

ACT 111

S.B. NO. 2213

A Bill for an Act Relating to Tort Actions.

Be It Enacted by the Legislature of the State of Hawaii:

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

~~“(a) Any waiver and release, waiver of liability, or indemnity agreement in favor of an owner, lessor, lessee, operator, or promoter of a motorsports facility, which releases or waives any claim by a participant or anyone claiming on behalf of the participant which is signed by the participant in any motorsports or sports event involving motorsports in the State, shall be valid and enforceable against any negligence claim for personal injury of the participant or anyone claiming on behalf of and for the participant against the motorsports facility, or the owner, operator, or promoter of a motorsports facility. The waiver and release shall be valid notwithstanding any claim that the participant did not read, understand, or comprehend the waiver and release, waiver of liability, or indemnity agreement if the waiver or release is signed by both the participant and a witness; provided that a. A waiver and release, waiver of liability, or indemnity agreement executed pursuant to this section shall not be enforceable against the rights of any minor [or the minor’s representative.], unless executed in writing by a parent or legal guardian.~~

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

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

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

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

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

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

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

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

(f) Without regard to whether a waiver and release, waiver of liability, or indemnity agreement has been executed pursuant to subsection (a) and without regard to subsection (e), no public entity or public employee shall be liable to a participant, for injury or damage sustained during the person’s use of a motorsports facility, except when the injury or damage is caused by a condition resulting from the public entity’s failure to design, maintain, or repair the motorsports facility. This limitation of liability for public entities and employees applies only to the provision of motorsports facilities and shall not extend to other activities, including but not

limited to police and security, ambulance and medical, fire, food concessions, and other non-motorsports activities or functions.

(g) For the purposes of this section:

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

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

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

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

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

(Approved May 19, 2006.)