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BILL

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TORT CLAIMS; EXPANDING THE APPLICATION OF THE SPACE  
FLIGHT INFORMED CONSENT ACT; AMENDING THE CIRCUMSTANCES UNDER  
WHICH A SPACE FLIGHT ENTITY IS LIABLE UNDER THE SPACE FLIGHT  
INFORMED CONSENT ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 41-14-1 NMSA 1978 (being Laws 2010,  
Chapter 8, Section 1) is amended to read:

"41-14-1. SHORT TITLE.--~~[This act]~~ Chapter 41, Article 14  
NMSA 1978 may be cited as the "Space Flight Informed Consent  
Act".

**SECTION 2.** Section 41-14-2 NMSA 1978 (being Laws 2010,  
Chapter 8, Section 2) is amended to read:

"41-14-2. DEFINITIONS.--As used in the Space Flight  
Informed Consent Act:

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underscored material = new  
[bracketed material] = delete

1           A. "crew" means an employee of a space flight  
2           entity who performs activities in the course of that employment  
3           directly relating to the launch, reentry or other operation of  
4           or in a launch vehicle or reentry vehicle that carries human  
5           beings;

6           B. "launch" means placing or trying to place a  
7           launch vehicle or reentry vehicle and any payload, crew or  
8           participant in a suborbital trajectory, in earth orbit in outer  
9           space or otherwise in outer space. "Launch" includes  
10          activities involved in the preparation of a launch vehicle or  
11          payload for launch when those activities take place at a launch  
12          site in New Mexico;

13          C. "launch vehicle" means:

14               (1) a vehicle built to operate in, or place a  
15               payload or human beings in, outer space; or

16               (2) a suborbital rocket;

17          ~~[A.]~~ D. "participant" means [a space flight  
18          ~~participant as that term is defined in 49 U.S.C. Section 70102]~~  
19          an individual who is not crew and who is carried within a  
20          launch vehicle or reentry vehicle;

21          E. "participant injury" means an injury sustained  
22          by a participant, including bodily injury, emotional distress,  
23          death, property damage or any other loss arising from the  
24          participant's participation in space flight activities;

25          F. "payload" means an object that a person

1 undertakes to place in outer space by means of a launch vehicle  
2 or reentry vehicle, including components of the vehicle  
3 specifically designed or adapted for that object;

4 G. "reenter" or "reentry" means to purposefully  
5 return or attempt to return a reentry vehicle and its payload,  
6 crew or participants from earth orbit or from outer space to  
7 earth;

8 H. "reentry vehicle" means a vehicle, including a  
9 reusable launch vehicle, designed to return from earth orbit or  
10 outer space to earth substantially intact;

11 ~~[B-]~~ I. "space flight activities" means [launch  
12 ~~services or reentry services as those terms are defined in 49~~  
13 ~~U.S.C. Section 70102; and]:~~

14 (1) activities, including crew training,  
15 involved in the preparation of a launch vehicle, payload, crew  
16 or participant for launch;

17 (2) the conduct of a launch;

18 (3) activities, including crew training,  
19 involved in the preparation of a reentry vehicle and payload,  
20 crew or participant; and

21 (4) the conduct of a reentry; and

22 ~~[G-]~~ J. "space flight entity" means:

23 (1) a public or private entity holding [a],  
24 either directly or through a corporate subsidiary or parent, a  
25 license, permit or other authorization issued by the United

1 States federal aviation administration [~~launch, reentry,~~  
2 ~~operator or launch site license for space flight activities~~]  
3 pursuant to the federal Commercial Space Launch Amendments Act  
4 of 2004, including, but not limited to, a safety approval and a  
5 payload determination;

6 (2) a manufacturer or supplier of components,  
7 services or vehicles used by the space flight entity and, if  
8 applicable, reviewed by the United States federal aviation  
9 administration as part of issuing the license or other  
10 authorization; or

11 (3) an employee, officer, director, owner,  
12 stockholder, member, manager or partner of the entity,  
13 manufacturer or supplier."

14 SECTION 3. Section 41-14-3 NMSA 1978 (being Laws 2010,  
15 Chapter 8, Section 3) is amended to read:

16 "41-14-3. [~~CIVIL IMMUNITY FOR SPACE FLIGHT ENTITIES~~]  
17 LIMITED LIABILITY.--

18 A. Except as provided in Subsection B of this  
19 section, a space flight entity is not liable [~~for injury to or~~  
20 ~~death of a participant resulting from the inherent risks of~~  
21 ~~space flight activities so long as the warning contained in~~  
22 ~~Section 4 of the Space Flight Informed Consent Act is~~  
23 ~~distributed and signed as required. Except as provided in~~  
24 ~~Subsection B of this section, a participant or participant's~~  
25 ~~representative may not maintain an action against or recover~~

.190210.1

1 ~~from a space flight entity for the loss, damage or death of the~~  
2 ~~participant resulting exclusively from any of the inherent~~  
3 ~~risks of space flight activities]~~ to any person for a  
4 participant injury or damages arising out of the participant  
5 injury if the participant has signed the warning and agreement  
6 required by Section 41-14-4 NMSA 1978.

