

- SUBJECT:** Liability waiver by space flight participants to space flight entities
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 10 ayes — Jackson, Lewis, Bohac, Castro, S. Davis, Hartnett, Madden, Raymond, Scott, Thompson
- 0 nays
- 1 absent — Woolley
- WITNESSES:** For — David Brown, Blue Origin; (*Registered, but did not testify:* Cary Roberts, Carol Sims, Texas Civil Justice League)
- Against — None
- BACKGROUND:** Under federal law, 49 U.S.C. sec. 70105, a non-crew space flight participant who wishes to be carried in a space launch vehicle or reentry vehicle must provide written informed consent acknowledging that the U.S. government has not certified the vehicle as safe for carrying crew or space flight participants.
- DIGEST:** Under CSHB 245, a space flight entity would not be liable to any person for an injury sustained by a non-crew space flight participant during 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 agreement would not limit a space flight entity's liability for an injury caused by gross negligence or that was intentionally caused.
- A space flight entity would be a person who had obtained an appropriate license from the Federal Aviation Administration (FAA) or other authorization to conduct space flight activities, including a manufacturer or supplier of components, vehicles, or services for the space flight entity that had been reviewed by the FAA, and an employee, officer, director, owner, stockholder, member, manager, or partner of the entity, manufacturer, or supplier.

The required agreement and warning statement would have to state 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 understood and accepted all risk of injury, death, property damage, or any other loss resulting from space flight activities. The agreement would also have to include any other language required by federal law.

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 effective and enforceable under state law. The agreement could not limit liability for an injury caused by a space flight entity's gross negligence or that was intentionally caused. A party bound by the agreement could not raise a defense that it was unconscionable or otherwise against public policy.

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, 2011, and would apply only to a cause of action that occurred on or after the bill's effective date.

**SUPPORTERS
SAY:**

With its generally low-tax, pro-business stance, Texas could attract private space launch and space flight operations if the state provided explicit liability protection for space flight entities that contracted with private individuals. By limiting space flight entities' liability to participant injuries caused by gross negligence or intentional acts, CSHB 245 would make Texas competitive in this growing market, boost the state's tourism industry, create jobs, and increase tax revenue.

Private space flight is emerging as a growing industrial and commercial business. Several states, including Florida, Virginia, and New Mexico, have used economic and legal incentives such as those in CSHB 245 to attract space flight companies in the hopes of creating new jobs and reaping other economic benefits.

The bill would not create a "blanket immunity" or protect space flight entities from injuries to participants resulting from air-to-air collisions, falling debris, or the like. The liability immunity would be limited only to space flight participants who voluntarily chose to waive liability after being made fully aware of the potential consequences.

While private space activities have inherent risks, the liability agreement that would be required by CSHB 245 would create legal requirements similar to other inherently risky adventures, such as whitewater rafting or skydiving. Participants in these types of activities who are aware of and often attracted to their dangers should assume their risks.

By allowing Texas to enter and flourish in an emerging business sector, CSHB 245 would let the state capitalize on the decades of government experience in space flight travel. As the home to the Johnson Space Center, Texas is uniquely positioned to learn from the experiences of government-run space flight and make it safe and accessible to private citizens.

OPPONENTS
SAY:

Private space flight is a fledgling industry without a historical safety track record. Private citizens could not be made fully aware of all the risks and dangers in such an industry to make a fully informed decision to waive their rights.

NOTES:

The committee substitute differs from the introduced bill by requiring the agreement and warning limiting liability to be typed in at least 10-point bold font and to be printed on a separate document from any other agreement between the space flight participant and the space flight entity.

The companion bill, SB 115 by Uresti, passed the Senate by 31-0 on March 15 and has been referred to the House Judiciary and Civil Jurisprudence Committee.