

THE CENTER FOR JUSTICE & DEMOCRACY'S
First Annual



ZANY IMMUNITY LAW
AWARDS * 2004

The Center for Justice & Democracy's First Annual Zany Immunity Law Awards, 2004

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Introduction

Every year, our nation's special interests line up before Congress and state legislatures, with emptied pockets and outstretched hands, and ask for the opportunity to show their patriotic civic duty. How do they do that? Why, by getting immunity from liability, of course.

After all, just in case they do something wrong, someday, why should they have to pay for it anyway?

And we allow this because... well, most of us don't even know this goes on. And even if we did, we sure don't have the money or power to stop it.

So as a public service, the Center for Justice & Democracy hereby announces the first-annual Top 10 Zany Immunity Law awards.

But of course, this isn't a joke. These are laws that have actually been enacted by state lawmakers around the country. And these are just the bills that passed! You should see the ones that didn't - immunity laws that special interests tried for but didn't get, at least not yet. (More on those coming up.)

So if you're a special interest group with a lot of cash and willing to spend it on a few members of your statehouse, take note. These laws could be yours someday, too.

So here they are - The Top 10 Zany Immunity Laws:



The “☆ One Strike, You’re ☆ Out . . . Cold” Award

Baseball Parks

In Arizona, the term “double header” has taken on a whole new meaning. The major league baseball park in Phoenix was designed so that people who leave the viewing area to buy hot dogs can still get hit in the head with foul balls coming through large openings in the walls. So, what did the ballpark owners and architects do to make the fans safer? More effectively separate the concession areas from the field of play? Of course not. Why should they, when it’s so much easier to just to make sure that if someone does get hit on the head, they can’t hold you responsible!¹

The “Let’s Put the FUN Back in FUNerals” Award

Morticians

Your uncle dies, you bury him and you find out later that he’s been buried in the wrong place, or after an autopsy, there are some extra body parts hanging around so the coroner puts them in your great aunt’s coffin. You find out and are traumatized, of course. But to add insult to injury, you discover that Indiana’s morticians lobby made sure they wouldn’t be legally accountable for any of this.²



The "Seniors Gone Wild" Award

It's a tie! Bingo-raffle volunteers and Maj Jongg players

Worried that your exuberant calling of bingo numbers or aggressive Maj Jongg playing might cause a riot among highly-competitive blue-haired lady players, who in turn might be injured and hold you liable? Confine your bingo activities to Colorado, where the bingo lobby has convinced the Legislature to grant you limited immunity if you hurt someone while acting as a bingo-raffle volunteer. Or, if it's Maj Jongg you prefer, stay in Florida, where you're off the hook if someone's a little too "enthusiastic" with their Maj Jongg tiles. And if Maj Jongg isn't your game, not to worry. Just stick to pinochle, bridge, rummy, canasta, hearts, dominoes or, of course, poker, and you get the same great immunity benefits.³

“Utilities . . . and Ghosts, Included” Award

Haunted Houses

Real estate agents can't think of everything, for goodness sake. And luckily they don't have to in a bunch of states, where an agent or real estate owner can't be held liable for failing to tell a potential buyer or renter that the house is “psychologically affected.” What's scarier than a haunted house? A statehouse that grants immunities like this one.⁴

The Deadly Doubloons Award

Mardi Gras Parade Sponsors

Nothing says religious observance more than the hurling of beaded necklaces, doubloons and coconuts through the air. Is it your fault if in the heat of celebration of the coming of Lent someone gets hurt? Not according to the lobbyists and lawmakers of Louisiana, who have graciously provided limited immunity for those presenting or sponsoring Mardi Gras parades, fairs or festivals for injuries caused to attendees from flying beads, cups, coconuts, or the aforementioned doubloons. Let the good times roll.⁵



The Gift That Keeps on Giving Award

Wild game meat donors

Who hasn't had this happen: You kill a deer early in the day, then go out drinking with your buddies. Okay, so maybe you leave the carcass out in the sun while celebrating the joy of hunting. Does that mean you can't donate the meat to a charity and enjoy your well-deserved tax write-off? Uh, no. And if someone gets sick from eating the meat that's gone bad, is that your fault? Not in a bunch of states, it isn't! The donor (whether person, retailer, commercial butcher, commercial slaughterhouse, commercial meat processor or government entity) of wild game meat for free use by a charity (a soup kitchen, for example) has limited liability for injuries or death caused by the age, condition, or packaging of the meat.⁶

The “Why Do You Think They Call It Dope?”

