

BUREAU OF MOTOR VEHICLES: Liability of sponsor in case of issuance of beginner's permit.

July 21, 1943.

Mr. M. W. Cameron, Chief Auditor,
Bureau of Motor Vehicles of the
State of Indiana,
State House,
Indianapolis, Indiana.

Dear Mr. Cameron:

Your letter of July 14, 1943, received as follows:

“Section 7 of Chapter 58, of the Acts of the 1939 General Assembly provides as follows:

“(a) Every application for an operator's, chauffeur's, public passenger chauffeur's or conditional license or beginner's permit shall be made upon the approved form furnished by the department and shall be verified by the applicant before a person authorized to administer oaths.

“(b) Every application shall state the name, age, sex and residence address of the applicant and whether or not the applicant has been theretofore licensed as an operator, chauffeur, public passenger chauffeur or holder of a conditional license or beginner's permit and if so when and by what state, and whether or not such license or permit has ever been suspended or revoked and if so the date of and the reason for such suspension or revocation and whether or not the applicant has been convicted of a felony, and if the applicant has any physical or mental disability, he shall so state in his application, giving the nature of such disability, and such other information as the commissioner may direct.

“(c) The department shall not grant the application of any minor under the age of eighteen years for a conditional license or a

beginner's permit unless such application is signed by the father of the applicant, if the father is living and has custody of the applicant, otherwise by the mother or guardian having the custody of such minor, or in the event a minor under the age of eighteen years has no father, mother or guardian, then a beginner's permit or conditional license shall not be granted to the minor unless his application therefor is signed by his employer or a resident householder.'

"There is attached hereto our Form 100B which is Application for Beginner's Permit. I refer you directly to the final paragraph on the front thereof. In case the applicant for a beginner's permit is a minor under the age of 18 years, does the law, which I have quoted, require that applicant's father, mother, guardian, employer, or resident householder shall assume all liability incurred by reason as said applicant's operating a motor vehicle under authority as granted by the virtue of a beginner's permit? In case a person signs an application for beginner's permit, in the event the applicant is a minor under age of 18 years, assuming liability incurred by reason of said applicant's operating a motor vehicle under authority granted by virtue of beginner's permit, is it possible that such signor may be relieved of such liability if for any reason he feels that the holder of the beginner's permit is conducting himself in such a manner that an actual loss may be suffered by the guarantor?"

The pertinent part of Form 100B referred to in your letter reads as follows:

"I agree that the above named applicant be issued a beginner's permit *and assume all liability incurred by reason of said applicant operating a motor vehicle under authority granted by virtue of a beginner's permit.*"

In answer to your first question, I wish to advise that Section 7, Chapter 58 of the Acts of 1939, being Section 47-439, Burns' Revised Statutes 1943 Supplement, does not require the applicant's father, mother, guardian, employer, or the resident householder, signing such application on behalf of the minor, to assume all liability incurred by reason of said applicant's operating a motor vehicle under the authority granted by virtue of a beginner's permit. The effect of such a signature by such person for and on behalf of such minor, as contemplated by said act, is that such father or other person so signing such application consents to the issuance by your department of such beginner's permit, and is an approval of the facts stated by such minor in his written application as to the minor's qualifications for the issuance of such beginner's permit.

In answer to your second question, I wish to advise that where said application form contains the language "I * * * assume all liability incurred by reason of said applicant operating a motor vehicle * * *," and said form is filed by the father of such minor, or by some other person named in the statute for and on behalf of such minor, that said provision for the assuming of such liability can be disregarded as not legally binding on such father or other person so signing said application for and on behalf of such minor. This is true for the reason that the legislature did not require such person to assume such liability in signing the application; and, secondly, there would be no consideration for the promise of the person purporting to assume the liability.

Indiana does not recognize the "family purpose doctrine." In the case of *McGoran v. Cromwell*, 86 Ind. App. 107, 109, 110, the court held that an aunt, being the owner of an automobile, was not liable in damages for the operation of said automobile by her nephew who lived in the same home with her and toward whom she maintained a relationship, in *Loco Parentis*, she having raised said nephew from infancy in her own home, where no agency was proved. The court held that the "family purpose doctrine" would not apply in Indiana.

However, this does not mean that the person who so signed such an application for and on behalf of such minor may have his name removed from such application. When such form is signed and filed with the said department it is a public record

and could not be changed. The promise to assume the liability above referred to would be merely unenforceable and the only way such a person signing for and on behalf of such minor could secure an entire removal of any future obligations on his part for so signing such application would be for the department to revoke such beginner's permit. He could not have a beginner's permit without such approval of the father or other person named in the statute in the order required by the statute.

However, attention is called to the fact that Section 7 (c) of the foregoing statute was amended by Chapter 278 of the Acts of 1943 by adding the following proviso:

“Provided, however, That no permit or license shall be issued to any minor under the age of eighteen years unless his father, if living and having custody of such minor, or unless his mother or guardian, if such father is not living, or does not have the custody of such minor, or in the event such minor has no father, mother or guardian, then unless his employer or a resident householder shall agree in said application to be responsible for any damage which such minor may cause by reason of the operation of a motor vehicle.”

The above amendment will be effective when the 1943 Acts have been distributed and declared in full force and effect by the Governor's proclamation. Such a provision in a statute has been held constitutional in the case of *Buelke v. Levenstadt*, 190 Calif. 684, 214 P. 42, in which case an uncle was held liable for damages where he stood *in Loco Parentis* to his minor nephew, for whom the uncle had signed an application for a beginner's permit under a statute making such parent liable for all damages, where the plaintiff was injured due to the nephew's negligent operation of the automobile.