

THE LACK OF REGULATIONS WILL MAKE YOU SCREAM: THE RISE OF HAUNTED HOUSES

Abstract: Haunted houses have existed in the United States for over a century, but despite their prominence, little legal precedent exists regarding their regulations. Given the growing commercialization of horror through movies and haunted houses, coupled with the increasing number of injuries linked to a controversial haunted house in Tennessee, the need for regulations has never been more urgent. Nevertheless, even outside of regulations, developments in tort and contract law show that contractual agreements to participate in a haunted house may not stand as enforceable contracts. Courts have consistently sided with haunted houses, claiming that patrons assume the risk when they consent to attend a haunted house, however, this does not acknowledge the lack of substantive precedent stemming from the prominence of binding, confidential arbitration clauses. This Note argues that the Consumer Product Safety Act should be expanded to include haunted houses, and unique regulations should be adopted to account for the typical contents of haunted houses. Additionally, this Note argues that courts should refrain from adhering to arbitration clauses in industries with high rates of injuries, such as amusement parks, and, in the absence of arbitration clauses, many haunted house contracts should be void. Under the traditional doctrine of assumption of risk, legally binding haunted house contracts should still be enforceable, preventing the flood of litigation that could arise without arbitration clauses.

INTRODUCTION

In the heart of Tennessee lies an unassuming, white-paneled, single-story home that has been the location of an unknown number of seemingly legal tortures.¹ In 2017, Navy veteran Russ McKamey relocated his controversial in-home haunted house from San Diego to Tennessee, where he continued to offer a \$20,000 reward to anyone who could finish the horrific haunt.² Despite dis-

¹ See Kelly Garino, *Extreme Haunted House McKamey Manor Refuses to Close Despite Complaints of Violent and Traumatizing Practices*, DAILY MAIL (Oct. 20, 2024), <https://www.dailymail.co.uk/news/article-13971277/extreme-haunted-house-mckamey-manor-refuses-close-complaints-violent-traumatizing.html> [perma.cc/3D4U-E5A8] (referring to McKamey Manor as a single-story home); Natalia Senanayake, *Controversial Haunted House Where Staff Physically Assault Patrons Is Still Open, Despite Backlash*, PEOPLE (Oct. 8, 2024), <https://people.com/mckamey-manor-still-open-despite-backlash-tennessee-haunted-house-arrest-owner-8724606> [perma.cc/5YC5-NCRD] (including photograph showing that the house is white paneled on a red brick foundation); *infra* notes 2–33 and accompanying text.

² Senanayake, *supra* note 1; Anna Claire Vollers, *Extreme Horror Experience McKamey Manor Opens Near North Alabama, Owner Dismisses Controversy*, ALABAMA (Aug. 16, 2017), https://www.al.com/news/2017/08/mckamey_manor_extreme_haunt_te.html [perma.cc/7YGJ-CLRH]. McKamey

approval from the community and an investigation by the Tennessee Attorney General, McKamey Manor is still in operation today.³ Because of the forty-page waiver that the participants are required to sign, McKamey Manor appears to be immune to legal action.⁴

previously resided in San Diego, where the haunt was limited to his backyard and a windowless van. Kelly Allen, *What Is McKamey Manor, America's Most Extreme Haunted House?*, AOL (Oct. 12, 2023), <https://www.aol.com/lifestyle/mckamey-manor-americas-most-extreme-170500036.html?guc-counter=1> [perma.cc/58X8-R59R]. Although the beginning of the haunt is unclear, McKamey claims that he began operating in San Diego in 1989. *Id.*; Vollers, *supra*. Following conflicting reasons, McKamey attempted to move the attraction to Illinois or Arizona in 2014, but public opposition kept him from doing so. *See* Allen, *supra* (stating that McKamey attempted to move from San Diego when the IRS filed a lien against his home because of \$252,000 in unpaid income taxes in 2012); Beth Accomando, *Extreme Haunt McKamey Manor to Leave San Diego*, KPBS (Aug. 7, 2015), <https://www.kpbs.org/news/arts-culture/2015/08/07/extreme-haunt-mckamey-manor-leave-san-diego> [perma.cc/87BN-3P8S] (quoting McKamey stating that he was leaving San Diego because he could not afford to live in San Diego after he lost his job as a veterans advocate); Accomando, *supra* (stating that McKamey attempted to relocate to McLeansboro, Illinois, but because of the opposition of 3,000 citizens, he was prevented from reopening the haunt in Illinois); Morgan Cook, *McKamey Manor Faces Haunts of Its Own—The IRS*, S.D. UNION TRIB. (Oct. 30, 2019), <https://www.sandiegouniontribune.com/2016/08/19/mckamey-manor-faces-haunt-of-its-own-the-irs/> [perma.cc/55Y8-WGQ6] (claiming that McKamey attempted to move to Arizona but was rebuffed by community opposition). Today, McKamey Manor is located in McKamey's house in Summerville, Tennessee. Allen, *supra*. McKamey claims, however, that there are two additional phases of the haunt, but no one has experienced the third phase because no one has been able to complete the second phase. *Id.*; Vollers, *supra*. The second phase is located in Nashville, Tennessee and the third phase is in Huntsville, Alabama. Vollers, *supra*. Despite offering \$20,000 to anyone who was able to complete the haunt, McKamey subtracted \$500 when a participant failed a challenge or used profane language during the haunt. *See* MCKAMEY MANOR PRESENTS, *McKamey Manor Presents (And Then There Were None) Revised*, at 21:20, 27:15 YOUTUBE (Aug. 9, 2019), https://www.youtube.com/watch?v=5LCB_k9jrYc&t=1275s [perma.cc/9S68-7TM5] (saying that for each failed challenge or use of profanity McKamey will deduct \$500 from the prize). By 2020 McKamey had rescinded the prize money following concerns that people were only going through the haunt for the money. *'If We Were Torturing, I'd Be in Jail': Owner of America's Scariest Haunted House Addresses Criticism*, WKRN (Oct. 22, 2020), <https://www.wkrn.com/news/local-news/if-we-were-torturing-id-be-in-jail-owner-of-americas-scariest-haunted-house-addresses-criticism/> [perma.cc/5S3R-SF2B]. No one ever completed the haunt or received the prize. Garino, *supra* note 1. Some people have speculated that McKamey never had the prize money in the first place. *See* Megan Seling, *Tennessee's McKamey Manor: Torture on Demand*, NASH. SCENE (Feb. 22, 2018), https://www.nashvillescene.com/arts_culture/coverstory/tennessees-mckamey-manor-torture-on-demand/article_760ac6f2-513f-5f7c-b1f2-d65d7452bb1a.html [perma.cc/3W45-KUJ3] (hypothesizing that there is no prize money because McKamey knows that people will not finish the haunt).

³ *See* Vollers, *supra* note 2 (detailing an onslaught of death threats, calls for McKamey to leave town, and community alerts in opposition of McKamey Manor); Garino, *supra* note 1 (stating that an online petition calling for the manor to be shut down had more than 192,000 signatures); Adam Mintzer & Sierra Rains, *McKamey Manor Sues TN AG Over Investigation Into Haunted House's Practices*, WKRN (Apr. 1, 2024), <https://www.wkrn.com/news/local-news/mckamey-manor-sues-tn-ag-over-investigation-into-haunted-houses-practices/> [perma.cc/523K-7XY4] (reporting that the Tennessee Attorney General notified McKamey of a pending investigation on October 31, 2023); Senayake, *supra* note 1 (stating that the manor was still open as of October 8, 2024).

⁴ *See* Rose Blake, *The Untold Truth of McKamey Manor*, THE DOUGHNUT (Oct. 12, 2024), <https://sites.marjon.ac.uk/doughnut/2020/10/12/the-untold-truth-of-mckamey-manor/> [perma.cc/J338-DVZE]

Amy Milligan was a California resident who was unlucky enough to experience McKamey Manor while it was operating in San Diego.⁵ When Milligan pleaded with McKamey to stop the haunt, McKamey taunted her by exclaiming she should feel ashamed.⁶ He threatened to continue the haunt until Milligan began to sob, at which point McKamey ended the haunt.⁷ Milligan's haunt was posted to YouTube by McKamey, as many of the haunts are, but some of the more horrific treatment was excluded.⁸ Milligan alleged that she was subjected to physical abuse and emotional torture that left her seeking legal recourse, but no report was ever filed.⁹

Milligan's story is not unique.¹⁰ McKamey tailors each haunt to his participants' greatest fears, and nothing is off limits.¹¹ Participants are required to con-

(stating that a participant was unable to receive assistance from the police because of the waiver that she signed).

⁵ Garino, *supra* note 1.

⁶ Juliet Bennett Rylah, *Woman Said Going Through the World's Most Extreme Haunted House Traumatized Her*, LAIST (Nov. 1, 2015), <https://laist.com/news/entertainment/mckamey-manor-amy-milligan> [perma.cc/D7DQ-A5T6]. After Milligan told McKamey that she could not breathe, he told her that she had not even completed a quarter of the haunt. *Id.* Haunted houses are colloquially referred to as haunts. See Griffin v. Haunted Hotel, Inc., 194 Cal. Rptr. 830, 837 (Ct. App. 2015) (referring to haunted houses as haunts); *The History of Haunted Houses!*, AM. HAUNTS (Mar. 8, 2014), <https://www.americahaunts.com/ah/2014/03/the-history-of-haunted-houses/> [perma.cc/E29D-VTKE] (same).

⁷ Rylah, *supra* note 6.

⁸ See Garino, *supra* note 1 (claiming that, although Milligan's haunt was posted to YouTube, the video was cut to remove scenes of her head being pushed under water); Blake, *supra* note 4 (stating that videos of participants undergoing the haunt are available for view on McKamey's YouTube channel); *McKamey Manor Presents*, YOUTUBE, <https://www.youtube.com/@mckameymanorpresents6828> [perma.cc/K9QH-6QGH] (showing videos of participants dating back to April 23, 2017). Some participants expressed concerns over being recorded. See Senanayake, *supra* note 1 (stating that participants thought that McKamey enjoyed recording them while they were being tortured); Elizabeth McCafferty, 'His Eye Was Full of Blood': The Halloween House of Horrors That Became a Real-Life Torture Den, THE GUARDIAN (Oct. 30, 2024), <https://www.theguardian.com/tv-and-radio/2024/oct/30/inside-mckamey-manor-podcast-halloween-house-of-horrors-real-life-torture-den> [perma.cc/3XHG-SLQW] (quoting nineteen-year-old Gabriella Hardiman, one of the first participants posted to YouTube, "I felt a little weird with the camera").

⁹ See Garino, *supra* note 1 (stating that Milligan went to the police after her experience at McKamey Manor, but she did not file a report). During her haunt Milligan was dragged by her hair, slapped, submerged in water, and covered in live roaches. Rylah, *supra* note 6. She was forced to make animal noises and was covered in soiled water while lying in the base of a freezer, all while being physically tormented by the haunt actors. *Id.* Unshown on the video, Milligan's hands were tied, and she was submerged several times in a pool covered with a cage. *Id.* Despite Milligan's obvious discomfort, she participated in a video interview after her haunt in which she gave McKamey Manor a glowing review. See *id.* (noting that Milligan said she would go back to McKamey Manor again and was sending McKamey an edible arrangement as a gift).

¹⁰ See Blake, *supra* note 4 (McKamey himself, in the same interview proudly added "7 years ago we had a heart attack. That was good stuff."); Seling, *supra* note 2 (detailing the experiences of three other participants who quit the haunt within an hour).

¹¹ See Blake, *supra* note 4 (noting that McKamey personalizes the haunts to target the participant's fears); *Warning*, MCKAMEY MANOR, <https://www.mckameymanor.com/warning> [perma.cc/2K2W-JUEF] (stating that each haunt is based on participants' personal fears); Hannah Yasharoff,

sent to a variety of horrors including: swimming through a trench full of caiman crocodiles, swimming in a tank filled with moray eels, being whipped, being tazed, being shot with a paintball gun, being force fed various bugs and mystery food, having teeth forcefully extracted, and much more.¹² Army Veteran Brandon Vance is a repeat participant, who willingly sought out the horror of McKamey Manor twice in order to simulate the adrenaline he experienced during service.¹³ Within three minutes of his second haunt Vance was placed in a straight-jacket with duct tape covering his face and submerged under water in a trench.¹⁴

Although participants are given a safe word to use to stop the experience, it provides little comfort.¹⁵ While visiting the San Diego location, Laura Hertz Brotherton had to say the safe word for several minutes before the actors finally stopped scraping her neck with a metal file.¹⁶ Even after the haunt ended, Brotherton was sprayed with a pressure washer while she was duct taped.¹⁷ Brotherton was later treated at the hospital for fractures, open wounds, and

'There's a Chance of Death': Extreme Haunted Tour Employee Explains Their Terrifying 40-Page Waiver, USA TODAY (Oct. 24, 2019), <https://www.usatoday.com/story/travel/destinations/2019/10/24/haunted-houses-require-waiver-insurance-drug-test/4082035002/> [perma.cc/FZN4-6C4V] (noting that the waiver to participate includes the possibility of death).

¹² Seling, *supra* note 2.

¹³ *Id.* Vance drove ten hours from McKinney, Texas to Summerton, Tennessee to visit McKamey Manor. *Id.* Vance said that the thrill of the manor was therapeutic, and it was the closest replica to the adrenaline rush he was familiar with while serving in the Army. *Id.*

¹⁴ *Id.* Brotherton, another participant, underwent a similar experience when she was held by her ankles and submerged in water. *Id.* Another promotional video showed participants locked in confined spaces while they filled with water. Mintzer & Rains, *supra* note 3. The waiver that participants are required to sign explicitly allows McKamey to submerge them underwater. Vollers, *supra* note 2.

¹⁵ See Allen, *supra* note 2 (finding that participants used the safe word, but the haunt did not stop until McKamey decided); Seling, *supra* note 2 (stating that one participant used the safe word for several minutes before the haunt stopped). Although Tennessee allows torture between two consenting adults, they must be able to revoke consent at any time. Sierra Rains, *McKamey Manor: TN AG Looking Into Claims Against 'Extreme Haunted Attraction'*, WKRN (Nov. 1, 2023), <https://www.wkrn.com/news/tennessee-news/mckamey-manor-tn-ag-looking-into-claims-against-extreme-haunted-attraction/> [perma.cc/3BBT-5R4Q]. When the safe word is ignored, the torture is no longer legal. See *id.* (stating that if a participant is not released after giving the safe word, the other person could be charged with kidnapping). In San Diego, McKamey did not allow participants to use a safe word. Vollers, *supra* note 2.

¹⁶ Seling, *supra* note 2. Brotherton traveled from Colorado to visit the San Diego location in 2016. *Id.* Brotherton claimed that the actors repeatedly hit her in the face, leaving her with marks to this day. *Id.* She was forced to dig a hole in the dirt and lie in it while the actors poured dirt over her face. *Id.* She was only allowed to breathe through a straw and was denied any water. *Id.*

¹⁷ *Id.* A pressure washer is a machine that ejects a pressurized water spray in order to clean stubborn stains or materials. *Pressure Washer Definition*, PRESSUREWASHERSUSA (Dec. 8, 2022), <https://pressurewashersusa.com/pressure-washer-definition/?srltid=AfmBOopl07Q1ZnKAaphW6xfxqi4ce5clwBaj9xuplXNgdU5oJjMDt2W2> [perma.cc/J9WC-HBZF]. The water sprayed by a pressure washers can lead to cuts or bruises from the pressure. BITCO Ins. Cos., *The Dangers of Pressure Washing and How to Stay Safe*, OLD REPUBLIC INS. GRP. (Mar. 28, 2023), <https://www.oldrepublicinsurancegroup.com/blog/the-dangers-of-pressure-washing-and-how-to-stay-safe> [perma.cc/SBC2-2Z7Q]. When dirty water is sprayed into an individual's skin it can also cause infection that could lead to an amputation. *Id.* Pressure washers can pierce through clothing and rubber. *Id.* Fourteen percent of emergency room visits for pressure washer injuries lead to hospitalization. *Id.*

severe bruising.¹⁸ When Brotherton tried to publicize her injuries, McKamey's fans discredited and bullied her, all with the approval of McKamey.¹⁹

Because of the horrific nature of McKamey's haunt, McKamey Manor vets its participants through an intense application process.²⁰ Participants over the age of twenty-one are required to complete a sports physical, bring a doctor's note showing mental and physical competency, pass a background check, show proof of medical insurance, pass a drug test, watch a two-hour long video of past participants, and execute a forty-page waiver consenting to emotional and physical abuse.²¹ Participants that are between eighteen and twenty years old must have parental permission in addition to the above requirements.²² The haunt is free to attend.²³

¹⁸ Selig, *supra* note 2. Brotherton had a large wound on her left knee because the actors reopened a scar from a previous surgery. *Id.* She had large bruises along her hips and stomach, and cuts in her mouth from the actors placing their fingers in her mouth. *Id.*

¹⁹ *Id.* McKamey has built a global fan base who watch his YouTube videos or participate in the manor. *Id.* The fan base communicates through the McKamey Manor Facebook page, which currently has almost 2,000 followers. *See id.* (finding that one participant communicated with another fan through the Facebook page); *McKamey Manor*, FACEBOOK, <https://www.facebook.com/RussMcKameyManor/> [perma.cc/PSCW-XRJU] (showing the number of followers). The fan base has been known to discredit and bully participants who try to share their negative experiences online. *See Selig, supra* note 2 (noting that one participant was called a liar by other fans when she tried to share her injuries after her haunt).

²⁰ *See Requirements, MCKAMEY MANOR*, <https://www.mckameymanor.com/requirements> [perma.cc/V9Y9-YAVP] (listing the requirements to attend McKamey Manor); Allen, *supra* note 2 (stating that “[a]nyone who wants to participate has to meet a long list of requirements”); Selig, *supra* note 2 (noting that participants must read the waiver out loud before signing in order to participate in the haunt). Many participants were required to purchase a onesie to wear during the haunt. Selig, *supra* note 2. Others were required to complete tasks assigned by McKamey before the haunt, including visiting Halloween stores or posting their challenges on the McKamey Manor Facebook page. *Id.*

²¹ *Requirements, supra* note 20; Stephanie Langston, *Petition to Shutdown ‘Torture Chamber’ in Lawrence County, TN*, WKRN (Oct. 28, 2019), <https://www.wkrn.com/news/newsfeed-now/petition-to-shutdown-torture-chamber-in-lawrence-co/> [perma.cc/YKQ8-LZFX]. Sports physicals are thorough medical examinations that ensure that participants are healthy enough to safely participate in a new activity. *What Is a Sports Physical and Who Should Get One?*, A PLUS ATHLETE (Feb. 23, 2023), <https://www.aplusathlete.com/post/what-is-a-sports-physical-and-who-should-get-one> [perma.cc/D2WT-9NN2]. They are designed to locate any preexisting health issues that could cause injuries during the activity. *Id.* Some sports physicals test heart function. *Id.* McKamey Manor requires a sports physical to verify that participants have a healthy heart and are capable of doing cardio. *McKamey Manor Presents*, YOUTUBE, *supra* note 8. McKamey records videos of the participants and posts them to his YouTube channel: McKamey Manor Presents. *Id.* The forty-page waiver allows for a variety of physical and psychological torture, including allowing participants' hair to be cut, teeth to be removed, fingers to be broken using mousetraps, have plastic wrap placed around their head, be exposed to extreme temperature, to be drugged intravenously, and more. Senanayake, *supra* note 1; Selig, *supra* note 2. One section of the waiver states that participants consent for McKamey Manor to do anything except sexual situations. Selig, *supra* note 2.

²² *Requirements, supra* note 20.

