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1
2 An act relating to liability releases; amending s.
3 549.09, F.S.; redefining the term "nonspectators" to
4 include a minor on whose behalf a natural guardian has
5 signed a motorsport liability release; providing that
6 a motorsport liability release signed by a natural
7 guardian on behalf of a minor participating in a
8 sanctioned motorsports event is valid to the same
9 extent as for other nonspectators; limiting the
10 validity of a waiver or release signed by a natural
11 guardian on behalf of a minor participating in an
12 activity at a closed-course motorsport facility other
13 than a sanctioned motorsports event; amending s.
14 744.301, F.S.; authorizing natural guardians to waive,
15 in advance, claims for injuries arising from risks
16 inherent in a commercial activity; defining the term
17 "inherent risk"; providing a statement that must be
18 included in the waiver; creating a rebuttable
19 presumption that a waiver is valid and that the injury
20 arose from the inherent risk; providing the
21 requirements and standard of evidence for overcoming
22 the presumption; authorizing natural guardians to
23 waive, in advance, any claim against a noncommercial
24 provider to the extent allowed by common law;
25 providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. Paragraph (g) of subsection (1) and subsection

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30 (3) of section 549.09, Florida Statutes, are amended to read:

31 549.09 Motorsport nonspectator liability release.—

32 (1) As used in this section:

33 (g) “Nonspectator” ~~“Nonspectators”~~ means an event
34 participant participants who has have signed a motorsport
35 liability release or, in the case of a minor, whose natural
36 guardian has signed a motorsport liability release on behalf of
37 the minor.

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

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

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

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

54 744.301 Natural guardians.—

55 (3) In addition to the authority granted in subsection (2),
56 natural guardians are authorized, on behalf of any of their
57 minor children, to waive and release, in advance, any claim or
58 cause of action against a commercial activity provider, or its

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59 owners, affiliates, employees, or agents, which would accrue to
60 a minor child for personal injury, including death, and property
61 damage resulting from an inherent risk in the activity.

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

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

70 2. The risk that the minor child or another participant in
71 the activity may act in a negligent or intentional manner and
72 contribute to the injury or death of the minor child. A
73 participant does not include the activity provider or its
74 owners, affiliates, employees, or 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
84 AGREEING TO LET YOUR MINOR CHILD ENGAGE IN A
85 POTENTIALLY DANGEROUS ACTIVITY. YOU ARE AGREEING THAT,
86 EVEN IF (...name of released party or parties...) USES
87 REASONABLE CARE IN PROVIDING THIS ACTIVITY, THERE IS A

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88 CHANCE YOUR CHILD MAY BE SERIOUSLY INJURED OR KILLED
89 BY PARTICIPATING IN THIS ACTIVITY BECAUSE THERE ARE
90 CERTAIN DANGERS INHERENT IN THE ACTIVITY WHICH CANNOT
91 BE AVOIDED OR ELIMINATED. BY SIGNING THIS FORM YOU ARE
92 GIVING UP YOUR CHILD'S RIGHT AND YOUR RIGHT TO RECOVER
93 FROM (...name of released party or parties...) IN A
94 LAWSUIT FOR ANY PERSONAL INJURY, INCLUDING DEATH, TO
95 YOUR CHILD OR ANY PROPERTY DAMAGE THAT RESULTS FROM
96 THE RISKS THAT ARE A NATURAL PART OF THE ACTIVITY. YOU
97 HAVE THE RIGHT TO REFUSE TO SIGN THIS FORM, AND
98 (...name of released party or parties...) HAS THE
99 RIGHT TO REFUSE TO LET YOUR CHILD PARTICIPATE IF YOU
100 DO NOT SIGN THIS FORM.

101
102 (c) If a waiver or release complies with paragraph (b) and
103 waives no more than allowed under this subsection, there is a
104 rebuttable presumption that the waiver or release is valid and
105 that any injury or damage to the minor child arose from the
106 inherent risk involved in the activity.

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

111 2. To rebut the presumption that the injury or damage to
112 the minor child arose from an inherent risk involved in the
113 activity, a claimant must demonstrate by clear and convincing
114 evidence that the conduct, condition, or other cause resulting
115 in the injury or damage was not an inherent risk of the
116 activity.

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

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

126 (4)~~(3)~~ All instruments executed by a natural guardian for
127 the benefit of the ward under the powers specified in this
128 section are ~~subsection (2) shall be~~ binding on the ward. The
129 natural guardian may not, without a court order, use the
130 property of the ward for the guardian's benefit or to satisfy
131 the guardian's support obligation to the ward.

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