

HOUSE BILL No. 6459

September 16, 2010, Introduced by Rep. Angerer and referred to the Committee on Judiciary.

A bill to limit civil liability arising from motor vehicle racing events; to allow exculpatory agreements that limit liability arising from racing events; and to impose certain duties on organizers of racing events.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "motor
2 sports liability act".

3 Sec. 3. As used in this act:

4 (a) "Child" means an individual who is less than 18 years of
5 age.

6 (b) "Exculpatory agreement" means a document that purports to
7 waive and release the signatory's, or an individual's on whose
8 behalf the signatory is signing, prospective claims for personal
9 injury, death, property damage, or other loss, including claims for
10 negligence, in connection with participation in motorsports

1 activities. Exculpatory agreement includes a waiver and release,
2 waiver of liability, or indemnity agreement.

3 (c) "Motorsports activities" means an event or activity,
4 including practices or trials, that involves the use of or racing
5 of motor vehicles of any kind, regardless of whether the event or
6 activity is conducted at a motorsports facility.

7 (d) "Motorsports facility" means land or a building,
8 structure, or area used for motorsports activities, including the
9 track on which and surrounding area in which a motorsports activity
10 or other event involving motor vehicles is held, including an area
11 designated as restricted to participants.

12 (e) "Parent" means a biological parent, a guardian, a person
13 who has legal custody, a legal representative, a physical
14 custodian, or a responsible person.

15 (f) "Participant" means any of the following:

16 (i) An individual who is participating in motorsports
17 activities at a motorsports facility as a rider, passenger, or
18 driver, official, or owner of a vehicle or equipment used in
19 motorsports activities.

20 (ii) An individual assisting an individual described in
21 subparagraph (i).

22 (iii) An individual, including a spectator, who enters an area
23 of the motorsports facility that is restricted to participants.

24 (g) "Person" means an individual, partnership, corporation,
25 association, governmental entity, or other legal entity.

26 (h) "Releasee" means any of the following:

27 (i) A promoter, participant, racing association, sanctioning

1 organization or a subdivision of a sanctioning organization, track
2 operator, track owner, official, car owner, driver, pit crew
3 member, rescue personnel, sponsor, advertiser, owner or lessee of
4 premises used to conduct the motorsports activities, premises or
5 event inspector, surveyor, underwriter, consultant, or other person
6 who gives recommendations, directions, or instructions to engage in
7 risk evaluation or loss control activities regarding the premises
8 or events.

9 (ii) A director, officer, agent, or employee of a person
10 described in subparagraph (i).

11 (iii) Any other person specified as a releasee in the
12 exculpatory agreement.

13 Sec. 5. (1) An exculpatory agreement signed by or on behalf of
14 a participant in favor of a releasee is valid and enforceable
15 against any claim for personal injury, death, property damage, or
16 any other loss of the participant or anyone claiming on behalf of
17 and for the participant against the releasee.

18 (2) An exculpatory agreement is valid and enforceable
19 notwithstanding a claim that the participant did not read,
20 understand, or comprehend the exculpatory agreement.

21 (3) An exculpatory agreement is valid and enforceable
22 notwithstanding any claim that the formatting of the document was
23 deficient.

24 (4) This section does not preclude a party from asserting any
25 other relevant affirmative defenses or legal theories in an action,
26 including the doctrine of primary, implied assumption of the risk.

27 (5) An exculpatory agreement is valid and enforceable

1 notwithstanding the illegality of any particular provision, term,
2 or definition contained in it. An exculpatory agreement shall be
3 considered to be severable, whether or not it contains an explicit
4 severability provision.

5 (6) Regardless of whether an exculpatory agreement has been
6 executed, a public entity or public employee is not liable to a
7 participant for personal injury, death, property damage, or other
8 loss sustained during the person's participation in motorsports
9 activities.

10 Sec. 7. A parent of a child may, on behalf of the child,
11 release or waive the child's prospective claims for personal
12 injury, death, property damage, or other loss suffered in
13 connection with motorsports activities by signing an exculpatory
14 agreement on behalf of the child.

15 Sec. 9. (1) An exculpatory agreement executed under this
16 section that includes a provision in which the signatory agrees to
17 expressly assume the risks relative to participation in motorsports
18 activities is valid and enforceable and shall be construed as an
19 express assumption of the risk by the party executing the
20 agreement.

21 (2) A parent may execute an exculpatory agreement that
22 contains an express assumption of the risk provision on behalf of a
23 child. An express assumption of the risk provision in an
24 exculpatory agreement described in this subsection is valid and
25 enforceable against the child.