²³ Vollers, *supra* note 2. At the original San Diego location, McKamey requested that participants donate four cans or a bag of dog food. *Id.*; Senanayake, *supra* note 1. He would donate the dog food to local animal shelters. Vollers, *supra* note 2. At the Tennessee location, McKamey now asks for monetary donations to cover the cost of transportation between the three locations. *Id.* Donations, however,

Following McKamey Manor's feature in a Hulu documentary, Jonathan Skrmetti, the Tennessee Attorney General, opened an investigation into the haunt because of possible violations of consumer protection law.²⁴ Specifically, the Attorney General was concerned that McKamey was not honoring withdrawn consent, was not giving participants access to the waiver, and that it was impossible to win the prize money.²⁵ McKamey then sued Skrmetti, but the case was dismissed by the United States District Court for the Middle District of Tennessee.²⁶

In spite of the tumultuous history, McKamey Manor's popularity is clear: in 2019 there were 27,000 people on the waitlist to attend the manor and people have traveled from across the globe to participate.²⁷ Currently, McKamey

are not required. *Id.* Although the salaries of the Tennessee location employees are unknown, the San Diego employees were unpaid volunteers. McCafferty, *supra* note 8. One thirteen-year-old, Mercedes Ann, volunteered to assist with injuries because she had first aid training through her lifeguarding job. *Id.*

²⁴ Garino, *supra* note 1; Rains, *supra* note 15. Assistant Tennessee Attorney General Kristine Knowles sent a letter to Russ McKamey on October 31, 2023, expressing the office's concerns about the manor. Rains, *supra* note 15. The letter stated that the Attorney General would be requesting documents from McKamey to see if the manor violated any consumer protection laws. *Id.* On November 15, 2023, McKamey received a Request for Information from Attorney General Skrmetti. Complaint for Injunctive and Declaratory Relief at 3, *McKamey v. Skrmetti*, No. 3:24-cv-00363, 2024 U.S. Dist. LEXIS 151618 (M.D. Tenn. Aug. 22, 2024). McKamey filed suit against Attorney General Skrmetti and the Tennessee Department of Commerce and Insurance Commissioner, stating that Skrmetti's Request for Information incorrectly relied upon the Tennessee Consumer Protection Act of 1977. *Id.* at 3–4. Section 47-18-106 of the Tennessee Consumer Protection Act of 1977 allows for the Attorney General to request documents or examine witnesses if they have basis to believe that a person is engaging in any unlawful act. TENN. CODE ANN. § 47-18-106 (2024). The Tennessee General Assembly passed the Tennessee Consumer Protection Act of 1977 to protect consumers and legitimate businesses from fraudulent or deceptive businesses. *Id.* § 47-18-102. It additionally functions to promote consumer education and provide legal means to obtain standards of ethical behavior. *Id.*

²⁵ Rains, *supra* note 15. In the letter to McKamey, the Assistant Attorney General cited a 2023 Hulu documentary that featured McKamey Manor. *Id.* In the documentary, McKamey said “[w]e’re known for no quitting and no safe wording.” *Id.* This quote implies that McKamey does not give participants the opportunity to stop the haunt. *Id.* Additionally, the Assistant Attorney General claimed that participants were unable to access the required waiver before signing up, driving to Tennessee, or, on occasion, beginning the tour. *Id.* Because participants are under an intense amount of adrenaline and have limited time to review the waiver, it is unlikely that they fully appreciated the nature of the waiver. *See id.* (quoting a participant “[i]f [the waiver] would have said that a man is going to come out of the woods and murder you . . . , I would’ve signed it”); Seling, *supra* note 2 (showing that McKamey would take breaks during the mandatory waiver reading in order to cover the participant with fake blood and force him to eat mysterious substances, all before the participant had signed the waiver).

²⁶ *McKamey*, 2024 U.S. Dist. LEXIS 151618, at *1. McKamey filed an Emergency Motion for Preliminary Injunction requesting a declaration from the court that he did not need to respond to the Request for Information from Skrmetti and that defendants or their agents were not allowed to enter McKamey's property without a warrant. Complaint for Injunctive and Declaratory Relief, *supra* note 24, at 3. Skrmetti's Motion to Dismiss was granted because McKamey failed to state sufficient facts to entitle him to a declaration of judgment. *McKamey*, 2024 U.S. Dist. LEXIS 151618, at *23, 31.

²⁷ *See Seling*, *supra* note 2 (stating that people from all fifty states and some international participants have come to visit the manor); Langston, *supra* note 21 (confirming that there are more than 27,000 people on the wait list to attend the manor); *If We Were Torturing, I'd Be in Jail: Owner of*

Manor has not faced any legal action from participants, potentially because of the forty-page waiver that they are forced to sign in order to participate.²⁸ Unless haunted house regulations are amended, attractions such as McKamey Manor will continue to exist.²⁹

This Note focuses on the current legal regulations surrounding haunted houses and amusement attractions, and further looks into the application of contract and tort law to the conduct of haunted houses.³⁰ Part I of this Note discusses the history of amusement regulations as they have developed with the horror industry, and relevant contract and tort law.³¹ Part II evaluates the application of contract and tort law in haunted houses and looks at legal decisions regarding the regulation of haunted houses.³² Part III proposes more stringent regulations for haunted houses and critiques the illegal application of tort and contract law to waivers in haunted attractions.³³

I. AMUSEMENT REGULATIONS, UNENFORCEABLE CONTRACTS, AND TORTS

Generally speaking, businesses are subject to regulations in order to ensure that consumers are safe and receiving adequate services.³⁴ Even when ad-

America's Scariest Haunted House Addresses Criticism, *supra* note 2 (finding that McKamey receives 150 to 200 requests per day to tour the manor); McCafferty, *supra* note 8 (quoting a fan who asked how to get on the waitlist for McKamey Manor in October 2024).

²⁸ See Garino, *supra* note 1 (stating that McKamey has not faced any criminal charges as of October 2024); Blake, *supra* note 4 (finding that a participant was told the police could not help her after she went through the San Diego attraction because she signed a waiver); Seling, *supra* note 2 (quoting McKamey “[n]obody’s ever had any lawsuits”). Participants are forced to sign the waiver “on the spot.” Senanayake, *supra* note 1.

²⁹ See Seling, *supra* note 2 (showing that the manor is attended by people from around the world, and detailing the abuse of multiple participants); Blake, *supra* note 4 (showing that a participant was unable to seek civil recourse because of the waiver); Vollers, *supra* note 2 (finding that McKamey Manor is not required to adhere to business regulations because participants do not pay to attend).

³⁰ See *infra* notes 34–211 and accompanying text.

³¹ See *infra* notes 34–82 and accompanying text.

³² See *infra* notes 83–142 and accompanying text.

³³ See *infra* notes 143–211 and accompanying text.

³⁴ See Ella Ames, *12 Government Business Regulations You Need to Know*, LENDINGTREE (June 16, 2023), <https://www.lendingtree.com/business/government-regulations/> [perma.cc/29FC-XXR3] (listing the types of regulations that businesses have to adhere to). Businesses are subject to the relevant labor and employment laws in order to ensure equitable treatment of their employees. See, e.g., N.C. GEN. STAT. § 95-25.5 (2025) (setting forth requirements for employees under the age of eighteen); S.C. CODE ANN. § 41-13-25 (2025) (stating the penalties for violating regulations regarding child labor). Businesses are also required to comply with anti-discrimination laws, federal antitrust laws, advertising regulations, privacy protection regulations, and permit requirements. *Prohibited Employment Policies/Practices*, U.S. EEOC, <https://www.eeoc.gov/prohibited-employment-policies/practices> [perma.cc/L3YU-N53Z] (stating that businesses cannot discriminate based on race, religion, or sex); 15 U.S.C. § 1 (declaring any trusts restraining trade as illegal); *Advertising and Marketing Basics*, FTC, <https://www.ftc.gov/business-guidance/advertising-marketing/advertising-marketing-basics> [perma.cc/RFY6-89CS] (stating that advertisements are required to tell the truth and cannot be deceptive); *Health Insurance Portability and Accountability Act of 1996*, OFF. OF THE ASSISTANT SEC’Y FOR PLAN. & EVALUATION, <https://aspe.hhs>

hering to set regulations, however, businesses can still be found liable if they violate contract or tort law.³⁵ Many haunted houses rely on the use of waivers to avoid tort law claims from disgruntled or injured participants, however, even legal waivers can be found unenforceable under contract law.³⁶

Section A of this Part explores the history of the scare industry, focusing on the history of haunted houses and scary movies.³⁷ Additionally, Section A provides an overview of the limited regulations on amusement attractions.³⁸ Section B provides an overview of contract law, looking at when courts have found that a contract is unenforceable and the extent of legally binding contracts.³⁹ Finally, Section C explores tort law and defenses used to refute liability.⁴⁰

A. History of the Scare Entertainment Industry and Current Regulations

Ever since the nineteenth century Halloween has been a night for mischief, much to the disgruntlement of neighbors, parents, and targets of the pranks.⁴¹ In 1933, during the height of the Great Depression, the pranks reached a peak dur-

gov/reports/health-insurance-portability-accountability-act-1996 [perma.cc/B7QA-P8U7] (requiring certain standards to be met for healthcare patient's privacy); Ames, *supra* (noting that businesses must apply for liquor and operating permits).

³⁵ See *Vokes v. Arthur Murray, Inc.*, 212 So. 2d 906, 909 (Fla. Dist. Ct. App. 1968) (finding that an otherwise legal business engaged in an unlawful contract because of misrepresentation); *City of Watauga v. Gordon*, 434 S.W.3d 586, 594 (Tex. 2014) (finding an otherwise lawful business liable for an intentional tort of battery).

³⁶ See *Requirements*, *supra* note 20 (stating that a signed waiver is required to attend McKamey Manor); *Can You Sue for a Haunted House Injury?*, TIMIAN FAWCETT, <https://www.timianfawcett.com/can-you-sue-for-a-haunted-house-injury/> [perma.cc/GP7U-A9H2] (stating that most haunted houses require their participants to sign a waiver); *infra* notes 63–80 and accompanying text.

³⁷ See *infra* notes 41–62 and accompanying text.

³⁸ See *infra* notes 41–62 and accompanying text.

³⁹ See *infra* notes 63–74 and accompanying text.

⁴⁰ See *infra* notes 75–82 and accompanying text.

⁴¹ Becky Little, *The Great Depression Origins of Halloween Haunted Houses*, HISTORY (Mar. 28, 2023), <https://www.history.com/news/halloween-haunted-house-great-depression> [perma.cc/4C8Q-NPH6]. When Scottish and Irish immigrants came to the United States in the nineteenth century, they brought a tradition of Halloween pranks and mischief. Christopher Klein, *Halloween Was Once So Dangerous That Some Cities Considered Banning It*, HISTORY (Oct. 4, 2023), <https://www.history.com/news/halloween-was-once-so-dangerous-that-some-cities-considered-banning-it> [perma.cc/9MLS-4LHY]. Young men used to steal neighbors' gates off the hinges, steal dead bodies from morgues, or pose fake dead bodies in various locations. Little, *supra*; see Jonathan Zimmerman, *Sexy Bo Peep: How Adults Stole Halloween from American Children*, CHRISTIAN SCI. MONITOR (Oct. 31, 2013), <https://www.csmonitor.com/Commentary/Opinion/2013/1031/Sexy-Bo-Peep-How-adults-stole-Halloween-from-American-children> [perma.cc/AZE8-E7VC] (showing that, in 1900, a group of medical students stole a headless cadaver from their school and propped it at the front door of the building); Klein, *supra* (stating that children used to remove manhole covers, deflate car tires, place fake road signs to confuse drivers, and set fires). Boys saw Halloween night as the time that they could play pranks without being disciplined. Little, *supra*; see Klein, *supra* (recounting a story of a train driver that was accosted by a terrifying prank but did not discipline the pranksters because he too had engaged in similar pranks as a child).

ing a historical Halloween known as Black Halloween.⁴² In response, communities took two differing approaches: some banned Halloween, while others began to organize activities to keep the pranksters entertained.⁴³ Thus the haunted house was created.⁴⁴

The first haunted houses in America were created in residences and featured classic horror imagery such as ghosts and witches.⁴⁵ Haunted houses did not gain commercial popularity, however, until 1969, when Disneyland opened

⁴² Little, *supra* note 41. The Great Depression took place from 1929 to 1939. Christine D. Romer & Richard H. Pells, *Great Depression*, BRITANNICA (Dec. 21, 2024), <https://www.britannica.com/event/Great-Depression> [perma.cc/SCV6-RQ52]. It was an international economic recession that began in the U.S. following a drop in spending. *Id.* The Great Depression had a tremendous impact on culture and society in the United States. *See id.* (finding that the Great Depression sparked fundamental changes in policy, artistic endeavors, and community practices). Communities suffered immense poverty, birth and marriage rates declined, and the rate of teenage drifters rose. *Id.* In 1933, the traditional Halloween pranks were exacerbated by the stress caused by the economic depression. *See* Little, *supra* note 41 (finding that men's Halloween pranks increased in severity in 1933 in response to the Great Depression). The previously harmless pranks shifted to severe property damage, vandalism, and harassment. *See id.* (finding that hundreds of boys chopped down telephone poles and flipped cars); Zimmerman, *supra* note 41 (stating that in 1933 hundreds of boys taunted police). The name Black Halloween was inspired by Black Tuesday, the colloquial name given to the stock market crash in 1929. Little, *supra* note 41. On October 29, 1929, referred to as Black Tuesday, the Dow Jones Industrial Average fell 12%, marking a 15% fall in two days. Julie Marks, *What Caused the Stock Market Crash of 1929?*, HISTORY (Oct. 23, 2024), <https://www.history.com/news/what-caused-the-stock-market-crash-of-1929> [perma.cc/BV5Q-L635].

⁴³ *See* Little, *supra* note 41 (stating that some cities debated outlawing Halloween and others began to organize activities for the youth); Klein, *supra* note 41 (quoting an Illinois newspaper calling for residents to shoot trespassers with "rock, salt or bird shot" in order to dissuade Halloween pranks). Communities organized local costume parades, parties, and carnivals using their own resources. Klein, *supra* note 41. Because of the Great Depression, many of the activities were located within people's houses and used low-cost materials, such as soot for face paint and sheets for ghost costumes. *Id.* Once trick-or-treating became standard in the 1950s, pranks continued to diminish. *Id.*

⁴⁴ *See* Little, *supra* note 41 (referring to the first organized Halloween activities as haunted houses). Neighborhoods began to create "trails of terror," which were haunted houses in people's basements or houses. Chris Heller, *A Brief History of the Haunted House*, SMITHSONIAN MAG. (Oct. 28, 2017), <https://www.smithsonianmag.com/history/history-haunted-house-180957008/> [perma.cc/A49E-22G8]. Homeowners would hang nets from the ceiling, create tunnels for participants to crawl through, and make scary noises. *Id.* Local children would travel in between basements, exploring a wide variety of haunts. *Id.* Haunted attractions have existed in Europe since as early as the 1800s. *See id.* (noting that Marie Tussaud's Chamber of Horrors in London featured decapitated figures in 1802); Little, *supra* note 41 (finding that a haunted house was debuted at a British amusement park in 1915).

⁴⁵ Heller, *supra* note 44.

its Haunted Mansion.⁴⁶ Today, commercial and residential haunted houses are an annual staple.⁴⁷

The scare industry represents a commercialization of horror through different modes, including haunted houses, scary movies, and gory video games.⁴⁸ The horror genre in film has evolved with the shifting fears of each generation, and along with it, the regulations imposed on the horror industry have shifted.⁴⁹ In 1934, the Motion Picture Production Code began to be enforced, imposing self-regulations upon movies released by major studios.⁵⁰ These regula-

⁴⁶ *Id.* The Haunted Mansion, which is still operating today, was a sweeping success as it had over 82,000 patrons in one day in 1969. *Id.*; see *Haunted Mansion*, DISNEYLAND, <https://disneyland.disney.go.com/attractions/disneyland/haunted-mansion/> [perma.cc/YN7A-W6YT] (stating that the Haunted Mansion is currently open); Little, *supra* note 41 (noting that the Haunted Mansion “had an extremely high production value for its day.”). To this day the Haunted Mansion is considered revolutionary for the haunted attraction industry because of its innovative use of technology and special effects. Heller, *supra* note 44.

⁴⁷ See Heller, *supra* note 44 (estimating that 2,700 professional haunted houses operated across the United States in 2016); Little, *supra* note 41 (stating that over 1,200 professional haunted houses operated across the United States in 2023 and free residential haunted houses continue to operate in neighborhood homes). Typical haunted houses average 7,500 to 10,000 customers annually, and most haunted houses charge twenty-five dollars per haunt. *Haunted House Facts*, AM. HAUNTS, <https://www.americahaunts.com/ah/facts/> [perma.cc/5U53-RAZF]; Mark Dent, *The Frightening Economics of Haunted Houses*, THE HUSTLE (Oct. 21, 2023), <https://thehustle.co/the-frightening-economics-of-haunted-houses> [perma.cc/TXV8-WDRD]. The haunted attraction industry is very lucrative. See Heller, *supra* note 44 (stating that the industry is valued at \$300 million).

⁴⁸ See *infra* notes 49–55 and accompanying text; Joseph D’Souza, *Video Game Violence Statistics and Facts*, COOLEST GADGETS (Jan. 2, 2025), <https://www.coolest-gadgets.com/video-game-violence-statistics/> [perma.cc/APS4-GA9A] (finding that violent video games have become more popular in the last three decades). Horror existed long before the scare industry. See Heller, *supra* note 44 (stating that people have been telling ghost stories for centuries). Ancient writers have been transcribing ghost stories since as early as first century A.D. See *History of Ghost Stories*, HISTORY (Oct. 3, 2023), <https://www.history.com/topics/halloween/historical-ghost-stories> [perma.cc/67MA-SMXQ] (noting that Pliny the Younger, a Roman author, wrote a ghost story in a letter). With the rise of gothic literature in the 18th century, ghost stories became commercialized. See *The History of Horror Literature: How Spooky, Scary Stories Evolved*, UNIV. OF TEX. PERMIAN BASIN, <https://online.utpb.edu/about-us/articles/humanities/the-history-of-horror-literature-how-spooky-scary-stories-evolved/> [perma.cc/6CCD-W2BH] (finding that gothic fiction became popular in the 18th century and closely reflects the style of popular horror authors today).

⁴⁹ Eleanore Barrera, *Film 101: A Harrowing History of Horror*, MEDIUM (Oct. 22, 2020), <https://medium.com/george-eastman-museum/film-101-a-harrowing-history-of-horror-ab70b5103132> [perma.cc/CE4X-MCYA]; see Ygraine Hackett-Cantabrana, *Censoring Fear: 7 Hays Code Horrors*, FANGORIA (Aug. 3, 2022), <https://www.fangoria.com/censoring-fear-7-hays-code-horrors/> [perma.cc/D2U3-WUCY] (noting that the regulations on rating horror movies have changed since the Hays Code).

⁵⁰ Hackett-Cantabrana, *supra* note 49; Matt Goldberg, *The Hays Code: A History of Hollywood’s Self-Censorship + Its Influence on Film*, BACKSTAGE (Sep. 17, 2024), <https://www.backstage.com/magazine/article/hays-code-rules-history-77748/> [perma.cc/QFU4-Z6Q7]. The Motion Picture Production Code, commonly referred to as The Hays Code after the president of Motion Picture Producers and Distribution America, was introduced in 1930, four years before it was heavily enforced. Hackett-Cantabrana, *supra* note 49. The Hays Code was created following multiple Hollywood scandals in the 1920s, including the alleged rape of actress Virginia Rappe by Fatty Arbuckle. Goldberg, *supra*. These scandals caused widespread criticism of the film industry, and critics around the United

tions directly impacted horror films and led to producers censoring their own content to avoid their scripts being changed.⁵¹ In 1952, in *Joseph Burstyn, Inc. v. Wilson*, the Supreme Court ruled that films are protected under the First Amendment as a form of free speech, setting into motion the fall of the Motion Picture Production Code.⁵² In 1968, the Code was replaced by the Motion Picture Association rating system that is in place today.⁵³ The new standardized rating system created a boom of horror movies because directors were no longer forced to censor their writing, in turn creating a larger fan base for hor-

States advocated for direct federal censorship of film production. *Hays Code*, BRITANNICA, <https://www.britannica.com/art/Hays-Code> [perma.cc/2AFK-WXTY]; Goldberg, *supra*. The film industry, however, was concerned about broad federal censorship and inconsistent state censorship, and chose to self-regulate through the creation of the Hays Code. *Hays Code*, *supra*; Goldberg, *supra*; see MOTION PICTURE ASS'N OF AM., *G Is for Golden: The MPAA Film Ratings at 50*, MOTION PICTURE ASS'N, <https://www.motionpictures.org/wp-content/uploads/2018/11/G-is-for-Golden.pdf> [perma.cc/9UNB-CF4U] (noting differing state censorship laws). The Hays Code was divided into two parts. Hackett-Cantabrana, *supra* note 49. The General Principles provided a general guideline for film content by requiring that the film content could not lower the audience's morality or have any influence on children, women, or people with a "susceptible mind." *Id.* The Particular Applications listed specific items that were prohibited from being depicted in movies, including graphic or realistic violence, sexual relations outside of wedlock, and sexual perversion. *Id.*

⁵¹ See Hackett-Cantabrana, *supra* note 49 (noting that depictions of violence were prohibited under the Hays Code and that, under the Code, many writers used creative ways to use prohibited themes in their movies); John Mackie, *This Week in History, 1934: Hollywood Gets Its Mouth Scrubbed with Soap by the Hays Code*, VANCOUVER SUN (July 29, 2022), <https://vancouversun.com/news/local-news/this-week-in-history-1934-hollywood-gets-its-mouth-scrubbed-with-soap-by-the-hays-code> [perma.cc/8779-9THU] (statement of director Edward Dmytryk) ("If we wanted to get something across that was censorable . . . we had to do it deviously. We had to be clever."). The horror genre radicalized the way that filmmakers showed prohibited themes by using subtext to avoid censorship. Hackett-Cantabrana, *supra* note 49.

