

Honolulu, Hawaii

APRIL 24 , 2006

RE: S.B. No. 2213
S.D. 2
H.D. 2
C.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 2213, S.D. 2, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO TORT ACTIONS,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to:

- (1) Provide a qualified immunity for public entities and public employees from injuries sustained by a person when using a motorsports facility; and
- (2) Clarify that a waiver, release, or indemnity agreement must be executed in writing by a parent or legal guardian of a minor in order to be enforceable against the rights of the minor.



The intent of your Committee is to facilitate the popularity of motorsports among minors. Motorsports facilities are commonly operated by county governments, which seek the immunity from liability. Your Committee views this measure as promoting a sports and family activity, without creating an imbalance of rights and responsibilities for safety.

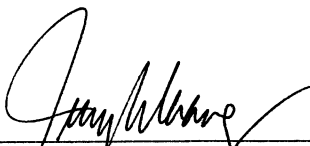
Your Committee has amended this measure by changing the effective date to upon its approval.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 2213, S.D. 2, H.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 2213, S.D. 2, H.D. 2, C.D. 1.


Respectfully submitted on behalf of the managers:

ON THE PART OF THE HOUSE

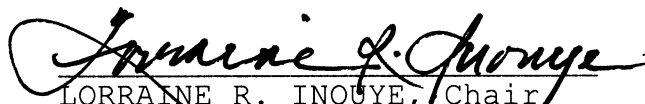
ON THE PART OF THE SENATE



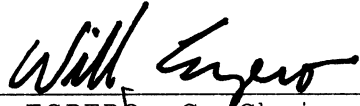
 JERRY L. CHANG, Co-Chair




 SYLVIA LUKE, Co-Chair



 LORRAINE R. INOUE, Chair



 WILL ESPERO, Co-Chair



 COLLEEN HANABUSA, Co-Chair



Hawaii State Legislature
Record of Votes of a
Conference Committee

Bill / Concurrent Resolution No.: SB 2213, SD 2, HD 2	Date/Time: 4/20/06, 10:45 am
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The recommendation of the House and Senate managers is to pass with amendments (CD).

The Committee is reconsidering its previous decision.

<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure	<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.
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Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
INOUE, Lorraine R., Chr.	✓				CHANG, Jerry L., Co-Chr.	✓			
ESPERO, Will, Co-Chr.	✓				LUKE, Sylvia, Co-Chr.	✓			
HANABUSA, Colleen, Co-Chr.	✓				CHING, Corinne W.L.	✓			
WHALEN, Paul				✓					
TOTAL	3			1	TOTAL	3			

A = Aye WR = Aye with Reservations N = Nay E = Excused

Senate Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted	House Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted
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Senate Lead Chair's or Designee's Signature: 	House Lead Chair's or Designee's Signature:
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Distribution: **Original** **Yellow** **Pink** **Goldenrod**
File with Conference Committee Report House Clerk's Office Senate Clerk's Office Drafting Agency

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 ~~demarcated 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.



Report Title:

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

Description:

Prohibits liability waivers from being enforceable against the rights of a minor who suffers injuries from participating in a motorsports event at a motorsports facility, unless executed in writing by a parent or legal guardian. Provides qualified immunity for public entities and public employees from injuries sustained by a person when using a motorsports facility. Effective date July 1, 2096. (CD1)

