

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:

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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:

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

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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.