



**MARYLAND
TOURISM
COALITION**

March 25, 2024

Maryland Senate
Senator William Smith, Chair
Judicial Proceedings Committee
Miller Senate Office Building
Annapolis, Maryland 21401

Maryland House of Delegates
Delegate Luke Clippinger, Chair
Judiciary Committee
121 House Office Building
6 Bladen Street
Annapolis, MD 21401

RE: Opposition to SB452/HB162 Courts – Prohibited Liability Agreements – Recreational Facilities

Chairpersons Smith and Clippinger and Members of the Committees,

My name is Matt Libber, and I am the Legislative Committee Chair for the Maryland Tourism Coalition (MTC) as well as the Executive Director of the Maryland SoccerPlex in Germantown Maryland. I am writing to you today to express MTC's and SoccerPlex's opposition for Senate Bill 452 and House Bill 741. The Maryland Tourism Coalition is a trade organization with members representing all areas of tourism in the State of Maryland. Our mission is to support businesses and organizations that cater to the tourism industry through education, networking, and advocacy. The Maryland SoccerPlex operates a 160-acre sports facility and provides playing opportunities for the youth of Maryland, professional sports teams and is an economic driver for Montgomery County and the State of Maryland. These bills would have negative consequences for tourism businesses and specifically for the Maryland SoccerPlex. As such, MTC and the Maryland SoccerPlex ask the committees for an unfavorable report for these bills.

First and foremost, this piece of legislation is overly broad in its language. The definitions in Section A are unclear as to what entities this bill would apply to. Section A(1) includes a circular definition in which it states that a "Recreational Facility" means a commercial recreational facility but does not define what that means. Section A (2) provides little further clarification by including only gymnasiums and swimming pools. While I concede that it is not possible or practical to list every type of entity that would be covered by this bill, it also must be conceded that the current language leaves too much interpretation and makes the bill itself unclear. The vague overly broad language of this bill will certainly lead to unintended consequences. Business that may or may not be covered by this legislation will surely see a drastic rise in insurance premiums. Insurance is currently a major expense for recreational and athletic facilities. Removing indemnity clauses for these facilities will surely cause the insurance underwriters to err on the side of caution and assume higher and more frequent payouts from lawsuits as a result. Given the definition of what entities are covered under this bill it is likely that insurers will apply these increases to far more businesses than that which are actually covered by this bill. These higher insurance costs will cripple many recreational and athletic facilities that operate on the slimmest of margins currently.



Second, we would ask for the bill to be amended to allow indemnity similar to California law which distinguishes between passive and active negligence. As such, contracts can include language to waive liability for simply negligence but prohibit such clauses for gross negligence, recklessness, and/or intentional misconduct. There needs to be an ability for businesses to protect themselves from simply accidents that do not rise to the definition of gross negligence.

The last issue is that should the legislature still decide to move forward with this legislation, it should be limited to consumer contracts only and not cover commercial contracts. It is my understanding this the intent of this law is for consumer protection, where the consumer is likely not sophisticated enough, in a legal sense, to understand the indemnity clause they are agreeing to in a contract. However, commercial contracts are between entities that should have the level of sophistication and legal review for such clauses to remain enforceable. Commercial contracts are typically between two parties that can provide sufficient legal review so that each party understands their liability risk. For example, the SoccerPlex is home to Old Glory DC Rugby. Their contract with our facility and the team included extensive review from legal counsel and both parties had the opportunity to negotiate terms of their preference. These commercial contracts are not an area where governmental intervention is needed to protect one of the parties to the agreement.

While we understand the intent of this bill is to protect consumers, we feel that there are flaws within the bill that need to be addressed prior to passage. The Maryland Tourism Coalition and the Maryland SoccerPlex ask that this bill be tabled for now until a better and clearer bill can be drafted to address the issues we have raise. For these reasons, the Maryland Tourism Coalition asks your committees for an unfavorable report on this legislation.

Respectfully submitted,

Matt Libber
Legislative Chair
Maryland Tourism Coalition

Matt Libber
Executive Director
Maryland Soccer Foundation
Maryland SoccerPlex
301-528-1480 (office)
mlibber@mdsoccerplex.org