⁵² Hackett-Cantabrana, *supra* note 49; *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 506 (1952). *Joseph Burstyn, Inc.*, a distributor of motion pictures, brought a claim against *Wilson*, the commissioner of Education of the State of New York, challenging the constitutionality of a New York statute that allowed movies to be banned if they were sacrilegious. *Joseph Burstyn, Inc.*, 343 U.S. at 497. Petitioner had attempted to show a movie called *The Miracle*, which was prohibited under the statute. *Id.* at 497–99. The Court held that motion pictures are considered speech and are protected under the free speech protections of the First Amendment. *Id.* at 502. Therefore, the statute was unconstitutional. *Id.* at 506.

⁵³ Hackett-Cantabrana, *supra* note 49. The impact of international film was one of the factors that led to the Hays Code being replaced. *Id.* In 1968, the Motion Picture Association of America (MPAA) had four movie ratings: G rated movies that were suitable for all ages, M rated movies that were considered "appropriate for 'Mature Audiences,'" R rated movies that were restricted for people under sixteen without a guardian, and X rated movies that were restricted for people under the age of sixteen, regardless of if there was a guardian present. Sam Kench, *Movie Ratings Explained—Origins & How They've Changed*, STUDIOBINDER (Aug. 7, 2022), <https://www.studiobinder.com/blog/movie-ratings-explained/> [perma.cc/QX5Q-3BAG]. As of 2026, the ratings have changed to the following: G rated movies, PG rated movies where parental guidance is suggested, PG-13 rated movies where parents are strongly cautioned, R rated movies where people under seventeen can only attend with a guardian, and NC-17 rated movies that are restricted for anyone under eighteen. *Id.*

ror movies.⁵⁴ The commercialization of horror movies directly benefited the haunted attraction industry, and demand for haunted attractions peaked following the embracement of slasher films.⁵⁵

Despite the prominence of haunted houses in the United States and the unique dangers that they pose, the regulations for haunted houses are state specific.⁵⁶ In some states, haunted houses are regulated under the same regulations as other amusement activities, such as amusement parks or water parks.⁵⁷ These regulations require amusements to have the proper permits, fire safety features, and mechanical testing, along with any other state specific regulations.⁵⁸

⁵⁴ See Hackett-Cantabrana, *supra* note 49 (noting that, during the Hays Code, directors would include censored topics in their movies despite the prohibition); Marco Lanzagorta, *Horror Cinema By the Numbers*, POP MATTERS (Nov. 25, 2007), <https://www.popmatters.com/horror-cinema-by-the-numbers-2496198962.html> [perma.cc/QPQ9-TDP6] (finding an increase in the number of horror movies produced in the late 1960s and the 1980s); Court Mann, *Did PG-13 Change Horror Films, or Just Change Us?*, DESERET NEWS (Oct. 31, 2019), <https://www.deseret.com/entertainment/2019/10/31/20940549/pg-13-horror-movies-ratings-r-mpaa-changed-scary-halloween-films/> [perma.cc/GC7P-5P9C] (noting that horror movies have increased in popularity).

⁵⁵ See Heller, *supra* note 44 (stating that the horror boom that followed slasher movies such as *Halloween* increased the demand for haunted houses); *Haunted House Facts*, *supra* note 47 (noting that the popularity of haunted houses grew alongside the popularity of horror movies). In the late twentieth century haunted houses commonly mirrored popular culture references in horror movies in order to cater to a larger audience. See Heller, *supra* note 44 (quoting the president of the Haunted House Association “[t]he haunted house industry really followed the movie industry at that time”). Slasher films are a sub-genre of horror movies that depict a killer or killers slaughtering a large number of victims using non-firearm weapons. Sam Kench, *What Is a Slasher Film—Definition, Characters, Villains & Tropes*, STUDIOBINDER (Oct. 24, 2021), <https://www.studiobinder.com/blog/what-is-a-slasher-film-definition/> [perma.cc/A75U-HJ42].

⁵⁶ See Heller, *supra* note 44 (estimating that over 2,000 professional haunted houses were operating in 2016); Little, *supra* note 41 (finding that residential, non-professional haunted houses are prominent in the United States today); #287—*Haunted House Safety Regulations: IBC and NFPA Model Code Requirements*, QRFS (Oct. 25, 2019), <https://blog.qrfs.com/287-haunted-house-safety-regulations-ibc-and-nfpa-code-requirements/> [perma.cc/5NXU-8JX6] (noting that the National Fire Protection Association reports that haunted houses pose unique fire risks because they contain props, distractions, and combustible material that increase the chances of a fire occurring); Connor Marcus Oehmke, *A Call for National Legislation Regarding Amusement Park Safety*, 38 J. LEGAL MED. 101, 107–08 (2018) (stating that Congress removed federal jurisdiction over amusement regulations, leaving it to the states). Haunted houses also pose unique risks because participants usually attend the haunts at night, hindering their vision, and are usually wearing costumes, hindering their movements. See #287—*Haunted House Safety Regulations: IBC and NFPA Model Code Requirements*, *supra* (finding that people usually attend haunted houses at night or while wearing costumes).

⁵⁷ Compare FLA. STAT. § 616.242 (2024) (defining an amusement ride for the purpose of the statute as any “building [or] structure . . . through which a patron moves, walks, or is carried . . . for the purpose of giving its patrons amusement, pleasure, thrills, or excitement”), and 3A OHIO. JURIS. 3d *Amusements and Exhibitions* § 1 WESTLAW (database updated Nov. 2025) (defining an amusement as a “pastime, diversion, or other enjoyable activity”), and *id.* § 9 (allowing the state to regulate amusements under their police power for the purpose of protecting the well-being of the community), with N.C. GEN. STAT. § 95-111.3 (2024) (stating that haunted houses and other walk-through seasonal attractions are not considered amusements for the purpose of regulations).

⁵⁸ See FLA. STAT. § 616.242 (requiring that amusement rides follow the national standards in the National Electric Code Handbook, National Fire Protection Association, and ASTM International

In states that do not include haunted houses in their amusement regulations, or where the amusement regulations exclusively mirror standard fire protection regulations, haunted houses are required to meet the proper regulations put forth in the International Building Code and by the National Fire Protection Association.⁵⁹ Under the 2021 International Building Code (IBC), haunted houses must have an automatic sprinkler system in accordance with the National Fire Protection Association's Sprinkler Installation Code, automatic smoke detectors that activate an audible alarm, visual or auditory affects in compliance with IBC sections 907.2.12.2–12.3, and exit signs and emergency exit markings that are activated by the smoke detectors or sprinkler system.⁶⁰

Committee F24 Standards on Amusement Rides and Devices); *City of Cleveland v. Alex Solomon Fam. Ltd. P'ship*, No. 2006-CVG-27560, 2009 WL 1156679, at *1–2 (Ohio Ct. App. Apr. 30, 2009) (holding that the defendant was required to adhere to Ohio zoning restrictions when operating a family haunted house). In Florida, permanent amusement rides must have an annual permit, temporary amusement rides must have a current permit, and all rides must have up-to-date nondestructive testing affidavits created by inspectors that are qualified and certify that the ride has undergone testing to verify its integrity annually. FLA. STAT. § 616.242. Nonvisual testing is not necessary for haunted houses. *Id.*

⁵⁹ See #287—*Haunted House Safety Regulations: IBC and NFPA Model Code Requirements*, *supra* note 56 (stating that haunted houses are special amusement buildings and are required to adhere to regulations in the International Building Code and National Fire Protection Association). Following a disastrous fire in a New Jersey haunted house in 1984 that killed eight people, states began to impose fire safety restrictions upon haunted houses. Ralph Blumenthal, *Koch Tightens Rules on 'Haunted Houses'*, N.Y. TIMES (May 18, 1984), <https://www.nytimes.com/1984/05/18/nyregion/koch-tightens-rules-on-haunted-houses.html> [perma.cc/56DY-TDSA]. Mayor Koch of New York required that haunted houses install smoke detectors, fire extinguishers, and emergency lights in order to reduce the risk of any more fires. *Id.* Today, all states have adopted the minimum requirements set forth in the model code, but some states necessitate additional requirements. #287—*Haunted House Safety Regulations: IBC and NFPA Model Code Requirements*, *supra* note 56. The International Building Code (IBC) is a model code that has been adopted in all fifty states, the District of Columbia, Guam, Northern Marianas Islands, and Puerto Rico. *The International Building Code*, INT'L CODE COUNCIL, [https://www.iccsafe.org/products-and-services/i-codes/2018-i-codes/ibc/#:~:text=The%20International%20Building%20Code%20\(IBC,associated%20with%20the%20built%20environment](https://www.iccsafe.org/products-and-services/i-codes/2018-i-codes/ibc/#:~:text=The%20International%20Building%20Code%20(IBC,associated%20with%20the%20built%20environment) [perma.cc/J6LV-ZBP4]. The IBC is created by the International Code Council, which is an initiative that has created fifteen international codes. *About the International Code Council*, INT'L CODE COUNCIL, <https://www.iccsafe.org/about/who-we-are/> [perma.cc/HWN9-RP3L].

⁶⁰ INT'L BLDG. CODE § 411.2 (INT'L CODE COUNCIL 2021); *id.* § 903.3.1; *id.* § 411.3–4; *id.* § 411.6. The National Fire Protection Agency is a nonprofit that develops codes addressing different aspects of fire safety using input from engineers, first responders, and other experts. *Why NFPA Codes and Standards Matter*, NFPA, <https://www.nfpa.org/about-nfpa/why-nfpa-codes-and-standards-matter> [perma.cc/EH3R-R379]. The NFPA has created over four hundred codes, each addressing a unique aspect of fire safety, emergency responses, or building engineering. See NAT'L FIRE PROT. ASS'N, 14 STANDARD FOR THE INSTALLATION OF STANDPIPE AND HOSE SYSTEMS 14-6 (2024) (detailing how to install hoses and standpipe systems to protect against fire damage); NAT'L FIRE PROT. ASS'N, 288 STANDARD METHODS OF FIRE TESTS OF HORIZONTAL FIRE DOOR ASSEMBLIES INSTALLED IN HORIZONTAL FIRE RESISTANCE-RATED ASSEMBLIES 288-4 (2022) (specifying proper technique for constructing fire doors that are placed in floors or roofs); NAT'L FIRE PROT. ASS'N, 13E RECOMMENDED PRACTICE FOR FIRE DEPARTMENT OPERATIONS IN PROPERTIES PROTECTED BY SPRINKLER AND STANDPIPE SYSTEMS 13E-6 (2026) (recommending procedures for first responders who respond to properties containing fire protection systems). National Fire Protection Association 13 addresses the

National Fire Protection Association 101 lists the same requirements as the IBC, but it does not require haunted houses shorter than ten feet where the amount of aggregate horizontal projections does not exceed 160 square feet to have a fire sprinkler system.⁶¹ Unless a state imposes additional regulations, which is a rare occurrence, there are no regulations on the content or features of a haunted house.⁶²

B. What Makes a Contract Unenforceable?

Courts are hesitant to void valid contracts, but not every contract is enforceable.⁶³ A contract is voidable for three reasons: (1) the characteristics of

proper procedures for installing sprinkler systems. NAT'L FIRE PROT. ASS'N, 13 STANDARD FOR THE INSTALLATION OF SPRINKLER SYSTEMS 13-16 (2025). When the haunted house is temporary, the supply for the sprinkler water must be approved. INT'L BLDG. CODE § 411.2-4. Temporary haunted houses are not required to have automatic sprinklers when the haunted house is smaller than 1,000 square feet and there are fewer than fifty feet between any point of the haunted house and the nearest exit. *Id.* § 411.4. If two or more smoke detectors or the automatic sprinkler system are activated, (1) the exit directions will be illuminated along the walking surface, (2) any disorienting visuals or sounds will stop, and (3) a prerecorded message will play directing patrons to proceed to the nearest exit, along with alarm sounds. *Id.* § 907.2.12.2. The alarm system should be heard across the entire haunted house. *Id.* § 907.2.12.3. Special Amusement Areas are defined as any temporary or permanent structures used for amusement and arranged in a way where the pathway is not readily apparent because of disruptive visual or audio stimuli, or where the path is intentionally hidden, or the path is otherwise not readily available because of the structure of the attraction. *Id.* § 411.2. If a haunted house has an open-air portion, however, it does not need to comply with the International Building Code. *Id.* § 411.1. This exception recognizes the fact that open air attractions prevent smoke from accumulating, which reduces the need for fire protocol. *See id.* (stating that special amusement areas that are constructed to prevent the accumulation of smoke do not need to follow the IBC); #287—*Haunted House Safety Regulations: IBC and NFPA Model Code Requirements*, *supra* note 56 (finding that the IBC exception permits haunted houses to bypass the requirements if the structure stops smoke from accumulating).

⁶¹ #287—*Haunted House Safety Regulations: IBC and NFPA Model Code Requirements*, *supra* note 56; LIFE SAFETY CODE 101 § 12.4.9.1.1 (NAT'L FIRE PROT. ASS'N 2024). The aggregate horizontal projections indicate how many people can be within the structure at one time and are at risk during a fire. #287—*Haunted House Safety Regulations: IBC and NFPA Model Code Requirements*, *supra* note 56; FLA. STAT. § 616.242 (2024) (requiring that amusement rides follow the national standards in the National Electric Code Handbook, National Fire Protection Association, and ASTM International Committee F24 Standards on Amusement Rides and Devices).

⁶² *See* #287—*Haunted House Safety Regulations: IBC and NFPA Model Code Requirements*, *supra* note 56 (noting that haunted houses must conform to fire safety standards and nothing else); Oehmke, *supra* note 56, at 108 (noting that amusement regulations are left up to the states).

⁶³ *See* Washington v. Glucksberg, 521 U.S. 702, 760 (1997) (citing Allgeyer v. Louisiana, 165 U.S. 578, 588–93 (1897)) (noting the Fourteenth Amendment protects the liberty to contract); Clark v. Abdallah, No. 21-10001, 2023 U.S. Dist. LEXIS 131388, at *12 (E.D. Mich. July 28, 2023) (holding that allowing voluntary contracts is beneficial to public policy because it encourages people to negotiate terms that suit their personal interests and encourages trust in the judiciary); *infra* notes 67–83 and accompanying text.

the parties involved, (2) duress placed on the contracting party, or (3) the content of the contract.⁶⁴

A contract may be voidable when the court has reason to believe that one of the parties was not able to legally consent to the contract, either because of intoxication or infancy.⁶⁵ Minors are unable to enter into contracts because courts are concerned about their ability to fully comprehend the legal nature of the contract.⁶⁶ Courts have, however, held that minors are able to enter into valid contracts when they are contracting for a necessity.⁶⁷ Similarly, contracts are voidable when one of the parties was intoxicated because courts believe that intoxicated individuals are unable to appreciate the nature of their actions.⁶⁸

A contract may also be voidable because one of the parties to the contract was under duress.⁶⁹ Duress occurs when one party's manifestation is induced by an improper threat by the other party leaving them with no reasonable choice but to sign the contract.⁷⁰ Alternatively, contracts are voidable for their

⁶⁴ See *infra* notes 65–80 and accompanying text. A contract is also voidable if the contract is formed under misrepresentation or undue influence. See *Vokes v. Arthur Murray, Inc.*, 212 So. 2d 906, 909 (Fla. Dist. Ct. App. 1968) (holding that a contract can be void for misrepresentation); *Odorizzi v. Bloomfield Sch. Dist.*, 54 Cal. Rptr. 533, 540 (Ct. App. 1966) (finding that a contract can be void for undue influence).

⁶⁵ See *Webster St. P'ship, Ltd v. Sheridan*, 368 N.W.2d 439, 444 (Neb. 1985) (finding that a contract was void because of infancy); *Guidici v. Guidici*, 41 P.2d 932, 934 (Cal. 1935) (holding that a contract was void because of intoxication).

⁶⁶ See *Webster St. P'ship, Ltd*, 368 N.W.2d at 442, 444 (finding that two minors could not enter into a binding contract for non-necessities because they lacked knowledge of the consequences). In 1985, in *Webster Street Partnership v. Sheridan*, the Supreme Court of Nebraska held that a contract entered into by two minors was void. *Id.* at 444. The court reasoned that minors are unable to enter into valid contracts because children do not have the requisite knowledge to bind themselves by contract. See *id.* at 442 (finding that the right to void a contract is meant to protect minors from their own improvidence); *Niemann v. Deverich*, 221 P.2d 178, 182 (Cal. Dist. Ct. App. 1950) (noting that minors are able to break their contracts because of their lack of experience and judgments). Children are commonly seen as unable to appreciate the consequences of the legal system. See *Ohio v. Clark*, 576 U.S. 237, 247–48 (2015) (holding that statements made by a child were not testimonial because young children do not understand the complexities of the legal system).

⁶⁷ *Webster St. P'ship, Ltd*, 368 N.W.2d at 442. Although there is no formal definition for necessities, the court noted that they are items that are required for the person to maintain an existence, and they depend upon the circumstances of the individual. *Id.* Previous courts have held that contracts for living arrangements when the minors had the opportunity to reside with their parents or in other locations were not a necessity. *Id.* at 442–43 (citing *Ballinger v. Craig*, 121 N.E.2d 66, 67 (Ohio Ct. App. 1953)). When the minor's parents are willing to provide the necessities, then the minor is not able to contract for them. *Id.* at 443.

⁶⁸ See *Guidici*, 41 P.2d at 934 (holding that someone who is intoxicated is the same as someone of an unsound mind, and they are unable to consent to a contract). It is irrelevant if the party became intoxicated by their own voluntary act. *Id.* The other party must know that the consenting party is intoxicated. *Labarbera v. Wynn Las Vegas, LLC*, 422 P.3d 138, 141 (Nev. 2018). The burden lies on the intoxicated party to disaffirm the contract by proving their intoxication with clear and convincing evidence. *Id.*

⁶⁹ See *infra* notes 71–75 and accompanying text.

⁷⁰ See *Martinez-Gonzales v. Elkhorn Packing Co.*, 25 F.4th 613, 620–21 (9th Cir. 2022) (holding that a contract was not voidable for economic duress because the other party did not engage in unlaw-

content if a court finds the terms to be unconscionable.⁷¹ For a contract to be unconscionable, two factors must be met: first, there must be an absence of genuine choice on the part of one of the parties, such as a gross inequality in bargaining power or lack of ability to understand the contract terms, and second, the contract terms must be unjustly beneficial for the other party.⁷²

Lastly, courts have held that a victim cannot contract to be killed or tortured.⁷³ Any contract that includes illegal activities or directly contravenes public policy is unenforceable.⁷⁴

ful conduct by rushing an employee to sign an arbitration contract); *Radon Constr., LLC v. Land Endeavor 0-2, Inc.*, 221 A.3d 654, 659 (Pa. Super. Ct. 2019) (holding that a party cannot claim duress if they had the opportunity to consult with a lawyer); *Finserv Comp. Corp. v. Bibliographic Retrieval Servs., Inc.*, 125 A.D.2d 765, 766 (N.Y. App. Div. 1986) (finding that a party can bring a claim for economic duress when they are forced to enter into a contract by a wrongful threat that prevents them from exercising free will). Courts disagree over what is considered an improper threat. *See Hackley v. Headley*, 8 N.W. 511, 512–13 (Mich. 1881) (holding that an improper threat must be an unlawful act, such as imprisonment, threats, or an illegal exaction); *Austin Instruments v. Loral Corp.*, 272 N.E.2d 533, 535 (N.Y. 1971) (holding that an improper threat is a wrongful threat, such as a threat to withdraw from a contract). Duress must be induced by the actions of the other party, not the subjective worries of the party claiming duress. *See Hackley*, 8 N.W. at 514 (holding that the contract was not voidable because of duress because the contracting party agreed to the contract based on his own financial worries, not because of any actions made by the other party).

