
WEST VIRGINIA CODE CHAPTER 20
ARTICLE 19

WV Legislature

§20-19-1. Legislative purposes.

The West Virginia Legislature finds that motorsport activities are engaged in by a large number of citizens of West Virginia and that such activities also attract to West Virginia a large number of nonresidents, significantly contributing to the economy of West Virginia. Since it is recognized that there are inherent risks in motorsport activities which should be understood by participants therein and which are essentially impossible for the operators of motorsport businesses to eliminate, it is the purpose of this article to define those areas of responsibility and those affirmative acts for which the operators of motorsport businesses shall be liable for loss, damage, or injury suffered by participants, and to further define those risks which the participants expressly assume and for which there can be no recovery. It is the intent of the Legislature to expand the liability protections afforded with respect to motorsports and to not eliminate any other liability protections that may be available under statutory or common law.

§20-19-2. Definitions.

In this article, unless a different meaning plainly is required:

- (1) "Driver training" means qualified instruction to enhance a vehicle operator's ability to learn vehicle control, provided by a motorsport facility.
- (2) "Lessee" means any qualified person or organization with the necessary licenses and liability insurance meeting the motorsport operator's lease requirements to operate a motorsport facility.
- (3) "Motorized vehicle" means an automobile, motorcycle, or any other vehicle propelled by power, other than muscular power, used to transport persons and which operates within the confines of a motorsport facility.
- (4) "Motorsport activities" means driver training, vehicle storage, competitive racing, non-competitive driving events, exhibitions of speed, fairs or shows using motorized vehicles, or other forms of recreation involving the use of motor vehicles, including motorcycles.
- (5) "Motorsport facility" means a speedway or racetrack designed and intended for motorsport activities.
- (6) "Motorsport operator" means any person, partnership, corporation, lessee, or other organization, or any combination thereof offering motorsport activities.
- (7) "Participant" means any person or organization using the services of a motorsport facility including, but not limited to, spectators, vehicle operators using either their own personally owned vehicle or a vehicle owned by the motorsport facility, or vehicle passengers using either their own personally owned vehicle or a vehicle owned by the motorsport facility.
- (8) "Spectator area" means a specified area within a motorsport facility intended for admission to the general public, whether or not an admission price is charged, or to which admitted persons of the general public have unrestricted access, including the grandstands and other general admission seating or viewing areas.

§20-19-3. Duties of motorsport operators.

(a) Every motorsport operator shall:

(1) Mark for identification purposes all equipment and vehicles used in the business;

(2) Maintain all equipment and vehicles used in the offering of motorsport activities in such condition that the equipment and vehicles are safe to operate or use as intended and recommended by the manufacturer;

(3) Provide facilities, equipment, and services conforming to safety and other requirements established by the rules promulgated by the Department of Economic Development;

(4) Provide or prepare facilities, equipment, and services for motorsports use as advertised or as agreed to by the motorsport operator and the participant;

(5) Procure and maintain commercial general liability insurance against claims for personal injury, death, and property damages occurring upon, in, or about the motorsport facility which affords protection to the limit of not less than \$1 million for injury or death of a single person, to the limit of \$2 million in the aggregate, and to the limit of not less than \$50,000 for property damage; and

(6) Maintain records for a period of at least three years from the date of the creation of the record of:

(A) Proof of insurance;

(B) Inspection reports;

(C) Maintenance records; and

(D) Participant acknowledgement of risks and duties.

§20-19-4. Duties of motorsport participants.

(a) All participants:

(1) Shall comply with the rules or regulations established for use by the motorsport operator;

(2) Shall wear all safety equipment as recommended by the motorsport operator, or which might otherwise be required by law;

(3) Shall obey all rules or instructions announced by the motorsport operator with regard to the safe operation of the motorized vehicle he or she is operating;

(4) Shall, as to the motorsport operator, expressly assume the risk of and legal responsibility for any injury, loss, or damage to person or property which results from participation in operating a motorized vehicle, and caused by any of the following:

(A) Variations in terrain, slope, or angle of terrain including elevation changes;

(B) Surface or subsurface conditions including, but not limited to, rocks or debris;

(C) Turns in the racetrack; and

(D) Collisions with retaining walls, tire walls, trees, fences, other vehicles, or any property provided by the motorsport operator.

(b) Each participant shall have the sole individual responsibility for:

(1) Knowing the range of his or her ability to negotiate the course of the motorsport facility;

(2) Operating the motorized vehicle within the limits of the participant's own ability;

(3) Heeding all posted warnings;

(4) Operating only within the designated area and designated times as provided by the motorsport operator; and

(5) Refraining from acting in a manner which a reasonable person would believe to be likely to cause or contribute to the injury of any person.

§20-19-5. Liability of motorsport operators.

(a) A motorsport operator is liable for injury, loss, or damage caused by failure to follow the duties set forth in §20-19-3 of this code where the violation of duty is the proximate cause of the injury, loss, or damage suffered.

(b) A motorsport operator is not liable for any injury, loss, or damage to the extent caused by the negligence of any person who is not an agent or employee of the motorsport operator.

(c) A motorsport operator is not liable for any injury, loss, or damage to the extent caused by a participant's violation of any duty described in §20-19-4 of this code.

§20-19-6. Liability of motorsport participants.

(a) A participant is not liable for any injury, loss, or damage resulting from violations of the duties established in §20-19-4 of this code where the violation of the duty constitutes simple negligence on the part of the participant, or where the injury, loss, or damage is a result of the risks inherent in motorsports.

(b) A participant is liable for injury, loss, or damage resulting from violations of the duties established in §20-19-4 of this code where the violation of the duty constitutes gross negligence, willful and wanton conduct, or intentional acts on the part the participant, and is the proximate cause of the injury, loss, or damage suffered.

§20-19-7. Rules.

The Department of Economic Development shall promulgate rules pursuant to §29A-1-1 *et seq.* of this code, with respect to motorsport facilities operating in the state, which shall include at a minimum: (a) Safety requirements for equipment; (b) safety requirements for the design of racing surfaces; (c) safety requirements for the provision of run-off areas; (d) requirements for fire and emergency services; and (e) requirements for signage. The rules shall be promulgated and designed for the purpose of developing motorsport facilities as a recreational activity and additional tourist attraction in West Virginia and shall be approved by the West Virginia Motorsport Committee.

§20-19-8. No abrogation of common law and statutory defenses.

In a proceeding brought against a motor sports operator or participant, in addition to the liability protections provided for under this article, a motor sports operator or participant may assert any and all common law, statutory, or other defenses that may be available. A motorsports operator may require participants to sign anticipatory release and waiver of liability forms as a condition of participating as a spectator or vehicle operator, which signed waiver forms shall be admissible at trial in any action for damages by or on behalf of the person who executed the forms.