

CHAPTER 2010-27

Committee Substitute for Senate Bill No. 2440

An act relating to liability releases; amending s. 549.09, F.S.; redefining the term "nonspectators" to include a minor on whose behalf a natural guardian has signed a motorsport liability release; providing that a motorsport liability release signed by a natural guardian on behalf of a minor participating in a sanctioned motorsports event is valid to the same extent as for other nonspectators; limiting the validity of a waiver or release signed by a natural guardian on behalf of a minor participating in an activity at a closed-course motorsport facility other than a sanctioned motorsports event; amending s. 744.301, F.S.; authorizing natural guardians to waive, in advance, claims for injuries arising from risks inherent in a commercial activity; defining the term "inherent risk"; providing a statement that must be included in the waiver; creating a rebuttable presumption that a waiver is valid and that the injury arose from the inherent risk; providing the requirements and standard of evidence for overcoming the presumption; authorizing natural guardians to waive, in advance, any claim against a noncommercial provider to the extent allowed by common law; providing an effective date.

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

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

549.09 Motorsport nonspectator liability release.—

(1) As used in this section:

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

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

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

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

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

744.301 Natural guardians.—

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

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

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

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

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

NOTICE TO THE MINOR CHILD'S NATURAL GUARDIAN

READ THIS FORM COMPLETELY AND CAREFULLY. YOU ARE AGREEING TO LET YOUR MINOR CHILD ENGAGE IN A POTENTIALLY DANGEROUS ACTIVITY. YOU ARE AGREEING THAT, EVEN IF (...name of released party or parties...) USES REASONABLE CARE IN PROVIDING THIS ACTIVITY, THERE IS A CHANCE YOUR CHILD MAY BE SERIOUSLY INJURED OR KILLED BY PARTICIPATING IN THIS ACTIVITY BECAUSE THERE ARE CERTAIN DANGERS INHERENT IN THE ACTIVITY WHICH CANNOT BE AVOIDED OR ELIMINATED. BY SIGNING THIS FORM YOU ARE GIVING UP YOUR CHILD'S RIGHT AND YOUR RIGHT TO RECOVER FROM (...name of released party or parties...) IN A LAWSUIT FOR ANY PERSONAL INJURY, INCLUDING DEATH, TO YOUR CHILD OR ANY PROPERTY DAMAGE THAT RESULTS FROM THE RISKS THAT ARE A NATURAL PART OF THE ACTIVITY. YOU HAVE THE RIGHT TO REFUSE TO SIGN THIS FORM, AND (...name

of released party or parties...) HAS THE RIGHT TO REFUSE TO LET YOUR CHILD PARTICIPATE IF YOU DO NOT SIGN THIS FORM.

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

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

2. To rebut the presumption that the injury or damage to the minor child arose from an inherent risk involved in the activity, a 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.

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

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

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

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

Approved by the Governor April 27, 2010.

Filed in Office Secretary of State April 27, 2010.