⁷¹ *See Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445, 448 (D.C. Cir. 1965) (finding that a court has the power to void contracts that are unconscionable). The Supreme Court has held that, in the case of an unconscionable contract, the party who sues for breach of damages will only be given the damages that they are equitably entitled to. *Id.* (quoting *Scott v. United States*, 79 U.S.(12 Wall.) 443, 445 (1870)). Additionally, the Uniform Commercial Code allows a court to reject a contract that is unconscionable. *Id.* When a contract term is considered unconscionable, the court may sever the unconscionable term and allow the rest of the contract to be enforced. *See Damico v. Lennar Carolinas, LLC*, 879 S.E.2d 746, 758 (S.C. 2022) (finding that severability clauses in general can be embraced, but not when the contract would be fragmented if severed). But courts are hesitant to alter material terms of the contract. *See id.* (declining to sever the unconscionable terms from the contract because they were material terms). Furthermore, courts will not sever unconscionable terms from contracts of adhesion because it discourages fair transactions. *Id.* Contracts of adhesion impose a condition on one party as a condition of doing business, therefore making it so the only way to avoid the adhesive term is by not doing business with the contracting party. 31 MOORE'S FEDERAL PRACTICE § 904.03(2)(c) (3d ed. 2025).

⁷² *See Williams*, 350 F.2d at 449 (stating that an unconscionable contract involves an absence of meaningful choice of one party and “contract terms which are unreasonably favorable to the other party.”). The court must consider all of the circumstantial factors, including any gross inequality of bargaining power or the ability of each party to comprehend the contract terms. *Id.*; *Damico*, 879 S.E.2d at 755 (citing *S.C. Farm Bureau Mut. Ins. Co. v. Kennedy*, 730 S.E.2d 862, 867 (S.C. 2012)). When a party does not fully understand a contract and lacks bargaining power, it is unlikely that the party manifested their consent to all the terms. *Williams*, 350 F.2d at 449. Unconscionability balances the procedural unconscionability of absence of meaningful choice and the substantive unconscionability of inequitable terms. *Damico*, 879 S.E.2d at 755 (citing *Fanning v. Fritz's Pontiac-Cadillac-Buick*, 472 S.E.2d 242, 245 (S.C. 1996)). The two aspects are balanced on a sliding scale; although both must be present, the strong presence of one reduces the need for the other. *Id.*

⁷³ *See Vera Bergelson, The 2008 David J. Stoffer Lecture: Autonomy, Dignity, and Consent to Harm*, 60 RUTGERS L. REV. 723, 727 (2008) (noting that American law does not allow victim consent as a defense for serious injury or homicide). International courts have adhered to the same principle. *See id.* at 726. (showing that English cases have rejected the concept that consent is a defense for

C. Tort Law and the Barrier of Consent

Under tort law, individuals can seek civil legal recourse for intentional or negligent inflictions of harm against them.⁷⁵ An intentional tort occurs when a party intends to cause harm with their actions.⁷⁶ Although the requirements of intentional tort claims differ, they range from physical injury of a person, to threatened injury, to confinement.⁷⁷ In contrast, negligent torts require that the negligent party have a duty to the injured party, and that the actions of the neg-

serious bodily harm). Before the seventeenth century, victims were allowed to consent to every activity and no legal action could refute this. *Id.* This changed once the state was seen as the victim in criminal cases, then the consent of the individual that suffered the harm did not negate the harm suffered by the state. *Id.* Internationally, this concept was highlighted in the influential case against Armin Meiwes. *Id.* at 724. Armin Meiwes was a forty-two-year-old German man who sought out and consumed forty-three-year-old Bernd Brandes in a cannibalistic ritual. Luke Harding, *Victim of Cannibal Agreed to be Eaten*, THE GUARDIAN (Dec. 3, 2003), <https://www.theguardian.com/world/2003/dec/04/germany.lukeharding> [perma.cc/LWV4-X6YR]. Meiwes had cannibalism fantasies for many years, and in 2001, he posted an ad online asking for a “young well-built man, who wanted to be eaten.” *Id.* One week later, Meiwes and Brandes met at Meiwes’s house, where Brandes ingested sleeping tablets and alcohol. *Id.* Brandes agreed to allow Meiwes to cut off his penis, fry it, and feed it to him. *Id.* After several hours, Meiwes killed Brandes by cutting his throat and dismembering him. *Id.* Meiwes froze Brandes’s body parts and eventually consumed them. *Id.* Although Brandes’s consent was recorded through video, Meiwes was sentenced to eight and a half years in prison for manslaughter. The Associated Press, *German Cannibal Sentenced to 8 ½ Years*, NBC NEWS (Jan. 30, 2004), <https://www.nbcnews.com/id/wbna4104727> [perma.cc/WA54-UBBN]. After his case was remanded, Meiwes was convicted of murder and sentenced to life. *Self-Confessed German Cannibal Convicted of Murder*, N.Y. TIMES (May 9, 2006), <https://www.nytimes.com/2006/05/09/world/europe/09iht-web.0509cannibal.html> [perma.cc/DT3P-S7BF].

⁷⁴ See *Loy ex rel. Union Secs. v. Kessler*, 39 N.W.2d 260, 267 (N.D. 1949) (stating that a contract to do an illegal act is unenforceable); *Summer Haven Lake Ass’n v. Vlach*, 905 N.W.2d 714, 724 (Neb. Ct. App. 2017) (citing *Devney v. Devney*, 886 N.W.2d 61, 69 (Neb. 2016)) (finding that contracts that are against public policy are unenforceable); *Daniels v. Venta Corp.*, 221 N.E.3d 503, 510 (Ill. App. Ct. 2022) (finding that a contract that requires illegal activity is void).

⁷⁵ See *infra* notes 82–90 and accompanying text.

⁷⁶ See *Staub v. Proctor Hosp.*, 562 U.S. 411, 417 (2011) (quoting *Kawaauhau v. Geiger*, 523 U.S. 57, 61–62 (1998)) (noting that intentional torts “require that the actor intend ‘the consequences of an act’”); RESTATEMENT (SECOND) OF TORTS § 8A cmt. a. (A.L.I. 1965) (noting that intent is meant to refer to “the consequences of an act rather than the act itself”).

⁷⁷ See *Picard v. Barry Pontiac-Buick*, 654 A.2d 690, 694 (R.I. 1995) (quoting *Proffitt v. Ricci*, 463 A.2d 514, 517 (R.I. 1983)) (defining battery as “an act that was intended to cause, and . . . did cause, ‘an offensive contact with . . . the body of another’”); *City of Watauga v. Gordon*, 434 S.W.3d 586, 589 (Tex. 2014) (stating that a battery is committed when a person sustains harmful or offensive contact with their body); *United States v. Gonzales*, 931 F.3d 1219, 1221 (10th Cir. 2019) (noting that there are two types of assault under common law: (1) “an attempted battery” and (2) “deliberate infliction of a reasonable fear of injury”); *Daniels v. State*, 308 So. 3d 212, 214 (Fla. Dist. Ct. App. 2020) (finding that, for an assault to have occurred, a reasonable person would have experienced fear of the imminent harm); *Snyder v. Evangelical Orthodox Church*, 264 Cal. Rptr. 640, 643 (Ct. App. 1989) (finding a plaintiff can bring a claim for false imprisonment if they were wrongfully deprived of their freedom to leave a space because of the actions of another); *Ferrell v. Mikula*, 672 S.E.2d 7, 11 (Ga. Ct. App. 2008) (finding that a person can be falsely imprisoned within an open area if their actions are restrained).

ligent party breach their duty, causing injury to the other party.⁷⁸ The majority of tort law claims against haunted houses are for negligence or assault.⁷⁹

Even when a tort has occurred, tort law defenses can prevent a party from recovering for their injuries.⁸⁰ For example, when the injured party signed a contract, a defendant can raise express assumption of risk as a defense so long as the contract is not contrary to public policy.⁸¹ In the case of intentional torts, however, the majority of courts have held that consent is not a valid defense and the defendant can be held liable.⁸²

II. SCREAMS AND SCHEMES: THE LEGAL LANDSCAPE OF HAUNTED HOUSES

As shown in Part I of this Note, the law regarding haunted houses is slim, despite the potential injuries that can arise from them.⁸³ Through the commercialization of horror, more and more people attend haunted houses each year,

⁷⁸ See *Elrich v. Menezes*, 981 P.2d 978, 983 (Cal. 1999) (stating that tort law depends on if a defendant owes a duty); *Doe v. Boys Clubs*, 907 S.W.2d 472, 477 (Tex. 1995) (first citing *Greater Houston Transp. Co. v. Phillips*, 801 S.W.2d 523, 525 (Tex. 1990); then citing *El Chico Co. v. Poole*, 732 S.W.2d 306, 311 (Tex. 1987)) (stating that the “elements of a negligence cause of action are a duty, a breach of that duty, and damages proximately caused by the breach of duty”); *Tindell v. Murphy*, 232 Cal. Rptr. 3d 448, 458 (Ct. App. 2018) (same).

⁷⁹ See *Mays v. Gretna Athletic Boosters, Inc.*, 668 So. 2d 1207, 1208 (La. Ct. App. 1996) (showing a claim for negligence); *Galan v. Covenant House of New Orleans*, 695 So. 2d 1007, 1008 (La. Ct. App. 1997) (same); *Griffin v. The Haunted Hotel, Inc.*, 194 Cal. Rptr. 3d 830, 847 (Ct. App. 2015) (showing a claim for negligence and assault); *Davis v. Dungeons of Delhi*, 135 N.E.3d 469, 471 (Ohio Ct. App. 2019) (same).

⁸⁰ See *infra* notes 81–82 and accompanying text.

⁸¹ See *Hanks v. Powder Ridge Rest. Corp.*, 885 A.2d 734, 741–42 (Conn. 2005) (holding that a contract term that limited a tortfeasor’s negligence was void because it violated public policy). The court emphasized that, despite the freedom to contract, contracts that go against public policy are void. *Id.* at 742. It is against public policy to shift the burdens to the weaker bargainer. *Id.* When looking at if a contract term violates public policy, the court noted six factors under *Tunkl v. Regents of the University of California. Id.* The court will look at (1) if the business type is fit for public regulation, (2) if the business performs a service that is of great public importance or of practical necessity for the public, (3) if the business holds themselves out as willing to perform said services for any member who seeks it, (4) if the business has bargaining power over the other party, (5) if the business allows the party to contract around the express term, and (6) if the purchaser is placed under the control of the business by contracting with them. *Id.* at 742–43 (citing *Tunkl v. Regents of the Univ. of Cal.*, 383 P.2d 441, 445 (Cal. 1963)).

⁸² See *Hart v. Geysel*, 294 P. 570, 571 (Wash. 1930) (noting that most courts rule that consent does not prevent a party from seeking legal action). Nevertheless, some courts have held that consent can prevent certain tort actions. See *Lopez v. Winchell’s Donut House*, 466 N.E.2d 1309, 1312 (Ill. App. Ct. 1984) (stating that consent will defeat a claim for intentional infliction of emotional distress); *City of Watauga*, 434 S.W.3d at 591 (stating that when a party consents to contact, it defeats a claim for assault or battery, but the tortfeasor is still liable for any actions in excess of consent).

⁸³ See #287—*Haunted House Safety Regulations: IBC and NFPA Model Code Requirements*, *supra* note 56 (stating that haunted houses are “special amusement buildings” and are required to adhere to regulations in the International Building Code and National Fire Protection Association).

posing a problem given the current lack of regulations.⁸⁴ Even states that regulate haunted houses as amusements are limited to standard fire and safety requirements.⁸⁵

If regulations were to be expanded, however, what agency would enforce them?⁸⁶ This question has led scholars to look towards federal regulatory agencies that may be able to help with this ongoing issue.⁸⁷ Additionally, the application of the above principles of tort and contract law have proven difficult for courts to adhere to when most cases are settled outside of court because of the rise of arbitration clauses.⁸⁸ Although tort law cases that proceed to court are usually settled in favor of the haunted houses, arbitration clauses create a ginormous gap in legal precedent, preventing illegal contracts from being squashed by the courts.⁸⁹

This Part of the Note looks at proposed regulations for haunted houses and amusement attractions, and analyzes the history of arbitration clauses and the application of tort law in haunted house cases.⁹⁰ Section A of this Part

⁸⁴ See Heller, *supra* note 44 (stating that the horror boom that followed slasher movies such as *Halloween* increased the demand for haunted houses).

⁸⁵ See FLA. STAT. § 616.242 (2024) (requiring that amusement rides follow the national standards in the National Electric Code Handbook, National Fire Protection Association, and ASTM International Committee F24 Standards on Amusement Rides and Devices); *City of Cleveland v. Alex Solomon Fam. Ltd. P'ship*, No. 2006-CVG-27560, 2009 WL 1156679, at *1 (Ohio Ct. App. Apr. 30, 2009) (holding that the defendant was required to adhere to Ohio zoning restrictions when operating a family haunted house).

⁸⁶ See Jeffrey S. Downs, Note, *New Jersey and You Perfect Together? A Fatal End to the 1999 Summer Tourism Season Raises the Question Whether New Jersey's Regulation of Fixed-Site Amusements Is Perfect Enough.*, 32 RUTGERS L.J. 307, 320–21 (2000) (recommending that the Consumer Product Safety Commission regulate fixed amusement rides).

⁸⁷ See *id.* at 330. (proposing that the Consumer Product Safety Act be amended); William Tunney, *Amusement Park Regulation's Bumpy Ride*, REGUL. REV. (Aug. 31, 2022), <https://www.theregreview.org/2022/08/31/tunney-amusement-park-regulations-bumpy-ride/> [perma.cc/2JJY-3LC7] (same); Oehmke, *supra* note 56, at 118 (same).

⁸⁸ See Katie Shonk, *What Is an Arbitration Agreement?*, HARVARD (Nov. 19, 2024), <https://www.pon.harvard.edu/daily/conflict-resolution/what-is-an-arbitration-agreement/> [perma.cc/GU8R-B5U7] (noting that contract claims settled through arbitration are settled outside of court confidentially); IMRE S. SZALAI & JOHN D. WESSEL, THE EMP. RTS. ADVOC. INST. FOR L. & POL'Y, THE WIDESPREAD USE OF WORKPLACE ARBITRATION AMONG AMERICA'S TOP 100 COMPANIES 3 (2018) (finding that eighty of the Fortune 100 companies include employee arbitration clauses).

⁸⁹ See *Griffin v. The Haunted Hotel, Inc.*, 194 Cal. Rptr. 3d 830, 847 (Ct. App. 2015) (finding that injury because of running away is inherent in a haunted house and the patron assumed the risk by attending); *Mays v. Gretna Athletic Boosters, Inc.*, 668 So. 2d 1207, 1209 (La. Ct. App. 1996) (finding that haunted house owners only have a duty to maintain the premises in a way consistent with ordinary care); *Galan v. Covenant House New Orleans*, 695 So. 2d 1007, 1009 (La. Ct. App. 1997) (holding that a haunted house did not have a duty to eliminate all risk, because acting in unexpected ways when scared is inherent in attending a haunted house); *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445, 448 (D.C. Cir. 1965) (holding that a contract can be void for unconscionability); Shonk, *supra* note 88 (noting that contracts that include arbitration clauses are settled outside of court through a confidential proceeding).

⁹⁰ See *infra* notes 94–142 and accompanying text.

evaluates scholarly arguments for expanding the Consumer Product Safety Act in order to include fixed attractions.⁹¹ Section B looks at the rise of arbitration clauses and their impact on inherently risky industries.⁹² Lastly, Section C discusses the application of tort law to haunted houses specifically.⁹³

A. Scholarly Calls for Heightened Regulations in Amusement Attractions

Amusement parks and other attractions, despite their cheery name, may bring death and injury to those that frequent them.⁹⁴ The wide variety of inspection requirements across states result in varying levels of safety at amusement parks depending on their location.⁹⁵ States have taken a wide range of approaches when it comes to securing the safety of thrill seekers, from comprehensive protection to a complete lack of regulation.⁹⁶ The lack of transparent data on amusement park injuries, however, poses an issue in attempting to regulate the industry.⁹⁷

Some states, such as Indiana, have proposed legislation that would amend the Consumer Product Safety Act (CPSA) to include amusement park rides under consumer products.⁹⁸ The Consumer Product Safety Commission

⁹¹ See *infra* notes 94–114 and accompanying text.

⁹² See *infra* notes 115–127 and accompanying text.

⁹³ See *infra* notes 128–142 and accompanying text.

⁹⁴ See *Amusement*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/amusement> [perma.cc/3UEC-2DEF] (defining amusement as a “pleasurable diversion”); Tunney, *supra* note 87 (stating that over 100,000 children were injured at amusement parks between 1990 and 2010). Surveys that detail injuries at amusement parks are often difficult to compare as they can include a wide variety of rides. See Tunney, *supra* note 87 (finding that a study by the Consumer Product Safety Commission included mechanical bulls and bouncy houses in a survey for amusement park injuries).

⁹⁵ See Tunney, *supra* note 87 (finding that fixed amusement rides, such as theme parks, are regulated by state regulations and mobile attractions, such as traveling state fairs, are federally regulated by the Consumer Product Safety Commission).

⁹⁶ See *infra* notes 98–114 and accompanying text.

⁹⁷ See Tunney, *supra* note 87 (noting that there is no U.S. agency that fully captures data on injuries or deaths from amusement rides). The International Association of Amusement Parks and Attractions (IAAPA) conducts a yearly safety survey that shows a low rate of injury; however, the survey is not mandatory. *Id.* In 2019, fewer than half of the invited amusement parks submitted data. *Id.* Additionally, the IAAPA is a trade association that lobbies \$600,000 per year in an attempt to prevent federal regulation, so the survey does not originate from an unbiased source. *Id.*

⁹⁸ National Amusement Park Ride Safety Act, H.R. 10205, 118th Cong. § 2 (2024). Texas has also taken action to expand the notion of what is covered under the CPSA. Oehmke, *supra* note 56, at 106. In 1981, in *State Fair of Texas v. U.S. Consumer Product Safety Commission*, the Fifth Circuit Court of Appeals held that an open tramway that was located in the state fair was a consumer product that could be federally regulated. *Id.*; 650 F.2d 1324, 1325, 1334 (5th Cir. 1981). The court found that the legislative history of the CPSA showed that Congress intended the Act to be construed broadly and that the cause of substantial injury was enough to grant the Commission the power to inspect the product. Oehmke, *supra* note 56, at 107. In 1981, the case was granted certiorari by the Supreme Court, but before the oral arguments were heard, Congress passed an amendment to the Act that severely limited the power of the Commission. *Id.* The 1981 amendment to the Act stated that the CPSC

(CPSC) is given the authority through the Act to investigate injuries arising from consumer products, develop safety standards for said products, and enforce requirements for safety standards.⁹⁹ Lobbying, however, has consistently halted state legislation seeking to allow federal oversight.¹⁰⁰ Currently, the Consumer Product Safety Commission does regulate amusement rides that are mobile and travel between states; however, this leaves fixed location amusement rides unregulated under the CPSA.¹⁰¹ The CPSA does not explicitly mention haunted houses, but it does allow for the regulation of any article or component produced for the personal use or enjoyment of a consumer.¹⁰² Additionally, Congress stated that the purpose of the Consumer Product Safety Act is to protect the public from any unreasonable risks associated with products and

only had control over mechanical rides controlled by an operator that were not permanently fixed rides, thus limiting the CPSC's control over traveling amusement park rides. *Id.* at 107–08.

⁹⁹ Downs, *supra* note 86, at 319. Since the 1981 amendment, the CPSC can only issue mandatory safety requirements in certain circumstances. DAVID H. CARPENTER, CONG. RSCH. SERV., R45174, *THE CONSUMER PRODUCT SAFETY ACT: A LEGAL ANALYSIS* 9 (2018). In order to implement a mandatory consumer safety rule, the Commission must follow the steps set forth in section 2058 of the CPSA. *Id.* at 10. The Commission must issue a detailed regulatory analysis of the product that includes a cost-benefit analysis and explains why the ruling is the best option. *Id.* Additionally, the Commission must demonstrate factual findings that show that the rule imposed is the least burdensome restriction and the benefits greatly outweigh the costs of restriction. *Id.* “Safety Requirements” can include performance requirements or warning label requirements. 15 U.S.C. § 2056(a). The CPSC has the power to regulate commerce according to Congress’s wishes, stemming from the power granted to Congress by the Constitution of the United States. *See* Downs, *supra* note 86, at 318 (noting that the Constitution grants Congress the power to regulate interstate commerce and fixed amusement parks impact interstate commerce because they bring visitors from other states).

