICIPATE IN THE
12 EQUINE ACTIVITY. A PERSON UNDER 15 YEARS OF AGE ATTENDING AN
13 EQUINE ACTIVITY AS A SPECTATOR WHO ENTERS AN UNAUTHORIZED AREA
14 OR AN AREA IN IMMEDIATE PROXIMITY TO THE EQUINE ACTIVITY SHALL
15 MEET THE DEFINITION OF PARTICIPANT WHETHER OR NOT HIS PARENTS
16 PERMITTED HIM TO ENGAGE IN AN EQUINE ACTIVITY.

17 § 8397. LIABILITY STANDARD.

18 EXCEPT AS PROVIDED IN SECTION 8398 (RELATING TO EXCEPTIONS),
19 AN EQUINE ACTIVITY SPONSOR, EQUINE ACTIVITY PARTICIPANT, EQUINE
20 PROFESSIONAL OR ANY OTHER PERSON, INCLUDING A CORPORATION OR
21 PARTNERSHIP, SHALL NOT BE LIABLE FOR AN INJURY OR LOSS TO OR THE
22 DEATH OF A PARTICIPANT RESULTING FROM THE INHERENT RISKS OF
23 EQUINE ACTIVITIES AND, EXCEPT AS PROVIDED IN SECTION 8398, NO
24 PARTICIPANT OR PARTICIPANT'S REPRESENTATIVE SHALL MAKE ANY CLAIM
25 AGAINST, MAINTAIN AN ACTION AGAINST OR RECOVER FROM AN EQUINE
26 ACTIVITY SPONSOR, EQUINE ACTIVITY PARTICIPANT, EQUINE
27 PROFESSIONAL OR ANY OTHER PERSON FOR HARM TO A PARTICIPANT
28 RESULTING FROM ANY OF THE INHERENT RISKS OF EQUINE ACTIVITIES.

29 § 8398. EXCEPTIONS.

30 (A) GENERAL RULE.--NOTHING IN SECTION 8397 (RELATING TO

1 LIABILITY STANDARD) SHALL PREVENT OR LIMIT THE LIABILITY OF AN
2 EQUINE ACTIVITY SPONSOR, EQUINE PROFESSIONAL OR ANY OTHER PERSON
3 IF THE EQUINE ACTIVITY SPONSOR, EQUINE PROFESSIONAL OR PERSON:

4 (1) (I) PROVIDED THE EQUIPMENT OR TACK AND KNEW OR
5 SHOULD HAVE KNOWN THAT THE EQUIPMENT OR TACK WAS FAULTY,
6 AND SUCH EQUIPMENT OR TACK WAS FAULTY TO THE EXTENT THAT
7 IT DID CAUSE THE INJURY; OR

8 (II) PROVIDED THE EQUINE AND FAILED TO MAKE
9 REASONABLE AND PRUDENT EFFORTS TO DETERMINE THE ABILITY
10 OF THE PARTICIPANT TO ENGAGE SAFELY IN THE EQUINE
11 ACTIVITY AND DETERMINE THE ABILITY OF THE PARTICIPANT TO
12 SAFELY MANAGE THE PARTICULAR EQUINE BASED ON
13 REPRESENTATIONS OF THE PARTICIPANT'S ABILITY BY THE
14 PARTICIPANT OR AN ADULT ACCOMPANYING THE PARTICIPANT.

15 (2) OWNS, LEASES, RENTS, HAS AUTHORIZED USE OF OR IS
16 OTHERWISE IN LAWFUL POSSESSION AND CONTROL OF THE LAND OR
17 FACILITIES UPON WHICH THE PARTICIPANT SUSTAINED INJURIES
18 BECAUSE OF A DANGEROUS LATENT CONDITION WHICH WAS KNOWN TO
19 THE EQUINE ACTIVITY SPONSOR, EQUINE PROFESSIONAL OR PERSON
20 AND FOR WHICH WARNING SIGNS HAVE NOT BEEN CONSPICUOUSLY
21 POSTED.

22 (3) COMMITS AN ACT OR OMISSION THAT CONSTITUTES WILLFUL
23 OR WANTON DISREGARD FOR THE SAFETY OF THE PARTICIPANT AND
24 THAT ACT OR OMISSION CAUSED THE INJURY.

25 (4) INTENTIONALLY INJURES THE PARTICIPANT.

26 (B) HORSE RACE MEETING.--THIS SECTION SHALL NOT APPLY TO A
27 HORSE RACE MEETING AS DESCRIBED IN THE ACT OF DECEMBER 17, 1981
28 (P.L.435, NO.135), KNOWN AS THE RACE HORSE INDUSTRY REFORM ACT.

