



March 25, 2024

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

RE: Support for SB624 – Prohibited Liability Agreements – Recreational Facilities

Chairman Smith 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 the Maryland SoccerPlex's support for Senate Bill 624. 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. The law that was enacted last year that this legislation seeks to roll back has had and will continue to have a negative impact on our business. As such, MTC and the Maryland SoccerPlex ask the committees for a favorable report for this bill.

First and foremost, the legislation that was passed last year 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) provided 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 has caused the insurance underwriters to err on the side of caution and assume higher and more frequent payouts from lawsuits as a result. These higher insurance costs will cripple many recreational and athletic facilities that operate on the slimmest of margins currently.

Second, the previous law that was enacted did not distinguish 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 the law enacted last year is that 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



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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 Maryland 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 were flaws within the law that was enacted that need to be addressed. Senate Bill 642 appears to bring the original intent of this legislation, to protect consumers at trampoline parks, and remove the rest of the recreational facilities in the state from the jurisdiction of this law. This bill addresses all of our concern of the bill that was passed last session. For these reasons, the Maryland Tourism Coalition and the Maryland SoccerPlex ask the committee for a favorable 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