¹⁰⁰ Tunney, *supra* note 87. Senator Ed Markey of Massachusetts has attempted since 2001 to introduce legislation that would allow the CPSC to regulate fixed-site rides, but he has been consistently foiled by the International Association of Amusement Parks and Attractions lobbying against it. *Id.*

¹⁰¹ Downs, *supra* note 86, at 320–21. Congress enacted the CPSA in 1972 to protect consumers from unreasonable risks of injury from consumer products. *Id.* at 319. Congress established the CPSC the same year to carry out the enforcement of the Act through the creation of safety standards. *Id.* In 1981, however, Congress amended the Act to reduce the power of the CPSC, removing its ability to unilaterally create safety standards and only allowing it to mandate safety standards if an industry is incapable of developing its own standards that would reduce the risk of unreasonable injury. *Id.*; 15 U.S.C. § 2054 (1972), amended by 15 U.S.C. § 2052 (1981); *see* CARPENTER, *supra* note 99, at 9 (noting that the CPSC is restricted from issuing “mandatory consumer safety rules” unless the voluntary standards would not adequately reduce the risk of injury or the voluntary rules are unlikely to be followed). The CPSC still has the power to investigate the safety of consumer products, implement recalls, and ban products that have unreasonable risks that no consumer product safety standards could prevent. Downs, *supra* note 86, at 319; CARPENTER, *supra* note 99, at 9.

¹⁰² *See* 15 U.S.C. § 2052(a)(5) (defining a consumer product as any article produced for consumer sales for personal use in or around a permanent or temporary house, school, or in recreation). The CPSA specifically states that it does not apply to (1) any product that is not produced for sale to or use of a consumer, (2) any tobacco products, (3) any motor vehicles or motor vehicle equipment, (4) pesticides, (5) firearms and equipment, (6) common carries, such as aircrafts and boats, (7) drugs and cosmetics regulated by the Federal Food, Drug, and Cosmetic Act, and (8) food. *Id.*

develop uniform safety standards that would reduce the dissonance between state and federal regulations.¹⁰³

Other states have adhered to state legislation in order to regulate amusement rides.¹⁰⁴ In Kansas, the regulations recently changed in 2017 when the state passed the Kansas Amusement Ride Act following the death of a ten-year-old boy who was decapitated on a water slide.¹⁰⁵ Under the Kansas Amusement Ride Act, the Kansas Secretary of Labor is responsible for regulating amusement rides, and rides must be inspected annually by a qualified amusement ride inspector.¹⁰⁶ The Kansas statute currently states that patrons of amusement rides accept the inherent risks of riding such attractions and have a duty to exercise ordinary judgment while participating in the ride.¹⁰⁷ Additionally, the patrons must obey all instructions and utilize the safety devices provided.¹⁰⁸

In Massachusetts, amusement rides are regulated under the Amusement Devices Massachusetts Code Regulations, and amusement rides must have an

¹⁰³ *Id.* § 2051.

¹⁰⁴ See *infra* notes 105–112 and accompanying text.

¹⁰⁵ Tunney, *supra* note 87. Caleb Schwab was the ten-year-old son of Kansas Representative Scott Schwab. *Lawmaker's Young Son Dies on 'World's Largest' Water Slide*, AP NEWS (Aug. 7, 2016), <https://apnews.com/general-news-eed5bd3e86f241b59797a70d3ce91ba9> [perma.cc/3UVC-GUMA]. Caleb was decapitated while going down Verruckt, a 168-foot-tall water slide at Schlitterbahn Waterpark in Kansas City that was certified as the world's tallest water slide. *Id.* At the time, Texas and Kansas allowed amusement park rides to be self-inspected by workers in order to test their safety, and the parks did not need to disclose incident reports to the state. Skip Hollandsworth, *Schlitterbahn's Tragic Slide*, TEX. MONTHLY (Aug. 2018), <https://www.texasmonthly.com/true-crime/jeff-henry-verruckt-schlitterbahns-tragic-slide/> [perma.cc/6F37-AUQX]; Tunney, *supra* note 87. This allowed Verruckt to continue operating until the brutal death of Caleb, despite eleven incidents being reported between August 2014 and 2016. Hollandsworth, *supra*.

¹⁰⁶ See Tunney, *supra* note 87 (noting that the Kansas Amusement Ride Act was passed in 2017 in response to the death of Caleb Schwab); Oehmke, *supra* note 56, at 114 (finding that the Kansas Secretary of Labor is authorized to regulate amusement park inspections). Under the Kansas statute, amusement rides include any mechanical devices that carry passengers along a route intended for amusement, but it does not include any coin operated rides in public locations that are not supervised by an operator, any home-owned amusement rides, or any playground equipment. Oehmke, *supra* note 56, at 113–14; KAN. STAT. ANN., § 44-1601 (2024). Rides must be inspected annually by a qualified inspector and daily by the operator. Oehmke, *supra* note 56, at 114. In order to be a qualified inspector, the inspector must have education and experience that is equivalent to a level two certification by the National Association of Amusement Ride Safety Officials. KAN. STAT. ANN., § 44-1601. Ride operators are required to undergo individualized training on how to operate their ride. Oehmke, *supra* note 56, at 115. In the event of a serious injury, the injuring ride must cease operations until it has been inspected and approved by a qualified inspector. *Id.*; KAN. STAT. ANN. § 44-1609. Additionally, the ride manufacturer must be notified within thirty days and the injury must be reported to the state. Oehmke, *supra* note 56, at 115; Tunney, *supra* note 87; KAN. STAT. ANN. § 44-1609.

¹⁰⁷ KAN. STAT. ANN. § 44-1607.

¹⁰⁸ *Id.* Instructions can be written or oral and occur before or during the ride. *Id.* Patrons are required to refrain from disabling safety devices unless they are instructed to do so by the owner or employee of the ride, and they should not extend their limbs outside of the bounds of the ride unless expressly asked to do so. *Id.* Minors or people under guardianship are expected to adhere to these same standards, as enforced by their parent or guardian. *Id.*

annually renewed permit.¹⁰⁹ The ride must be inspected daily by a certified maintenance mechanic or acceptable alternative, and the state inspector is allowed to inspect any amusement device at their request.¹¹⁰ Any owner who fails to comply with the requirements can have their license revoked, preventing them from operating the ride until the ride has been reinspected.¹¹¹ California has adopted similar regulations through the California Labor Code.¹¹²

Scholars have argued in favor of broad, federal regulations for amusement rides, citing problems with inefficiency and inconsistency when the regulation is left to the states.¹¹³ Scholars acknowledge, however, that if federal regulations were put in place, it would require a substantial increase in the federal budget.¹¹⁴

B. The Black Hole Created by Arbitration Clauses

No court has yet ruled on the validity of a waiver signed by a participant attending a haunted house.¹¹⁵ This lack of precedent makes it difficult for the public to make informed decisions about signing such waivers and allows haunted house operators to continue using potentially invalid documents.¹¹⁶ When examining the validity of waivers signed by the public for amusement services, the most robust case law lies in waivers of liability for amusement

¹⁰⁹ 520 MASS. CODE REGS. § 5.01–.02 (2024). A certified inspector report must be submitted to the Department of Public Safety before the ride can be licensed. *Id.* § 5.02.

¹¹⁰ *Id.* The certified inspector must provide a report with their findings to the Department of Public Health. *Id.*

¹¹¹ *Id.*

¹¹² CAL. LAB. CODE § 7900 (West 2024). In California, the Amusement Ride and Tramway Unit of the Division of Occupational Safety and Health regulates temporary and fixed amusement parks. *Id.* §§ 7340-57, 7900-15. Ride permits must be renewed annually and require an inspection by California Labor Code Section 7906-07. *Id.* § 7906-07.

¹¹³ Oehmke, *supra* note 56, at 102–03. Scholars cite the fact that some states have slim to no amusement regulations, but others are comprehensive. *Id.* at 103.

¹¹⁴ *Id.* at 117. To effectively amend the CPSA to allow the Commission to regulate fixed amusement park rides, the budget would need to be increased by around \$500,000 per fiscal year. *Id.* In 2024, the CPSC had a budget of \$174.3 million. CONSUMER PROD. SAFETY COMM'N, AGENCY FINANCIAL REPORT 4 (2024). These funds were received from three different sources: (1) allocation by Congress, (2) the American Rescue Plan Act of 2021, and (3) agreements with other federal agencies. *Id.* The CPSC used \$167 million of its budget in 2024, leaving \$7.3 million in unused funding. *Id.* In 2023, for comparison, the CPSC had a budget of \$152.5 million and used \$147.9 million. CONSUMER PROD. SAFETY COMM'N, AGENCY FINANCIAL REPORT 3 (2023). The CPSC budget has expanded by roughly \$18 million each fiscal year. *See* CONSUMER PROD. SAFETY COMM'N, AGENCY FINANCIAL REPORT 4 (2024) (noting that the 2024 fiscal year budget was \$174.3 million); CONSUMER PROD. SAFETY COMM'N, AGENCY FINANCIAL REPORT 3 (2023) (noting that the 2023 fiscal year budget was \$152.5 million); CONSUMER PROD. SAFETY COMM'N, AGENCY FINANCIAL REPORT 3 (2022) (noting that the 2022 fiscal year budget was \$139.05 million); CONSUMER PROD. SAFETY COMM'N, AGENCY FINANCIAL REPORT 3 (2021) (noting that the 2021 fiscal year budget was \$135 million).

¹¹⁵ *See infra* notes 118–127 and accompanying text.

¹¹⁶ *See infra* notes 118–127 and accompanying text.

parks, but even those waivers have been found to be valid so long as the party had knowledge of the waiver that they signed.¹¹⁷

One of the potential reasons for the sheer lack of cases analyzing haunted house waivers is the rise of arbitration clauses in contracts.¹¹⁸ Arbitration clauses are provisions within a larger contract that require the parties to attempt to settle any claims outside court through a neutral arbitrator.¹¹⁹ When claims are settled through arbitration, the results are usually confidential and not disclosed to the public unless the courts need to step in to enforce the agreement.¹²⁰ Arbitration clauses are increasingly popular, and most consumers or employees have signed an arbitration clause within their lifetimes.¹²¹

¹¹⁷ See *infra* notes 118–127 and accompanying text.

¹¹⁸ See Clifford D. Bloomfield, *Mass Arbitrations: The New Landscape of Dispute Resolution and Its Challenges*, JAMS ADR (May 2, 2024), <https://www.jamsadr.com/blog/2024/mass-arbitrations-the-new-landscape-of-dispute-resolution-and-its-challenges> [perma.cc/F5SC-ALS9] (finding that there has been a rise in the number of mass arbitration clauses in contracts); *Fact Sheet: Forced Arbitration Clauses and Class Actions Waivers, By the Numbers*, CTR. FOR JUST. & DEMOCRACY (Apr. 23, 2019), <https://centerjd.org/content/fact-sheet-forced-arbitration-clauses-and-class-actions-waivers-numbers> [perma.cc/23U8-83FH] (noting that eighty-one of the companies in the Fortune 100 include arbitration agreements in their consumer transactions).

¹¹⁹ Shonk, *supra* note 88. When a party brings a claim that is covered by an arbitration clause, the parties meet with a neutral arbitrator to settle the claim. *Id.* Arbitrators are usually retired judges. *Id.* Although the specific details of arbitration can change depending on the content of the arbitration clause, usually the parties select the arbitrator together and then present their arguments to the arbitrator in a private conference room. See *id.* (noting the standard arbitration guidelines). After they present their arguments and evidence, the arbitrator issues a written judgment that cannot be appealed. *Id.* Mediation, in comparison, involves a neutral, trained, third party who works with the parties to help them reach a mutual agreement. *What Is Mediation and Arbitration?*, HARVARD, <https://www.pon.harvard.edu> [perma.cc/J8UH-F3BG] (search “mediation and arbitration” in the search bar; then select “What Is Mediation and Arbitration?” from the list of results). The parties have control over the judgment and the mediator does not issue any settlements. *Id.* Usually, arbitration clauses are included within longer contracts, leading to people signing them without knowing that they are waiving their rights to litigate. See Shonk, *supra* note 88 (finding that there is a power imbalance between consumers and product producers because consumers are commonly unaware of arbitration agreements and arbitration judgments are usually favorable to the company). Additionally, scholars have noted that employees and consumers are less likely to bring claims when they have signed an arbitration clause. See *Fact Sheet: Forced Arbitration Clauses and Class Actions Waivers, By the Numbers*, *supra* note 118 (finding that employees are dissuaded from filing claims for harassment or wrongful termination when they have signed an employee arbitration clause).

¹²⁰ Shonk, *supra* note 88.

¹²¹ See *Fact Sheet: Forced Arbitration Clauses and Class Actions Waivers, By the Numbers*, *supra* note 118 (finding that more than half of the online retail sales in the United States have arbitration agreements and over half of the households in the United States have signed an arbitration agreement); Leah Hengemuhle, Comment, *Striving for Consistency: The Battle of Jurisdiction in Enforcing Arbitration Awards*, 59 B.C. L. REV. E. SUPP. 499, 503–04 (2018), <http://lawdigitalcommons.bc.edu/bclr/vol59/iss9/499/> (stating that the Federal Arbitration Act is a “national policy favoring arbitration”). Arbitration clauses are not limited to products, they are also popular in employment contracts. See *id.* (finding that almost half of companies used arbitration clauses in 2018 and more than sixty million employees are covered by arbitration clauses).

Since Congress passed the Federal Arbitration Act in 1925, courts have strictly upheld arbitration clauses, even when the underlying contract is invalid.¹²² In 2011, in *AT&T Mobility LLC v. Concepcion*, the United States Supreme Court held that courts have no choice but to enforce arbitration clauses unless an applicable defense such as fraud, duress, or unconscionability could invalidate the clause itself.¹²³ In 2006, in *Buckeye Check Cashing, Inc. v. Cardegna*, the Supreme Court affirmed *AT&T Mobility LLC* by holding that illegal contracts can be separated from the arbitration clause, requiring parties to arbitrate an otherwise illegal violation unless a defense applied to the arbitration clause itself.¹²⁴ In internet contracts where the arbitration clause is included in an extensive terms and conditions agreement, courts have upheld agreements where the consenting party provided affirmative assent through selecting a check box or where the party had affirmative knowledge of the agreement, even if they have not read the agreement in its entirety.¹²⁵

¹²² See David Allgeyer, *Arbitration Clauses: Watch State Law*, ALLGEYER ADR, LLC (July 28, 2024), <https://daveadr.com/blog/arbitration-clauses-watch-state-law> [perma.cc/8R7H-ER6W] (noting that the passage of the Federal Arbitration Act liberalized arbitration enforcement); *AT&T Mobility, LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (holding that an arbitration clause should be enforced unless the clause itself is subject to a valid contractual defense). The Federal Arbitration Act of 1925 (FAA) stated that any disputes that involved a contract with an arbitration clause must not be litigated and the dispute must be arbitrated. Katherine V.W. Stone & Alexander J.S. Colvin, *The Arbitration Epidemic*, ECON. POL'Y INST. (Dec. 7, 2015), <https://www.epi.org/publication/the-arbitration-epidemic/#epi-toc-5> [perma.cc/YU3L-CGMN]. After arbitration is completed, the FAA only allows a court to set aside an award for four reasons: (1) the award was won by fraud, (2) the arbitrator was a biased party, (3) the arbitrator refused to hear arguments that would have been relevant, or (4) the arbitrator exceeded the power granted to them through the arbitration agreement. *Id.* Although initially the FAA was assumed to only apply to commercial disputes brought into federal court for a federal issue, the Supreme Court expanded the scope of the FAA starting in 1983. *Id.*; see *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983) (holding that the court should favor arbitration agreements). Currently, the FAA has been interpreted to apply to state and federal courts, and the type of dispute is irrelevant. Stone & Colvin, *supra*.

¹²³ *AT&T Mobility LLC*, 563 U.S. at 339.

¹²⁴ 546 U.S. 440, 444–45, 449 (2006). The Supreme Court later held that arbitration agreements are still valid even if the contract itself is challenged as unconscionable. *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 71 (2010). The arbitration agreement itself must be challenged as unconscionable to find it unenforceable. *Id.*

¹²⁵ See *Nguyen v. Barnes & Noble, Inc.*, 763 F.3d 1171, 1176 (9th Cir. 2014) (finding that courts have enforced agreements where the party is shown to have actual knowledge of the agreement); *Keenaugh v. Warner Bros. Ent. Inc.*, 100 F.4th 1005, 1014 (9th Cir. 2024) (finding that courts have found clickwrap agreements enforceable because the users have to click accept on the terms in order to proceed). There are other types of online agreements besides clickwraps. *Keenaugh*, 100 F.4th at 1014. In a browswrap agreement, the user accepts the terms of the agreement simply by using the party's website. *Id.* Courts have often held that these agreements are unenforceable because the individual does not have notice of the agreement. *Id.* A scrollwrap agreement requires an individual to scroll to the bottom of the terms and conditions before agreeing, and it is the most enforceable agreement. *Id.* Lastly, a sign-in wrap agreement allows a user to sign-in in order to accept the agreement. *Id.* A Pew Research study showed that over a third of Americans have agreed to terms and conditions without reading them, and over a third of those who do read the conditions do not understand them. Brooke Auxier et al., *Americans' Attitudes and Experiences with Privacy Policies and Laws*, PEW

Courts have upheld amusement park waivers of liability when the participating party was not harmed by gross negligence or a breach of a statutory duty, and when the participant has been given ample notice of the waiver.¹²⁶ When a participant, however, signs a waiver on behalf of another party without the proper authority, or when a participant did not receive notice of the waiver, it is unclear if the waiver is valid.¹²⁷

C. Assumption of Risk, the Final Hurdle

Despite the tort law implications of allowing individuals to consent to intentional torts, many courts have sided with haunted houses in tort law claims.¹²⁸ Plaintiffs are often unsuccessful when they bring claims for injuries against haunted houses because they assumed the risk of injury by agreeing to enter the haunted house.¹²⁹

In 2015, in *Griffin v. The Haunted Hotel, Inc.*, the California Court of Appeals held that a haunted house did not breach its duty when a patron—Griffin—was injured while running away from a scare actor.¹³⁰ The Court rea-

RSCH. (Nov. 15, 2019), <https://www.pewresearch.org/internet/2019/11/15/americans-attitudes-and-experiences-with-privacy-policies-and-laws/> [perma.cc/FQ9E-5HAU].

¹²⁶ See Order Denying Defendant's Motion For Summary Judgment, *Schneider v. Doe*, 2019 CV30018, 2021 Colo. Dist. LEXIS 1679, at *2–3 (Colo. Dist. Ct. Jan. 26 2021) (holding that summary judgment was improper because it was unclear if a blind attendee was given notice that her ticket contained a waiver that should be read to her); *Steinberg v. Sahara Sam's Oasis, LLC*, 142 A.3d 742, 750 (N.J. 2016) (holding that an amusement park waiver was unenforceable if there was gross negligence or a breach of statutory duty); *Conway v. O'Brien*, 312 U.S. 492, 495 (1941) (quoting *Shaw v. Moore*, 162 A. 373, 374 (Vt. 1932)) (defining gross negligence as a higher magnitude than ordinary negligence). Gross negligence is the absence of even the smallest amount of care by acting in a way that is so heedless that it falls below the standard of any reasonable person. *Conway*, 312 U.S. at 495.

¹²⁷ See *Schneider*, 2021 Colo. Dist. LEXIS 1679, at *1–2 (finding that summary judgment was improper because there was a material dispute of fact regarding whether the plaintiff's sightseeing guide was operating as her agent, and thus if, as her agent, she had an obligation to make the plaintiff aware of the contract in order to bind her).

¹²⁸ See *infra* notes 129–142 and accompanying text.

¹²⁹ See *infra* notes 129–142 and accompanying text.

¹³⁰ 194 Cal. Rptr. 3d 830, 847 (Ct. App. 2015). Scott Griffin visited The Haunted Trail, an outdoor haunted house where patrons were chased by scare actors wielding chainsaws and other prop weapons. *Id.* at 834. It was operated by the Haunted Hotel, a California company that operated three other Halloween attractions in San Diego, California. *Id.* The Haunted Trail spanned one mile, and patrons would walk the trail at their own pace while scare actors would frighten and chase them. *Id.* Before patrons went through the attraction, the Haunted Trail would play them an orientation video that warned that the scare actors would chase any patrons who tried to run. *Id.* at 834–35. The website of the attraction also explicitly warned patrons not to run because running was the main cause of injuries. *Id.* at 835. The Haunted Trail also had off-duty police officers, security guards, and medical staff on site to help with any injuries or problems. *Id.* Griffin went through the attractions with a group of friends and once he arrived at the access trail at the end of the attraction, he believed that the haunt was over. *Id.* Haunted Trails, however, owned the access road and had planted another scare actor with a chainsaw at the access road to scare unsuspecting patrons. *Id.* When Griffin was scared on the access road, he attempted to run away, fell, and injured his wrist. *Id.* at 836.

soned that the risk of being scared and running away was essential to the fundamental essence of a haunted house.¹³¹ Therefore, under the primary assumption of risk doctrine, when recreational activities involve an inherent risk that cannot be eliminated without altering the very nature of the activity, and the participant voluntarily partook in the activity, the court cannot hold the injuring party liable.¹³² Owners or co-participants, however, may still owe a duty to participants if they unreasonably heighten the chance of injury or intentionally or recklessly injure the participant.¹³³ The court found, however, that the haunted hotel did not recklessly injure Griffin because Griffin was the only participant who had been injured in the fourteen years that the haunted house was in operation.¹³⁴

In 1996, in *Mays v. Gretna Athletic Boosters, Inc.*, the Louisiana Court of Appeals stated that the owner of a haunted house did not need to eliminate every possible source of danger, and instead they only had an obligation to maintain the haunted house premises with ordinary and reasonable care.¹³⁵ There, the court found that haunted houses did not have a duty to remove decorations that could cause a patron to react in an unpredictable way, as patrons are expected to be scared and disoriented by the exhibit.¹³⁶ Additionally, the court held that the haunted house owner had fulfilled his duty by hosting the

¹³¹ *Id.* at 834.

