

# **SB 452 Testimony.pdf**

Uploaded by: Jill Carter

Position: FAV



THE SENATE OF MARYLAND  
Annapolis, Maryland 21401

**Testimony of Senator Jill P. Carter**  
**In Favor of SB0452 – Courts - Prohibited Liability Agreements -**  
**Recreational Facilities**  
**Before the Judicial Proceedings Committee**  
**On February 8<sup>th</sup> 2024**

**Mr. Chairman, Vice Chair, and Members of the Committee:**

**Senate Bill 0452 establishes that recreational facilities like gymnasiums and pools cannot use liability waivers signed prior to injury to absolve themselves of a patron's injury at their facility if it is found that it was the cause of negligence or neglect. This bill puts into Maryland law that any such liability waiver used for this reason would be null and void.**

**Recreational facilities still play an important role in our communities. According to the National Safety Council, sports and recreational injuries have increased by 12% since 2022, part of a sharp uptick since the COVID lockdowns ended. A study from the National Institute of Health indicates that neighborhood-level concerns are the primary factor for this, with the size of the recreational area as well as playing surfaces playing a role in injury concerns. This shows the value of not only a dedicated recreational space, but also a safe one.**

**Liability waiver forms can also be a useful and valuable resource for businesses to protect themselves from an injury claim. If someone visits a trampoline park, for example, and they try to perform a dangerous jump but land awkwardly and injure themselves, a liability waiver can correctly protect a business from being sued. Conversely, if someone visits a trampoline park and breaks through the trampoline while simply jumping up and down because the staff ignored a rusty spring or a threadbare trampoline surface, a liability waiver should not be able to protect a business who negligently let their equipment fall into disrepair. No rational person would have patronized the business if they had known that was the case.**

**There is such a precedent for this bill in Maryland case law. The State Court of Appeals case *Adloo v. H.T. Brown Real Estate Inc.* (1996) set Maryland's liability waiver policy that a liability waiver will be held invalid and unenforceable when a party to the contract is proven to have been trying to avoid liability for "intentional conduct of harm caused by reckless, wanton, or gross behavior".**

**SB0452 writes into Maryland law an important measure to protect Maryland residents from being entrapped into predatory waiver agreements that leave them vulnerable and unprotected in the event of negligence on behalf of an owner of a recreational facility.**

**I urge this committee to issue a favorable report in regards to SB0452. Thank you for your time.**

**Respectfully,**

**Jill P. Carter**

# **IHRSA 2024 Favorable with Amendments - MD SB 452.p**

Uploaded by: Michael Goscinski

Position: FWA



February 7, 2024

The Honorable Will Smith  
Chair, Senate Judiciary Committee  
2 East Miller Senate Office Building  
Annapolis, Maryland 21401

**Opposition to SB 452–Prohibited Liability Agreements for Recreational Facilities**

Dear Chairman Smith,

On behalf of the Health & Fitness Industry in Maryland, I am writing to urge you to amend SB 452.

IHRSA–The Health & Fitness Association is the leading trade association dedicated to enhancing mental and physical health by ensuring adequate access to physical activity. From health and fitness facilities, gyms, studios, sports and aquatic facilities, to industry partners, IHRSA works to promote and protect the Health & Fitness Industry, ensuring diverse options to keep individuals moving.

The Maryland health club sector mirrors the diversity of the communities it serves, encompassing gyms, clubs, studios, classes, community, and other structured exercise programs provided by small independent sole proprietors to large publicly held businesses. With nearly 700 health clubs servicing more than 1.1 million residents, the industry employs nearly 30,000 Marylanders.

As written, this bill invites unrestricted litigation exposure and increased operating and insurance costs, which are untenable to health and fitness businesses, particularly small and independently owned, in Maryland.

Specifically, the bill lists “Recreational Facility” as “a commercial facility, a commercial athletic facility, or an amusement facility, including gymnasiums and pools,” granting exemptions to state and local government properties, but not taking into account private, membership-required organizations that are not open to the general public for free use.

If enacted into law without amendment, this bill would result in a significant increase in the risk of frivolous or fraudulent litigation targeting health and fitness facilities. As a result, the higher operating costs for insurance and legal expenses would cause

health and fitness facilities throughout the state to close or require price increases that make access to physical activity and its health benefits inaccessible for many communities throughout the state.

IHRSA supports the bill's primary aim of safeguarding children and Maryland residents from potential harm due to negligence. However, we believe that certain exemptions are necessary to ensure that adults who willingly accept and comprehend the inherent risks associated with physical activity in health and fitness facilities are not unduly burdened. Therefore, we urge the committee to support an amendment to the legislation, specifically exempting agreements or contracts between consenting adults and providers of Health Club Services as defined under the Annotated Code of Maryland, Commercial Law - Title 14, Subtitle 12b. Our proposed amendments, which outline these exemptions in detail, are provided below for your consideration.

Thank you for the opportunity to share our concerns and echo our support for laws that protect health club consumers through practical legislation. Should you have any questions, please contact me at [mike.goscinski@ihrsa.org](mailto:mike.goscinski@ihrsa.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Goscinski", written in a cursive style.

