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Parental waivers, indemnity depends on your state

A waiver or release of liability is a contract releasing a party from liability for injuries resulting from his or her ordinary negligence. An indemnification agreement is a contract agreeing to reimburse the party for any monetary loss incurred as a result of a participant's engagement in an activity.

The law is well-established in most states that a contract signed by a minor only is not enforceable because, as a matter of law, minors lack the capacity and competency to enter into binding contractual agreements (except for necessities such as food, clothing and medical care).

Contracts for equine activities, as is the case for almost all types of activities, therefore require parents to waive and/or release legal rights and indemnify intended parties on behalf of a minor participant. Typically, these contracts are enforceable as to the parents. However, the enforceability of these contracts as to the minors themselves depends on the applicable state law.

Parental releases or indemnification agreements

In Illinois, the law is well-established that a parent cannot waive, compromise or release a minor child's cause of action. Only by statute or court approval is a parent's waiver and/or liability release effective to bar a minor child's future cause of action.

In *Meyer v. Naperville Manner Inc.*, the Illinois court reasoned that this policy serves several important purposes: (1) protects a seriously injured minor child where his parents may be unwilling or unable to provide for his care; (2) the child would otherwise have no recourse against a negligent party to acquire necessary resources for his care; and (3) prevents conflicts of interest between the parent and child.

Additional reasons why other states do not enforce waivers signed by parents on behalf of minor participants include: (1) A minor should be allowed to par-

ticipate in school activities or other events without the enforcement of a parental waiver as a matter of public policy; (2) Minors should be protected from contractual obligations and retain their rights to a prospective negligence claim; (3) Courts are reluctant to allow parties to contract away their duty to use reasonable care where the service provided is one of public importance; and (4) As many jurisdictions already prohibit parents from releasing a child's claim after his injury, i.e. settling an existing claim without court approval, it is illogical to allow a parent to release a child's claim before he or she suffers an injury.

Rationales for not enforcing parental indemnification agreements include: (1) Shifting responsibility for the payment of damages to the parent from the negligent party creates a conflict of interest between the child's interest in pursuing his or her claim and the parents obligation to be financially responsible for the resulting damages; and therefore, (2) enforcing such agreements would circumvent the public policy of affording protection to minors.

The policy rendering unenforceable releases and indemnification agreements signed by parents on behalf of their minor children is a matter of legislative prerogative, and, of course, the General Assembly could choose to address it differently in the future.

In the meantime, Michigan, Pennsylvania and Washington state prohibit parental waivers and Hawaii, Illinois, New Jersey, Tennessee, Utah and Virginia, specifically prohibit parental waivers and indemnification agreements. Montana, Virginia and Louisiana simply do not enforce waivers for minors or adults.

Enforcement of parental releases or indemnification agreements

Whether a parental waiver is enforceable depends on the applicable state's law. A court is likely to enforce a waiver or



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indemnification agreement on behalf of a minor participant in Arizona, Georgia, Maine, Idaho, Mississippi and New York.

A court is even more likely to enforce these contracts in California, Colorado, Connecticut, Florida, Massachusetts, North Dakota, Ohio and Wisconsin.

The law is not as clear in Alabama, Indiana, Iowa, Missouri, Nebraska and Wyoming. In these states, the court addressed a parental waiver or indemnification agreement; however, the court did not resolve all the relevant issues. In a number of other states, the law is simply unsettled.

Therefore, a definite conclusion as to the enforceability of parental waiver or indemnification agreement cannot be provided at this time.

There are a number reasons to support enforcing parental waivers and indemnification agreements signed on behalf of a minor: (1) Supports public policy by allowing organizations to provide recreational activities for young children; (2) The law presumes that fit parents act in furtherance of the welfare and best interests of the child; and (3) Parents have a fundamental right to make decisions concerning the upbringing and education of their children.

Recommendations for dealing with these concerns

Minor participation in equine

activities plays a significant role in the present and future success of the equine industry. As a matter of public policy, equine activity sponsors, professionals and others should be encouraged to make equestrian activities available to minors without the fear of unpreventable and unlimited liability exposure.

Equestrian sports are inherently dangerous, but rightfully loved by children and should be encouraged for children to participate in as they are not only physically and mentally challenging, but working on and around horses teaches children life lessons such as accountability, organization, caring, respect, patience, fiscal responsibility, commitment, dedication and selflessness.

Until the Illinois legislature acknowledges the importance of youth participation and the potentially prohibitive damages risk and creates a statute enforcing parental waivers and indemnification agreements, providers of equines and equine activities have several choices.

They can simply refuse to permit minor participation in the equestrian activities. Or, they can have a knowledgeable attorney draft a proper release and indemnification agreement to be signed by the parents on their own behalf and on behalf of the minor child.

While a court may not enforce the release and indemnification provisions against the minor, the execution of a carefully drafted agreement may deter a parent and his/her minor child from pursuing a claim for damages incurred.

Finally, it is always recommended that a sponsor, professional or anyone else providing the equine or the equine activity facility, purchase insurance specifically for the particular activity and purchase the right amount of insurance coverage to pay for the legal fees and costs to defend a claim and to indemnify the provider in the event damages are awarded.