¹³² *Id.* at 838. The court noted that it is possible to determine what risks are inherent to an activity on summary judgment through using common knowledge and the court's own experiences with the activity. *Id.* at 838–39. The court should apply an objective standard to decide if the defendant owed the plaintiff a duty; the subjective belief of the plaintiff is irrelevant. *Id.* at 839.

¹³³ *Id.* at 839. Inherent risks change depending on who is doing the activity. *Id.* As an example, the court noted that a batter in a baseball game has no duty to avoid throwing a baseball bat, even though it could cause harm, because it is an inherent risk of the sport. *Id.* The owner of the ballpark, however, may have a duty to protect spectators from any irresponsibly tossed bats. *Id.* Therefore, the duties owed to patrons depends on who is being held liable. *See id.* (noting that owners and operators owe a higher duty to patrons than coparticipants).

¹³⁴ *Id.* at 845–46. The court held that the lower court was correct to apply primary assumption of risk to haunted houses because the point of a haunted attraction is to scare patrons, so reactions out of fear, such as running, are inherent in the activity and cannot be fully eliminated. *Id.* at 839–40. The Haunted Trail did not increase the chances of Griffin running in fear beyond the risk that was inherent in the activity. *Id.* at 844. It was irrelevant that Griffin did not think that the access road was The Haunted Trail's property because attraction boundaries are defined by the company, not the patrons. *Id.* at 842. Lastly, the court held that Griffin could not use the defense of revoked consent because primary assumption of risk does not rest on implied consent or subjective experiences. *Id.* at 842–43.

¹³⁵ 668 So. 2d 1207, 1209 (La. Ct. App. 1996). Deborah Mays attended a haunted house at Mel Ott Playground where she was injured after running into a cinder block wall covered in dark fabric. *Id.* at 1208. A scare actor in the haunted house jumped at Mays and a child who was with her, causing both of them to run. *Id.* Mays ran through a dark section of the haunted house and hit the wall, seriously injuring her nose. *Id.*

¹³⁶ *Id.* at 1209. The court found that, because patrons expect a haunted house to startle them, operators do not have a duty to protect against people reacting in unexpected ways when they are startled. *Id.*

haunted house within adequately sized rooms and by providing a sufficient number of staff to assist patrons.¹³⁷

In 1997, in *Galan v. Covenant House New Orleans*, the Louisiana Court of Appeals affirmed the analysis in *Mays* and confirmed that the purpose of a haunted house is to scare its patrons, thus eliminating a duty to prevent patrons from reacting in unpredictable ways.¹³⁸ In addition, the court held that the duty of the operator is dependent on the objective standard of care that they owe to all patrons, not the subjective reaction of one patron.¹³⁹

Despite the leniency extended to injuries within haunted houses, patrons who are injured outside of the confines of the attraction may have a better chance at bringing a tort claim against the attraction.¹⁴⁰ In 2019, in *Davis v. Dungeons of Delhi*, the Ohio Court of Appeals refused to grant summary judgment to a haunted attraction because there was a genuine dispute as to whether the patron was within the haunted house at the time of the injury.¹⁴¹ The court not agree that she could have foreseen her injury, thus assuming the risk.¹⁴²

¹³⁷ *Id.* There were eighteen employees working in the haunted house and one employee was stationed at the entrance and exit. *Id.* at 1208.

¹³⁸ 695 So. 2d 1007, 1009 (La. Ct. App. 1997). Linda Galan visited Covenant Haunted House with her minor child and two of her child's friends. *Id.* at 1007. The haunted house was located on the second floor of a shopping mall and patrons were escorted through the house in groups of eight to fifteen people. *Id.* At the end of the haunted house, the groups were escorted downstairs to a supposed exit, where they would walk unattended down an alleyway. *Id.* In the alleyway, a scare actor would start a chainsaw and come towards the patrons. *Id.* There were police officers located throughout the entire haunt. *Id.* at 1007–08. While running from the final scare actor, Galan fell and injured her head. *Id.* at 1008.

¹³⁹ *Id.* at 1008 (citing *Murray v. Ramada Inns, Inc.*, 521 So. 2d 1123, 1136 (La. 1988)). In 1988, in *Murray v. Ramada Inns, Inc.*, the Louisiana Supreme Court answered a certified question regarding the duty of a defendant. 521 So. 2d at 1135–36. The court found that a defendant's duty is not foregone simply because of the subjective state of mind of the plaintiff. *Id.* at 1136. Instead, a defendant's duty to one plaintiff is determined by the standard of care that they owe to all potential plaintiffs. *Id.* Therefore, if a jury finds that a defendant's conduct was unreasonably dangerous, they cannot excuse liability because the plaintiff was aware of the risk. *Id.* Although *Murray* was a pool diving case and not a haunted house case, the Louisiana Supreme Court in *Murray* explicitly stated that it was ruling on the issue because similar arguments may arise from future cases. *Id.* at 1125, 1135.

¹⁴⁰ See *infra* notes 141–142 and accompanying text.

¹⁴¹ 135 N.E.3d 469, 477 (Ohio Ct. App. 2019). McKenzie Davis attended the Dungeons of Delhi haunted house with her mother, where Davis was injured while running from a scare actor. *Id.* at 471. Davis testified that she was chased by the scare actor before she entered the haunted house. *Id.* at 477. The same scare actor testified that the Dungeons of Delhi haunt was confined within the building, meaning that, if Davis was chased while she was outside of the building, she would have been outside of the confines of the haunt. *Id.*

¹⁴² *Id.* at 477. Additionally, the court found that it was improper to enter summary judgment on behalf of the defendants because the trial court had not concluded as a matter of law that the defendant had not been reckless. *Id.* The court relied on four cases that looked at the assumption of risk of haunted house patrons. *Id.* at 476–77. In all four cases, the patron had been injured while within the confines of the haunted house. See *Durmon v. Billings*, 873 So. 2d 872, 879 (La. Ct. App. 2004) (holding that a patron assumed the risk when she was injured within a haunted corn maze attraction); *Mays v. Gretna Athletic Boosters, Inc.*, 668 So. 2d 1207, 1209 (La. Ct. App. 1996) (holding that a

III. THREE SCREAMS FOR UNENFORCEABLE CONTRACTS

Allowing states to only regulate the amusement industry, and sometimes not regulate haunted houses at all, has had disastrous impacts on the safety of patrons.¹⁴³ Federal enforcement offers the most comprehensive, unified plan to regulate haunted houses in order to prevent further catastrophic injuries, but the regulations must be tailored to fit the individual needs of haunted houses.¹⁴⁴ Because haunted houses lack the mechanical components of many amusement rides, it's unwise to impose blanket regulations that cover both amusement rides and haunted houses.¹⁴⁵

Additionally, the widespread use of arbitration clauses in industries with a risk of injury goes against public policy and allows contracts that would otherwise be unenforceable to go unchecked.¹⁴⁶ Arbitration clauses should not be

patron assumed the risk when they were injured after running into a wall in a haunted house); *Galan v. Covenant House New Orleans*, 695 So. 2d 1007, 1009 (La. Ct. App. 1997) (holding that a patron assumed the risk when she was injured in the last exhibit of a haunted house); *Griffin v. The Haunted Hotel, Inc.*, 194 Cal. Rptr. 3d 830, 847 (Ct. App. 2015) (holding that a patron assumed the risk when she was injured within the confines of the haunted house). The court found that other jurisdictions have held that haunted house operators have no duty to protect a patron from their own reactions while they were physically confined within the haunted house, and therefore, the boundaries of the Dungeons of Delhi determined whether the patron had assumed the risk. *Davis*, 135 N.E.3d at 476–77.

¹⁴³ See Tunney, *supra* note 87 (stating that over 100,000 children were injured at amusement parks between 1990 and 2010, and that the regulations in Kansas were changed following the death of a young boy).

¹⁴⁴ See *infra* notes 151–180 and accompanying text.

¹⁴⁵ See *History of Haunted Houses: How Attractions Evolved Over Time*, HAUNTPAY, <https://hauntpay.com/2024/07/history-of-haunted-houses-how-attractions-evolved-over-time/> [perma.cc/8HJK-4DUP] (listing current popular haunted houses, many of which require visitors to proceed through the attraction on foot); Caitlin Johnson, *Haunted Houses Go High-Tech*, CBS NEWS (Oct. 31, 2006), <https://www.cbsnews.com/news/haunted-houses-go-high-tech/> [perma.cc/SE36-UNMG] (stating that, despite the increase in mechanical components in haunted houses, many patrons still prefer to be scared by people instead of machines); *infra* notes 151–180 and accompanying text.

¹⁴⁶ See *Haunted House Risks: Common Injuries and What Operators Can (and Should) Do to Prevent Them*, DRAKE, HILEMAN & DAVIS (Sep. 30, 2022), <https://www.dhdllaw.com/haunted-house-risks-common-injuries-and-what-operators-can-and-should-do-to-prevent-them/> [perma.cc/AC57-GTVH] (finding that injuries in haunted houses are common); *infra* notes 181–211 and accompanying text. Something is against public policy when it could harm society as a whole. Amanda Hayes, *Unenforceable Contracts: What to Watch Out for*, NOLO (Mar. 12, 2025), <https://www.nolo.com/legal-encyclopedia/unenforceable-contracts-tips-33079.html> [perma.cc/UL7G-4YG7]. The most obvious example are contracts that are blatantly illegal, either against state or federal law. *Id.* Contracts that offend a public sensibility are also against public policy. See *id.* (stating that contracts for sexual immorality, prohibiting medical leave, or forbidding medical service dogs would be unenforceable because they offend public policy); GA. CODE ANN. § 13-8-2 (2024) (listing types of contracts that are considered against public policy in Georgia, including but not limited to contracts that corrupt the government branches, contracts that restrain trade, and gambling contracts); *Innovative Images, LLC v. Summerville*, 848 S.E.2d 75, 81 (Ga. 2020) (citing *Emory Univ. v. Porubiansky*, 282 S.E.2d 903, 905 (Ga. 1981)) (finding that an exculpatory clause in a contract was against public policy because it attempted to waive the duty of reasonable care); *Degliomini v. ESM Prods.*, 253 A.3d 226, 238 (Pa.

enforced in the haunted house industry, as many of the contracts would be clearly invalid if they were litigated in court.¹⁴⁷

Section A of this Part argues that the CPSA should be expanded to specifically include haunted houses because simply expanding the Act to include fixed amusement parks would not accurately meet the need of specific haunted house regulations.¹⁴⁸ Section B argues that courts should refrain from enforcing arbitration clauses in haunted house contracts because the industry includes inherent risks and many of the contracts would otherwise be void.¹⁴⁹ Additionally, Section B argues that disregarding arbitration clauses would not cause a flood of litigation against haunted houses because the current tort law precedent has established that haunted houses are protected by the doctrine of assumption of risk.¹⁵⁰

A. Grisly Optimism: The Future of Regulations

As echoed by scholars and politicians over the years, amusement regulations are severely lacking and difficult to navigate.¹⁵¹ In order to protect against the dangers faced by haunted house patrons, it is necessary to implement a federal regulation system that will regulate the content, mechanisms, and employee requirements employed by both commercial and residential haunted houses.¹⁵²

2021) (finding that a contract clause violates public policy when it infringes upon a policy that is reflected in government practices, legal precedent, or “obvious ethical or moral standards”).

¹⁴⁷ See *infra* notes 181–211 and accompanying text.

¹⁴⁸ See *infra* notes 151–180 and accompanying text.

¹⁴⁹ See *infra* notes 181–211 and accompanying text.

¹⁵⁰ See *infra* notes 181–211 and accompanying text.

¹⁵¹ See Oehmke, *supra* note 56, at 102–03 (finding that amusement park regulations must be enforced federally because state regulations are inconsistent and ineffective); Summer Johnson, Comment, *Is the Government Taking You for a Loop? Why There Needs to Be National Regulations or Stricter Regulations in Texas for Amusement Parks*, 54 TEX. TECH. L. REV. 789, 796 (2022) (detailing the death of a woman in Texas who was killed in 2013 after she was ejected from an amusement ride due to faulty equipment and the operator ignoring the warning light on the ride); Brandon D. Coneby, Comment, *A “Thrilling” Proposal: Federal Regulation of America’s Modern Day Scream Machines*, 39 DUQ. L. REV. 787, 789 (2001) (noting that state amusement regulations have failed to adequately protect patrons of the amusement park and patrons have continued to be injured under state regulations); Jennifer Kingsley, *High Tech Hunks of Steel: Fixed-Site Amusement Rides and Safety Under State Regulation*, 4 PITT. J. TECH. L. & POL’Y 1, 83 (2003) (noting that state regulations have allowed amusement regulations to vary widely between states); David D. Kremenetsky, *Regulation of Permanent Amusement Park Rides*, 31 MCGEORGE L. REV. 633, 635 (2000) (finding that the California state regulations for amusement rides were inadequate because the state allowed injury records for amusement parks to be kept confidential and record books were even difficult to obtain through legal discovery).

¹⁵² See *infra* notes 151–180 and accompanying text; Samira Asma-Sadeque, *Owner of Controversial Haunted Attraction in Tennessee Arrested on Rape, Attempted Murder Charges*, PEOPLE (July 24, 2024), <https://people.com/controversial-manor-tour-haunted-attraction-accused-rape-murder-charges-8682817> [perma.cc/4MYR-WDRG] (stating that the owner of McKamey Manor was arrested on charges of rape and attempted murder); NBC NEW YORK, *‘Death Traps’ Queens Haunted House Sued*

A federal regulatory system is necessary to consistently protect haunted house patrons because haunted houses draw thrill-seekers from across state lines who are unlikely to be aware of the different regulations between their home state and the state that they are visiting.¹⁵³ Unlike other interstate activities that patrons assume the risk for when they cross state lines, such as the possession of a substance that is only legal in some states, regulations are not commonly advertised or well known by the public.¹⁵⁴ Therefore, patrons are

After Injuries from Alleged Safety Hazards, NBC NEWS (Oct. 22, 2024), [https://www.nbcnews.com/news/us-news/death-trap-queens-haunted-house-sued-injuries-alleged-safety-hazards-rcna176530 \[perma.cc/MC9P-BWEP\]](https://www.nbcnews.com/news/us-news/death-trap-queens-haunted-house-sued-injuries-alleged-safety-hazards-rcna176530 [perma.cc/MC9P-BWEP]) (noting that five patrons were injured attending a haunted house in Hollis, NY, including one patron who shattered both of her ankles); Oehmke, *supra* note 56, at 102–03 (recommending federal regulations for amusement attractions).

¹⁵³ See Oehmke, *supra* note 56, at 102–03 (finding that amusement park regulations must be enforced federally because state regulations are inconsistent and ineffective); *id.* at 102 (stating that “society expects amusement park rides to be safe”); Ali Rowhani-Rahbar et al., *Knowledge of State Gun Laws Among US Adults in Gun-Ownning Households*, PUBMED (Nov. 18, 2021), [https://pmc.ncbi.nlm.nih.gov/articles/PMC8603069/ \[perma.cc/C29T-SWVE\]](https://pmc.ncbi.nlm.nih.gov/articles/PMC8603069/ [perma.cc/C29T-SWVE]) (noting the results of a survey of Americans that showed that only one third of the surveyed participants accurately knew their own states gun laws). Within the United States, 90% of households with children will attend a haunted house. *Haunted House Facts*, *supra* note 47. Halloween Horror Nights at Universal Studios, an annual haunted attraction, attracts 1.5 million attendees per year. Suzanne Rowan Kelleher, *How Universal Scares Up Monster Revenues with Halloween Horror Nights*, FORBES (Oct. 01, 2023), [https://www.forbes.com/sites/suzannerowankelleher/2023/10/01/universal-scares-halloween-horror-nights/# \[perma.cc/X5K2-58YE\]](https://www.forbes.com/sites/suzannerowankelleher/2023/10/01/universal-scares-halloween-horror-nights/# [perma.cc/X5K2-58YE]). Amusement parks often amass a large number of out of state attendees. See *Walt Disney World Statistics*, MAGIC GUIDES, [https://magicguides.com/disney-world-statistics/ \[perma.cc/U3ZX-MKYX\]](https://magicguides.com/disney-world-statistics/ [perma.cc/U3ZX-MKYX]) (noting that Disney world is the “most visited vacation resort in the world”); *Walt Disney World Tourism Statistics*, ROAD GENIUS (Oct. 7, 2024), [https://roadgenius.com/statistics/tourism/usa/walt-disney-world/ \[perma.cc/7D84-MNW9\]](https://roadgenius.com/statistics/tourism/usa/walt-disney-world/ [perma.cc/7D84-MNW9]) (finding that Disney World is attended by out of state and international attendees). As in the horror movie industry, regulations that vary by state cause confusion. See MOTION PICTURE ASS’N OF AM., *supra* note 50 (detailing differing state censorship laws in relation to the creation of the Hays Code).

¹⁵⁴ See *Massachusetts Law About Medical Marijuana*, MASS.GOV, [https://www.mass.gov/info-details/massachusetts-law-about-medical-marijuana#:~:text=You%20can%27t%20cross%20state,kind%20of%20medical%20marijuana%20product \[perma.cc/VDV9-YM3W\]](https://www.mass.gov/info-details/massachusetts-law-about-medical-marijuana#:~:text=You%20can%27t%20cross%20state,kind%20of%20medical%20marijuana%20product [perma.cc/VDV9-YM3W]) (stating that people cannot cross state lines with medical or recreational marijuana); *Medical Marijuana*, TSA, [https://www.tsa.gov/travel/security-screening/whatcanibring/items/medical-marijuana \[perma.cc/KTT7-AZGR\]](https://www.tsa.gov/travel/security-screening/whatcanibring/items/medical-marijuana [perma.cc/KTT7-AZGR]) (stating that marijuana is illegal under federal law and TSA officials are required to report any findings of marijuana to the federal authorities); Katherine Schaeffer, *Nine Facts About Americans and Marijuana*, PEW RSCH. CTR. (Apr. 10, 2024), [https://www.pewresearch.org/short-reads/2024/04/10/facts-about-marijuana/ \[perma.cc/Q3K8-D9UQ\]](https://www.pewresearch.org/short-reads/2024/04/10/facts-about-marijuana/ [perma.cc/Q3K8-D9UQ]) (finding that nine out of ten Americans support the legalization of marijuana, including large percentages of each age demographic); Brooke Auxier et al., *Americans and Privacy: Concerned Confused and Feeling Lack of Control Over Their Personal Information*, PEW RSCH. CTR. (Nov. 15, 2019), [https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-confused-and-feeling-lack-of-control-over-their-personal-information/ \[perma.cc/5MBF-H6EU\]](https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-confused-and-feeling-lack-of-control-over-their-personal-information/ [perma.cc/5MBF-H6EU]) (finding that over 60% of Americans report that they do not understand data privacy regulations); Jon Greenberg, *Watch Out, Seventy Percent of Us Have Done Something That Could Put Us in Jail*, POLITIFACT (Dec. 8, 2014), [https://www.politifact.com/factchecks/2014/dec/08/stephen-carter/watch-out-70-us-have-done-something-could-put-us-j/ \[perma.cc/L72A-ZRQD\]](https://www.politifact.com/factchecks/2014/dec/08/stephen-carter/watch-out-70-us-have-done-something-could-put-us-j/ [perma.cc/L72A-ZRQD]) (verifying a claim made by law scholar Douglas Husak that 70% of Americans have “committed a crime that could lead to imprisonment”).

placed in an unjust position where they lack legal remedies for injuries that they were unaware could occur because of varying regulations.¹⁵⁵

As proposed by other scholars, the most efficient way to federally regulate the amusement industry is through amending the CPSA.¹⁵⁶ If Congress simply amended the CPSA per the recommendations of current scholars, however, it would only be amended to include fixed amusement rides that mechanically carry individuals over a designated area, which would exclude most haunted houses.¹⁵⁷ Because of the comparable risk of injuries between haunted houses and amusement rides, the CPSA should be amended to include fixed amusement rides, including haunted attractions, regardless of the mechanical devices employed.¹⁵⁸ Upon the amendment of the CPSA, haunted houses would be required to adhere to safety standards set by the Commission.¹⁵⁹

¹⁵⁵ See Oehmke, *supra* note 56, at 102 (finding there is an expectation of safety in amusement parks); Tunney, *supra* note 94 (noting that the Kansas legislature passed the Kansas Amusement Ride Act to prevent any additional deaths of participants because of a lack of regulations in amusement park rides).

