

CS/SB 2440 — Liability Releases

by Judiciary Committee and Senator Bennett

This bill (Chapter 2010-27, L.O.F.) provides statutory authority for natural guardians, on behalf of their minor children, to execute pre-injury releases or waivers, waiving any claim or cause of action against a commercial activity provider, or its owners, affiliates, employees, or agents, for the inherent risks involved in an activity. The bill clarifies that it is not limiting the ability of natural guardians, on behalf of their children, to waive any claim against a noncommercial activity provider to the extent authorized by common law. The bill defines the term “inherent risk” to mean the dangers or conditions that are characteristic of, intrinsic to, or an integral part of the activity; the failure of the activity provider to warn of the inherent risks; and the risk that the minor child or another participant may act negligently or intentionally and contribute to the injury of the minor child.

The bill also provides specific language that must be included in a waiver or release, and be at least five points larger than the rest of the text of the waiver or release, in order for it to be enforceable. As long as the waiver or release includes the statutory language and waives no more than allowed by statute, there is a rebuttable presumption that the waiver or release is valid and that the minor child’s injury or damage arose from an inherent risk. A claimant can rebut the presumption that the waiver or release is valid by showing by a preponderance of the evidence that the waiver or release does not comply with the statute. In order to rebut the presumption that the injury or damage to the minor child arose from an inherent risk, the claimant must demonstrate by clear and convincing evidence that the conduct, condition, or other cause resulting in the injury or damage was not an inherent risk of the activity. If a claimant successfully rebuts one of the presumptions, liability and compensatory damages must be established by a preponderance of the evidence at trial.

Additionally, the bill provides that a motorsport liability release signed by a natural guardian on behalf of a minor is valid to the same extent provided for other nonspectators, if the minor is participating in a sanctioned motorsports event. However, if a minor is participating in any other activity at a closed-course motorsport facility, other than a sanctioned motorsports event, then the waiver is valid only if it complies with the general waiver requirements proposed by the bill. The bill also expands the definition of “nonspectators” to include a minor, if the minor’s natural guardian signed the motorsport liability release.

These provisions became law upon approval by the Governor on April 27, 2010.

Vote: Senate 38-0; House 114-0