

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2569

BY DELEGATES ESPINOSA, RIDENOUR, CLARK, FERRELL,

STEELE, CRISS, BARNHART, HARDY, DEAN AND HOWELL

[Passed March 8, 2023; in effect ninety days from passage.]

FILED

2023 MAR 29 P 1:11

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SECRETARY OF STATE

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1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §20-19-1, §20-19-2, §20-19-3, §20-19-4, §20-19-5, §20-19-6, §20-19-7, and
 3 §20-19-8, all relating to establishing the Motorsport Responsibility Act; providing legislative
 4 findings; defining terms; setting forth duties of motorsport operators; setting forth duties of
 5 motorsport participants; setting forth the liability of motorsport operators; setting forth the
 6 liability of motorsport participants; and providing rule-making authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 19. MOTORSPORT RESPONSIBILITY ACT.

§20-19-1. Legislative purposes.

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

§20-19-2. Definitions.

1 In this article, unless a different meaning plainly is required:
 2 (1) "Driver training" means qualified instruction to enhance a vehicle operator's ability to
 3 learn vehicle control, provided by a motorsport facility.

4 (2) "Lessee" means any qualified person or organization with the necessary licenses and
5 liability insurance meeting the motorsport operator's lease requirements to operate a motorsport
6 facility.

7 (3) "Motorized vehicle" means an automobile, motorcycle, or any other vehicle propelled
8 by power, other than muscular power, used to transport persons and which operates within the
9 confines of a motorsport facility.

10 (4) "Motorsport activities" means driver training, vehicle storage, competitive racing, non-
11 competitive driving events, exhibitions of speed, fairs or shows using motorized vehicles, or other
12 forms of recreation involving the use of motor vehicles, including motorcycles.

13 (5) "Motorsport facility" means a speedway or racetrack designed and intended for
14 motorsport activities.

15 (6) "Motorsport operator" means any person, partnership, corporation, lessee, or other
16 organization, or any combination thereof offering motorsport activities.

17 (7) "Participant" means any person or organization using the services of a motorsport
18 facility including, but not limited to, spectators, vehicle operators using either their own personally
19 owned vehicle or a vehicle owned by the motorsport facility, or vehicle passengers using either
20 their own personally owned vehicle or a vehicle owned by the motorsport facility.

21 (8) "Spectator area" means a specified area within a motorsport facility intended for
22 admission to the general public, whether or not an admission price is charged, or to which
23 admitted persons of the general public have unrestricted access, including the grandstands and
24 other general admission seating or viewing areas.

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

1 (a) Every motorsport operator shall:

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

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

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

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

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

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

17 (A) Proof of insurance;

18 (B) Inspection reports;

19 (C) Maintenance records; and

20 (D) Participant acknowledgement of risks and duties.

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

1 (a) All participants:

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

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

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

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

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

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

13 (C) Turns in the racetrack; and

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

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

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

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

19 (3) Heeding all posted warnings;

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

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

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

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

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

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

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

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

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

§20-19-7. Rules.


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

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

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

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.


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Clerk of the House of Delegates

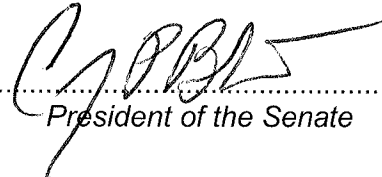

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Clerk of the Senate

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE


Originated in the House of Delegates.

In effect ninety days from passage.


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Speaker of the House of Delegates


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President of the Senate

The within is approved this the 29th
Day of March, 2023.


.....
Governor

PRESENTED TO THE GOVERNOR

MAR 20 2023

Time 11:49am