



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

GOV. MSG. NO. **641**

May 19, 2006

The Honorable Robert Bunda, President
and Members of the Senate
Twenty-Third State Legislature
State Capitol, Room 003
Honolulu, Hawaii 96813

Dear Mr. President and Members of the Senate:

This is to inform you that on May 19, 2006, the following bill was signed into law:

SB2213 SD2 HD2 CD1

A BILL FOR AN ACT RELATING
TO TORT ACTIONS.
(ACT 111)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

THE SENATE
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

S.B. NO. 2213
S.D. 2
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO TORT ACTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 663-10.95, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§663-10.95 **Motorsports facilities; waiver of**
4 **liability.**[+] (a) Any waiver and release, waiver of liability,
5 or indemnity agreement in favor of an owner, lessor, lessee,
6 operator, or promoter of a motorsports facility, which releases
7 or waives any claim by a participant or anyone claiming on
8 behalf of the participant which is signed by the participant in
9 any motorsports or sports event involving motorsports in the
10 State, shall be valid and enforceable against any negligence
11 claim for personal injury of the participant or anyone claiming
12 on behalf of and for the participant against the motorsports
13 facility, or the owner, operator, or promoter of a motorsports
14 facility. The waiver and release shall be valid notwithstanding
15 any claim that the participant did not read, understand, or
16 comprehend the waiver and release, waiver of liability, or
17 indemnity agreement if the waiver or release is signed by both
18 the participant and a witness [~~provided that a~~]. A waiver and



1 release, waiver of liability, or indemnity agreement executed
2 pursuant to this section shall not be enforceable against the
3 rights of any minor [~~or the minor's representative.~~], unless
4 executed in writing by a parent or legal guardian.

5 (b) The execution of a waiver and release, waiver of
6 liability, or indemnity agreement shall create a presumption
7 that the person signing the document read and understood the
8 document.

9 [~~(c) For the purposes of this section:~~

10 "~~Motorsports facility" means land, building, structure, or~~
11 ~~area designed or modified for motorsports activities including~~
12 ~~the track and surrounding area wherein a motorsports or other~~
13 ~~event involving motor vehicles is held and which is clearly~~
14 ~~demarkated as a restricted area to spectators. "Motorsports~~
15 ~~facility" shall not include the areas intended for use by~~
16 ~~spectators or nonparticipants.~~

17 "~~Owner" means a person or entity which owns or holds fee~~
18 ~~simple title to, or a leasehold interest in, a motorsports~~
19 ~~facility or any portion of a motorsports facility, and shall~~
20 ~~include without limitation, a fee owner or lessor of the~~
21 ~~underlying land, a lessee, or sublessee, or a sublessor or~~
22 ~~master lessor, of a motorsports facility or a portion thereof.~~



1 ~~"Participant" means a person who is participating in a~~
2 ~~motorsports event at a motorsports facility, including practices~~
3 ~~or trials, as a rider, passenger or driver, official, or owner~~
4 ~~of a vehicle or equipment used in a motorsports, or anyone~~
5 ~~assisting any of the foregoing, or a person entering an area of~~
6 ~~the motorsports facility restricted to participants.]~~

7 ~~(d)~~ (c) A waiver and release, waiver of liability, or
8 indemnity agreement executed under this section shall be
9 construed as an express assumption of risk on the part of the
10 party executing such a waiver and release, waiver of liability,
11 or indemnity agreement.

12 ~~(e)~~ (d) This section shall not apply to acts or
13 omissions constituting gross negligence, wilful and wanton
14 conduct, or intentional acts on the part of another participant
15 or employees or agents of the motorsports facility.

16 ~~(f)~~ (e) The provisions of this section shall not apply
17 to any motorsports facility unless the facility has a general
18 liability policy of no less than \$1,000,000 for spectators and
19 no less than \$500,000 for participants, per claim, indemnifying
20 participants and spectators for the negligence of the facility,
21 its employees or agents.



1 (f) Without regard to whether a waiver and release, waiver
2 of liability, or indemnity agreement has been executed pursuant
3 to subsection (a) and without regard to subsection (e), no
4 public entity or public employee shall be liable to a
5 participant, for injury or damage sustained during the person's
6 use of a motorsports facility, except when the injury or damage
7 is caused by a condition resulting from the public entity's
8 failure to design, maintain, or repair the motorsports facility.
9 This limitation of liability for public entities and employees
10 applies only to the provision of motorsports facilities and
11 shall not extend to other activities, including but not limited
12 to police and security, ambulance and medical, fire, food
13 concessions, and other non-motorsports activities or functions.

14 (g) For the purposes of this section:

15 "Motorsports facility" means land, building, structure, or
16 area designed or modified for motorsports activities, including
17 the track and surrounding area wherein a motorsports or other
18 event involving motor vehicles is held and which is clearly
19 demarcated as a restricted area to spectators. "Motorsports
20 facility" shall not include the areas intended for use by
21 spectators or nonparticipants.



1 "Owner" means a person or entity that owns or holds fee
 2 simple title to, or a leasehold interest in, a motorsports
 3 facility or any portion of a motorsports facility, and shall
 4 include without limitation, a fee owner or lessor of the
 5 underlying land, a lessee, or sublessee, or a sublessor or
 6 master lessor, of a motorsports facility or a portion thereof.

7 "Participant" means a person who is participating in a
 8 motorsports event at a motorsports facility, including practices
 9 or trials, as a rider, passenger or driver, official, or owner
 10 of a vehicle or equipment used in a motorsports event, or anyone
 11 assisting any of the foregoing, or a person entering an area of
 12 the motorsports facility restricted to participants."

13 SECTION 2. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

15 SECTION 3. This Act shall take effect upon its approval.



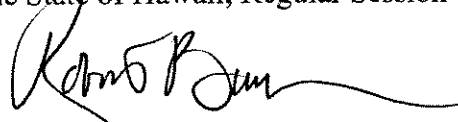
GOVERNOR OF THE STATE OF HAWAII

Approved this day: MAY 19 2006

THE SENATE OF THE STATE OF HAWAII

Date: April 26, 2006
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.



President of the Senate

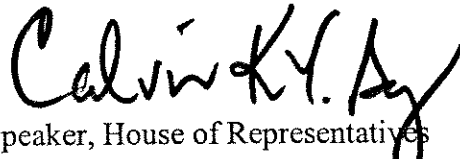


Clerk of the Senate

**THE HOUSE OF REPRESENTATIVES
OF THE STATE OF HAWAII**

Date: April 26, 2006
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the House of Representatives of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.



Speaker, House of Representatives



Clerk, House of Representatives