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SENATE BILL 9

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Mary Kay Papen

FOR THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE
AND THE ECONOMIC AND RURAL DEVELOPMENT COMMITTEE

AN ACT

RELATING TO TORT CLAIMS; REQUIRING INFORMED CONSENT OF SPACE
FLIGHT PARTICIPANTS; ESTABLISHING A PUBLIC POLICY THAT INFORMED
SPACE FLIGHT PARTICIPANTS WHO EXECUTE WAIVERS ASSUME THE RISKS
OF ENGAGING IN SPACE FLIGHT ACTIVITIES.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Space Flight Informed Consent Act".

Section 2. LEGISLATIVE FINDINGS AND STATEMENT OF PUBLIC
POLICY.--

A. The legislature finds that:

(1) the commercial human space flight industry
is an emerging and important industry, and private industry has
begun to develop vehicles capable of carrying human beings into
space. New Mexico and its residents will gain significant

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1 economic and personal benefits from the development of a
2 successful and robust commercial human space flight industry,
3 while playing a significant role in its growth. Spaceport
4 development will create jobs and have a positive effect on the
5 state's tax base;

6 (2) commercial human space flight activities
7 involve inherent risks that cannot be eliminated or controlled
8 through the exercise of reasonable care; and

9 (3) space flight participants have the
10 bargaining position and the right to contract to assume the
11 risk of space flight activities.

12 B. The legislature declares that it is the public
13 policy of New Mexico that space flight participants who are
14 informed of the risk of space flight activities as required by
15 the Space Flight Informed Consent Act and who voluntarily
16 release space flight entities from liability have assumed the
17 risk of any space flight participant injury.

18 Section 3. DEFINITIONS.--As used in the Space Flight
19 Informed Consent Act:

20 A. "crew" means any employee of a space flight
21 entity, or of a contractor or subcontractor of a space flight
22 entity, who performs activities in the course of that
23 employment directly relating to the launch, reentry or other
24 operation of or in a launch vehicle or reentry vehicle that
25 carries human beings;

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1 B. "launch" means to place or try to place a launch
2 vehicle or reentry vehicle and any payload, crew or space
3 flight participant:

- 4 (1) in a suborbital trajectory;
5 (2) in earth orbit in outer space; or
6 (3) otherwise in outer space, including
7 activities involved in the preparation of a launch vehicle or
8 payload for launch;

9 C. "launch vehicle" means a vehicle built to
10 operate in or place a payload or human beings in outer space;
11 or a suborbital rocket;

12 D. "reentry" means to return or attempt to return a
13 reentry vehicle and any payload, crew or space flight
14 participant from suborbit, earth orbit or outer space to earth;

15 E. "reentry vehicle" means a vehicle designed to
16 return from suborbit, earth orbit or outer space to earth, or a
17 reusable launch vehicle designed to return from suborbit, earth
18 orbit or outer space to earth, substantially intact;

19 F. "space flight activities" means activities and
20 training in all phases of preparing for and undertaking space
21 flight, including:

22 (1) the preparation of a launch vehicle,
23 payload, crew or space flight participant for launch, space
24 flight and reentry;

25 (2) the conduct of the launch;

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1 (3) conduct occurring between the launch and
2 reentry;

3 (4) the preparation of a reentry vehicle,
4 payload, crew, or space flight participant for reentry;

5 (5) the conduct of reentry and descent;

6 (6) the conduct of the landing; and

7 (7) the conduct of post-landing recovery of a
8 reentry vehicle, payload, crew or space flight participant;

9 G. "space flight entity" means any public or
10 private entity holding, either directly or through a corporate
11 subsidiary or parent, a license, permit or other authorization
12 issued by the United States federal aviation administration
13 pursuant to the federal Commercial Space Launch Amendments Act
14 of 2004, including, but not limited to, a safety approval and a
15 payload determination. "Space flight entity" includes any
16 manufacturer or supplier of components, services or vehicles
17 that have been reviewed by the United States federal aviation
18 administration as part of issuing such a license, permit or
19 authorization. "Space flight entity" also includes an
20 employee, officer, director, owner, stockholder, member,
21 manager or partner of the entity, manufacturer or supplier;

22 H. "space flight participant" means an individual,
23 who is not crew, carried within a launch vehicle or reentry
24 vehicle; and

25 I. "space flight participant injury" means an

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1 injury sustained by a space flight participant, including
2 bodily injury, death, emotional injury or property damage or
3 any other loss arising from the individual's participation in
4 space flight activities.