29 (C) ASSUMPTION OF RISK; CONTRIBUTORY FAULT.--NOTHING IN THIS
30 SECTION SHALL BE CONSTRUED AS AFFECTING OR MODIFYING THE

1 DOCTRINE OF ASSUMPTION OF RISK OR CONTRIBUTORY FAULT ON THE PART
2 OF A PARTICIPANT OR ANY PERSON.

3 § 8399. POSTING, NOTIFICATION AND PROTECTIVE HEADGEAR.

4 (A) POSTING REQUIREMENTS.--

5 (1) EVERY EQUINE PROFESSIONAL SHALL POST AND MAINTAIN
6 SIGNS WHICH CONTAIN THE WARNING NOTICE SPECIFIED IN
7 SUBSECTION (B). AN EQUINE PROFESSIONAL WHO FAILS TO POST AND
8 MAINTAIN SIGNS AS REQUIRED BY THIS SECTION FORFEITS ANY OF
9 THE BENEFITS OF THIS SUBCHAPTER. THE SIGNS SHALL BE PLACED IN
10 A CLEARLY VISIBLE LOCATION IN THE PROXIMITY OF THE EQUINE
11 ACTIVITY. THE WARNING NOTICE SPECIFIED IN SUBSECTION (B)
12 SHALL APPEAR ON THE SIGN IN BLACK LETTERS, WITH EACH LETTER
13 TO BE A MINIMUM OF ONE INCH IN HEIGHT.

14 (2) EVERY WRITTEN CONTRACT ENTERED INTO BY AN EQUINE
15 PROFESSIONAL FOR THE PROVIDING OF PROFESSIONAL SERVICES,
16 INSTRUCTION OR THE RENTAL OF EQUIPMENT, TACK OR AN EQUINE TO
17 A PARTICIPANT, WHETHER OR NOT THE CONTRACT INVOLVES EQUINE
18 ACTIVITIES ON OR OFF THE LOCATION OR SITE OF THE EQUINE
19 PROFESSIONAL'S BUSINESS, SHALL CONTAIN IN CLEARLY READABLE
20 PRINT THE WARNING NOTICE SPECIFIED IN SUBSECTION (B). AN
21 EQUINE PROFESSIONAL MAY NOT BENEFIT FROM THIS SUBCHAPTER'S
22 HEIGHTENED LIABILITY STANDARD FOR ACTIVITIES COVERED BY A
23 WRITTEN CONTRACT WHICH DOES NOT INCLUDE THE WARNING NOTICE
24 SPECIFIED IN SUBSECTION (B).

25 (B) CONTENT OF NOTICE.--THE SIGNS AND CONTRACTS DESCRIBED IN
26 SUBSECTION (A) SHALL CONTAIN THE FOLLOWING WARNING NOTICE:

27 WARNING: UNDER PENNSYLVANIA LAW AN EQUINE
28 ACTIVITY SPONSOR, PARTICIPANT OR PROFESSIONAL
29 OR ANY OTHER PERSON IS NOT LIABLE FOR AN INJURY
30 OR LOSS TO OR THE DEATH OF A PARTICIPANT IN EQUINE

1 ACTIVITIES RESULTING FROM THE INHERENT RISKS OF
2 EQUINE ACTIVITIES UNDER THE EQUINE ACTIVITY LIABILITY
3 ACT.

4 (C) PROTECTIVE HEADGEAR.--AN EQUINE ACTIVITY SPONSOR OR
5 EQUINE PROFESSIONAL SHALL OFFER HELMETS FOR USE BY ANY
6 PARTICIPANT WHILE RIDING OR DRIVING AN EQUINE. THE EQUINE
7 ACTIVITY SPONSOR OR EQUINE PROFESSIONAL SHALL REQUIRE ANY
8 PARTICIPANT UNDER 15 YEARS OF AGE TO WEAR A HELMET WHILE RIDING
9 OR DRIVING AN EQUINE. A PARTICIPANT RIDING IN A CART, CARRIAGE
10 OR OTHER HORSE DRAWN CONVEYANCE DRIVEN BY AN EQUINE PROFESSIONAL
11 SHALL NOT BE CONSIDERED A PARTICIPANT RIDING OR DRIVING AN
12 EQUINE FOR THE PURPOSES OF THE PROTECTIVE HEADGEAR REQUIREMENTS
13 OF THIS SECTION. AN ACTIVITY SPONSOR OR EQUINE PROFESSIONAL WHO
14 FAILS TO COMPLY WITH THE PROTECTIVE HEADGEAR REQUIREMENTS OF
15 THIS SECTION CONCERNING A PARTICIPANT FORFEITS ANY OF THE
16 BENEFITS OF THIS SUBCHAPTER FOR INJURIES SUFFERED BY THAT
17 PARTICIPANT.

18 Section ~~2~~ 3. This act shall take effect in 60 days.

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