



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

Nancy.egan@APCIA.org Cell: 443-841-4174