

- SUBJECT:** Limiting liability of space flight entities to space flight participants
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Hunter, Hughes, Alonzo, Hartnett, Leibowitz, Madden, Martinez
0 nays
4 absent — Branch, Jackson, Lewis, Woolley
- WITNESSES:** For — Robert Millman, Blue Origin, LLC
Against — None
- BACKGROUND:** In recent years, private space flight has emerged as a fledgling industrial and commercial business with future growth potential. Many states have used economic and legal incentives to attract space flight companies in the hopes of creating new jobs and reaping other economic benefits.
- With its generally low-tax, pro-business stance, Texas has become an attractive staging ground for private space launch and space flight operations. Texas law, however, provides no explicit liability protection for space flight entities that contract with private individuals who wish to participate in space launch and space flight activities, even when the contracts contain explicit written warnings about the inherent risks of space flight. The lack of a statutory provision concerning potential liability of space flight entities has raised questions among these entities and their vendors about potential liability under state law.
- Federal law, 49 U.S.C. sec. 70105, requires a non-crew member individual, or “space flight participant,” who wishes to be carried in a space launch vehicle or reentry vehicle to provide written informed consent acknowledging that the United States Government has not certified the vehicle as safe for carrying crew or space flight participants.
- DIGEST:** CSHB 1679 would provide that a space flight entity would not be liable to any person for an injury sustained by a space flight participant during the course of space flight activities if the participant had signed an agreement accepting all risk of injury and had given written consent as required under

federal law, 49 U.S.C. sec. 70105. The space flight entity also would not be liable for any other damages or losses arising out of an injury to a space flight participant.

Definitions. CSHB 1679 would define “space flight participant” to mean an individual who was carried aboard a launch vehicle or reentry vehicle and who was not a vehicle crew member. The bill would define “space flight entity” to mean a person who had obtained an appropriate license from the Federal Aviation Administration (FAA) or other authorization to conduct space flight activities. The term also would include:

- a manufacturer or supplier that provided components, vehicles, or services to the space flight entity, and that had been reviewed by the FAA; and
- an employee, officer, director, owner, stockholder, member, manager, or partner of the space flight entity, manufacturer, or supplier.

“Space flight activities” would include activities and training in all phases of preparing for and undertaking space flight, from the preparation of a launch vehicle to reentry and post-landing recovery of the reentry vehicle.

“Space flight participant injury” would encompass any injury, property loss, emotional distress, death or other loss sustained by a space flight participant during space flight activities.

CSHB 1679 would also define the terms “launch” and “reentry.”

Warning required. CSHB 1679 would require a space flight participant to sign an agreement and warning statement with a space flight entity before participating in any space flight activity. The agreement would have to contain language acknowledging that a space flight entity would not be liable for a space flight participant’s injury or death resulting from space flight activities and that the participant had understood and accepted all risk of injury, death, property damage, or any other loss resulting from space flight activities.

The agreement also would have to include any other language required by federal law.

No liability protection from gross negligence or intentional conduct.
CSHB 1679 would not limit a space flight entity's liability for an injury:

- proximately caused by a space flight entity's gross negligence, as evidenced by willful or wanton disregard for a space flight participant's safety; or
- intentionally caused by a space flight entity.

Agreement to limit liability enforceable. An agreement between a space flight entity and a space flight participant that limited or otherwise affected liability related to space flight activity would be an enforceable agreement under state law, except as to liability for an injury caused by a space flight entity's gross negligence or intentional act. A party bound by the agreement could not raise a defense that it was unconscionable or otherwise against public policy.

CSHB 1679 would apply only to a cause of action that accrued on or after the bill's effective date.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

NOTES:

The companion bill, SB 2105 by Uresti, passed the Senate by 31-0 on April 27 and was reported favorably, without amendment, by the House Judiciary and Civil Jurisprudence Committee on May 7, making it eligible to be considered in lieu of HB 1679.