

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

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House Bill 4231

Sponsor: Rep. John Walsh

Committee: Judiciary

Complete to 3-2-11

A SUMMARY OF HOUSE BILL 4231 AS INTRODUCED 2-10-11

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.

House Bill 4231 would add a new section (MCL 700.5109) 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 for injury or death resulting solely from the inherent risks of the sport. A release under the bill would not limit the liability for negligence of the subject of the release, or the negligence of the organization's employees or agents, that causes or contributes to the injury or death of the minor.
- 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

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.

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

Last session, a similar bill, House Bill 4970, was introduced to address these concerns. The bill was reported from committee but did not see floor action.

FISCAL IMPACT:

To the extent that the House Bill 4231 reduces filings at local trial courts, it would have a positive fiscal impact on the local governments. There would be no fiscal impact at the state level.

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■ 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.