



2024 POSITION PAPER

HB 162 / SB 452

COURTS - PROHIBITED LIABILITY AGREEMENTS - RECREATIONAL FACILITIES FAVORABLE

HB 162 / SB 452 would prohibit a commercial recreational facility in Maryland from requiring a signed waiver protecting the facility from liability for injuries or death caused by the facility's own negligence. The bill declares such pre-injury contractual waivers of liability to be void and unenforceable as a matter of public policy.

Under existing law, a commercial recreational facility may – and many do – require customers to sign “waivers of liability” as a condition of entry or participation. These waivers prevent paying customers from participating in the recreational activity unless they agree, ahead of time, to surrender their rights, and the rights of their family members, to hold the facility legally accountable for injuries or death caused by the facility's negligence.

Liability waivers exploit customers' trust that a business would never allow its employees to ignore safety rules, or that a business might fail adequately to train its employees or maintain equipment. By securing a broad liability waiver from a trusting customer before an injurious event occurs, the facility obtains “immunity by contract,” despite the fact that the existence of the waiver decreases the facility's incentive to exercise reasonable care. Moreover, waivers frequently are written to apply to (and the Maryland courts enforce waivers against) all members of the customer's family, even children, who never read, agreed to, or signed the waiver.

To protect consumers and hold commercial recreational facilities to the same standards of reasonable care that apply to other businesses and professionals, other States have enacted statutes similar to HB 162 / SB 452. See, e.g., N.Y. Consolidated Laws, General Obligations Law § 5-326 (prohibiting waivers that exempt places of amusement or recreation and “similar establishments” from liability for negligence), and La. C.C. Art. 2004 (declaring “null” contractual provisions that limit liability for personal injury).

There is also precedent for such a policy in Maryland, as the General Assembly has enacted other statutes that prohibit exculpatory clauses as a matter of public policy in different contexts. See Md. Code, Real Prop. § 8-105 (declaring exculpatory clauses in leases that exonerate a landlord from negligence resulting in injury to be void as against public policy); Md. Code, Real Prop. § 8a-1502(e) (declaring void as against public policy any provision in a mobile home park rental agreement that exonerates the owner from liability for negligence/misconduct).



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Maryland should protect consumers and hold commercial recreational facilities to the same standards of safety applicable to all other businesses, by prohibiting waivers and exculpatory clauses that allow commercial recreational facilities to disregard their basic duty to act with reasonable care.

The Maryland Association for Justice urges a FAVORABLE Report on HB 162 / SB 452.

About Maryland Association for Justice

The Maryland Association for Justice (MAJ) represents over 1,250 trial attorneys throughout the state of Maryland. MAJ advocates for the preservation of the civil justice system, the protection of the rights of consumers and the education and professional development of its members.

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