¹⁵⁶ See Oehmke, *supra* note 56, at 118 (finding that the Consumer Product Safety Act should be amended to include regulation of fixed amusement park rides); Johnson, *supra* note 151, at 790–91 (arguing that the CPSA should be expanded to allow the regulation of fixed amusement rides and water parks); Coneby, *supra* note 151, at 789 (arguing that the CPSA should be expanded to allow for the regulation of the construction and operation of fixed amusement park rides).

¹⁵⁷ See Oehmke, *supra* note 56, at 118 (advocating for the CPSA to be expanded to include fixed amusement park rides); Johnson, *supra* note 151, at 790–91 (same); Coneby, *supra* note 151, at 789 (same); 15 U.S.C. § 2052(a)(5) (stating that a consumer product specifically includes any “mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area . . . which is customarily controlled or directed by an individual who is employed for that purpose”); *History of Haunted Houses: How Attractions Evolved Over Time*, *supra* note 145 (listing current popular haunted houses, many of which require visitors to proceed through the attraction on foot).

¹⁵⁸ Compare FLA. STAT. § 616.242 (2024) (defining an amusement ride as something that could apply to haunted houses, although haunted houses are not explicitly referenced), OHIO. JURIS., *supra* note 57, at § 1 (same), and *id.* § 9 (allowing the state to regulate amusements in order to protect the community), with N.C. GEN. STAT. § 95-111.3 (2024) (explicitly excluding haunted houses from amusement regulations). See KAN. STAT. ANN. § 44-1601 (2024) (defining amusement rides as any mechanical contraption that carries participants along a fixed attraction); *History of Haunted Houses: How Attractions Evolved Over Time*, *supra* note 145 (finding that modern day haunted houses feature sophisticated mechanical developments).

¹⁵⁹ See 15 U.S.C. § 2054 (allowing the Commission to test consumer products and develop safety methods and testing devices for such products); *id.* § 2056(b) (granting the Commission the ability to put forth mandatory safety standards in limited circumstances). The Commission would be required to rely upon the voluntary safety standards employed by the amusement industry unless the optional guidelines would not remove the risk of injury or where it is likely that the amusement parks would not comply with the regulations. CARPENTER, *supra* note 99, at 9. Given the shortcomings of current amusement regulations and the trend within the industry to fight against federal regulations, it is likely that the CPSA would be able to issue mandatory requirements. See Johnson, *supra* note 151, at 790 (showing that a young child was able to be decapitated on an amusement park ride under the current regulations); Tunney, *supra* note 87 (finding that the IAAPA has consistently lobbied against federal regulations).

In order to ensure that the standards set by the CPSC accurately address the current gaps in haunted house regulations, the Commission should conduct independent research into the number of injuries in haunted houses and the primary causes for these injuries.¹⁶⁰ Currently, the International Association of Amusement Parks and Attractions (IAAPA) recommends certain amusement regulations and collects data on amusement park injuries, but the association's history of lobbying against federal oversight shows that it is unable to provide unbiased, accurate data to the Commission.¹⁶¹ The IAAPA may argue that they are the most qualified association to provide data on amusement park injuries.¹⁶² This critique, however, is squashed by Section 9(a)(4)–(6) of the CPSA, that allows anyone to submit comments regarding any risks identified by the Commission and statements of intent to modify a product safety standard, allowing people to recommend their own standards.¹⁶³ Additionally, any haunted houses that feel that they have been adversely affected by a Commission's ruling are able to file petitions with the U.S. Court of Appeals for the District of Columbia.¹⁶⁴

When formulating its recommendations or analyzing the voluntary safety standards employed by haunted houses, the Commission should regulate the content of the haunts, ownership, and employees.¹⁶⁵ Because of the intimate

¹⁶⁰ See *infra* notes 161–164 and accompanying text.

¹⁶¹ See *IAAPA Ride Safety Reports*, IAAPA, <https://www.iaapa.org/safety/ride-safety-report> [perma.cc/5UCA-52VW] (showing safety reports for fixed amusement park rides that are available to registered IAAPA members); *IAAPA Crisis Communications*, IAAPA, <https://www.iaapa.org/safety/crisis-communications> [perma.cc/4LVX-UH2L] (providing templates that IAAPA can use to communicate injuries at their park to the public); *IAAPA Safety Institute*, IAAPA, <https://www.iaapa.org/safety/iaapa-safety-institute> [perma.cc/8TL6-3M6U] (providing education to IAAPA members for how to regulate their rides); Tunney, *supra* note 87 (detailing the IAAPA's history of lobbying against federal regulations); Lawrence Banton, *Why the U.S. Government Doesn't Regulate Amusement Parks*, CHEDDAR (May 6, 2021), <https://www.cheddar.com/media/why-us-government-does-not-regulate-amusement-parks/> [perma.cc/JUD9-5PWK] (finding that the vice president of the IAAPA reported to journalists that a federal oversight agency is unnecessary because of how rare injuries are).

¹⁶² See *IAAPA Ride Safety Reports*, *supra* note 161 (providing data for fixed amusement park rides); ENSC NAT'L SAFETY COUNCIL, NORTH AMERICA FIXED-SITE AMUSEMENT RIDE INJURY SURVEY, 2021 UPDATE 4 (2021) (reporting data on North American amusement park injuries for IAAPA). The IAAPA has reported that the chances of being injured on an amusement park ride is one in 15.5 million. *IAAPA Ride Safety Reports*, *supra* note 161.

¹⁶³ See 15 U.S.C. § 2058(a) (stating that, in the event of proposed regulations by the Commission, interested persons may submit comments about the risk of injury identified and interested parties may submit notice of an existing standard or intent to modify an existing standard).

¹⁶⁴ *Id.* § 2060(a). The petition must be filed within sixty days after the consumer product safety rule was enacted by the Commission. *Id.*

¹⁶⁵ See Seling, *supra* note 2 (detailing how one participant of McKamey Manor was submerged in water until he requested to be withdrawn from the haunt); Sierra Rains, *Attempted Murder, Rape Charges Against McKamey Manor Owner Dropped*, WKRN (Sep. 25, 2024), <https://www.wkrn.com/news/local-news/attempted-murder-rape-charges-against-mckamey-manor-owner-dropped/> [perma.cc/YQZ8-79XV] (stating that Russ McKamey, the owner of McKamey Manor, was facing charges of attempted rape, second-degree murder, and domestic assault). McKamey has been accused of assault-

nature of the haunt and the risk of injury, haunted houses should clearly state whether scare actors are able to touch the participants, and participants should be given any waivers in advance so they are able to fully appreciate the nature of the agreement.¹⁶⁶ Additionally, the owners and employees of haunted houses should undergo background checks that screen for histories of violence or criminal records in order to protect patrons who are unable to know the risks associated with every individual they may come in contact with during the haunt.¹⁶⁷ As allowed under Section 6A(a)-(b) of the CPSA, the Commission should keep a public database cataloging reports of injuries stemming from haunted houses and details of the voluntary procedures implemented by the haunted houses, helping consumers make informed decisions about what haunted houses they will attend.¹⁶⁸

Critics may argue that the CPSA cannot be further expanded as it would require a substantial budget increase.¹⁶⁹ This argument, however, ignores the

ing his girlfriend multiple times. *Id.* McKamey Manor was operated by volunteers, many of whom were adrenaline junkies themselves. *See* Accomando, *supra* note 2 (finding that many of the employees at McKamey Manor had gone through the haunt themselves, and many of them had previously served in the military or had gone through similar experiences to make them seek out adrenaline).

¹⁶⁶ *See* Rains, *supra* note 15 (finding that the Tennessee Attorney General expressed concern that participants of McKamey Manor were not given ample time to understand or read the forty-page waiver before they were required to sign it); *How Much Is Too Much?*, HAUNTED ATTRACTION NETWORK, <https://hauntedattractionnetwork.com/how-much-is-too-much/> [perma.cc/4PH2-N32Y] (noting that haunted houses vary in the level of contact that they allow between scare actors and participants, but it can be very difficult to enforce boundaries when scare actors are allowed to touch participants); *Frequently Asked Questions*, BOS. WICKED HAUNTED FEST, <https://www.bostonswickedhauntedfest.com/faq> [perma.cc/3Q5E-MMSS] (showing that haunted house websites do not clearly state if the scare actors are allowed to touch participants); *Frequently Asked Questions*, BARRETT'S HAUNTED MANSION, <https://bhmansion.com/faq/> [perma.cc/ZTH7-FNYB] (stating that actors may touch participants but they will not grab participants); *Haunted House Risks: Common Injuries and What Operators Can (and Should) Do to Prevent Them*, *supra* note 146 (noting that injuries from haunted houses are frequent).

¹⁶⁷ *See* Rains, *supra* note 165 (finding that the owner of McKamey Manor was charged with various violent crimes); FLA. STAT. § 616.242 (showing that state regulations do not currently enforce regulations on employees of amusement parks); *City of Cleveland v. Alex Solomon Fam. Ltd. P'ship*, No. 2006-CVG-27560, 2009 WL 1156679, at *2 (Ohio Ct. App. Apr. 30, 2009) (holding that the defendant was required to adhere to Ohio zoning restrictions while operating a family haunted house, but no other regulations). Employee background checks search databases and public records to collect and confirm information about the employee. Hayley Harrison, *Employment Background Checks: The Complete Guide*, CHECKR (Sep. 13, 2024), <https://checkr.com/resources/articles/background-check-for-employment> [perma.cc/U5AX-46GS]. These background checks can include checks for criminal history, along with credit checks, professional license verification, and other categories. *Id.* All background checks must comply with federal laws that prohibit employment discrimination based on a protected class. *Id.*

¹⁶⁸ 15 U.S.C. § 2055a(a)-(b).

¹⁶⁹ *See* Johnson, *supra* note 151, at 804 (acknowledging that adding federal regulations would be costly); Oehmke, *supra* note 56, at 117 (noting that increasing the regulatory power of the CPSA would require Congress to increase the budget by \$500,000 per fiscal year). In 2024, the federal government spent \$6.75 trillion on a variety of programs, goods, and services. *How Much Has the U.S.*

availability of funds through the reallocation of unused federal funds.¹⁷⁰ In addition, this argument ignores the importance of prioritizing the protection of citizens from hazardous claims, of which there is little to no protection.¹⁷¹ This priority is echoed by state legislatures, who have shown through budget allocations that the safety of private citizens is more important than the reallocation of funds.¹⁷² Even in the case of tight budget constraints, states could enter into a partnership with federal grant programs to provide the proper level of regulations, and states that already require heightened regulations would be allowed

Government Spent This Year?, FISCALDATA, <https://fiscaldata.treasury.gov/americas-finance-guide/federal-spending/#spending-trends-over-time-and-the-us-economy> [perma.cc/ENN5-3F43].

¹⁷⁰ See *Unused Federal Grant Dollars (Infographic)*, GAO (Apr. 20, 2016), <https://www.gao.gov/blog/2016/04/20/unused-federal-grant-dollars-infographic> [perma.cc/2LDN-8Z7N] (finding that \$994 million of federal grant funding was unspent as of September 2015). The Department of the Treasury, Department of Health and Human Services, and Department of Defense receive the most funding out of federal programs. *Agency Profiles*, USA SPENDING, <https://www.usaspending.gov/agency> [perma.cc/9VTC-KXUA]. The Department of the Treasury received \$3,125,545,544,294 in 2024, or 28.86% of the total budget. *Id.* The Department of Health and Human Services and Department of Defense received \$2,369,129,444,329 and \$1,713,980,313,483 respectively. *Id.* In 2023, the federal government reported \$236 billion in inappropriate payments, including over \$175 billion in overpayments to ineligible individuals or programs. *Federal Government Made \$236 Billion “Improper Payments” Last Fiscal Year*, GAO (Mar. 26, 2024), <https://www.gao.gov/blog/federal-government-made-236-billion-improper-payments-last-fiscal-year> [perma.cc/MR7Z-UFBB].

¹⁷¹ See Johnson, *supra* note 151, at 804 (finding that current state regulations reflect the bare minimum requirements and do not tend to keep citizens safe); Oehmke, *supra* note 56, at 101 (noting that the death of Caleb Schwab on an amusement park ride in 2016 caused a criminal investigation and civil suit).

¹⁷² See Oehmke, *supra* note 56, at 117 (quoting Senator Edward Markey “[c]hildren are at risk all across the country when their parents take them to a fixed site amusement park and the CPSC is actually prohibited from investigating”); Johnson, *supra* note 156, at 804–05 (noting that the safety of citizens is more important than the federal budget); *2023 State of the State Addresses: Criminal Justice and Public Safety Priorities*, NAT’L GOVERNORS ASS’N (June 15, 2023), <https://www.nga.org/news/commentary/2023-state-of-the-state-addresses-criminal-justice-and-public-safety-priorities/> [perma.cc/4Z35-NB42] (finding that governors used their platforms in 2023 to highlight multiple public safety concerns and pledge their allegiance to helping curb these concerns). Eight states emphasized the opioid crisis and referenced programs that they had created to curb the crisis, including Governor Glenn Youngkin of Virginia, Governor Janet Mills of Maine, and Governor J.B. Pritzker of Illinois. *2023 State of the State Addresses: Criminal Justice and Public Safety Priorities*, *supra*. Five governors stated that law enforcement would receive a salary increase to reduce rates of violent crimes and provide for effective law enforcement. *Id.* Ohio Governor Mike DeWine specifically allocated \$40 million per year towards de-escalation training. *Id.* Tennessee Governor Bill Lee stated that he would be allocating an additional \$50 million to the Violent Crime Intervention Fund, a program that provides grant funding to law enforcement. *Id.* In 2024, 171 state legislatures, representing forty-three states, came together to create Legislatures for Safer Communities, a coalition dedicated to lowering gun violence. *Nation’s Leading Gun Safety Organizations Applaud Creation of ‘Legislatures for Safer Communities,’* EVERYTOWN FOR GUN SAFETY (Sep. 17, 2024), <https://www.everytown.org/press/nations-leading-gun-safety-organizations-applaud-creation-of-legislators-for-safer-communities/> [perma.cc/ZF3C-FEGF]; LEGISLATURES FOR SAFER COMMUNITIES, <https://legislatorsforsafercommunities.org> [perma.cc/AK6S-ZY9Z].

to continue with their programs.¹⁷³ Therefore, expanding the CPSA is not only feasible, it is realistic.¹⁷⁴

In the event that the CPSA is not expanded to encompass haunted houses and haunted house regulation continues to fall to the states, states' amusement regulations should be expanded to encompass haunted houses.¹⁷⁵ Because some states classify haunted houses as amusements and some do not, the level of regulations imposed upon haunted houses varies widely by state.¹⁷⁶ If haunted houses were included as amusements it would begin to close the divide between state regulations.¹⁷⁷ Additionally, state regulations on amusements should be expanded to include additional requirements outside of fire safety, such as content inspections and employee screening.¹⁷⁸ Because haunted houses include hands on interactions that many amusement park rides do not, they require different types of regulations.¹⁷⁹ Although state regulations would lack the federal oversight and uniformity offered by the expansion of

¹⁷³ See Oehmke, *supra* note 56, at 117–18 (noting that states with regulations that exceeded federal regulations would be able to continue to self-regulate amusement rides); Elizabeth Williams, Anna Mudumala, Robin Rudowitz, & Alice Burns, *Medicaid Financing: The Basics*, KFF (Jan. 29, 2025), <https://www.kff.org/medicaid/issue-brief/medicaid-financing-the-basics/> [perma.cc/5DVY-TE8C] (explaining that Medicaid health insurance coverage is jointly funded by state and federal funding through a program that matches the federal and state funding with no limit on the spending).

¹⁷⁴ See *2023 State of the State Addresses: Criminal Justice and Public Safety Priorities*, *supra* note 172 (showing that governors have committed to funding state programs dedicated to improving public safety that would cost fifty times as much as the annual cost to expand the Consumer Product Safety Act); *Federal Government Made \$236 Billion “Improper Payments” Last Fiscal Year*, *supra* note 170 (finding that the federal government improperly spent \$174,999,500,000 more than what it would cost annually to expand the Consumer Product Safety Act).

¹⁷⁵ See *infra* notes 176–180 and accompanying text.

¹⁷⁶ Compare FLA. STAT. § 616.242 (2024) (defining amusement rides in a way that could include haunted houses), OHIO. JURIS., *supra* note 57, at § 1 (same), and *id.* § 9 (stating that the state can regulate amusements), with N.C. GEN. STAT. § 95-111.3 (2024) (excluding haunted houses from the definition of amusements). See Oehmke, *supra* note 56, at 103 (finding wide variance in state regulations for amusement parks).

¹⁷⁷ Compare FLA. STAT. § 616.242 (finding that a haunted house is an amusement ride), OHIO. JURIS., *supra* note 57, at § 1 (same), and *id.* § 9 (allowing the state full authority to regulate haunted houses), with N.C. GEN. STAT. § 95-111.3 (finding that haunted houses are not amusements and cannot be regulated as such).

¹⁷⁸ See #287—*Haunted House Safety Regulations: IBC and NFPA Model Code Requirements*, *supra* note 56 (stating that haunted houses are “special amusement buildings” and are required to adhere to regulations in the International Building Code and National Fire Protection Association).

¹⁷⁹ See Blake, *supra* note 4 (detailing the stories of participants at McKamey Manor that were physically touched and abused while going through the haunt); Noah Wullkotte, *A Haunted Hoochie History*, CITY BLOOD, <https://ohioshaunted.com/hauntedhoochie/> [perma.cc/53KV-8ND2] (detailing how participants at one haunted house were chased by actors with chainsaws); u/princesstortilla, REDDIT (r/vegaslocals), *Freakling Bros Gates of Hell* (2024), https://www.reddit.com/r/vegaslocals/comments/1g32b9f/freakling_bros_gates_of_hell/ [perma.cc/XSH2-HGN3] (recounting how an actor at Freakling Bros Gates of Hell physically pinned a participant against a wall during the haunt).

the Consumer Product Safety Act, defining haunted houses as amusements would at least offer more protections than are currently available to patrons.¹⁸⁰

B. Arbitration Clauses: The Protector of Unenforceable Contracts

With the above regulations, many of the concerns over haunted houses would be minimized.¹⁸¹ In the absence of the above regulations, however, courts should refrain from enforcing arbitration clauses in haunted house contracts and should allow cases to be heard in public courts.¹⁸² As arbitration clauses have precluded courts from determining the validity of the contract itself, courts have been unable to set precedent to bind haunted houses.¹⁸³ As such, haunted house contracts such as the one used in McKamey Manor have been allowed to persist, despite the fact that the contract is void under contract

¹⁸⁰ See OHIO. JURIS., *supra* note 57, at § 9 (allowing haunted houses to be regulated under state regulations); Oehmke, *supra* note 56, at 103 (noting the lack of protection for patrons of amusement rides without federal regulations and advocating for an expansion of the Consumer Product Safety Act in order to promote uniform regulations).

¹⁸¹ See *supra* notes 151–180 and accompanying text (detailing how federal regulations would combat many of the issues of irregularity and inconsistency in state regulations of amusement regulations).

¹⁸² See *infra* notes 183–211 and accompanying text; *Morgan v. Sundance, Inc.*, 596 U.S. 411, 418 (2022) (holding that arbitration provisions are to be weighted equally to other contracts and can be found unenforceable by a court). In 2022, in *Morgan v. Sundance, Inc.*, the Supreme Court took a step to halt the expansive arbitration clause enforcement that has dominated legal precedent by holding that arbitration clauses cannot be analyzed under rules that would favor arbitration clauses more favorably than traditional litigation. See 596 U.S. at 411 (acknowledging the Supreme Court’s previous adherence to favoring arbitration clauses but stating that arbitration clauses must be treated equally to normal contracts). *Morgan* was an hourly employee at Taco Bell who was subjected to an employment arbitration clause. *Id.* at 414. *Morgan* filed suit against Taco Bell after the franchise failed to pay overtime to its employees, as was required by the Fair Labor Standards Act. *Id.* *Sundance* proceeded with the litigation for eight months without mentioning the arbitration clause, before suddenly they moved to compel arbitration. *Id.* *Morgan* argued that *Sundance* had waived its right to compel arbitration because of how long *Sundance* waited to file. *Id.* The Eighth Circuit had created a unique procedural precedent for arbitration issues, holding that a party waived its contractual right to arbitrate if it acted inconsistently with the right to arbitrate and prejudiced the other party through proceeding with litigation. *Id.* at 415. Notably, the prejudice requirement was specifically added only for arbitration clauses, and all other federal waiver questions only required the first requirement. *Id.* The Supreme Court remanded the case under the holding that arbitration clauses cannot have unique procedural rules, so the inclusion of the prejudice requirement only for arbitration clauses was improper. *Id.* at 419.

