

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

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Paragraph (g) of subsection (1) and subsection
28 (3) of section 549.09, Florida Statutes, are amended to read:

29 | 549.09 Motorsport nonspectator liability release.—

30 | (1) As used in this section:

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

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

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

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

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

53 | 744.301 Natural guardians.—

54 | (3) In addition to the authority granted in subsection
 55 | (2), natural guardians are authorized, on behalf of any of their
 56 | minor children, to waive and release, in advance, any claim or

57 cause of action against a commercial activity provider or its
58 owners, affiliates, employees, or agents which would accrue to a
59 minor child for personal injury, including death, and property
60 damage resulting from an inherent risk in the activity.

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

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

69 2. The risk that the minor child or another participant in
70 the activity may act in a negligent or intentional manner and
71 contribute to the injury or death of the minor child. As used in
72 this subparagraph, the term "participant" does not include the
73 activity provider or its owners, affiliates, employees, or
74 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:

80

81 NOTICE TO THE MINOR CHILD'S NATURAL GUARDIAN

82

83 READ THIS FORM COMPLETELY AND CAREFULLY. YOU ARE AGREEING TO LET
84 YOUR MINOR CHILD ENGAGE IN A POTENTIALLY DANGEROUS ACTIVITY. YOU

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

98
 99 (c) If a waiver or release complies with paragraph (b) and
 100 waives no more than allowed under this subsection, there is a
 101 rebuttable presumption that the waiver or release is valid and
 102 that any injury or damage to the minor child arose from the
 103 inherent risk involved in the activity.

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

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

113 activity.

114 3. If a presumption under this paragraph is rebutted,
115 liability and compensatory damages must be established by a
116 preponderance of the evidence.

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

123 (4) ~~(3)~~ All instruments executed by a natural guardian for
124 the benefit of the ward under the powers specified in this
125 section are ~~subsection (2) shall be~~ binding on the ward. The
126 natural guardian may not, without a court order, use the
127 property of the ward for the guardian's benefit or to satisfy
128 the guardian's support obligation to the ward.

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