

By Senator Bennett

21-01774A-10

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1
2 A bill to be entitled
3 An act relating to liability releases; amending s.
4 549.09, F.S.; redefining the term "nonspectators" to
5 include a minor on whose behalf a natural guardian has
6 signed a motorsport liability release; providing that
7 a motorsport liability release signed by a natural
8 guardian on behalf of a minor is valid; amending s.
9 744.301, F.S.; authorizing natural guardians to waive,
10 in advance, claims for injuries arising from risks
11 inherent in an activity; defining the term "inherent
12 risk"; providing a statement that must be included in
13 the waiver; creating a rebuttable presumption that a
14 waiver is valid; providing the requirements and
15 standard of evidence for overcoming the presumption;
16 providing an effective date.
17

18 Be It Enacted by the Legislature of the State of Florida:
19

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

22 549.09 Motorsport nonspectator liability release.—

23 (1) As used in this section:

24 (g) "Nonspectators" means event participants who have
25 signed a motorsport liability release or, if a minor, whose
26 natural guardian has signed a motorsport liability release.

27 (3) A motorsport liability release may be signed by more
28 than one person if ~~so long as~~ the release form appears on each
29 page, or side of a page, which is signed.

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30 (a) A motorsport liability release must ~~shall~~ be printed in
31 8 point type or larger.

32 (b) A motorsport liability release signed by a natural
33 guardian on behalf of a minor is valid to the extent provided in
34 s. 744.301.

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

38 744.301 Natural guardians.—

39 (3) In addition to the authority granted in subsection (2),
40 natural guardians are authorized, on behalf of any of their
41 minor children, to waive and release, in advance, any claim or
42 cause of action against an activity provider, or its owners,
43 affiliates, employees, or agents, which would accrue to a minor
44 child for personal injury, including death, and property damage
45 resulting from an inherent risk in the activity.

46 (a) As used in this subsection, the term "inherent risk"
47 means those dangers or conditions, known or unknown, which are
48 characteristic of, intrinsic to, or an integral part of the
49 activity and which are not eliminated even if the activity
50 provider acts with due care in a reasonably prudent manner. The
51 term includes, but is not limited to:

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

54 2. The risk that the minor child or another participant in
55 the activity may act in a negligent or intentional manner and
56 contribute to the injury or death of the minor child. A
57 participant does not include the activity provider or its
58 owners, affiliates, employees, or agents.

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

64
65 NOTICE TO THE MINOR CHILD'S NATURAL GUARDIAN

66
67 READ THIS FORM COMPLETELY AND CAREFULLY. YOU ARE
68 AGREEING TO LET YOUR MINOR CHILD ENGAGE IN A
69 POTENTIALLY DANGEROUS ACTIVITY. YOU ARE AGREEING THAT,
70 EVEN IF (...name of released party or parties...) USES
71 REASONABLE CARE IN PROVIDING THIS ACTIVITY, THERE IS A
72 CHANCE YOUR CHILD MAY BE SERIOUSLY INJURED OR KILLED
73 BY PARTICIPATING IN THIS ACTIVITY BECAUSE THERE ARE
74 CERTAIN DANGERS INHERENT IN THE ACTIVITY WHICH CANNOT
75 BE AVOIDED OR ELIMINATED. BY SIGNING THIS FORM YOU ARE
76 GIVING UP YOUR CHILD'S RIGHT AND YOUR RIGHT TO RECOVER
77 FROM (...name of released party or parties...) IN A
78 LAWSUIT FOR ANY PERSONAL INJURY, INCLUDING DEATH, TO
79 YOUR CHILD OR ANY PROPERTY DAMAGE THAT RESULTS FROM
80 THE RISKS THAT ARE A NATURAL PART OF THE ACTIVITY. YOU
81 HAVE THE RIGHT TO REFUSE TO SIGN THIS FORM, AND
82 (...name of released party or parties...) HAS THE
83 RIGHT TO REFUSE TO LET YOUR CHILD PARTICIPATE IF YOU
84 DO NOT SIGN THIS FORM.

85
86 (c) If a waiver or release complies with paragraph (b) and
87 waives no more than allowed under this paragraph, there is a

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88 rebuttable presumption that the waiver or release is valid and
89 that any injury or damage to the minor child arose from the
90 inherent risk involved in the activity.

91 1. To rebut the presumption that the waiver or release is
92 valid, a claimant must demonstrate by a preponderance of the
93 evidence that the waiver or release does not comply with this
94 subsection.

95 2. To rebut the presumption that the injury or damage to
96 the minor child arose from an inherent risk involved in the
97 activity, a claimant must demonstrate by clear and convincing
98 evidence that the conduct, condition, or other cause resulting
99 in the injury or damage was not an inherent risk of the
100 activity.

101 3. If a presumption under this paragraph is rebutted,
102 liability and compensatory damages must be established by a
103 preponderance of the evidence.

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

110 Section 3. This act shall take effect July 1, 2010.