The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1318
INTRODUCER:	Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Wright
SUBJECT:	Spaceflight Entity Liability
DATE:	April 21, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Proctor	MS	**Fav/CS**
2.	Lloyd	Twogood	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1318 amends s. 331.501, F.S., to define the term "crew" to include the federal definitions for the terms "crew" and "government astronaut," which includes any employee, contractor or subcontractor of a licensee or transferee, who performs activities directly related to the launch, reentry, or other operation of or in a launch vehicle or reentry vehicle that carries human beings.

Under s. 331.501, F.S., a spaceflight entity is not liable for the injury to or death of a spaceflight participant or crew resulting from the spaceflight activities, so long as a required warning form is provided and signed. The immunity from liability does not apply in certain circumstances.

The bill extends the limited immunity from liability held by spaceflight entities to also include crew members who would be required, along with participants, to sign a modified waiver. The bill modifies the liability language to require the spaceflight entity to have actual knowledge of an extraordinarily dangerous condition rather than actual knowledge of a dangerous condition or reasonable knowledge of a dangerous condition. Furthermore, the extraordinarily dangerous condition must be one that is not inherent in spaceflight activities.

The bill may have an indeterminate, though unlikely, impact on state and local governments. See Section V. Fiscal Impact Statement.

The bill provides an effective date of July 1, 2023.

II. Present Situation:

Spaceflight Entity

A "spaceflight entity" is a public or private entity that holds a United States Federal Aviation Administration (FAA) launch, reentry, operator, or launch site license for spaceflight activities. The term also includes a manufacturer or supplier of components, services, or vehicles that have been reviewed by the FAA as part of issuing such a license, permit, or authorization.

A "participant" is defined as a "spaceflight participant" as that term is defined under federal law, which is an individual who is not crew or a government astronaut carried within a launch vehicle or reentry vehicle.[1]

Current state law shields a public or private spaceflight entity from liability for ordinary negligence towards any participant as long as the participant signs a specified warning statement advising of such liability limitation.[2] Immunity is not granted to a spaceflight entity, even with a signed waiver, if the spaceflight entity:

- Commits an act or omission that constitutes gross negligence or willful or wanton disregard for the safety of the participant which proximately causes the injury or death of the participant;
- Has actual knowledge or reasonably should have known of a dangerous condition on the land or in the facilities or equipment used in the spaceflight activities which proximately causes the injury or death of the participant; or
- Intentionally injures the participant.

To be valid, the spaceflight entity must provide to the participant the following warning statement and have the participant sign the statement:[3]

> WARNING: Under Florida law, there is no liability for an injury to or death of a participant or crew in a spaceflight activity provided by a spaceflight entity if such injury or death results from the inherent risks of the spaceflight activity. Injuries caused by the inherent risks of spaceflight activities may include, among others, injury to land, equipment, persons, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this spaceflight activity.[4]

Negligence

As developed by the common law, a cause of action for negligence arises where one's "failure to use that degree of care which a reasonably careful person would use under like circumstances"

[1] *See* 51 U.S.C. s. 50902.
[2] Section 331.501, F.S.
[3] Section 331.501(3), F.S.
[4] Section 331.501(3)(b), F.S.

causes injury. Common law negligence is open-ended and divorced from intent, "allow[ing] the plaintiff to claim that any given conduct was negligent."[5]

While negligence has its roots in common law, legislative enactments play a role in shaping standards of conduct. [6] Proof that a defendant violated a statute can be categorized in a negligence case in one of three ways, depending on the statute's purpose:

- Violation of a strict liability statute designed to protect a particular class of persons who are unable to protect themselves, constituting negligence per se;
- Violation of a statute establishing a duty to take precautions to protect a particular class of persons from a particular type of injury, also constituting negligence per se; or
- Violation of any other kind of statute, constituting mere prima facie evidence of negligence.[7]

Workers' Compensation

Workers' Compensation is a no-fault system that provides medical benefits and compensation for lost wages when an employee is injured or killed in the course of employment. In addition to on-the-job injuries, employers may be required to provide benefits if an occupational disease causes death or disablement, due to the nature of the employee's occupation, and the employee contracted the disease while on the job.

Employers must secure workers' compensation coverage and may do so by purchasing insurance from an authorized carrier or through an employee-leasing agreement, qualifying as a self-insurer, or purchasing coverage from the Florida Workers' Compensation Joint Underwriting Association, Inc., which is the state-sponsored insurer of last resort.[8] In return for providing compensation, the employer is relieved of liability for workplace injuries, and may only be sued for intentional acts that result in injury or death.[9] Florida's workers' compensation system is administered by the Department of Financial Services, Division of Workers' Compensation.