Mike Goscinski  
Vice President for Government Affairs  
IHRSA–The Health & Fitness Association

CC: Members of the Senate Judiciary Committee

# Summary of Proposed Amendments for Consideration:

## Intro

Line 7: Insert 'by a recreational facility or the employees of a recreational facility,' after 'acts'

## Section 1

Line 10: After 'EMPLOYEES' insert 'WHILE SERVING AS AGENTS'

Line 16: Insert '16 (D) THIS SECTION DOES NOT APPLY TO CONTRACTS OR AGREEMENTS BETWEEN ADULT PERSONS AND PROVIDERS OF HEALTH CLUB SERVICES AS DEFINED IN MD. COMMERCIAL LAW CODE § 14-12B-01(d)(2)'

## Courts – Prohibited Liability Agreements – Recreational Facilities

3 FOR the purpose of establishing that a provision in a contract or agreement relating to the  
4 use of a recreational facility that purports to limit the recreational facility's liability,  
5 or release the recreational facility from or indemnify or hold harmless the  
6 recreational facility against liability, for injury caused by negligence or other  
7 wrongful acts by a recreational facility or the employees of a recreational facility, is void and  
unenforceable under certain circumstances; and generally  
8 relating to liability agreements and recreational facilities.

9 BY adding to  
10 Article – Courts and Judicial Proceedings  
11 Section 5–401.2  
12 Annotated Code of Maryland  
13 (2020 Replacement Volume and 2023 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
15 That the Laws of Maryland read as follows:

16 Article – Courts and Judicial Proceedings  
17 5–401.2.

18 (A) (1) IN THIS SECTION, "RECREATIONAL FACILITY" MEANS A  
19 COMMERCIAL RECREATIONAL FACILITY, A COMMERCIAL ATHLETIC FACILITY, OR AN  
20 AMUSEMENT ATTRACTION.

21 (2) "RECREATIONAL FACILITY" INCLUDES:

22 (I) GYMNASIUMS; AND  
1 (II) SWIMMING POOLS.

2 (3) "RECREATIONAL FACILITY" DOES NOT INCLUDE A UNIT OF STATE  
3 OR LOCAL GOVERNMENT THAT LEASES LAND OR FACILITIES TO A RECREATIONAL  
4 FACILITY.

5 (B) ANY PROVISION IN A CONTRACT OR AGREEMENT RELATING TO THE USE  
6 OF A RECREATIONAL FACILITY THAT PURPORTS TO LIMIT THE RECREATIONAL  
7 FACILITY'S LIABILITY, OR RELEASE THE RECREATIONAL FACILITY FROM OR  
8 INDEMNIFY OR HOLD HARMLESS THE RECREATIONAL FACILITY AGAINST LIABILITY,  
9 FOR INJURY CAUSED BY OR RESULTING FROM THE NEGLIGENCE OR OTHER  
10 WRONGFUL ACT OF THE RECREATIONAL FACILITY OR ITS AGENTS OR EMPLOYEES  
11 **WHILE SERVING AS AGENTS** IS  
11 AGAINST PUBLIC POLICY AND IS VOID AND UNENFORCEABLE.

12 (C) THIS SECTION MAY NOT BE INTERPRETED TO AFFECT, EXTEND, OR  
13 LIMIT THE LIABILITY OF A GOVERNMENTAL ENTITY FOR A TORT OR OTHER CLAIM  
14 SUBJECT TO TITLE 12, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE OR  
15 SUBTITLE 3 OF THIS TITLE.

16 (D) THIS SECTION DOES NOT APPLY TO CONTRACTS OR AGREEMENTS BETWEEN  
ADULT PERSONS AND PROVIDERS OF HEALTH CLUB SERVICES AS DEFINED IN MD.  
COMMERCIAL LAW CODE § 14-12B-01(d)(2)



**SB 452 Prohibited Liab Agrmts Rec OPPOSE JPR 020**

Uploaded by: Nancy Egan

Position: UNF



## Testimony of

### American Property Casualty Insurance Association (APCIA)

#### Senate Judicial Proceedings Committee

#### Senate Bill 452 Courts - Prohibited Liability Agreements - Recreational Facilities

February 8, 2024

### Oppose

The American Property Casualty Insurance Association (APCIA) is a national trade organization whose members write approximately 70.8% of the commercial general liability market in Maryland. APCIA opposes this legislation which would eliminate the ability of a commercial recreational facility, defined as a recreational, athletic or amusement attraction, including gyms and pools, from protecting their businesses from negligence claims by customers through any contracts/agreements/waivers that they request that their patrons sign and which contain release or hold harmless agreements for the entity for liability for bodily injury. The bill provides that any such agreements/ releases/waivers would be void and unenforceable.

This bill would be very detrimental to all of the above-listed facilities and their insurers, since waivers and releases are very commonly used and upheld to protect these types of businesses and recreational facilities, including pools, gyms, stadiums etc. when signed by a competent adult who is aware of the terms, from negligence claims. To avoid exposure for providing entertainment that people want, these and many other businesses rely upon limitations on liability and hold harmless language. While this bill proports to focus only on injuries arising from facilities' actions or negligence or those of its agents or employees such causation questions are often complicated and this legislation will result in many additional disputes, claims and litigation in Maryland Such claims and litigation will impact these enterprises, their customers and those who insure them. Ironically, the sponsors of this legislation recognize as much as they would expressly exclude it applying to governmental activities of the same kind.

Most states uphold the validity of such agreements as they are freely entered into and since the consumer is aware of the terms, which basically make them aware that they are assuming the risk of bodily injury by utilizing the facilities and agreeing not to sue, or they do not have to use the facility. The release agreements only waive simple negligence - not gross negligence or willful misconduct. . Recreational activities need to protect themselves to provide their services. APCIA urges the Committee to provide an unfavorable report on Senate Bill 452.

Nancy J. Egan,

State Government Relations Counsel, DC, DE, MD, VA, WV

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