

- SUBJECT:** Limiting the liability of space flight entities to space flight participants
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Hunter, Hughes, Alonzo, Hartnett, Jackson, Lewis, Madden, Martinez, Woolley
- 0 nays
- 2 absent — Branch, Leibowitz
- SENATE VOTE:** On final passage, April 27 — 31-0
- WITNESSES:** (*On House companion bill, HB 1679:*)
For — Robert Millman, Blue Origin, LLC
- Against — None
- BACKGROUND:** Federal law, 49 U.S.C. sec. 70105, requires a non-crew member individual, or “space flight participant,” who wishes to travel 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:** SB 2105 would provide that a space flight entity was not 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.** SB 2105 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 used by the space flight entity and 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 damage, emotional distress, death, or other loss sustained by a space flight participant during space flight activities.

SB 2105 would also define the terms “launch” and “reentry.”

Warning required. SB 2105 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 was not 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 would be effective and enforceable if it was in writing and signed by the space flight participant and a competent witness.

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

No liability protection from gross negligence or intentional conduct. SB 2105 would not limit a space flight entity’s liability for an injury that was:

- proximately caused by a space flight entity’s gross negligence, as shown 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 the agreement was unconscionable or otherwise against public policy.

Effective date. SB 2105 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.

**SUPPORTERS
SAY:**

SB 2105 would promote the development of a commercial space launch industry in Texas by establishing clear guidelines for the liability of a space flight entity to persons who voluntarily contracted and gave informed consent to participate in space launch and space flight operations. Currently, Texas law provides no explicit liability protections for space flight entities that contract with individuals who wish to participate in space launch and space flight activities, even though these 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. By providing clear answers to these questions, the bill would help Texas become a more attractive staging ground for private space flight operations, resulting in more state and local jobs and greater economic growth.

The liability protections afforded to space flight entities by SB 2105 would apply only in the event of injuries or damages resulting to a space flight participant and would not apply if a space flight entity was grossly negligent or intentionally caused an injury or damage. The bill would not create any sort of "blanket immunity" or protect space flight entities from injuries resulting to third parties by air-to-air collisions, falling debris, or the like. The plain language of the bill clearly would afford immunity only to specifically defined "space flight participant" injuries, not all injuries.

**OPPONENTS
SAY:**

SB 2105 could be more carefully worded to ensure that the waiver of immunity to space flight entities would apply only to injuries or damages suffered by a space flight participant and not injuries or damages caused to non-participants or non-crew members as a result of a collision with

another aircraft or as a result of falling debris, to cite just a couple of possible examples. A court could interpret the phrase “a space flight entity is not liable to *any person* for a space flight participant injury or damages arising out of the space flight participation injury” to shield a space flight entity from liability for injuring an uninvolved third party in the air or on the ground. The bill should be reworded to ensure that the liability protections applied only to injuries suffered by space flight participants.

NOTES:

The companion bill, HB 1679 by Gallego, was reported favorably as substituted by the House Judiciary and Civil Jurisprudence Committee on April 24 and placed on the May 8 General State Calendar, where no further action was taken.