

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 839 Spaceflight Entity Liability  
**SPONSOR(S):** Judiciary Committee, Civil Justice Subcommittee, Sirois  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 1318

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	16 Y, 1 N, As CS	Loyed	Jones
2) Transportation & Modals Subcommittee	13 Y, 2 N	Lewis	Hinshelwood
3) Judiciary Committee	22 Y, 0 N, As CS	Jones	Kramer

### SUMMARY ANALYSIS

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.

Under s. 331.501, F.S., a spaceflight entity is not liable for the injury to or death of a spaceflight participant resulting from the inherent risks of spaceflight activities, as long as a required warning statement is given to and signed by the participant. The immunity from liability granted to the spaceflight entity by a participant signing such a waiver does not apply 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.

CS/CS/HB 839 extends the limited immunity from liability held by spaceflight entities against suits brought by participants to also include suits brought by crew members who sign the waiver provided for in s. 331.501, F.S. The bill provides that an exception to the immunity applies if the spaceflight entity is grossly negligent, knows of an extraordinarily dangerous condition that is not inherent in spaceflight activities, or acts intentionally. The bill also:

- Modifies the definition of “spaceflight entity” to:
  - Include a public or private entity that is otherwise authorized by the United States Government to conduct spaceflight activities;
  - Specify that the manufacturers or suppliers covered under the definition are the manufacturers and suppliers of “spaceflight components, services, or vehicles”; and
  - Eliminate the requirement that the FAA must have reviewed such components, services, or vehicles.
- Defines “spaceflight activities” to mean launch services or reentry services, as well as activities occurring between launch and landing.
- Defines “crew” as a crew or government astronauts as those terms are defined in 51 U.S.C. s. 50902.

The bill also modifies the liability protection within s. 331.501, F.S., to include liability protection from injury or death resulting from spaceflight activities, regardless of whether the injury or death resulted from the “inherent risks” of such spaceflight activities.

The bill has no fiscal impact on state or local governments and provides an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Florida Liability Shield for Spaceflight Entities

Current Florida 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.<sup>1</sup> For purposes of this liability limitation, a:

- “Spaceflight entity” is a public or private entity holding a United States Federal Aviation Administration launch, reentry, operator, or launch site license for spaceflight activities. The term also includes any manufacturer or supplier of components, services, or vehicles that have been reviewed by the United States Federal Aviation Administration as part of issuing such a license, permit, or authorization.<sup>2</sup>
- “Participant” is a person who meets the definition of “participant” under federal law, which defines the term as a non-crew member aboard a space flight.<sup>3</sup> “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 vehicle that carries human beings.”<sup>4</sup>

Therefore, under current Florida law, the civil liability shield limits the liability of a spaceflight entity towards a participant for dangers resulting from the inherent risks of spaceflight activities, but not towards a crew member—such as an employee of the spaceflight entity.

To take advantage of this limited civil liability shield, the spaceflight entity must provide to the participant the following boilerplate warning statement and have the participant sign the warning statement:<sup>5</sup>

WARNING: Under Florida law, there is no liability for an injury to or death of a participant 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.<sup>6</sup>

However, even if a participant signs the warning statement, the limited civil liability shield does not protect the spaceflight entity if the spaceflight entity does any of the following:

- 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.
- Intentionally injures the participant.<sup>7</sup>

##### Federal Definitions for Spaceflight Activities

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<sup>1</sup> S. 331.501, F.S.

<sup>2</sup> S. 331.501(1)(c), F.S.

<sup>3</sup> A spaceflight “participant” is defined as the term is defined in 51 U.S.C. s. 50902, which includes “an individual, who is not crew or a government astronaut, carried within a launch vehicle or reentry vehicle.”

<sup>4</sup> 51 U.S.C. s. 50902.

<sup>5</sup> S. 331.501(3), F.S.

<sup>6</sup> S. 331.501(3)(b), F.S.

<sup>7</sup> S. 331.501(2)(b), F.S.

Federal law—specifically, 51 U.S.C. s. 50902—defines various spaceflight-related terms, some of which are borrowed by Florida law for use within s. 331.501, F.S. One term that is defined in federal law but is not currently used in s. 331.501, F.S., is the term “government astronaut,” which means an individual who is:

- Designated as a government astronaut by the National Aeronautics and Space Administration (NASA);
- Carried within a launch or reentry vehicle in the course of his or her employment; 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
  - International partner astronaut—that is, an individual designated, under the International Space Station Intergovernmental Agreement by a partner to that agreement other than the United States, as qualified to serve as an International Space Station crew member.<sup>8</sup>

## Effect of Proposed Changes

CS/CS/HB 839 amends s. 331.501, F.S., to extend the liability immunity held by spaceflight entities against spaceflight participants to also include immunity against crew members. The bill also broadens the liability immunity to apply to any injury or death resulting from “spaceflight activities,” regardless of whether such injury or death arose out of the “inherent risks” of such activities. The bill provides that “spaceflight activities” includes launch services or reentry services, as well as activities occurring between launch and landing.

The bill also adds a definition of “crew” within s. 331.501, F.S., to incorporate relevant definitions from federal law, so that “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 vehicle that carries human beings.
- Any “government astronaut,” which means an individual who is:
  - Designated as such by the National Aeronautics and Space Administration;
  - Carried within a launch or reentry vehicle in the course of his or her employment; 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
    - International partner astronaut—that is, an individual designated, under the International Space Station Intergovernmental Agreement by a partner to that agreement other than the United States, as qualified to serve as an International Space Station crew member.

The bill also modifies the definition of “spaceflight entity” within s. 331.501, F.S., to:

- Include a public or private entity that is otherwise authorized by the United States Government to conduct spaceflight activities;
- Specify that the manufacturers or suppliers covered under the definition are the manufacturers and suppliers of “spaceflight components, services, or vehicles”; and
- Eliminate the requirement that the FAA must have reviewed such components, services, or vehicles.

The bill provides that the boilerplate warning statement within s. 331.501(3)(b), F.S., must be provided to each participant or crew, regardless of whether the spaceflight activities are provided to a participant, and regardless of whether such activities occur on or off a launch site. The bill also removes from the boilerplate warning statement any reference to the “inherent risks” of the spaceflight activity, so that under the bill, such warning statement now reads as follows:

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<sup>8</sup> *Id.*

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 activity. Injuries caused by 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.

Finally, the bill changes the exception to the liability immunity to allow suit only if the spaceflight entity:

- Commits an act or omission that constitutes gross negligence or willful or wanton disregard for the safety of the participant or crew;
- Knew of an extraordinarily dangerous condition that is not inherent in spaceflight activities; or
- Intentionally injures the participant or crew.

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

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 331.501, F.S., relating to spaceflight; informed consent.

**Section 2:** Provides an effective date of July 1, 2023.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

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

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 9, 2023, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Modified the definitions of “spaceflight entity” and “crew.”
- Changed the exception to the liability protection to provide that an entity may be liable if it knew or reasonably should have known of an extraordinarily dangerous condition that is not inherent in spaceflight activities.

On April 11, 2023, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that the liability protection extends to activities occurring between launch and landing.
- Provided that the liability protection shields a spaceflight entity from injury or death resulting from spaceflight activities, rather than only an injury or death resulting from the inherent risks of spaceflight activities; and modified the boilerplate warning statement accordingly.
- Narrowed the exception to the liability shield by removing language providing that a spaceflight entity may be liable if it “reasonably should have known” of an extraordinarily dangerous condition.
- Required a spaceflight entity to have each participant or crew sign the warning statement if the spaceflight entity provides any spaceflight activities, without reference to whether such activities are provided to a participant or crew.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.