

Testimony of George S. Tolley III

SB 642 Courts – Prohibited Liability Agreements – Indoor Trampoline Parks

UNFAVORABLE

Dear Chairman Smith and Members of the Senate Judicial Proceedings Committee:

Consumers generally will never know whether staff are properly trained or supervised, whether equipment is properly maintained, or whether facilities are safely operated. Indeed, many consumers will never know that they agreed to a liability waiver in the fine print until it is too late.

When they are enforceable, liability waivers remove incentives to exercise ordinary care, and extinguish forever a family's right to access our Courts.

Liability waivers proliferated in Maryland after a 2013 Maryland Supreme Court decision that affirmed summary dismissal of the claims of a child who suffered brain injuries after falling from play equipment onto a concrete floor. *BJ's Wholesale Club, Inc. v. Rosen*, 435 Md. 714 (2013).

The waiver in *BJ's Wholesale Club* was contained in the fine print of a subscription agreement. Companies increasingly exploit such "fine print" waivers to limit their liability for causing injury and death, such as when the Walt Disney Company notoriously sought to dismiss a food poisoning / wrongful death lawsuit based on a waiver hidden in the "Terms of Use" of its Disney + streaming service.

Last year, this Committee unanimously reported favorably on SB 452 (which passed the Senate 45-0), and it was enacted into law, declaring many liability waivers unenforceable in Maryland as a matter of public policy.

Enacting SB 452 brought Maryland into line with its southern neighbor: such waivers have been unenforceable as a matter of public policy in Virginia for over a century. See *Hiatt v. Lake Barcroft Community Ass'n*, 244 Va. 191 (1992) (citing *Johnson v. Richmond & Danville R.R. Co.*, 86 Va. 975 (1890)).

The bill before you now, SB 642, would overturn the Legislature's actions to protect Marylanders from unscrupulous liability waivers, and allow corporations of every sort (other than "indoor trampoline parks") to use liability waivers to avoid responsibility for their negligence. Neither outdoor trampoline parks, nor other commercial recreational facilities, should be allowed to exploit fine print waivers.

From a public policy standpoint, Maryland should encourage businesses to act with reasonable care toward their customers – and not to cut corners on safety knowing that a "fine print waiver" would protect them from responsibility for injuring or killing children.

I respectfully ask for an **UNFAVORABLE** report on **Senate Bill 642**.

Judicial Proceedings Committee
Voting Record - 2024 Regular Session

Bill/Resolution Number:

SB 452

Vote Date:

3/14/2024

Final Action:

FWA

Motion:

- ☐ Favorable ☒ **Favorable with Amendment** ☐ Unfavorable ☐ Withdrawn by Sponsor
- ☐ No Motion ☐ Referred to Interim - Summer Study ☐ Re-referred to: _____

Name	Yea	Nay	Abstain	Excused	Absent
Waldstreicher, J., Vice Chair	✓				
Sydnor, C.	✓				
West, C.	✓				
Muse, C.				✓	
Folden, W.	✓				
James, M.	✓				
Charles, N.	✓				
Kelly, A.	✓				
McKay, M.				✓	
Carter, J.	✓				
Smith, W., Chair	✓				
Totals	9	0	0	2	0

Amendment Numbers,
Consent Bill Lists,
Other

Committee Reporter: Sandra B. Papp

SB 452 Third Reading (SB) Calendar No.73
Senator Carter (JPR)
Courts - Prohibited Liability Agreements - Recreational Facilities
On Third Reading