¹⁸³ See *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444 (2006) (holding that an arbitration clause for an invalid contract can be separated from the contract itself); *AT&T Mobility, LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (holding that courts must adhere to arbitration clauses unless the clause itself is invalidated by a contractual defense); Shonk, *supra* note 88 (noting that arbitration decisions are confidential and not available to the public or seen by the courts unless the courts need to intervene to enforce the decision); *Fact Sheet: Forced Arbitration Clauses and Class Actions Waivers, by the Numbers*, *supra* note 118 (noting that more than 75% of Fortune 100 companies include arbitration clauses in their contracts). Over half of households in the United States have signed an arbitration agreement and more than half of the online retail stores use arbitration clauses. *Fact Sheet: Forced Arbitration Clauses and Class Actions Waivers, by the Numbers*, *supra* note 118.

law defenses.¹⁸⁴ If courts were to dispose of arbitration clauses for inherently dangerous activities, illegal haunted house contracts would be exposed and squashed.¹⁸⁵

Because most consumer contracts include arbitration clauses, courts are unlikely to establish public precedent regarding haunted house contracts because these are normally confidentially arbitrated.¹⁸⁶ As shown by the Supreme Court's holding in *Rent-A-Center, West, Inc. v. Jackson* in 2010, even if the contract itself is unconscionable, the arbitration clause will be binding unless the clause itself is shown to be unconscionable.¹⁸⁷ Therefore, courts are unable to strike down contracts that would normally be invalid, preventing haunted houses from knowing what contract terms are legal.¹⁸⁸ Furthermore, patrons are less likely to bring claims when they know that their contracts include an arbitration clause, minimizing precedent.¹⁸⁹

In order to limit these harmful impacts, courts should refrain from enforcing arbitration clauses in instances of inherently dangerous activities.¹⁹⁰ When

¹⁸⁴ See *infra* notes 195–202 and accompanying text; Senanayake, *supra* note 1 (noting that McKamey Manor was still operating as of October 2024); Blake, *supra* note 4 (stating that the police told a McKamey Manor participant that she could not bring a legal claim against McKamey Manor for the injuries she suffered because she had signed a binding contract).

¹⁸⁵ See *infra* notes 195–202 and accompanying text.

¹⁸⁶ See *Fact Sheet: Forced Arbitration Clauses and Class Actions Waivers, By the Numbers*, *supra* note 118 (noting that eighty-one of the companies in the Fortune 100 include arbitration agreements in their consumer transactions); Shonk, *supra* note 88 (noting that arbitration decisions are confidential and kept out of the court unless the court is needed to enforce the reward); Alexander J.S. Colvin, *The Growing Use of Mandatory Arbitration*, ECON. POL'Y INST. (Apr. 6, 2018), <https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/> [perma.cc/Q9JL-4AB9] (finding that more than half of American workers, or 60.1 million workers, have signed employee arbitration clauses); *Forced Arbitration by Corporations Surges to Unprecedented Levels*, JUSTICE (Dec. 2023), <https://www.justice.org/resources/research/forced-arbitration-by-corporations-surges-to-unprecedented-levels> [perma.cc/PBT5-7QMN] (finding that arbitration clauses increased by 467% in 2022 and only 0.7% of consumers who brought an arbitration claim won a monetary award). Companies with more than one thousand employees have a higher rate of arbitration clauses. See Colvin, *supra* note (finding that 65% of companies with greater than one thousand employees have mandatory arbitration clauses).

¹⁸⁷ *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 71 (2010).

¹⁸⁸ See *id.* at 70 (stating that arbitration clauses are reviewed as an additional contract to the original contract, so they are subject to their own review of enforceability); Shonk, *supra* note 88 (noting that the results of a claim settled by arbitration are confidential). The Supreme Court held that a challenge to the validity of another section of a contract does not prevent a court from enforcing an arbitration clause, allowing invalid contracts to be confidentially arbitrated. *Rent-A-Center, W., Inc.*, 561 U.S. at 70–71.

¹⁸⁹ See *Fact Sheet: Forced Arbitration Clauses and Class Actions Waivers, By the Numbers*, *supra* note 118 (stating that employees are less likely to file claims for wrongful termination or harassment when they have signed an arbitration clause).

¹⁹⁰ See *infra* notes 183–211 and accompanying text.

faced with an inherently dangerous activity, courts should allow the case to proceed to court as usual and evaluate the contract on its merits.¹⁹¹

In the absence of this, when reviewing haunted house cases, courts should review if a party had knowledge of the arbitration clause before signing it.¹⁹² This would help to protect haunted house patrons who did not have sufficient knowledge of any arbitration clause because they signed the contract under duress without having the proper ability to review the contract.¹⁹³ Similarly, courts can protect patrons by holding haunted houses liable for gross negligence or lack of notice for the waiver requirements.¹⁹⁴

If a court were to review haunted house contracts with arbitration clauses on their merits, many contracts would be deemed invalid.¹⁹⁵ Under the above contractual defenses, the waiver used by McKamey Manor would be unenforceable.¹⁹⁶ First, the patrons of McKamey Manor signed the waiver while being actively tortured, belittled, and threatened by McKamey, which could constitute an improper threat, thus making the contract unenforceable for duress.¹⁹⁷ Second, the terms in McKamey Manor's contract are unreasonably fa-

¹⁹¹ See *Griffin v. Haunted Hotel, Inc.*, 194 Cal. Rptr. 3d 830, 840 (Ct. App. 2015) (finding that the risk of falling and injuring oneself is inherent in haunted houses, and thus the risk of injury cannot be full eliminated for haunted houses without changing the fundamental nature of the activity); *Shonk*, *supra* note 88 (stating that, unlike normal claims, arbitration clauses are settled outside of court); *infra* notes 192–211.

¹⁹² See *Schneider v. Doe*, 2019CV30018, 2021 Colo. Dist. LEXIS 1679, at *2 (Colo. Dist. Ct. Jan. 26, 2021) (holding that summary judgment was improper because it was unclear if a blind attendee was given notice that her ticket contained a waiver that should be read to her).

¹⁹³ See *Seling*, *supra* note 2 (finding that one participant did not hear the waiver terms until he was actively being tortured); *Rains*, *supra* note 15 (stating that the Tennessee Attorney General was investigating McKamey Manor because of concerns that participants were not given the time to fully understand the waiver before they signed it).

¹⁹⁴ See *Schneider*, 2021 Colo. Dist. LEXIS 1679, at *2 (finding that a party can be held liable when they did not provide notice of the contract to the contracting party); *Steinberg v. Sahara Sam's Oasis, LLC*, 142 A.3d 742, 750 (N.J. 2016) (holding that an amusement park waiver was invalid if there was gross negligence or a breach of statutory duty).

¹⁹⁵ See *infra* notes 195–202 and accompanying text.

¹⁹⁶ See *infra* notes 195–202 and accompanying text.

¹⁹⁷ See *Rylah*, *supra* note 6 (noting that McKamey taunted one participant of McKamey Manor because she withdrew from the haunt); *Rains*, *supra* note 15 (finding that the participants were under pressure to sign the waiver and were unable to fully appreciate the nature of the contract); *Seling*, *supra* note 2 (stating that McKamey's employees force fed participants mystery substances when they took breaks from reading the contract); *Austin Instruments v. Loral Corp.*, 272 N.E.2d 533, 537 (N.Y. 1971) (holding that a wrongful threat would fulfill the threat needed to succeed on a defense of duress); *Finserv Comp. Corp. v. Bibliographic Retrieval Servs., Inc.*, 125 A.D.2d 765, 766 (N.Y. App. Div. 1986) (finding that a party can bring a claim for economic duress when they are forced to enter into a contract by a wrongful threat that prevents them from exercising free will). In *Austin Instruments*, the court held that threatening to halt deliveries of parts needed to produce the final product constituted a wrongful threat because Loral had no choice but to fulfill the contract since the company did not have an alternative producer and had invested substantial capital in Austin Instruments. 272 N.E.2d at 536–37. Similarly, participants at McKamey Manor invested substantial capital by traveling dozens of hours to participate in the haunt, thus giving them no other reasonable option besides agree-

avorable towards the torturing party, and the tortured party lacked the ability to understand them because they were forced to sign the contracts under pressure while being taunted by McKamey, making the contract unconscionable.¹⁹⁸ Third, the contract is also invalid because of the characteristics of the parties: (1) McKamey had previously contracted with minors for non-necessities, and (2) some participants signed the waiver while they were unable to comprehend the nature of the contract because of fear, pain, or adrenaline, all of which mirror the effect of intoxication.¹⁹⁹

ing to the contract. *See* Seling, *supra* note 2 (stating that one participant drove eleven hours to visit McKamey Manor).

¹⁹⁸ *See* Williams v. Walker-Thomas Furniture Co., 350 F.2d 445, 449 (D.C. Cir. 1965) (stating that an unconscionable contract involves an “absence of meaningful choice” of one party and “contract terms which are unreasonably favorable to the other party”); Rains, *supra* note 15 (finding that the Tennessee Attorney General was investigating McKamey Manor because of concerns that the participants were not given sufficient time to understand the contract terms); Seling, *supra* note 2 (noting that the contract terms included the right for McKamey Manor to extract teeth, force feed, or break the bones of the participants). Participants of McKamey Manor would drive from far away to attend the haunt and would not be able to read the contract until they arrived, leaving them with few options besides agreeing to the haunt. *See* Seling, *supra* note 2 (stating that individuals from every state and some international participants have come to visit the manor and finding that one participant did not hear the waiver terms until he was actively being tortured).

¹⁹⁹ *See* Webster St. P’ship, Ltd. v. Sheridan, 368 N.W.2d 439, 444 (Neb. 1985) (finding that two minors could not enter into a contract unless it was for a necessity); McCafferty, *supra* note 8 (finding that a thirteen-year-old signed a contract to go through McKamey Manor in San Diego); Guidici v. Guidici, 41 P.2d 932, 934 (Cal. 1935) (holding that an intoxicated party cannot legally consent to a contract because there is no mutual assent); Atiyeh Vaezipour et al., *How Distracting Is Chronic Pain? The Impact of Chronic Pain on Driving Behavior and Hazard Perception*, SCIENCE DIRECT (Dec. 2022), <https://www.sciencedirect.com/science/article/pii/S0001457522002913> [perma.cc/Z8BE-R8KE] (finding that pain has an impact on one’s mental ability and ability to carry out simple tasks); Rains, *supra* note 15 (quoting a participant “[i]f [the waiver] would have said that a man is going to come out of the woods and murder you . . . , I would’ve signed it”). Courts that have refused to honor contracts formed while one party was intoxicated have stated concerns that the intoxicated party was unable to comprehend the decision, however, courts require the intoxicated party to prove that they were intoxicated to the point of “privation of understanding.” *See* Reinskopf v. Rogge, 37 Ind. 207, 208–09 (1871) (holding that a person who is incapable of assenting because of intoxication is not bound by a contract, but the person must be intoxicated to the point of being deprived of reason); Harbison v. Lemon, 3 Blackf. 51, 53 (Ind. 1832) (same). Just like intoxication, pain, fear, and adrenaline can impact a person’s comprehension, limiting their ability to comprehend their actions. *Compare Alcohol and the Brain: An Overview*, NAT’L INSTS. HEALTH: NAT’L INST. ON ALCOHOL ABUSE & ALCOHOLISM (Dec. 2025), <https://www.niaaa.nih.gov/publications/alcohol-and-brain-overview> [perma.cc/9W54-Y3YD] (noting that alcohol can impact memory and judgment), and *Alcohol Related Brain Impairment*, VICTORIA DEP’T OF HEALTH: BETTER HEALTH CHANNEL, <https://www.betterhealth.vic.gov.au/health/conditionsandtreatments/alcohol-related-brain-impairment#bhc-content> [perma.cc/C82H-NTFA] (noting that alcohol use can cause an acquired brain injury and possible lead to frontal lobe dysfunction, a condition that impacts cognition), with Milan Patel et al., *The Impact of Chronic Pain on Cognitive Function*, BRAIN SCIS., May 2025, at 1, 1 (finding that chronic pain leads to cognitive dysfunction and impairments in decision-making and executive function), Jenna Morogello et al., *The Effect of Acute Pain on Executive Function*, 4 J. CLINICAL & TRANSLATIONAL RSCH. 113, 118 (2018) (finding that individuals who experienced acute pain because of a physical injury had diminished capacity for attention and executive function, and were slower to complete tasks), Sophia Ahmed, *Fear and Decision Making: How Fear Affects Risk Assessment and Behavioral Choices*, J.

The contracts are also unenforceable on public policy grounds.²⁰⁰ McKamey Manor allows individuals to illegally contract for torture, going against international law and public policy.²⁰¹ Even though under the traditional application of contract defenses the McKamey Manor contracts are void, the use of arbitration clauses prevents these types of contracts from being publicly discredited.²⁰²

Additionally, allowing haunted house cases to proceed to court would allow illegal haunted houses to be held liable under the standard of liability set forth by the Louisiana Court of Appeals in *Mays v. Gretna Athletic Boosters* in 1996.²⁰³ McKamey Manor, and other similar haunts, have a history of injuring patrons and do not maintain their businesses with ordinary and reasonable care.²⁰⁴ Therefore, in the absence of an arbitration clause, courts could apply tort liability to haunted houses that have a history of injuries.²⁰⁵

Critics may argue that failing to adhere to arbitration clauses defies precedent encouraging the use and enforcement of arbitration clauses.²⁰⁶ This argument, however, ignores similar instances where courts have refused to en-

TRAUMATIC STRESS DISORDERS & TREATMENT, Aug. 2024, at 1, 1 (“Stress can amplify the effects of fear on decision-making. Under stress, the brain’s fear centers become more active . . . This can impair the ability to make balanced decisions and lead to more impulsive or defensive choices.”), and Olivier Chanel & Graciela Chichilnisky, *The Influence of Fear in Decisions: Experimental Evidence*, 39 J. RISK & UNCERTAINTY 271, 271 (2009) (finding that fear impacts decision-making by causing hyper fixation), and Luis Felipe Sarmiento et al., *Decision-Making Under Stress: A Psychological and Neurobiological Integrative Model*, BRAIN BEHAV. & IMMUNITY—HEALTH, Apr. 2024, at 1, 4 (finding that stress can lead to increased impulsive choices). *But see* Milan Patel et al., *supra* (noting that acute pain did not impact learning).

²⁰⁰ See *infra* note 196 and accompanying text.

²⁰¹ See *Summer Haven Lake Ass’n v. Vlach*, 905 N.W.2d 714, 724 (Neb. Ct. App. 2017) (citing *Devney v. Devney*, 886 N.W.2d 61, 69 (Neb. 2016)) (finding that contracts that are contrary to public policy are unenforceable); Rains, *supra* note 15 (stating that the Tennessee Attorney General was investigating McKamey Manor because of concerns that the manor violated the consumer protection laws in Tennessee, which were meant to protect the public); 18 U.S.C. § 2340A (stating that anyone who is a citizen of the United States or resides in the United States can be criminally penalized for committing or attempting to commit torture outside of the United States).

²⁰² See Shonk, *supra* note 88 (noting that arbitration decisions are confidential and kept out of the court unless the court is needed to enforce the reward); *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 71 (2010) (holding that an arbitration clause can still be enforced even if the contract itself is void).

²⁰³ See *infra* notes 204–205 and accompanying text.

²⁰⁴ See *Mays v. Gretna Athletic Boosters*, 668 So. 2d 1207, 1209 (La. Ct. App. 1996) (requiring that a haunted house operate in a way that resembles ordinary and reasonable care); Selig, *supra* note 2 (noting that one participant suffered from a broken foot); Blake, *supra* note 4 (noting that one participant suffered from a heart attack).

²⁰⁵ See *Griffin v. Haunted Hotel, Inc.*, 194 Cal. Rptr. 3d 830, 845 (Ct. App. 2015) (looking to a history of injuries to determine if a haunted house was operating under reasonable care).

²⁰⁶ See *AT&T Mobility, LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (holding that an arbitration clause should be enforced unless the clause itself is subject to a valid contractual defense); *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983) (favoring enforcing arbitration clauses).

force arbitration clauses when there is a clear imbalance of power between the bargaining parties.²⁰⁷ In addition, critics may argue that this will open a flood of litigation against haunted houses and amusement park operators, causing these operations to cease to exist.²⁰⁸ The application of current tort law, which acknowledges assumption of risk, clearly shows that this fear is unfounded.²⁰⁹ Courts will continue to apply the current standard of tort law to cases where valid contracts are used for haunted houses, and will likely side with the haunted houses given that patrons assume the risk of an inherently dangerous activity.²¹⁰ The absence of arbitration clauses will simply strike down otherwise unenforceable contracts, but legal haunted houses will still maintain the current protections afforded by tort law.²¹¹

CONCLUSION

Haunted houses are full of all kinds of scary things: witches, ghouls, and physical injury with no opportunity to recover. As historical data has shown us, the popularity of haunted houses has grown over time, along with the measures that owners will take in order to scare their patrons. The current regulations, which barely cover fire safety, do not begin to regulate the things that truly make a haunted house scary, such as the employees, decorations, and venue. In order to ensure that patrons are safe, it is crucial to expand upon the current regulations of haunted houses.

²⁰⁷ JOHN M. TOWNSEND, STATE COURT ENFORCEMENT OF ARBITRATION AGREEMENTS: A REPORT TO THE U.S. CHAMBER INSTITUTE FOR LEGAL REFORM 2 (2006). When the parties have included terms that are especially unfavorable to one party and where the parties are clearly distinguished by power, state courts have resisted enforcing the arbitration clauses. *Id.* at 2–3. Additionally, state courts have vacated arbitration clauses on the grounds of public policy when the contracted outcome clearly goes against public policy for reasons of bad faith, endangerment of children, or state law. *Id.* at 18–19.

²⁰⁸ See *S. Comm'ns. Servs. v. Thomas*, 829 F. Supp. 2d 1324, 1341 (Ga. N.D. 2011) (stating that district courts should not review every arbitration clause because it would cause a flood of litigation); Kyle Kimball, *The Significance of Freedom of Contract in Commerce: A Comprehensive Guide*, SAJEN LEGAL (Dec. 11, 2023), <https://www.sajenlegal.com.au/news/contract-law/the-significance-of-freedom-of-contract-in-commerce-a-comprehensive-guide/> [perma.cc/R96M-VPHL] (finding that freedom of contract increases competition in the market because it allows businesses to tailor their offerings).

²⁰⁹ See *infra* notes 210–211 and accompanying text.

²¹⁰ See *Griffin*, 194 Cal. Rptr. 3d at 847 (finding that injury because of running away is inherent in a haunted house and the patron assumed the risk by attending); *Mays v. Gretna Athletic Boosters, Inc.*, 668 So. 2d 1207, 1209 (La. Ct. App. 1996) (finding that haunted house owners only have a duty to manage the premises in a way consistent with ordinary care); *Galan v. Covenant House New Orleans*, 695 So. 2d 1007, 1009 (La. Ct. App. 1997) (holding that a haunted house did not have a duty to eliminate all risk, because acting in unexpected ways when scared is inherent in attending a haunted house).

²¹¹ See *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445, 448 (D.C. Cir. 1965) (holding that a contract can be void for unconscionability); *Griffin*, 194 Cal. Rptr. 3d at 847 (applying the assumption of risk doctrine and finding that a patron could not bring a claim against a haunted house).

In order to do so, haunted houses should be included in the Consumer Product Safety Act and should be federally regulated. Additional regulations should be added to ensure that all aspects of a haunted house, such as its employees and content, are regulated. Further, courts should refrain from enforcing arbitration clauses in haunted house contracts and should allow these cases to proceed publicly. As we have seen, contracts to scare or injure patrons face serious questions of validity, and arbitration clauses only allow these contracts to continue to exist outside of the public eye. In the absence of arbitration clauses, invalid contracts would be litigated by the courts, allowing the courts to create binding precedent to guide haunted house owners when they draft their own contracts. Despite concerns over a flood of litigation without arbitration clauses, the current binding tort law still favors haunted houses over plaintiffs, helping to mitigate any frivolous claims.

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