

HOUSE BILL REPORT

HB 1947

As Reported By House Committee On:
Judiciary

Title: An act relating to releases from liability for sports injuries.

Brief Description: Releasing certain persons from liability for children's sports injuries.

Sponsors: Representatives Foreman, Appelwick, Ludwig, Padden, Rust, Tate, Quall, Cothorn, L. Johnson, Schoesler, Morton, Sheahan, Anderson, Silver, Long, Chandler, Carlson, King, Mastin, Sehlin, Romero, Lisk, Reams, Ballard, Dellwo, Shin, Mielke, Van Luven, Dyer, Karahalios, Vance, Dorn, Brough, Horn and J. Kohl.

Brief History:

Reported by House Committee on:
Judiciary, February 2, 1994, DPS.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Appelwick, Chair; Johanson, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Eide; Forner; J. Kohl; Long; Morris; H. Myers; Schmidt; Scott and Tate.

Staff: Bill Perry (786-7123).

Background: Parents of a child who wants to participate in an athletic event or other activity are sometimes asked to sign liability "releases." These releases purport to waive the parents' and the child's right to sue the organizer of the activity for any injury to the child caused by the organizer's negligence. In two recent cases, the state Supreme Court has held such waivers void as against public policy.

In one case, the court held that such a waiver is void with respect to the rights of both the parent and the child when the activity is interscholastic sports and the party demanding the release is a public school. In the other case, the court invalidated a waiver, but only with respect

to the child's right to sue, when the activity is skiing and the party demanding the release is a private ski school operator.

In Wagenblast v. Odessa School District, a 1988 decision, the state Supreme Court held that releases commonly required by school districts for participation in school sports are unenforceable. The court listed six factors that it considers in determining whether a release is enforceable as a matter of public policy. The greater the presence of these factors, the greater the likelihood that the court will declare the release invalid. The factors are:

1. whether the release concerns an activity generally suitable for public regulation.
2. whether the party seeking the release provides a service that is often a matter of practical necessity for some members of the public.
3. whether the party seeking the release offers the service to any qualified member of the public.
4. whether the party seeking the release is in a stronger bargaining position than the person participating in the activity.
5. whether the party seeking the release offers a standardized "adhesion" contract without offering an alternative such as insurance protection that the participant could purchase for a fee.
6. whether the participant in the activity is under the supervision of the party seeking the release and is exposed to risk of negligence by that party while engaged in the activity.

The court concluded that in the case of interscholastic sports offered by public schools, all of these factors are present and the releases are therefore void as against public policy. The decision was unanimous, but the court noted that it was the prerogative of the Legislature to investigate whether a change in public policy is desirable on this issue.

In a 1990 case, Scott v. Pacific West Mt. Resort, the court held that as a matter of public policy a parent may not release a third party from liability to a child for negligence that injures the child. In the Scott case, a child was injured while skiing in racing classes at a ski school. The child's mother had signed a release purporting to exculpate the ski school from liability for injuries

caused to the child by the school's negligence. The court noted that it is settle law in this state that a parent may not unilaterally settle or release a child's claim following an injury. Generally, court approval is required for such a settlement or release. The court concluded that in light of this policy, it made little sense to allow a parent to release a child's claim before it arises.

The court in Scott noted that an exculpatory clause is valid unless (1) it violates public policy, or (2) it purports to exculpate conduct that falls "greatly below" the standard of ordinary negligence, or (3) it is inconspicuously placed in the contract so that it might be unwittingly signed. (The waiver in Scott was invalid only because it violated public policy.)

For many purposes, minors do not enjoy the same power of contract as do adults. Specific statutory authority to contract has been given to minors with respect to certain activities, e.g., banking, insurance and sports employment contracts. These specific grants of authority are usually limited to minors of certain ages and may contain conditions of approval or other qualifiers. A law that took effect January 1, 1994 allows minors over the age of 16 to petition a court for emancipation. An emancipated minor may contract to the same extent as an adult.

Summary of Substitute Bill: A parent may not release a third party from liability to a parent or a child for injury to the child. However, a parent may agree to indemnify a third party for liability for injury to a child caused by the third party's ordinary negligence.

Substitute Bill Compared to Original Bill: The original bill is limited to athletic activities and authorizes parental releases of liability on two conditions. First, the release portion of a contract must be conspicuous. Second, the release may not cover conduct other than ordinary negligence.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The original bill would promote desirable physical activities for youth, particularly activities sponsored by non-profit groups.

Testimony Against: The original bill is too broad and covers activities sponsored by major corporations as well as small non-profit groups.

Witnesses: Cliff Webster, Pacific Northwest Ski Areas Association (pro); Larry Tobiska, Wenatchee Row and Paddle Club and Leavenworth Winter Sports Club (pro); and Dennis Martin, Washington State Trial Lawyers Association (con).