

**TESTIMONY BEFORE PENNSYLVANIA
HOUSE TOURISM AND RECREATIONAL
DEVELOPMENT COMMITTEE**

HB 544

March 18, 2013

OFFERED BY MARK E. PHENICIE, ESQUIRE

**ON BEHALF OF PENNSYLVANIA
ASSOCIATION FOR JUSTICE**

Chairman Stern, members of the Committee and staff. Thank you for allowing the Pennsylvania Association for Justice (PAJ) to speak today. My name is Mark Phenicie, and I am currently serving as Legislative Counsel. The members of our association represent victims injured or killed, and their families, mainly as a result of gross negligence, recklessness or intentional conduct.

We welcome the opportunity to speak to the Committee today to elaborate why the Committee must take a careful look at HB 544 in its current version and make sure that major changes are made to HB 544 before it is voted out of this Committee and considered by the full Pennsylvania House of Representatives.

First, HB 544 is not necessary and represents a departure from even the most strict immunity statutes, without any purported justification. We are not aware of any verdicts or large settlements against the landowner of an unimproved or improved land under the current law, except one case in the Allentown area several years back, which was ultimately dismissed without a verdict.

Second, there are problems with the bill which this committee should not endorse. I will elaborate on four (4) of them.

1. The overall scope of the law is broadened to apply to all portions of land, even if they are improved. The original purpose of the Recreational land Use Act applies to open, unimproved land that remains mostly in a natural state where it is difficult to supervise or inspect. It was passed largely to protect landowners who allow hunters and fishermen to use their unimproved lands, not as a blanket immunity to all structures. It does not apply to public recreational areas that are highly developed.

2. HB 544 protects instances of abhorrent behavior such as gross negligence or reckless conduct. In these cases, a landowner may not have acted intentionally or criminally but certainly with a wanton and reckless indifference to the rights of others and still be immune. This bill does not adequately protect those injured as a result of recklessness, or what is known as gross negligence. In those types of instances a person could actually be liable for punitive damages, but under HB 544 these actions would be immune! Therefore, in a case where a child is injured or killed as a result of gross negligence or recklessness the wrongful landowner is immune. Is that fair?

3. The Bill unnecessarily expands the scope of activities covered to inherently dangerous ones such as snowmobiling and all-terrain vehicles. Adding these provides immunity and greatly increase the likelihood that a person injured through reckless conduct will not be compensated and the wrongdoer protected.

4. HB 544 awards attorneys fees and costs to an owner, lessee, manager or holder of an easement of real property who is found not liable without providing the same corresponding award to a successful injured party. At the very least, the same type of award should be available to the victim who overcomes the strict immunity hurdle.

There are also drafting errors implicit here. How do you define a structure that is “large” or “small?”

Thank you for giving us a chance to voice our 100% opposition to this bill and some of our specific concerns. I will be more than happy to answer any questions the Committee members may have.