Award

Anhydrous Ammonia Handlers

What do the lobbyists and lawmakers of Kansas, Missouri and Wyoming have in common? A shared concern for the welfare of those in the anhydrous ammonia business, that's what. In these great states, anyone storing, handling or owning anhydrous ammonia is not liable if someone is injured while trying to steal said ammonia. (This immunity may be of special interest to accident-prone thieves who depend on pilfered ammonia for operation of their illegal methamphetamine labs.)⁷

The Trick or Treat Award

Placebos

If you enjoy manufacturing or distributing placebos or investigational new drugs, you'd be well-advised to locate your operation in Alabama, Florida, Utah or Virginia, where the powerful Placebo and Investigational New Drug Manufacturers' lobby has made sure you'd be immune from liability. Conversely, before you find yourself needing to take legal action because you've been on the receiving end of a dangerously experimental (or fake) drug, make sure the drug comes from some other state!⁸



The “When You Absolutely, Positively Gotta Go” Award

Employee Bathrooms

Are you a business owner who feels strongly that employee bathrooms really, really, REALLY should be reserved for employees only? No matter what? The esteemed members of the Maryland State Legislature agree, and have granted limited immunity to stores and their employees for allowing customers to use employee bathrooms where that leads to a customer's injury or death. (You read that right: Injury or death.)⁹

The “Make Mine Extra Crispy” Award

Tanning Parlors

As an owner or operator of a tanning salon, have you grown weary of making sure that customers don't bake themselves into human jerky? Not a problem if your business is in Colorado, where legislators have put the responsibility for safety back where the tanning parlor lobby intended it: on the customer. Colorado lawmakers have given tanning parlor owners and operators limited liability for customer injuries considered “assumption of the risk.” Toss another one on the Barbie!¹⁰



Special Mention: The Animals

If you're an animal, do you feel like your voice isn't being heard in your state capital? Are you miffed that your owner, the vet, the pound, or even some crazy driver on the road, is getting a whole lot of legal protection while you're getting killed out there? Well, you're right.

Dog "Research" Labs

In Oklahoma, institutions using dogs unclaimed at the pound aren't liable to the dog's owners if they kill or injure the dog during a "scientific" experiment.¹¹

Highway Animals

In Idaho, livestock owners can't be sued for injuries caused by an auto collision with an animal "running on open range" that goes on to a highway. Owners have no duty to keep their animals off the highway.¹²

Vets and Dog Fights

In Arizona, a veterinarian who files a report with a local law enforcement agency, stating that he believes a dog he's treated or examined has participated in a dogfight, is immune from liability.¹³



A Few Runners Up

Bus Companies that Haul Religious Pilgrims

Worried that one of your company's buses might be involved in an accident while transporting pilgrims to a religious event? Get thee to Colorado, where liability for a single bus accident is limited to \$600,000 per incident, no matter how many people might be hurt.¹⁴

Cave Owners

In Kentucky, cave owners have limited liability for injuries suffered by those using their caves for recreational or scientific purposes.¹⁵

Hot to Trot Horse Owners

In over 30 states, companies and riding instructors are not liable for a rider's injury or death due to the "inherent risks of equine activities." What's an "inherent risk of equine activity?" Ask the young Indiana horsewoman who was sitting on her horse ready to show when a male stallion nearby, aroused by all the surrounding female horses in heat, got out of control and took out a part of her leg. No lawsuit allowed.¹⁶

