



## Senate Bill 291

### *Courts - Prohibited Liability Agreements - Recreational Facilities*

MACo Position: **SUPPORT**

To: Judicial Proceedings Committee

**WITH AMENDMENTS**

Date: February 16, 2023

From: Dominic J. Butchko

The Maryland Association of Counties (MACo) **SUPPORTS SB 291 WITH AMENDMENTS**. This bill limits the use of liability waivers for certain commercial recreational facilities. Amendments could better confirm the bill language to this intent and avoid effect on governmental facilities.

According to the advocates, the intent of SB 291 is to eliminate the use liability waivers for certain for-profit recreational facilities. While not the original intent of the advocates, the use of the term commercial within the bill may be interpreted by the courts to also include county programs and facilities. This interpretation could put at risk dozens of county-led programs meant for after school care and youth recreation.

Counties suggests amendments to specify that the limitations of the bill should not apply to publicly owned facilities, but to also avoid any unintended consequences to expand or limit a potential plaintiff's rights under existing laws to file tort lawsuits against governments.

During the House hearing, the bill sponsor recognized the concerns of local jurisdictions and indicated interest in amending local governments out of the bill. MACo has been working with advocates to try and find some middle ground and is hopeful that the amendment language on the following page will accomplish this goal.

Without further clarifying language, SB 291 puts youth and after school care programs at risk, but clarifying language could fully assuage local government concerns. Accordingly, MACo urges the Committee to issue a **FAVORABLE WITH AMENDMENTS** report for SB 291.

*(proposed amendment language on next page)*

**AMENDMENTS TO SENATE BILL 291**

Suggested by the Maryland Association of Counties

On page 1, in line 18 strike "COMMERCIAL" and substitute "PRIVATELY OWNED" and on line 19 before "AMUSEMENT ATTRACTION" insert "PRIVATELY OWNED";

On page 2, before line 1, insert "(3) RECREATIONAL FACILITY" DOES NOT INCLUDE A FACILITY OWNED BY A STATE OR LOCAL GOVERNMENT, INCLUDING WHEN UNDER THE DIRECTION OR OPERATION OF A NONPROFIT AGENCY UNDER CONTRACT WITH THE STATE OR LOCAL GOVERNMENT OWNER.";

On page 2, after line 7, insert "(C) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO AFFECT, EXTEND, OR LIMIT THE LIABILITY OF A GOVERNMENTAL ENTITY FOR A TORT OR OTHER CLAIM SUBJECT TO TITLE 12, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE (MARYLAND TORT CLAIMS ACT) OR TITLE 5, SUBTITLE 3 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE (LOCAL GOVERNMENT TORT CLAIMS ACT).".