5 Section 4. ASSUMPTION OF THE RISK BY SPACE FLIGHT
6 PARTICIPANTS.--

7 A. Except as provided in Subsection B of this
8 section, a written waiver of claims or release of liability
9 regarding the risks of space flight activities shall be
10 enforceable between a space flight entity and a space flight
11 participant; provided that the agreement was knowing and
12 voluntary and the space flight participant had the capacity to
13 contract.

14 B. A waiver of claims or release of liability shall
15 not release a space flight entity from liability for a space
16 flight injury caused by the space flight entity's gross
17 negligence that evidences reckless or wanton disregard for the
18 safety of the space flight participant.

19 C. Space flight entities are not required to
20 transport space flight participants who chose not to sign a
21 written waiver of claims or release of liability.

22 D. If a valid waiver of claims or release of
23 liability has been signed by a space flight participant, no
24 space flight participant, space flight participant's
25 representative, including the heirs, administrators, executors,

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1 assignees, next of kin and estate of the space flight
2 participant, or any other person may bring or maintain an
3 action against or recover from a space flight entity for a
4 space flight participant injury that resulted from the risks of
5 space flight activities.

6 Section 5. REQUIRED WARNING OF RISKS AND RELEASE OF
7 LIABILITY.--

8 A. A space flight entity providing space flight
9 activities shall inform each space flight participant of the
10 risks of the space flight activities and shall provide a
11 warning statement and release of liability for each space
12 flight participant's signature at least seven days prior to the
13 space flight activities, or as soon as practical for space
14 flight activities contracted for within seven days of the
15 activity. The warning statement and release of liability
16 shall, at a minimum, contain the following language plus any
17 additional language required by federal law:

18 "WARNING OF RISKS AND RELEASE OF LIABILITY:

19 1. I understand that the commercial human space flight
20 industry is an emerging industry and that private industry has
21 begun to develop vehicles capable of carrying human beings into
22 space.

23 2. I understand that commercial human space flight
24 activities involve inherent risks that cannot be eliminated or
25 controlled through the exercise of reasonable care.

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1 3. I therefore understand, acknowledge and agree that I
2 am waiving all claims for any loss, damage or injury, including
3 bodily injury, emotional injury, death or property damage, that
4 I sustain in space flight activities provided by a space flight
5 entity if the loss, damage or injury results from the risks of
6 the space flight activity.

7 4. I understand, acknowledge and agree that this waiver
8 shall also be binding on my representatives, including my
9 heirs, administrators, executors, assignees, next of kin and
10 estate, or any other person who attempts to bring a claim on my
11 behalf.

12 5. I have been informed of the risks of space flight
13 activities as required by federal law pursuant to 49 U.S.C.
14 Section 70105 and 14 C.F.R. Section 460.45, and I consent to
15 participate in space flight activities after receiving a
16 description of risks.

17 6. I acknowledge that the risks of space flight
18 activities include, but are not limited to, risks of bodily
19 injury, including death, emotional injury and property damage.
20 I understand, acknowledge and agree that I am participating in
21 space flight activities at my own risk.

22 7. I have been given adequate opportunity to consult with
23 an attorney of my own choosing before signing this warning of
24 risks and release of liability.".

25 B. Failure to provide the warning of risks and

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1 release of liability required by Subsection A of this section
2 to a space flight participant and failure to obtain a fully
3 executed waiver from the space flight participant prior to
4 space flight activities shall prevent a space flight entity
5 from invoking the assumption of risk provisions of the Space
6 Flight Informed Consent Act with regard to that space flight
7 participant.

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