



890696

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2010	.	
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The Committee on Judiciary (Negron) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (g) of subsection (1) and subsection  
(3) of section 549.09, Florida Statutes, are amended to read:

549.09 Motorsport nonspectator liability release.—

(1) As used in this section:

(g) "Nonspectator" ~~"Nonspectators"~~ means an event participant participants who has have signed a motorsport liability release or, in the case of a minor, whose natural guardian has signed a motorsport liability release on behalf of the minor.



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14           (3) (a) A motorsport liability release may be signed by more  
15 than one person ~~if so long as~~ the release form appears on each  
16 page, or side of a page, which is signed. A motorsport liability  
17 release ~~must shall~~ be printed in 8 point type or larger.

18           (b)1. If a minor is participating in a motorsports event as  
19 defined in s. 549.10, the motorsport liability release must  
20 comply with the requirements of this section and is valid to the  
21 same extent provided for other nonspectators under this section.

22           2. If a minor is participating in an activity at a closed-  
23 course motorsport facility, other than a motorsports event as  
24 defined in s. 549.10, a waiver or release must comply with the  
25 requirements in s. 744.301(3) and is valid only to the extent,  
26 and subject to the presumptions, provided in that subsection.

27           Section 2. Present subsection (3) of section 744.301,  
28 Florida Statutes, is redesignated as subsection (4) and amended,  
29 and a new subsection (3) is added to that section, to read:

30           744.301 Natural guardians.—

31           (3) In addition to the authority granted in subsection (2),  
32 natural guardians are authorized, on behalf of any of their  
33 minor children, to waive and release, in advance, any claim or  
34 cause of action against a commercial activity provider, or its  
35 owners, affiliates, employees, or agents, which would accrue to  
36 a minor child for personal injury, including death, and property  
37 damage resulting from an inherent risk in the activity.

38           (a) As used in this subsection, the term "inherent risk"  
39 means those dangers or conditions, known or unknown, which are  
40 characteristic of, intrinsic to, or an integral part of the  
41 activity and which are not eliminated even if the activity  
42 provider acts with due care in a reasonably prudent manner. The



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43 term includes, but is not limited to:

44 1. The failure by the activity provider to warn the natural  
45 guardian or minor child of an inherent risk; and

46 2. The risk that the minor child or another participant in  
47 the activity may act in a negligent or intentional manner and  
48 contribute to the injury or death of the minor child. A  
49 participant does not include the activity provider or its  
50 owners, affiliates, employees, or agents.

51 (b) To be enforceable, a waiver or release executed under  
52 this subsection must, at a minimum, include the following  
53 statement in uppercase type that is at least 5 points larger  
54 than, and clearly distinguishable from, the rest of the text of  
55 the waiver or release:

56  
57 NOTICE TO THE MINOR CHILD'S NATURAL GUARDIAN

58  
59 READ THIS FORM COMPLETELY AND CAREFULLY. YOU ARE  
60 AGREEING TO LET YOUR MINOR CHILD ENGAGE IN A  
61 POTENTIALLY DANGEROUS ACTIVITY. YOU ARE AGREEING THAT,  
62 EVEN IF (...name of released party or parties...) USES  
63 REASONABLE CARE IN PROVIDING THIS ACTIVITY, THERE IS A  
64 CHANCE YOUR CHILD MAY BE SERIOUSLY INJURED OR KILLED  
65 BY PARTICIPATING IN THIS ACTIVITY BECAUSE THERE ARE  
66 CERTAIN DANGERS INHERENT IN THE ACTIVITY WHICH CANNOT  
67 BE AVOIDED OR ELIMINATED. BY SIGNING THIS FORM YOU ARE  
68 GIVING UP YOUR CHILD'S RIGHT AND YOUR RIGHT TO RECOVER  
69 FROM (...name of released party or parties...) IN A  
70 LAWSUIT FOR ANY PERSONAL INJURY, INCLUDING DEATH, TO  
71 YOUR CHILD OR ANY PROPERTY DAMAGE THAT RESULTS FROM



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72 THE RISKS THAT ARE A NATURAL PART OF THE ACTIVITY. YOU  
73 HAVE THE RIGHT TO REFUSE TO SIGN THIS FORM, AND  
74 (...name of released party or parties...) HAS THE  
75 RIGHT TO REFUSE TO LET YOUR CHILD PARTICIPATE IF YOU  
76 DO NOT SIGN THIS FORM.

77  
78 (c) If a waiver or release complies with paragraph (b) and  
79 waives no more than allowed under this subsection, there is a  
80 rebuttable presumption that the waiver or release is valid and  
81 that any injury or damage to the minor child arose from the  
82 inherent risk involved in the activity.

83 1. To rebut the presumption that the waiver or release is  
84 valid, a claimant must demonstrate by a preponderance of the  
85 evidence that the waiver or release does not comply with this  
86 subsection.

87 2. To rebut the presumption that the injury or damage to  
88 the minor child arose from an inherent risk involved in the  
89 activity, a claimant must demonstrate by clear and convincing  
90 evidence that the conduct, condition, or other cause resulting  
91 in the injury or damage was not an inherent risk of the  
92 activity.

93 3. If a presumption under this paragraph is rebutted,  
94 liability and compensatory damages must be established by a  
95 preponderance of the evidence.

96 (d) Nothing in this subsection limits the ability of  
97 natural guardians, on behalf of any of their minor children, to  
98 wave and release, in advance, any claim or cause of action  
99 against a non-commercial activity provider, or its owners,  
100 affiliates, employees, or agents, to the extent authorized by



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101 common law.

102 ~~(4)(3)~~ All instruments executed by a natural guardian for  
103 the benefit of the ward under the powers specified in this  
104 section are ~~subsection (2)~~ shall be binding on the ward. The  
105 natural guardian may not, without a court order, use the  
106 property of the ward for the guardian's benefit or to satisfy  
107 the guardian's support obligation to the ward.

108 Section 3. This act shall take effect upon becoming a law.

109

110 ===== T I T L E A M E N D M E N T =====

111 And the title is amended as follows:

112 Delete everything before the enacting clause  
113 and insert:

114 A bill to be entitled

115 An act relating to liability releases; amending s.  
116 549.09, F.S.; redefining the term "nonspectators" to  
117 include a minor on whose behalf a natural guardian has  
118 signed a motorsport liability release; providing that  
119 a motorsport liability release signed by a natural  
120 guardian on behalf of a minor participating in a  
121 sanctioned motorsports event is valid to the same  
122 extent as for other nonspectators; limiting the  
123 validity of a waiver or release signed by a natural  
124 guardian on behalf of a minor participating in an  
125 activity at a closed-course motorsport facility other  
126 than a sanctioned motorsports event; amending s.  
127 744.301, F.S.; authorizing natural guardians to waive,  
128 in advance, claims for injuries arising from risks  
129 inherent in a commercial activity; defining the term



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130 "inherent risk"; providing a statement that must be  
131 included in the waiver; creating a rebuttable  
132 presumption that a waiver is valid and that the injury  
133 arose from the inherent risk; providing the  
134 requirements and standard of evidence for overcoming  
135 the presumption; authorizing natural guardians to  
136 waive, in advance, any claim against a non-commercial  
137 provider to the extent allowed by common law;  
138 providing an effective date.