

By the Committee on Judiciary; and Senator Bennett

590-03218-10

20102440c1

1                   A bill to be entitled  
2           An act relating to liability releases; amending s.  
3           549.09, F.S.; redefining the term "nonspectators" to  
4           include a minor on whose behalf a natural guardian has  
5           signed a motorsport liability release; providing that  
6           a motorsport liability release signed by a natural  
7           guardian on behalf of a minor participating in a  
8           sanctioned motorsports event is valid to the same  
9           extent as for other nonspectators; limiting the  
10          validity of a waiver or release signed by a natural  
11          guardian on behalf of a minor participating in an  
12          activity at a closed-course motorsport facility other  
13          than a sanctioned motorsports event; amending s.  
14          744.301, F.S.; authorizing natural guardians to waive,  
15          in advance, claims for injuries arising from risks  
16          inherent in a commercial activity; defining the term  
17          "inherent risk"; providing a statement that must be  
18          included in the waiver; creating a rebuttable  
19          presumption that a waiver is valid and that the injury  
20          arose from the inherent risk; providing the  
21          requirements and standard of evidence for overcoming  
22          the presumption; authorizing natural guardians to  
23          waive, in advance, any claim against a noncommercial  
24          provider to the extent allowed by common law;  
25          providing an effective date.

26  
27   Be It Enacted by the Legislature of the State of Florida:

28  
29          Section 1. Paragraph (g) of subsection (1) and subsection

590-03218-10

20102440c1

30 (3) of section 549.09, Florida Statutes, are amended to read:

31 549.09 Motorsport nonspectator liability release.—

32 (1) As used in this section:

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

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

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

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

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

54 744.301 Natural guardians.—

55 (3) In addition to the authority granted in subsection (2),  
56 natural guardians are authorized, on behalf of any of their  
57 minor children, to waive and release, in advance, any claim or  
58 cause of action against a commercial activity provider, or its

590-03218-10

20102440c1

59 owners, affiliates, employees, or agents, which would accrue to  
60 a minor child for personal injury, including death, and property  
61 damage resulting from an inherent risk in the activity.

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

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

70 2. The risk that the minor child or another participant in  
71 the activity may act in a negligent or intentional manner and  
72 contribute to the injury or death of the minor child. A  
73 participant does not include the activity provider or its  
74 owners, affiliates, employees, or agents.

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

81 NOTICE TO THE MINOR CHILD'S NATURAL GUARDIAN

82  
83 READ THIS FORM COMPLETELY AND CAREFULLY. YOU ARE  
84 AGREEING TO LET YOUR MINOR CHILD ENGAGE IN A  
85 POTENTIALLY DANGEROUS ACTIVITY. YOU ARE AGREEING THAT,  
86 EVEN IF (...name of released party or parties...) USES  
87 REASONABLE CARE IN PROVIDING THIS ACTIVITY, THERE IS A

590-03218-10

20102440c1

88 CHANCE YOUR CHILD MAY BE SERIOUSLY INJURED OR KILLED  
89 BY PARTICIPATING IN THIS ACTIVITY BECAUSE THERE ARE  
90 CERTAIN DANGERS INHERENT IN THE ACTIVITY WHICH CANNOT  
91 BE AVOIDED OR ELIMINATED. BY SIGNING THIS FORM YOU ARE  
92 GIVING UP YOUR CHILD'S RIGHT AND YOUR RIGHT TO RECOVER  
93 FROM (...name of released party or parties...) IN A  
94 LAWSUIT FOR ANY PERSONAL INJURY, INCLUDING DEATH, TO  
95 YOUR CHILD OR ANY PROPERTY DAMAGE THAT RESULTS FROM  
96 THE RISKS THAT ARE A NATURAL PART OF THE ACTIVITY. YOU  
97 HAVE THE RIGHT TO REFUSE TO SIGN THIS FORM, AND  
98 (...name of released party or parties...) HAS THE  
99 RIGHT TO REFUSE TO LET YOUR CHILD PARTICIPATE IF YOU  
100 DO NOT SIGN THIS FORM.

101  
102 (c) If a waiver or release complies with paragraph (b) and  
103 waives no more than allowed under this subsection, there is a  
104 rebuttable presumption that the waiver or release is valid and  
105 that any injury or damage to the minor child arose from the  
106 inherent risk involved in the activity.

107 1. To rebut the presumption that the waiver or release is  
108 valid, a claimant must demonstrate by a preponderance of the  
109 evidence that the waiver or release does not comply with this  
110 subsection.

111 2. To rebut the presumption that the injury or damage to  
112 the minor child arose from an inherent risk involved in the  
113 activity, a claimant must demonstrate by clear and convincing  
114 evidence that the conduct, condition, or other cause resulting  
115 in the injury or damage was not an inherent risk of the  
116 activity.

590-03218-10

20102440c1

117       3. If a presumption under this paragraph is rebutted,  
118 liability and compensatory damages must be established by a  
119 preponderance of the evidence.

120       (d) Nothing in this subsection limits the ability of  
121 natural guardians, on behalf of any of their minor children, to  
122 wave and release, in advance, any claim or cause of action  
123 against a noncommercial activity provider, or its owners,  
124 affiliates, employees, or agents, to the extent authorized by  
125 common law.

126       (4)-(3) All instruments executed by a natural guardian for  
127 the benefit of the ward under the powers specified in this  
128 section are ~~subsection (2)~~ shall be binding on the ward. The  
129 natural guardian may not, without a court order, use the  
130 property of the ward for the guardian's benefit or to satisfy  
131 the guardian's support obligation to the ward.

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