III. Effect of Proposed Changes:

CS/SB 1318 amends s. 331.501, F.S., to provide a definition for the term "crew" by incorporating two separate federal terms, "crew" and "government astronaut" and cross-referencing the federal definitions:

> "Crew" means any employee of a licensee or transferee or of a contractor or subcontractor of a licensee or transferee, who performs activities in the course of that employment directly relating to the launch, reentry, or other operation of or in a launch vehicle or reentry or reentry vehicle that carries human beings.[10]

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[5] *Kohl v. Kohl,* 149 So. 3d 127, 131-32 (Fla. 4th DCA 2014) (citing Dan B. Dobbs et al., *on the Law of Torts s. 110* at 257 (2000).
[6] *Kohl v. Kohl,* 149 So. 3d 127, 131-32 (Fla. 4th DCA 2014) (citing W. Page Keeton et al., *on the Law of Torts s. 35* (3d ed. 1964).
[7] *Id.*
[8] Section 627.311(5)(a), F.S.
[9] Sections 440.015, 440.09, 440.10, 440.38, and 627.313, F.S.
[10] 51 U.S.C. 50902(2).

> "Government astronaut" means an individual who is designated by the National Aeronautics and Space Administration under section 20113(n); carried within a launch vehicle or reentry vehicle in the course of his or her employment, which may include performance of activities directly related to the launch, reentry, or other operation of the launch vehicle or reentry vehicle; and either an employee of the United States Government, including the uniformed services, engaged in the performance of a Federal function under authority of law or an Executive act or an international partner astronaut.[11]

The definition for the term "spaceflight activities" is expanded to include any activities which occur between launch and landing and not just those activities defined under federal law, such as launch and landing activities only. The bill also modifies "spaceflight entity" to include anyone holding the appropriate licensure from the United States Government to conduct spaceflight activities.

The bill extends the liability immunity held by spaceflight entities towards spaceflight participants to include crew who sign the warning statement provided for in law. If either the participant or the crew fails to sign the warning statement, the spaceflight entity will be prevented from invoking the privileges of immunity. The liability language is modified to require the spaceflight entity to have *actual knowledge of an extraordinarily dangerous condition* rather than actual knowledge of a dangerous condition or reasonable knowledge of a dangerous condition. Furthermore, the extraordinarily dangerous condition must be one that *is not inherent*[12] in spaceflight activities and that the associated danger proximately causes injury, damage, or death to the participant or crew for the immunity shield to be pierced. *(emphasis added).*

Under the bill, the revised statement must be signed by each participant or crew participating in spaceflight activities on or off the launch site. The revised statement reads:

> WARNING: Under Florida law, there is no liability for an injury to or death of a participant or crew in a spaceflight activity provided by a spaceflight entity if such injury or death results from the spaceflight activities. Injuries caused by the spaceflight activities may include, among others, injury to land, equipment, persons, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this spaceflight activity.

The bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[11] 51 U.S.C. 50902(4).

[12] According to Black's Law Dictionary (11th ed. 2019), something is "inherently dangerous" when it is (Of an activity or thing) requiring special precautions at all times to avoid injury; dangerous per se.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Access to Courts

Section 21 of Article I of the State Constitution reads, "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Justice Adkins writing for the majority opinion in *Kluger v. White* further said:

> We hold, therefore, that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. s. 201, the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.[13]

The scope of the access-to-courts provision has been addressed by both the federal and Florida courts on multiple occasions. Federal courts used their equity powers to create remedies through common law where the statutes had failed to legislate private rights of actions. In *Guaranty Trust Co. v. York* in 1945, the United States Supreme Court hearing a case in diversity, noted that the case was brought on the equity side and they were not bound to apply state law in their decision.[14] Delivering the opinion, Justice Frankfurter noted that just because a state case was in a federal court did it mean that only state equitable relief or only federal equitable relief was available, only that "the suit must be within the traditional scope of equity as historically evolved in the English Court of Chancery."[15]

In 1973 in *Kluger v. White,*[16] the Florida Supreme Court interpreted the access-to-courts guarantee to mean that the legislature cannot abolish a statutory or common law right that

[13] *Kluger v. White,* 281 So. 2d 1 (Fla. 1973).
[14] *Guaranty Trust Co. v. York, 326 U.S. 99, 101 (1945).*
[15] *Id.* at 105.
[16] 281 So.2d 1 (Fla. 1973).

existed prior to the adoption of the Declaration of Rights without providing a reasonable alternative, unless the legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown. Though *Kluger* spoke in terms of total abolishment of a right, the scope of the protection extends to circumstances in which legislative action significantly obstructs the right to access to the courts.

