WATER AND NATURAL RESOURCES COMMITTEE
AND THE
COURTS, CORRECTIONS AND JUSTICE COMMITTEE
AUGUST 27, 2012

SPACE FLIGHT LEGISLATION

I.
CURRENT STATE DIFFERENCES

Five states have enacted spaceflight legislation: Colorado, Florida, New Mexico, Texas and Virginia. (California has proposed legislation similar to New Mexico) The objectives of all five statutes are to limit the liability of persons who are the providers of the spaceflight and to require that the individuals who participate in space flight consent to the risks associated with spaceflight after being given explicit, written notice of those risks. The states differ with respect to the providers who receive protection (the "protected parties") and the scope of the protection from liability that those providers are afforded.

A. Protected Persons

1. All the states include the operators as protected parties.
2. Colorado, Florida, Texas and Virginia also include manufactures and suppliers as protected parties.
3. Texas adds to its protection: employees, officers, directors, owners, shareholders, members, managers, partners of the operator, manufacturer, or supplier.

B. Scope of Liability Protection

All five statutes deal with a protected person's liability, first, by indicating those injuries for which the protected person will not be liable, and then by legislating exceptions to that limitation of liability, stating when the protected person will be liable.

1. Limitation of Liability

a. Colorado, Florida and New Mexico provide that protected parties are relieved from liability resulting exclusively from the "inherent risks" of spaceflight. Inherent risks are not defined; thus, its meaning will be left to court decisions.

b. Virginia's protection from liability extends to "risks" from space flight. Virginia and does not require that those risks be "inherent."

c. Texas does not require that a injury result from any risk. Texas simply states that the protected persons are not liable for any space flight injury.

2. Exceptions

a. Colorado, Florida and New Mexico indicate that protected parties will be liable in three situations:

i. The protected party has been grossly negligent or its conduct evidences willful or wanton disregard for the safety of the participant. In either case, the protected party's conduct must be the proximate cause of the injury suffered by the participant.
ii. The protected party has actual knowledge or reasonably should have known of a dangerous condition on the land or in the facility or the equipment and the danger is the proximate cause of the injury.
iii. The protected party intentionally causes the injury.

b. Texas and Virginia have two exceptions (they have not included the second exception above):

i. The protected party was grossly negligent, which evidences willful and wanton disregard for the safety of the participant.
ii. The protected party intentionally causes the injury.

All states require that participants sign an assumption of the risk warning and agreement as a condition of any protected party limitation of liability.

Only New Mexico has a sunset - 2018.

II
NEW MEXICO PROPOSED LEGISLATION

The proposed legislation:

1. Aligns New Mexico with Texas.

2. Changes the definitions so that the New Mexico law does not incorporate federal laws by reference, which is prohibited by Article 4 Section 18 of the New Mexico Constitution.

3. Extends to manufacturers and suppliers of components and services, the same protection that the operators have; that is they will not be liable to passengers for injury or death on a space flight unless they act intentionally or with gross negligence. The protection also extends to employees, officers, directors and owners of the space flight entities.

4. Adds a definition of "space flight injury" to include all the possible injuries a participant may suffer. This definition is not intended to add anything new, but merely to restate what appears in other sections of the present Act.

5. Amends present law that explains when a space flight entity is liable in the event of a space flight accident. This amendment leaves intact the liability for intentional acts or gross negligence, but eliminates liability resulting from negligence.

6. Changes the Agreement and Warning found in Section 41-14-4. The purpose of the section has not been changed; that purpose is to give participants notice of the risks he/she is taking. The goal of the rewritten Agreement is to track the actual protections the spaceport entities are receiving.

   In addition, a provision has been added that if the Agreement and Warning complies with Section 41-14-4(b), the Agreement and Warning cannot be held unenforceable based on unconscionablity or in violation of public policy. The conditions with which the Agreement and Warning must comply are that the agreement must be in writing, must be conspicuous, must not be included in any other agreement signed by the participant, and must be signed by the participant. These conditions are disclosure provisions, so that a participant is put on notice as to the risk he or she is taking.

7. The 2018 sunset clause remains in place.