

FS 97-23

December, 1997

**Modifying Georgia's Negligence Law: A New Good
Samaritan Paradigm for Some Business Owners**

Terence J. Centner

**MODIFYING GEORGIA'S NEGLIGENCE LAW: A NEW GOOD
SAMARITAN PARADIGM FOR SOME BUSINESS OWNERS**

Terence J. Centner

The author is Professor, Department of Agricultural and Applied Economics, The University of Georgia, Athens.

Dept. of Agricultural & Applied Economics
College of Agricultural & Environmental Sciences
University of Georgia

MODIFYING GEORGIA'S NEGLIGENCE LAW: A NEW GOOD SAMARITAN PARADIGM FOR SOME BUSINESS OWNERS

Terence J. Centner

Department of Agricultural and Applied Economics

University of Georgia

Athens, GA 30602-7509

centner@agecon.uga.edu

ABSTRACT---

An investigation of the new statutory standards of conduct relating to accidents involving horses and other equids highlights current issues concerning tort liability. After a summary of existing Georgia Good Samaritan statutes and liability exceptions, part II evaluates the provisions on standards of conduct to show how the statute changes existing law. In part III, two legislative proposals are offered to encourage safer equine activities: (1) an amendment of the statutory provisions on warnings, and (2) adopting new provisions requiring helmets for minors. Through these proposed amendments, the statutory dispensation for equine owners and operators could be based on safety prerequisites.

-----KEY WORDS-----

equine liability statute, Good Samaritan statutes, horses, tort liability

Faculty Series are circulated without formal review. The views contained in this paper are the sole responsibility of the authors.

The University of Georgia is committed to the principle of affirmative action and shall not discriminate against otherwise qualified persons on the basis of race, color, religion, national origin, sex, age physical or mental handicap, disability, or veteran's status in its recruitment, admissions, employment, facility and program accessibility, or services.

Copyright © 1997 by Terence J. Centner. All rights reserved. Readers may make verbatim copies of this document for non-commercial purposes by any means, provided that this copyright notice appears on all such copies.

Modifying Georgia's Negligence Law: A New Good Samaritan Paradigm for Some Business Owners

I. Introduction

In enacting the provisions regarding “Injuries from Equine Activities,”¹ the Georgia General Assembly has created a new Good Samaritan paradigm for conduct involving horses, other equids, and llamas.² The provisions, called the equine statute, provide immunity to animal owners and additional qualifying persons³ and change longstanding negligence rules regarding some conduct by animal business owners. Similar proposed legislation would cover cows,⁴ and legislatures have enacted equine statutes in thirty-four states.⁵ The expansion of tort liability, increases in insurance costs, and the dangerousness of activities involving animals are unique factors that seem to have persuaded the General Assembly to modify tort liability.

Classic Good Samaritan statutes provide immunity to qualifying doctors and others who render voluntary assistance.⁶ Negligence exceptions for charitable and philanthropic activities now exist for an extensive array of Good Samaritans.⁷ These include persons assisting a human who is choking,⁸ licensees providing ambulance service,⁹ law enforcement officers,¹⁰ participants in 911 emergency service,¹¹ voluntary health care providers,¹² persons providing services in conjunction with catastrophic acts of nature,¹³ agents fighting fires,¹⁴ drivers of fire apparatus,¹⁵ drug abuse instructors,¹⁶ persons donating services to schools,¹⁷ donees of food,¹⁸ employees of compressed gas dealers assisting a law enforcement agency,¹⁹ and operators of vessels rendering assistance to persons affected by a casualty.²⁰

A preexisting duty to assist or remuneration often serves to disqualify Good Samaritans or other individuals from the statutory immunity. Some statutes delineate a prerequisite of good faith. Enumerated standards of gross negligence or willful misconduct that may not be exceeded also serve as qualifications under individual Good Samaritan statutes.

