



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.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Goscinski". The signature is fluid and cursive, with a large loop at the end.

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)