

Legislative Analysis



RECREATIONAL SPORTS: ALLOW PARENT TO WAIVE LIABILITY FOR INJURY TO CHILD

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4970 (Substitute H-2)

Sponsor: Rep. John Walsh

Committee: Judiciary

First Analysis (3-17-10)

BRIEF SUMMARY: The bill would allow the parent or guardian of a minor child to provide a written release from liability before the child participated in a recreational sport run by a nongovernmental, nonprofit organization.

FISCAL IMPACT: House Bill 4970 would have an indeterminate, but likely positive, fiscal impact on the judicial branch. Any fiscal impact would depend on the amount of litigation avoided due to the waiver of claims of liability.

THE APPARENT PROBLEM:

Parents often sign releases on behalf of their children giving up the child's right to sue if the child is injured while participating in sports or other recreational activities. Many organizations that sponsor or provide recreational activities for children require such releases as a condition of participation. However, this type of waiver or release of liability was ruled invalid by the Michigan Court of Appeals in the case of Woodman v. Kera, LLC, 290 Mich. App. 125, 650 N.W. 2d 641 (2008), a case that is now on appeal before the Michigan Supreme Court. (Oral arguments were heard in October 2009, and a decision is expected by July 2010).

The Woodman case involved the validity of a waiver signed by the parent of a five-year-old boy who broke his leg at his birthday party held at a commercial play area. In finding the waiver invalid, the court relied on the common-law rule that parents have no authority simply by virtue of the parental relationship to waive or release claims on behalf of their minor children. The court concluded that any statutory exception to this common-law rule would have to be created by the Legislature.

House Bill 4970 would provide statutory authorization for parents or guardians to release certain organizations or volunteers from liability for damages for personal injuries sustained by children while actively participating in a recreational sport. The bill would only apply to injuries sustained by children who were actively participating in a recreational sport sponsored or organized by nongovernmental, nonprofit organizations.

THE CONTENT OF THE BILL:

The bill would add a new section to the Estates and Protected Individuals Code (EPIC) to allow the parent or guardian of a minor to provide a written release before the minor

participated in a recreational activity. Under the bill, a "recreational activity" means "active participation in a recreational sport." The release would apply to liability for economic or noneconomic damages for a personal injury sustained by the minor during the specific recreational sport for which the release was provided.

Other provisions of the bill include:

- The release could only be for a recreational sport sponsored or organized by a nongovernmental, nonprofit organization.
- The release could apply to the sponsor or organizer of the recreational activity, or to an individual who volunteered as a coach or to help conduct the activity, or to both sponsors and volunteers.
- The release would only apply to liability arising from ordinary negligence.
- The release would have to be in writing.
- The bill would not restrict the limitation of liability provided in Section 73301 of the Natural Resources and Environmental Protection Act¹ or under Public Act 170 of 1964.²

MCL 700.5109

BACKGROUND INFORMATION:

In its 41st Annual Report (2008), the Michigan Law Revision Commission recommended that the Legislature immediately review the following question raised by the Woodman v. Kera decision:

Should state law be amended to create an exception to the common-law rule for pre-injury parental waivers and should a distinction be drawn for waivers between profit and non-profit groups?

http://council.legislature.mi.gov/files/mlrc/2008-09/mlrc_41annual_2008.pdf

ARGUMENTS:

For:

The Woodman decision exposes nonprofit organizations to liability for injuries suffered by children participating in sports, even in the absence of gross negligence. This legislation would permit the use and enforceability of a parental waiver while preserving

¹ Generally speaking, Section 73301 of the Natural Resources and Environmental Protection Act, MCL 324.73301, protects the owner or renter of land from lawsuits brought by persons who are injured while on the land to hike, fish, hunt, use a designated Michigan trailway, glean, or purchase products from a u-pick farm, except under certain conditions.

² Among other things, Public Act 170 of 1964 (MCL 691.1401 - 691.1419) provides immunity to governmental agencies, employees, and volunteers for tort liability resulting from ordinary negligence. The term "governmental agency" means the state and political subdivisions; the term "political subdivision" includes municipal corporations, counties, county road commissions, school districts, community college districts, and others.

the child's right to sue if the defendant committed gross negligence or reckless misconduct.

If nonprofit organizations can no longer obtain parental waivers of liability for injuries that result from the sports activity they sponsor, they may no longer be able to provide recreational opportunities for children or find volunteers willing to serve as coaches, thus depriving children of valuable experiences. A policy goal of the bill is to encourage nonprofit organizations to provide recreational opportunities to youth.

The bill is drafted to cover only nongovernmental, nonprofit organizations because governmental organizations such as schools already have governmental immunity and commercial ventures can obtain insurance.

Against:

Some say that rather than allowing waivers of liability for "ordinary negligence" while preserving the right to sue if gross negligence occurs, as the bill does in its present form, it would be better to allow parents to waive liability for injuries that result from the "inherent risk" of an activity while preserving the right to sue where the injury results from a risk that is not inherent in the activity. For example, a head injury suffered by a child sent on a field to play football without a helmet would not be an injury resulting from an inherent risk in the activity if the injury could have been avoided by wearing standard equipment. It can be difficult to determine whether a particular type of action qualifies as ordinary negligence, gross negligence, or should be characterized in some other way. It would be clearer to focus on risks that are inherent versus those that are not.

Other questions raised at the committee level include whether parents should receive full disclosure of an activity's risk before being asked to sign a waiver and whether the bill should be expanded to allow waivers of liability for participation in for-profit youth sports leagues.

POSITIONS:

The Michigan Association for Justice (formerly the trial lawyers association) opposes the bill in its current form and would like to see this type of waiver cover injuries sustained as the result of an inherent risk of a recreational activity rather than having the bill focus on ordinary versus gross negligence. (3-12-10)

Legislative Analyst: Susan Stutzky
Shannan Kane
Fiscal Analyst: Ben Gielczyk

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.