A modification of the Good Samaritan immunity was developed for recreational land owners “to encourage owners of land to make land and water areas available to the public for recreational purposes. . . .”²¹ In Georgia, these provisions are known as the Georgia Recreational Property Act.²² An owner of land does not owe a duty of care to persons who enter the land for recreational purposes, although exceptions exist. Owners that charge fees for recreational activities may not qualify,²³ and owners remain liable “[f]or willful or malicious failure to guard or warn against a dangerous condition . . . or activity. . . .”²⁴

While the coverage of the state equine liability statutes has been addressed, its coverage of non-charitable activities is quite different from most of the Good Samaritan statutes. Recently, additional statutory exceptions for sport activities²⁵ and pick-your-own fruit and vegetable business operations²⁶ have secured special dispensation for qualifying persons in some states. Although the vicissitudes of tort liability with respect to animal activities may justify special dispensation, perhaps the immunity should be accompanied by provisions that would augment the safety of participants in equine activities. This article commences with an analysis of the immunity provided by the statutory general standard of conduct. Next, the article examines a special standard of reasonable and prudent efforts for persons providing suitable animals and the change in liability to articulate the coverage of the equine statute. Two ideas for safety prerequisites

involving equestrian helmets are proposed as vehicles to complement the new legislative directives concerning safer equine activities.

II. Immunity Under Statutory Provisions Regarding Standards of Conduct

The statutory directive of the equine statute provides that qualifying persons “shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities . . .” except as provided under enumerated exceptions.²⁷ Inherent risks are dangers or conditions that are an integral part of equine activities.²⁸ Under the statutory command, inherent risks include equine behavior, unpredictability of reactions, hazards such as surface and subsurface conditions, collisions with other equines and objects, and a participant's negligence or failure to maintain control over an animal.

A. The General Standard

After the statutory grant of immunity, the equine statute enumerates five major exceptions that establish standards of conduct that cannot be exceeded.²⁹ As a general standard, anyone who “[c]ommits an act or omission that constitutes willful or wanton disregard for the safety of a participant, and that act or omission caused the injury . . .” is not entitled to statutory immunity.³⁰ This excuses gross negligence relating to injuries resulting from the inherent risks of equine activities, a standard that is similar to several other Georgia Good Samaritan provisions. Other exceptions of the equine statute prescribe different standards so that persons providing equipment or animals may be liable for negligence in selected situations.

The meaning of the general standard of conduct under the equine statute was recently considered by the Georgia Court of Appeals in *Muller v. English*.³¹ An experienced horsewoman was injured when defendant Muller's horse "suddenly and without warning kicked her in the leg."³² The plaintiff claimed that the horse was a habitual kicker and should have been marked with a red ribbon in the tail to denote an irritable horse. Additional allegations stated that Muller's horse was vicious with a known propensity to kick, which established a willful or wanton disregard for the plaintiff's safety.

The defendants moved for summary judgment based on the provisions of the Georgia equine statute. Defendants argued that, given the facts, the immunity provided by subsection 4-12-3(a) meant there could be no liability. The appellate court agreed, but the court considered the issue of whether the plaintiff's allegations could establish liability under the general standard. This question concerned whether defendant Muller committed an act or omission that constituted willful or wanton disregard for the safety of the plaintiff. Case law interpretations of other statutes and common law revealed that willful conduct requires actual intent to do harm or inflict injury. To show wanton conduct, the conduct needs to be "so reckless or so charged with indifference to the consequences as to be equivalent in spirit to actual intent." The *Muller* plaintiff's experience with horses and the nature of the equine activity meant that there was no "evidence that the horse's conduct was anything other than ordinary equine behavior. . . ."³³

The significance of the general standard of conduct provided by an equine statute is that profitable businesses may be shielded from liability for conduct that Good Samaritans remain liable for. In Georgia, an equine sponsor engaged in a profit-making business activity can escape liability for gross negligence involving the inherent risks of equine activities,³⁴ yet a Good

Samaritan physician who attempts to rescue an unfortunate accident victim may not be excused if the physician was grossly negligent.³⁵ Moreover, a physician on call remains liable for ordinary negligence. While policy reasons and distinctions between the activities addressed by these separate statutes may justify such results, they are surprising.