Llama Handlers

Laws in many states say that if you rent a llama and it hurts you, it's pretty hard to hold someone responsible. Other animals usually also considered extra risky, for which this limited immunity applies, are cattle, sheep, swine, horses, ponies, donkeys, mules, hinnies, goats, buffalo, and poultry. Sometimes camels, giraffes, ostriches and emus are included.¹⁷

Navigational Aids in Great Ponds

In Maine, a lake association that has a permit to put navigational aid markers in "great ponds" has limited liability for injuries or death caused by placement or maintenance of those markers.¹⁸

Pawnbrokers

Pawnbrokers in Missouri and Nevada who don't release or dispose of pledged property, because they've been ordered to hold it by a police officer, are immune from liability.¹⁹

Shooting ranges

In nearly 30 states, anyone who owns a shooting range isn't liable for the noise to those living nearby. In Ohio, the immunity applies if the shooting range operator complies with noise rules promulgated by the Chief of the Ohio Division of Wildlife, which by statute, "shall be no more stringent than National Rifle Association standards." Does the phrase "fox guarding the henhouse" come to mind?²⁰



NOTES

¹ In Arizona, Colorado and Illinois, owners of baseball facilities have limited liability for spectator injuries caused by baseballs, baseball bats and other equipment used by players during a baseball game. In Arizona, the immunity also applies to architects and licensed contractors who were involved in the design, construction or operation of the park. Arizona, Colorado, Illinois [Ariz. 12-554, Colo. CRS 13-21-120, Ill. 745 ILCS 38/1, /5, /10]. Email exchange with Michael Saks, Professor of Law & Psychology, Arizona State University Law School.

² In Indiana, a cemetery owner has immunity for burying remains in the wrong place or unburying the wrong remains. Upon learning of the error, though, the owner must correct the error and notify the appropriate person(s). In addition, a cemetery owner has limited immunity from suits relating to human remains that have been left with the owner without a casket or urn for three years. Indiana [23-14-59-1 and -3; 23-14-55-2].

³ In Colorado, volunteers have limited immunity if they hurt someone while acting as a bingo-raffle volunteer. Colorado [12-9-111]. In Florida, condo, co-op, homeowners' and mobile homeowners' associations are immune from liability arising from a penny-ante games. The statute also covers games within a dwelling/residential premises owned or rented and occupied by a participant in the game. Immunity extends to dwelling owners, and to unit owners who weren't participating in the game. "Penny-ante game" means a game or series of games of poker, pinochle, bridge, rummy, canasta, hearts, dominoes or mah-jongg in which the winnings of any player in a single round, hand or game don't exceed \$10 in value. Florida[Fla. Stat. 849.085(5)].

⁴ For example, in Indiana, unless they're specifically asked, a real estate owner or agent isn't liable for failing to tell a potential buyer or renter that the house or real estate is "psychologically affected" which results if the house was, for example, the scene of a crime, gang activity, discharge of a police firearm, or, believe it or not, where someone died or was afflicted with AIDS. Indiana [32-21-6-3, -5, -6.]

⁵ Organizations presenting or sponsoring Mardi Gras parades, fairs or festivals have limited liability for injuries caused to attendees from flying beads, cups, coconuts or doubloons. Louisiana [La. R.S. 9:2796.] The law was specifically amended in 1987 to protect those who throw coconuts, and has been repeatedly strengthened since then to expand the immunity.

⁶ In Idaho, Illinois, New Mexico and Tennessee, a donor (i.e., person, retailer, commercial butcher, commercial slaughterhouse, commercial meat processor, government entity, etc.) of wild game meat for free use by a charity has limited liability for injuries or death caused by the age, condition or packaging of the meat. Idaho, Illinois, Iowa, Maine, New Mexico, Tennessee [ID 5-338; Ill. 745 ILCS 50/2.13, /3; Iowa 672.1, 556H.1 (no protection unless inspected and found fit for consumption, nor to negligence, recklessness or intentional, nor if actual or constructive knowledge that tainted/harmful); Tenn. 53-13-102 (no protection for negligence, recklessness, intentional conduct; must be apparently wholesome food fit for consumption)].