Thus, a statute restricting access to the courts is not permitted unless one of the *Kluger* exceptions is met: (i) the legislature provides a reasonable alternative remedy or commensurate benefit; or (ii) the legislature makes a showing of overpowering public necessity for the abolishment of the right and no alternative method of meeting such public necessity."

Whether or not the immunity waiver which spaceflight participants and crew are being asked to execute would be in violation of this long-standing interpretation is not exactly clear. Nor is it clear if in lieu of this immunity waiver, these participants or crew would be or could be covered by workers' compensation coverage and the ramifications for that decision. It is possible that like first responders or those who suffered from asbestos poisoning, the after effects of that exposure was sometimes not known until after treatment deadlines leaving those participants without any remedy, except to seek an equitable one in the courts.

The United States and Florida Supreme Courts have looked more favorably on legislative authority over court-made remedies in more recent opinions. Equitable remedies are still a tool in the legal toolbox, but the courts have also become more sensitive to their role and left more of the lawmaking to the Congress and state legislatures.

Starting as early 1948, many tort cases' court opinions included discussions about the balance between maintaining traditional and long-standing common law at both federal and state law and not destroying those causes of action upon a mere whim.[17] In *Rotwein v. Gersten,* the Florida Supreme Court upheld enactment of a statute which abolished certain common law crimes of extortion, such as alienation of affection, criminal conversation, seduction, and breach of contract to marry.[18] The courts have noted the ever evolving character of common law negligence and that one of common law's greatest virtues is its dynamic nature and adaptability.[19] Most recently, the United States Supreme Court considered expanding the pool of potential actions and individuals that could fall under the Federal Tort Claims Act which bars any claim arising in a foreign country.[20] In *Hernandez,* the court determined that with the demise of federal common law, a federal court's authority to recognize a damages remedy must rest at bottom on a statute enacted by Congress.[21]

[17] *Kluger v. White,* 281 So. 2d 1 (Fla. 1973).
[18] *Rotwein v. Gersten,* 36 So. 2d 419 (Fla. 1948). These actions were codified under ch. 771, FLA. STAT.; quoted in Florida State University Law Review, 2 Fla. St. U. L. Rev. 178 (1974).
[19] *Supra* note 6.
[20] 28 U.S.C. s. 2680(k) as quoted in *Hernandez et al v. Mesa,* 589 U.S. _____ (2020).
[21] *Hernandez et al v. Mesa,* 589 U.S. _____(2020). In *Hernandez,* the court would have had to recognize a claim against an American Border Patrol Agent who shot and killed a 15-year old Mexican boy on the Mexican side of the border. Absent no

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill grants limited civil liability immunity to a spaceflight entity for injury to or death of a crew member or participant resulting from the risks of spaceflight activities, as long as the required warning is given to and signed by the participants and crew members. This bill has the potential to limit the cost of litigation to businesses engaging in spaceflight activities.

C. Government Sector Impact:

The bill may have an indeterminate, though unlikely, impact on state and local governments to the extent that additional individuals will have assumed the risk for their spaceflight activities and may incur medical and other costs that may be borne by public health care systems if injured or harmed by their spaceflight activities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 331.501 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Military and Veterans Affairs, Space, and Domestic Security on March 29, 2023:
The committee substitute:

- Adopts the federal definitions of the terms "crew" and "government astronaut" under a combined definition of "crew" and modified the definition for "spaceflight activities" to include those activities occurring between the launch and landing. The term "spaceflight entity" was updated to incorporate any space flight activities approved by the United States government.

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charges being filed against the agent, the family of Mr. Hernandez wanted the agent extradited to Mexico which the United States refused. The Department of Justice had concluded that Agent Mesa had not violated any policies.

- Expands the immunity from liability for spaceflight activities to include all spaceflight activities and not just those which were inherently dangerous for participants and crew. The immunity would preclude recovery by a participant, a participant's representative, crew, or a crew's representative in case of injury so long as the warning was signed.
- Amends the liability waiver signed by the participants and crew and replaced the spaceflight entity's liability obligation from requiring actual or reasonable knowledge of a dangerous condition on the land or in the facilities or equipment used in spaceflight activities with a new standard that would require showing that the spaceflight entity had actual knowledge of an extraordinarily dangerous condition that is not inherent in spaceflight activities and the danger proximately causes injury, damage, or death to the participant or crew.
- Requires both crew and participants to sign the warning statement.

B. Amendments:

None.