B. A Suitability Standard for Equine Providers

The enumerated general standard of conduct³⁶ of the equine statute does not excuse negligence or gross negligence in all instances. If the defendant has provided the animal to an injured plaintiff, the general standard evaluated in *Muller* may be superseded by a statutory suitability standard.³⁷ The suitability standard provides that a person providing an equine who fails “to make reasonable and prudent efforts” is not entitled to the statutory immunity.

The suitability standard enables a plaintiff-participant to maintain an action against a defendant-provider of an equine if any one of three fundamental allegations is raised by appropriate pleadings. Under the first category, an inquiry of the participant’s ability must have been made by the provider of the equine. An allegation that the defendant-provider failed to employ reasonable and prudent efforts to inquire of the participant’s ability to safely engage in equine activities would raise a triable issue. The second category involves allegations that the provider negligently failed to use the information gained through the inquiry to determine the participant's ability to engage safely in the equine activity. A third category of allegations involves failure of the provider to determine the participant’s ability to safely manage the selected equine. If the facts support an allegation within one of these categories, they would frustrate the statutory immunity and preclude summary judgment for a defendant.

C. The Change in Liability by the Equine Statute

To discern the effect of the Georgia equine statute, its provisions may be applied to the facts of the *Jones v. Walker*³⁸ case, a case decided prior to the adoption of the new legislative directives. In *Jones*, a court found evidence of possible negligence so that summary judgment was not appropriate for one defendant, Mrs. Walker. A horse owned by Mrs. Walker had collided with another horse being ridden by a minor, the plaintiffs' daughter. The collision occurred in a crowded warm-up ring, causing a severe injury to the daughter. The court noted that Mrs. Walker had experience with horses and horse shows and, thus, had knowledge that the crowded warm-up ring was dangerous. Since Mrs. Walker did not remove her horse and rider from the crowded ring, there was a possibility that she was negligent.

If the *Jones* mishap had occurred after the adoption of the equine statute, the result should be different. Mrs. Walker may raise as a defense the statutory immunity, and this defense should provide immunity unless an exception disqualifies her. As the plaintiffs' injured daughter was not riding a horse provided by Mrs. Walker, the exceptions for faulty tack or the suitability standard would not apply. Nor did Mrs. Walker have a relationship with the premises or commit an intentional act to cause the injury. The only possible exception involves whether Mrs. Walker breached the statutory general standard of conduct; did she commit an act or omission that constituted willful or wanton disregard for the safety of the injured daughter? The plaintiffs' allegation of "direct negligence" seems insufficient to raise an issue under this statutory general standard. As noted by the *Muller* court, intent to inflict injury or recklessness is required to thwart the immunity offered by the equine statute.³⁹ Mrs. Jones, as the owner but not the rider of

the horse involved in the collision with the injured daughter, did not engage in any intentional or reckless conduct.⁴⁰

The meaning of the suitability standard may be seen by changing the facts of the *Jones* case. In *Jones*, the plaintiffs' injured daughter was on a horse owned by a third party rather than defendant Mrs. Walker. Replace this fact with the assumption that the injured daughter was on a horse provided by defendant Mrs. Walker and that the mishap occurred after enactment of the Georgia equine statute.⁴¹ Because Mrs. Walker provided the animal to the plaintiff-rider, the suitability standard may be employed to perfect a cause of action. An allegation that the defendant should have removed her horse and the injured-rider from the crowded warm-up ring raises an issue of whether the defendant failed to determine the rider's ability to engage safely in the warm-up ring. Under the second category of the suitability standard, such an allegation should be found to present a triable issue. Due to the more direct relationship, equine owners and professionals remain liable for their negligence when they provide animals to a participant.

The analyses of the *Muller* and *Jones* cases support a conclusion that the equine statute alters Georgia's negligence law as it applies to injuries arising from some equine activities. As defined by the statute, immunity is granted for injuries resulting from the inherent risks of the activity. The thrust of the equine statute is to limit the liability of defendants who have insubstantial contacts with an injury and the injury was due to an inherent risk of equine activities. Substantial contact with an injury involves the statutory obligations set forth for persons providing animals, whereas insubstantial contact generally refers to situations where the defendant did not provide the animal connected to the injury. The *Jones* case discloses an injury involving insubstantial contact. Mrs. Walker, the defendant in *Jones*, had not supplied the horse ridden by

the plaintiff's injured daughter and her horse was being ridden by a third party. Thereby, Mrs. Walker was not able to prevent the collision of her horse with the horse being ridden by the injured daughter, and there was no direct contact between Mrs. Walker and the injury. Rather, the injured daughter and her parents chose to accept the risk of a collision when the daughter was permitted to ride in the crowded ring.

