

# PROPOSED

THE SENATE  
TWENTY-THIRD LEGISLATURE, 2006  
STATE OF HAWAII

S.B. NO. 2213  
S.D. 2

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## A BILL FOR AN ACT

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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 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].~~

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

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

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

16 ~~"Owner" means a person or entity which owns or holds fee~~  
17 ~~simple title to, or a leasehold interest in, a motorsports~~  
18 ~~facility or any portion of a motorsports facility, and shall~~  
19 ~~include without limitation, a fee owner or lessor of the~~  
20 ~~underlying land, a lessee, or sublessee, or a sublessor or~~  
21 ~~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 any person,  
5 including but not limited to a participant, for injury or damage  
6 sustained during the person's use of a motorsports facility,  
7 except when the injury or damage is caused by a condition  
8 resulting from the public entity's failure to maintain or repair  
9 the motorsports facility.

10       (g) For the purposes of this section:

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

18       "Owner" means a person or entity which owns or holds fee  
19 simple title to, or a leasehold interest in, a motorsports  
20 facility or any portion of a motorsports facility, and shall  
21 include without limitation, a fee owner or lessor of the



1 underlying land, a lessee, or sublessee, or a sublessor or  
2 master lessor, of a motorsports facility or a portion thereof.

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

9 SECTION 2. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 3. This Act shall take effect on July 1, 2050.

# PROPOSED

**Report Title:**

Motorsports Facilities; Tort Actions; Waiver of Liability;  
Qualified Immunity

**Description:**

Makes effective minor's waiver of liability for injuries from use of motorsports facilities; provides qualified immunity to a public entity and public employees from injuries from such use.  
(SD2)

