

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 2569

By Delegates Espinosa, Ridenour, Clark, Ferrell,
Steele, Criss, Barnhart, Hardy, Dean and Howell

[Introduced January 16, 2023; Referred to the
Committee on the Judiciary]

1 A BILL 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, and §20-19-7,
3 all relating to establishing the Motorsport Responsibility Act; providing legislative findings;
4 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.

§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 racing, exhibitions of speed, fairs or shows using motorized vehicles, or other forms of
12 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, vehicle operators using either their own personally owned
19 vehicle or a vehicle owned by the motorsport facility, or vehicle passengers using either their own
20 personally owned vehicle or a vehicle owned by the motorsport facility, and spectators, except
21 spectators in the spectator area.

22 (8) "Spectator area" means a specified area within a motorsport facility intended for
23 admission to the general public, whether or not an admission price is charged, or to which
24 admitted persons of the general public have unrestricted access, including the grandstands and
25 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 business in such condition that the
4 equipment and vehicles are safe to operate or use as intended and recommended by the
5 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 facilities, equipment, and services as advertised or as agreed to by the
9 motorsport operator and the participant;

10 (5) Procure and maintain commercial general liability insurance against claims for personal
11 injury, death, and property damages occurring upon, in or about the motorsport facility which
12 affords protection to the limit of not less than \$1 million for injury or death of a single person, to the
13 limit of \$2 million in the aggregate, and to the limit of not less than \$50,000 for property damage;
14 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 to
7 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 participations
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 rocks or debris;
- 13 (C) Turns in the racetrack; and
- 14 (D) Collisions with retaining walls, tire walls, other vehicles, or any property provided by the
- 15 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.

§20-19-4a. Duties of spectators who are not participating.

1 All spectators who are not participants shall comply with the rules or regulations
2 established for use by the motorsport operator.

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

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

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

7 (c) A motorsport operator is not liable for any injury, loss, or damage to a participant to the
8 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.

1 A participant is liable for injury, loss, or damage resulting from violations of the duties
2 established in §20-19-4 of this code where the violation of duty is causally related to the injury,
3 loss, or damage suffered.

§20-19-7. Rules.

1 The Department of Economic Development shall promulgate rules pursuant to §29A-1-1 *et*
2 *seq.* of this code, with respect to motorsport facilities operating in the state, which shall include at a
3 minimum: (a) Safety requirements for equipment; (b) safety requirements for the design of racing
4 surfaces; (c) safety requirements for the provision of run-off areas; (d) requirements for fire and
5 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.

NOTE: The purpose of this bill is to establish the Motorsport Responsibility Act; provide legislative findings; define terms; set forth duties of motorsport operators; set forth duties of motorsport participants; set forth the liability of motorsport operators; set forth the liability of motorsport participants; and provide rule-making authority.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.