Turning to the issue of an inherent risk, the *Muller* case involved a horse ridden by Mr. Muller that placed the kick injuring the plaintiff. Because a kicking horse is ordinary equine behavior during a fox hunt, it is an inherent risk. Under the Georgia equine statute, Mr. Muller could raise the statutory defense and qualify for immunity from the injuries. The *Jones* and *Muller* cases suggest that the statutory grant of immunity will defeat allegations of negligence and gross negligence only for sponsors and owners who have some type of attenuated relationship to the injury and the plaintiff.

III. Safety Prerequisites

Equine activity sponsors and equine professionals are required by the Georgia equine statute to post warning signs and use written warning notices before they qualify for statutory immunity.⁴² The statutory warning notice requirement mandates that sponsors and professionals post warning notice signs at visible locations near areas where the equine activities are conducted, stating:

WARNING:

Under Georgia law, an equine activity sponsor or 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 Chapter 12 of Title 4 of the Official Code of Georgia.⁴³

Failure of sponsors or professionals to meet the general warning notice requirement prevents them from qualifying for statutory immunity. For written contracts involving professional services and rental of equipment, sponsors and professionals also must provide a warning that is clearly readable. Signs and written notices providing warning may be expected to lead participants to use greater care while enjoying their equine activities.

While such warning provisions should be applauded, the question that should be addressed is whether these notice provisions are sufficient safety prerequisites given current information and knowledge about injuries from equine activities.⁴⁴ The equine statute was intended to reduce insurance and liability costs associated with animal mishaps so that the reduction of injuries is important. Data on equine accidents suggest that head injuries are particularly dangerous,⁴⁵ and that the low level of use of protective headgear among equestrian riders is a major factor to the injuries.⁴⁶ Moreover, standards developed by the American Society for Testing Materials and certification by the Safety Equipment Institute provide information that may be used for the selection of appropriate equestrian headgear.

The United States Pony Clubs Accident Study suggests that the use of approved headgear has reduced head injuries of its riders by more than 50 percent.⁴⁷ A safety program of the North American Horsemen's Association (NAHA), developed for equine liability insurance, also attests to the importance of helmets.⁴⁸ NAHA's safety program requires that participants be advised to wear helmets and, in some cases, a requirement that helmets be available.⁴⁹ Injury figures from NAHA showed that only eight percent of its injury claims involved head injuries for persons insured under its programs, as opposed to 21%-22% for the industry as a whole.⁵⁰ More recently, NAHA has been more exacting in its requirement for protective headgear, requiring a Safety

Equipment Institute certified American Society for Testing Materials standard F-1163 equestrian riding helmet.⁵¹

A. Encouraging the Use of a Helmet

Given reported data, equine riders need to be encouraged to wear helmets. This might be effected through a prerequisite in the warning signs and contract provisions of the equine statute that requires equine sponsors and professionals to advocate the use of a helmet.⁵² By that, subsection 4-12-4(b) would read (struck-out text is to be deleted, underlined text is proposed):



WARNING:

Under Georgia law, ~~an~~ to provide for safer activities, riders are encouraged to wear a helmet. ~~An~~ equine activity sponsor or 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 Chapter 12 of Title 4 of the Official Code of Georgia.

Through this small amendment to the warning provision of the equine statute, riders may be more likely to wear a helmet, and the equine statute could further the objective of safer equine activities.

