Memorandum

To: Senator Mark Jensen
Members of the Senate Judiciary Committee

From: Representatives of SpringHill Camps, Pine Ridge Bible Camp, Grace Adventures, and Cran-Hill Ranch

Date: May 13, 2014

Re: MCL 700.5109

This memo summarizes two important reasons why we believe the Legislature should pass your proposed amendment to MCL 700.5109 (referred to below as the "Amendment").

1. **Protecting Camps**

The current statute permits releases to protect against lawsuits. But it does so too narrowly. The current statute permits releases only for "recreational activity," which it defines as "active participation in an athletic or recreational sport." Thus, the definition extends protection only to activities that can be described as a "sport." While camping is clearly recreation, it is not clear whether a judge would regard camping as a "sport," which is all the current statute covers.

The Amendment eliminates that uncertainty. The Amendment expands the definition of recreational activity to include "camping activities." This makes sense, especially in Michigan. As you know, camping is a very common and very important form of recreation in Michigan. And it is a very important economic activity as well. Many Michigan residents and residents of other states camp in our state or attend youth camps in our state, especially in the summer. It is important that the Legislature pass this amendment to protect this vital part of our growing tourist industry. We think it is possible that camping activities were left out of the current statute as an oversight. Accordingly, we urge your support of this Amendment as it will correct that oversight and help Michigan continue to be a national leader in camping activities.

2. **Protecting All Who Serve Youth**

As we considered the current statute, we discovered it provides very little if any protection for those who serve youth, even those involved in sports who are already covered by the statute's current provisions. To the contrary, the current statute puts those who serve youth in Michigan at a very great disadvantage when compared to those who serve youth in surrounding states.

As it is now written, the current statute permits a release "solely from the inherent risks of the recreational activity." MCL 700.5109(4). It is important to understand that, in reality, this statute adds no protection for those who serve youth in Michigan. It adds no protection because Michigan common law already protects against suits arising from the inherent risks of recreational activities. As our Supreme Court has explained:

> When people engage in a recreational activity, they have voluntarily subjected themselves to certain risks inherent in that activity. When one of those risks results in injury, the participant has no ground for complaint.

Ritchie-Gamester v. City of Berkley, 461 Mich. 73, 87, 597 N.W. 2d 517, 524 (1999).

Because common law already protects against claims arising from the inherent risks of recreational activity, releases are intended to serve a different purpose in practice. Properly drafted releases protect against claims resulting from an honest error of judgment, that is, claims of simple negligence. Those who serve youth in surrounding states are permitted to obtain a release for claims resulting from errors of judgment or simple negligence. *Spears v. Ass'n of Illinois Electric Cooperatives*, 986 N.E.2d 216 (Ill. App. Ct. 2013); *Marsh v. Dixon,* 707 N.E.2d 998, 1000 (Ind.Ct.App.1999); *Zivich v. Mentor Soccer Club,* 82 Ohio St.3d 367, 696 N.E.2d 201, 207 (Ohio 1998); *Atkins v. Swimwest Family Fitness Ctr.*, 691 N.W.2d 334 (Wis. 2005). But those who serve youth in Michigan cannot obtain this kind of release because the current statute limits releases to inherent risks. Accordingly, the current statute puts all who serve youth in Michigan at risk, not just Michigan camps and their personnel, but also anyone who volunteers in Michigan to work with youth such as a coach for a church baseball team, a community soccer team, or swim club. The statute also puts Michigan nonprofit organizations at an economic disadvantage compared to those located in surrounding states.

Unfortunately, we live in a world where people file lawsuits over injuries arising from honest errors of judgment. Those suits drive up the costs of serving youth, subject Michigan youth camps to increasing risk, and make it increasingly difficult to provide sustainable youth camp programs and services. That is why other states permit releases for simple negligence. Michigan nonprofit organizations need and deserve that same protection.

It is also important to note that the Amendment includes protections for those who sign releases. First, it requires that the release specifically mention "negligence," so that the signer will be on notice that he or she is giving up important rights. Second, and most importantly, the Amendment specifically prohibits a release of claims arising from "gross negligence or intentional acts."

Again, all that we seek is the same protection enjoyed in neighboring states against claims arising from honest errors of judgment or simple negligence. Like nonprofits in other states, we do not seek protection from gross negligence or intentional misconduct.

Thank you again for your efforts to help us continue to serve youth in the great State of Michigan, and to put Michigan on an equal footing with its neighbors in recreational activities. Please let us know if we can provide any further information.