

RELEASELAW.COM

Legal Liability Risk Reduction for You

News and Updates for Sports, Fitness & Recreational Businesses

New Minnesota Law Voids Some, But Not All, Waivers

By Alexander "Sandie" Pendleton

An attempt by a group of Minnesota legislators to amend Minnesota law so as to void all waiver agreements has failed. Instead, the legislature adopted a bill that provides that any agreement between parties for a "consumer service" (including a recreational activity), that purports to release liability resulting from conduct that constitutes "greater than ordinary negligence," is against public policy, and is therefore void and unenforceable.

Generally, it appears [that](#) this new law does little more than codify the current state of the common law in Minnesota, and therefore does not appear to be significantly detrimental to the interests of recreational-opportunity providers.

The law may in fact be beneficial to Minnesota providers. The law makes clear that if the waiver in question seeks to release claims for "greater than ordinary negligence," that portion is severable from the remainder of the waiver agreement. (In contrast, the common law in Wisconsin, as developed by the Wisconsin courts, provides that any attempt to release "all claims," is overbroad and *not* severable from the remainder of the release, and thus voids the entire waiver agreement.)

The new law also expressly includes minors in the definition of "parties" involved with waivers, and thus may provide an argument to providers that the legislature had the opportunity to void all waivers-that-relate-to-minors, and decided to forgo that opportunity, and go instead in the opposite direction. The new law also indicates that a party may waive claims that are "inherent in a particular activity."

The new law was signed into law by Governor Dayton on May 24th, and goes into effect on August 1, 2013.

Alexander "Sandie" Pendleton
Pendleton Legal, S.C.
250 E. Wisconsin Avenue, Suite 1800
Milwaukee, Wisconsin 53202
p: (414) 418-4469
e: pendleton@pendletonlegal.com
firm sports website: www.releaselaw.com
firm general website: www.pendletonlegal.com

(The information and views discussed in this article are for general information purposes only. An organization that has specific questions as to the effect the above development may have for it should discuss such with its attorney, or with an attorney who is familiar with this area of the law and the organization's specific operations or concerns.)

About Pendleton: Alexander "Sandie" Pendleton is a shareholder with the Milwaukee law firm of Pendleton Legal, S.C. Sandie has over twenty years of experience counseling clients involved in sports and recreational activities, including power sports activities, and is a frequent speaker and writer on recreational liability issues.

About Pendleton Legal, S.C.: At Pendleton Legal, S.C., we continue to believe the right to the "Pursuit of Happiness" is a right worth preserving. Our S/F/R Team (Sports, Fitness & Recreation Team) guides and fights for businesses and organizations that provide recreational opportunities and products, so that our clients are not overwhelmed by liability that might otherwise threaten their continued success (or even existence). Preserving the right is often not an easy or simple task, but we know this mission is an important one to our clients, and to the future of a free society. In addition to our S/F/R services, we provide legal expertise across the numerous areas of law encountered by businesses and organizations in the normal course of their day-to-day operations and growth. If you would like to explore whether we can help your organization achieve its mission, contact us.