B. Safety of Minors

Additional protection of young children may be warranted, as recognized by the General Assembly in 1993 when bicycle helmet provisions for minors were enacted.⁵³ The bicycle helmet provisions require persons under the age of 16 to wear a helmet on highways, bicycle paths, and sidewalks.⁵⁴ Violation of this provision, however, is not evidence of negligence and shall not be considered as evidence of negligence or liability.⁵⁵

Why should young equine riders be afforded less protection from head injuries than bicycle riders? This difference could be changed by amending the equine statute through the addition of a new section 4-12-5 that incorporates helmet provisions for minors. The suggested section, drawn from the bicycle helmet provisions, could read:

§ 4-12-5. Wearing a helmet for safe equine activities

(a) No person under the age of 16 years shall ride an equine on property that is being made available for use by the general public without wearing a helmet.

(b) For the purposes of this section, the term 'helmet' means a piece of protective headgear which meets or exceeds the F-1163 impact standards for equestrian riding helmets set by the American Society for Testing Materials as certified by the Safety Equipment Institute.

(c) For the purposes of this section, a person shall be deemed to wear a helmet only if a helmet of good fit is fastened securely upon the head with the straps of the helmet.

(d) Violation of any provision of this section shall not constitute negligence per se nor contributory negligence per se or be considered evidence of negligence or liability. No person under the age of 16 failing to comply with any provision of this section may be fined or imprisoned.

These suggested provisions would help reduce head injuries to minors and contribute to a safer recreational activity. Following the bicycle provisions, minors on qualifying private property would not be obligated to wear a helmet.⁵⁶

V. Conclusion

The Georgia equine statute is a novel approach to the risks and accident costs associated with equine mishaps. It provides Good Samaritan immunity for qualifying situations to alter existing negligence law. Under a general standard of conduct, a person who commits an act or omission that constitutes willful or wanton disregard for the safety of a participant does not

qualify for statutory immunity. Exceptions denote situations in which equine owners and sponsors may be liable for negligence. A suitability standard requires persons providing equines to use reasonable and prudent efforts in determining the ability of the participant.

While legislatures should be hesitant to alter existing liability provisions, especially when championed by a narrow special interest group, a more important issue is harmony among the state's divergent legislative provisions. What standards of conduct have been found appropriate for various activities by the General Assembly? Existing Good Samaritan and other legislative provisions provide responses to this question, with at least three delineating standards of conduct similar to the equine provisions.⁵⁷ Thus, it may be concluded that the equine statute agrees with existing legislation.

The equine statute grants qualifying persons immunity without a donation or special benevolence. Looking at other Georgia good Samaritan statutes, this departure from the traditional good Samaritan paradigm is not unusual. Moreover, statutory qualifications limit the immunity to a narrow category of acts and omissions resulting from the inherent risks of equine activities. It may be concluded that defendants who have engaged in egregious conduct will not escape liability due to the immunity provided by the equine statute.

A major public policy concern is whether the special dispensation afforded by the equine statute is accompanied by appropriate encouragement of safety features. This article responds to this need by proposing the amendment of the statutory warning requirements to include language encouraging the use of a helmet. Yet, as submitted by an earlier analysis, a warning by itself may be insufficient. A more definitive requirement may be advisable in some cases and primary responsibility needs to be placed with participants.

A second recommendation is a new statutory section modeled after the Georgia bicycle helmet provisions to afford minors riding horses the same safeguards against head injuries as minors riding bicycles. Recognizing that persons engaging in equine activities need to take greater responsibility in taking appropriate precaution, this proposal assigns responsibility to participants and their parents. The suggested statutory provisions would require minors to wear equestrian helmets when riding on property used by the general public. In this manner, Georgia could provide young horseback riders a safer recreational activity.

