SENATE BILL REPORT

SHB 1947

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, FEBRUARY 24, 1994

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

SPONSORS: House Committee on Judiciary (originally sponsored by Representatives Foreman, Appelwick, Ludwig, Padden, Rust, Tate, Quall, Cothern, 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)

HOUSE COMMITTEE ON JUDICIARY

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.
Signed by Senators A. Smith, Chairman; Ludwig, Vice Chairman; Hargrove, Nelson, Roach and Schow.

Staff: Lidia Mori (786-7755)

Hearing Dates: February 16, 1994; February 24, 1994

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 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.)

SUMMARY:

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.

Appropriation: none

Revenue: none

Fiscal Note: none requested

TESTIMONY FOR:

It is fair to ask a parent to give up his or her right to bring a lawsuit in situations where the decision to participate in a community sporting event is voluntary. These sorts of activities will become uninsurable, or organizers will ignore the legal danger that exists with respect to liability. Then, at some point, someone will be injured and the organizer will be hit with a big lawsuit which will destroy the organization.

TESTIMONY AGAINST:

The language in this bill is too broad. There is no litigation crisis with regard to nonprofit corporations.

TESTIFIED: Representative Dale Foreman, original prime sponsor (pro); Larry Tobiska (pro); Dennis Martin, WA State Trial Lawyers Association (con in part); Cliff Webster, Pacific NW Ski Areas Association (pro)