⁷ Kansas, Missouri, Wisconsin [Ks. 60-4601; Mo. 537.297, Wisc. 895.555] Anhydrous ammonia is a component of the narcotic methamphetamine. Those storing, handling or owning anhydrous ammonia or anhydrous ammonia equipment aren't liable if someone hurts him or herself when trying to steal the ammonia.

⁸ In a number of states, including Alabama, Alaska, Florida, Hawaii, New Mexico, North Dakota, Rhode Island, Utah, Virginia, and Washington, anyone who manufactures, distributes or has a placebo for professional practice or research is immune from liability. In Alaska, the law also applies to those who advertise or solicit to promote delivery of placebos.

⁹ Stores and their employees have limited immunity if they allow customers to use employee bathrooms and that leads to the injury or death of the customer or any other person. Note that a 2002 bill (S.B. 275) would have repealed this immunity. Maryland [Courts & Jud. Proceedings 5-635, Health-General 24-209, -210].

¹⁰ Colorado tanning parlors have limited liability for injuries deemed to qualify as an "assumption of the risk." Colorado [25-5-1011; 13-21-111.7].

¹¹ In Oklahoma, institutions using dogs unclaimed at the pound aren't liable to the dog's owners if the dog is injured or killed using the for any injury or death resulting from the transportation, detention or use of the dog in its scientific and educational activities. Oklahoma [4 Okl. St. § 396].

¹² Idaho [25-2118, 25-2119].

¹³ Arizona [32-2239].

¹⁴ In Colorado, liability for a single bus accident is limited to \$600,000 per incident, no matter how many people might be injured in a single bus accident. Colorado [24-10-114] The law was enacted to limit the liability of the metro area bus system that used its buses to haul pilgrims to an outdoor mass. Email exchange with Dave Diepenbrock, CTLA.

¹⁵ Kentucky [433.883] Note that this law was pushed through by a coal company, which probably wanted immunity for leaving mineshafts unprotected.

¹⁶ Interview with John C. Grimm, Grimm & Grimm, P.C., Auburn, Indiana. These states include Alabama, Arizona, Arkansas, Colorado (equine/llama statute), Delaware, Florida, Georgia (equine/llama), Hawaii, Idaho, Illinois, Indiana, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York (bill), North Carolina, North Dakota, Ohio, Oregon, Pennsylvania (bill), Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming).

¹⁷ Laws in states like Iowa, Kansas, Louisiana, Minnesota and Oklahoma immunize non-profit groups, companies and paid professionals where injury results from the "inherent risks" of livestock, farm or domesticated animal activities. The term "livestock" includes cattle, sheep, swine, horses, ponies, donkeys, mules, hinnies, goats, buffalo, llamas and poultry. The term "farm/domesticated animal" covers cow, sheep, goat, domesticated deer, llama, poultry, rabbit, horse, pony, mule, jenny, donkey, hinny, bison, camel, giraffe, ostrich, emu and rhea. Alaska (2001 bill), Kansas, Kentucky, Louisiana, Minnesota, Oklahoma, [Iowa, 673.2; Kans. Stat. 60-4001 to -4004; Kentucky 247.402; Louisiana, 9-2795.1; Minn. Stat. 604A.12; 76 Okl. St. 50.1 - .4.] Colorado (equine-llama statute), Georgia (equine-llama statute) [Colo. 13-21-119; OCGA 4-12-3].

¹⁸ Maine [14 Me. Rev. Stat. 159-C].

¹⁹ Missouri, Nevada [Mo. Rev. Stat. 367.049; Nev. Rev. Stat. 646.047].

²⁰ Ohio [Ohio Rev. Code 1533.84 & 1533.85]; Email exchange with Richard Mason, OTLA.