Notes

1. GA. CODE ANN. §§ 4-12-1 to -4 (1995).
2. See Terence J. Centner, *The New Equine Liability Statutes*, 62 TENN. L. REV. 997 (1995); Krystyna M. Carmel, *The Equine Activity Liability Acts: A Discussion of Those in Existence and Suggestions for a Model Act*, 83 KY. L.J. 157 (1994).
3. GA. CODE ANN. § 4-12-3(a) (1995).
4. 1995 Georgia H.B. No. 565.
5. ALA. CODE § 6-5-337 (1993); ARIZ. REV. STAT. ANN. § 12-553 (1995-1996); ARK. CODE ANN. §§ 16-120-201 to -202 (Michie Supp. 1995); COLO. REV. STAT. ANN. § 13-21-119 (West Supp. 1995); CONN. GEN. STAT. ANN. § 52-577p (West Supp. 1996); DEL. CODE ANN. tit. 10, § 8140 (Supp. 1995); FLA. STAT. ANN. §§ 773.01—.05 (Harrison 1994); GA. CODE ANN. §§ 4-12-1 to -4 (1995); HAW. REV. STAT. ANN. §§ 663B-1 to -2 (1995); IDAHO CODE §§ 6-1801 to -1802 (1990); 745 ILCS 47/1 to 47/999 (West's Smith-Hurd Supp. 1996); IND. CODE ANN. §§ 34-4-44-1 to -12 (Burns Supp. 1996); KAN. STAT. ANN. §§ 60-4001 to -4004 (1994); LA. REV. STAT. ANN. § 9:2795.1 (West Supp. 1996); ME. REV. STAT. ANN. tit. 7, §§ 4102—4104 (West Supp. 1995); MASS. GEN. LAWS ANN. ch. 128, § 2D (Supp. 1996); MICH. COMP. LAWS §§ 691.1661—.1667 (West Supp. 1996); MINN. STAT. ANN. § 604A.12 (West Supp. 1996); MISS. CODE ANN. §§ 95-11-1 to -7 (1994); MO. ANN. STAT. § 537.325 (Vernon Supp. 1996); MONT. CODE ANN. §§ 27-1-725 to -728 (1995); N.M. STAT. ANN. §§ 42-13-1 to -5 (Michie Supp. 1995); N.D. CENT. CODE §§ 53-10-01 to -02 (Supp. 1995); OR. REV. STAT. §§ 30.687—.697 (Supp. 1994); R.I. GEN. LAWS §§ 4-21-1 to -4 (Supp. 1995); S.C. CODE ANN. §§ 47-9-710 to -730

(Law. Co-op. Supp. 1995); S.D. CODIFIED LAWS ANN. §§ 42-11-1 to -5 (Supp. 1996); TENN. CODE ANN. §§ 44-20-101 to -105 (1993); TEX. CIV. PRAC. & REM. CODE ANN. §§ 87.001—.005 (West Supp. 1996); UTAH CODE ANN. §§ 78-27b-101 to -102 (Supp. 1994); VA. CODE ANN. §§ 3.1-796.130—.133 (Michie 1994); WASH. REV. CODE ANN. §§ 4.24.530—.540 (West Supp. 1996); W. VA. CODE §§ 20-4-1 to -7 (1996); WYO. STAT. §§ 1-1-121 to -123 (Supp. 1996). *See also* 1995 Ohio H.B. No. 564 (approved by the Governor December 2, 1996).

6. GA. CODE ANN. § 51-1-29 (1982).
7. *See* Robert A. Mason, *Good Samaritan Laws—Legal Disarray: An Update*, 38 MERCER L. REV. 1439 (1987).
8. GA. CODE ANN. § 26-2-374 (1982).
9. *Id.* § 31-11-8 (1991).
10. *Id.* § 35-1-7 (1993).
11. *Id.* § 46-5-131 (1992).
12. *Id.* § 51-1-29.1 (Supp. 1995).
13. *Id.* § 51-1-29.2.
14. *Id.* § 51-1-30.
15. *Id.* § 51-1-30.1.
16. *Id.* § 51-1-30.2.
17. *Id.* § 51-1-30.3.
18. *Id.* § 51-1-31.
19. *Id.* § 51-11-8.
20. *Id.* § 52-7-14 (1995).