7 B. Subsection A of this section does not prevent or  
8 limit the liability of a space flight entity if the space  
9 flight entity:

10 (1) commits an act or omission that  
11 constitutes gross negligence ~~[or]~~ evidencing willful or wanton  
12 disregard for the safety of the participant and that act or  
13 omission proximately causes injury, damage or death to the  
14 participant; or

15 (2) ~~[has actual knowledge or reasonably should~~  
16 ~~have known of a dangerous condition on the land or in the~~  
17 ~~facilities or equipment used in the space flight activities and~~  
18 ~~the danger proximately causes injury, damage or death to the~~  
19 ~~participant; or~~

20 ~~(3)]~~ intentionally injures the participant.

21 C. The limitation on legal liability provided to a  
22 space flight entity by the Space Flight Informed Consent Act is  
23 in addition to any other limitation of legal liability  
24 otherwise provided by law."

25 SECTION 4. Section 41-14-4 NMSA 1978 (being Laws 2010,

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Chapter 8, Section 4) is amended to read:

"41-14-4. AGREEMENT AND WARNING [~~AND ACKNOWLEDGMENT  
REQUIRED~~].--

A. A space flight entity providing space flight activities to a participant, whether the activities occur on or off the site of a facility capable of launching a suborbital flight, shall have each participant sign a warning statement. The warning statement shall contain, at a minimum, the following: [~~statement:~~

~~"WARNING AND ACKNOWLEDGMENT~~

~~I understand and acknowledge that under New Mexico law, there is no liability for injury to or death sustained by a participant in a space flight activity provided by a space flight entity if the injury or death results from the inherent risks of the space flight activity. Injuries caused by the inherent risks of space flight activities may include, among others, death, bodily injury, emotional injury or property damage. I assume all risk of participating in this space flight activity."~~

~~B. Failure to provide the warning statement requirements in this section to a participant shall prevent a space flight entity from invoking the immunity provided by this section with regard to that participant]~~

"AGREEMENT AND WARNING

I UNDERSTAND AND ACKNOWLEDGE THAT UNDER NEW MEXICO LAW, A SPACE

1 FLIGHT ENTITY IS NOT LIABLE FOR ANY INJURY TO, OR DEATH OF, A  
2 PARTICIPANT RESULTING FROM SPACE FLIGHT ACTIVITIES EXCEPT FOR  
3 INJURY OR DEATH CAUSED BY THE SPACE FLIGHT ENTITY'S GROSS  
4 NEGLIGENCE EVIDENCING WILLFUL OR WANTON DISREGARD FOR THE  
5 SAFETY OF THE PARTICIPANT OR CAUSED INTENTIONALLY BY THE SPACE  
6 FLIGHT ENTITY. THOSE INJURIES MAY INCLUDE BODILY INJURY,  
7 EMOTIONAL DISTRESS, DEATH OR PROPERTY DAMAGE. I UNDERSTAND  
8 THAT I HAVE ACCEPTED ALL RISK OF INJURY, DEATH, PROPERTY DAMAGE  
9 AND OTHER LOSS THAT MAY RESULT FROM SPACE FLIGHT ACTIVITIES  
10 EXCEPT FOR THE RISK OF INJURY, DEATH, PROPERTY DAMAGE AND OTHER  
11 LOSS THAT MAY RESULT FROM THE SPACE FLIGHT ENTITY'S GROSS  
12 NEGLIGENCE EVIDENCING WILLFUL OR WANTON DISREGARD FOR THE  
13 SAFETY OF THE PARTICIPANT OR FROM AN INTENTIONAL ACT OR  
14 OMISSION OF THE SPACE FLIGHT ENTITY."

15 B. An agreement under Subsection A of this section  
16 is effective and enforceable and is not unconscionable or  
17 against public policy if it is:

18 (1) in writing;  
19 (2) in a document separate from any other  
20 agreement between the participant and the space flight entity  
21 other than a different warning, consent or assumption of risk  
22 statement;

23 (3) printed in not less than ten-point bold  
24 type; and

25 (4) signed by the participant."