21. *Id.* § 51-3-20 (1982).
22. *Id.* §§ 51-3-20 to -26.
23. *Id.* § 51-3-25(2) (1982).
24. GA. CODE ANN. § 51-3-25(1) (1982).
25. *See* states with specialized statutes concerning skiing (*e.g.*, MICH. COMP. LAWS §§ 408.321—.344 (West 1985 & Supp. 1996)), whitewater rafting (*e.g.*, W. VA. CODE §§ 20-3B-1 to -5 (1996)), outfitters and guides, (*e.g.*, IDAHO CODE §§ 6-1201 to -1206 (1990)), and roller skating (*e.g.*, 745 ILCS §§ 72/1 to 72/25 (West’s Smith-Hurd Supp. 1996)).
26. *See* Terence J. Centner, *The New “Pick-Your-Own” Statutes: Delineating Limited Immunity from Tort Liability*, 30 UNIV. MICH. J. LAW REFORM 743 (1997).
27. GA. CODE ANN. § 4-12-3(a) (1995).
28. *Id.* § 4-12-2(7).
29. *Id.* § 4-12-3(b). These are (1) equipment and tack, (2) reasonable and prudent efforts by providers, (3) dangerous latent conditions, (4) willful or wanton disregard, and (5) intentional acts. *Id.* The state’s products liability laws also apply. *Id.* § 4-12-3(c).
30. *Id.* § 4-12-3(b)(3).
31. 472 S.E.2d 448 (Ga. App. 1996).
32. *Muller*, 472 S.E.2d at 450.
33. *Id.* at 452.
34. GA. CODE ANN. § 4-12-3 (1995).
35. *Id.* § 51-1-29 (1982).
36. *Id.* § 4-12-3(b)(3) (1995).

37. GA. CODE ANN. § 4-12-3(b)(1)(B) (1995).
38. 433 S.E.2d 726 (Ga. App. 1993).
39. *Muller*, 472 S.E.2d at 452.
40. *Jones*, 433 S.E.2d at 727.
41. The statute became effective on July 1, 1991. 1991 Ga. Laws 680, 685.
42. GA. CODE ANN. § 4-12-4(a) (1995).
43. *Id.* § 4-12-4(b).
44. Legislation passed for children riding bicycles raises this question. *See* GA. CODE ANN. § 40-6-296(e)(1) (1994).
45. *See* Doris Bixby-Hammett & William H. Brooks, *Common Injuries in Horseback Riding*, 9 SPORTS MEDICINE 36, 37 (1990); David E. Nelson et al., *Helmets and Horseback Riders*, 10 AM. J. PREVENTIVE MED. 15, 15 (1994).
46. Corrine Condie et al., *Strategies of a Successful Campaign to Promote the Use of Equestrian Helmets*, 108 PUBLIC HEALTH REP. 121 (Jan.-Feb. 1993); Bixby-Hammett & Brooks, *id.* at 41.
47. Drusilla E. Malavase, *United State Pony Clubs Accident Study*, 7 AM. MED. EQUESTRIAN ASS'N NEWS 6, 7 (May 1996).
48. Kathy Bagley, "Safety Programs: The Financial Impact on Insurance," *North American Horsemen's Association 1993 Yearbook of News* 8-9 (Ark International Group, Paynesville, MN, 1993).
49. North American Horsemen's Association, "NAHA Head Injury Statistics Lower Than National Average," *North American Horsemen's Association 1993 Yearbook of News* 10 (Ark International Group, Paynesville, MN, 1993).

50. North American Horsemen's Association, "NAHA Head Injury Statistics Lower Than National Average," *North American Horsemen's Association 1993 Yearbook of News*, p. 10.
51. North American Horsemen's Association 1995 Yearbook of News, "NAHA Risk Reduction Programs, Contracts & Legal Agreements are Updated," p. 10.
52. Terence J. Centner, *Adopting Good Samaritan Immunity for Dependents in the Horse Industry*, 12 AGRICULTURE & HUMAN VALUES 69 (1995).
53. 1993 Ga. Laws 518, § 3 (codified as GA. CODE ANN. § 40-6-296(e) (1994)).
54. GA. CODE ANN. § 40-6-296(e)(1) (1994).
55. *Id.* § 40-6-296(e)(5).
56. *Id.* § 40-6-296(e)(1).
57. *E.g.*, GA. CODE ANN. §§ 31-11-8(b) (1991) (standard of willful and wanton negligence for physician advisor to an ambulance service); 51-1-30 (Supp. 1995) (standard of willful negligence or malfeasance for employees of fire departments); 51-3-26 (1991) (standard of willful or malicious failure to guard or warn against for recreational property owners).