

1-8-2018

## HB 1 - Space Flight

Malissa Caroline Barger

*Georgia State University College of Law*, [mbarger1@student.gsu.edu](mailto:mbarger1@student.gsu.edu)

Ethan L. Smith

*Georgia State University College of Law*, [Esmith133@student.gsu.edu](mailto:Esmith133@student.gsu.edu)

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Air and Space Law Commons](#), [Contracts Commons](#), [Environmental Law Commons](#), [Insurance Law Commons](#), [Land Use Law Commons](#), [Legislation Commons](#), [Property Law and Real Estate Commons](#), [Science and Technology Law Commons](#), [Torts Commons](#), and the [Transportation Law Commons](#)

---

### Recommended Citation

Malissa C. Barger & Ethan L. Smith, *HB 1 - Space Flight*, 34 GA. ST. U. L. REV. 251 (2018).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol34/iss1/12>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact [mbutler@gsu.edu](mailto:mbutler@gsu.edu).

## TORTS

***Liability of Owners and Occupiers of Land: Amend Title 51 of the Official Code of Georgia Annotated, Relating to Torts, so as to Provide for the Facilitation of Space Flight Activities in this State; Provide for Definitions; Provide for Exceptions; Limit the Liability of Space Flight Entities Related to Injuries Sustained by Participants who have Agreed in Writing to such a Limitation after Being Provided with certain Warnings; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes***

|                 |   |
|-----------------|---|
| CODE SECTIONS:  | O.C.G.A. §§ 51-3-41, -42, -43,<br>-44 (new)   |
| BILL NUMBER:    | HB 1  |
| ACT NUMBER:     | 172   |
| GEORGIA LAWS:   | 2017 Ga. Laws 348   |
| SUMMARY:        | The Act limits the civil and criminal liability of a space flight entity for injuries sustained by space flight participants arising from ordinary negligence. The Act defines new terms and provides a statutory waiver form that participants with informed consent must sign. The Act mandates space flight participants sign the waiver before participating in any space flight activity. The Act does not limit the liability of space flight entities for gross negligence or intentional acts, nor does it prevent suits from anyone other than the space flight participant. |
| EFFECTIVE DATE: | July 1, 2017  |

*History*

Off the coast of Georgia in Camden County, near the I-95 corridor, is a brownfield site previously owned by a chemical company.<sup>1</sup> Many hope this land will one day become “Spaceport Camden.”<sup>2</sup> The site borders the Atlantic Ocean and sits almost directly behind historic Little Cumberland Island—one of Georgia’s “jewels.”<sup>3</sup> Project proponents hope a spaceport in Camden will bring new jobs to Georgia, as well as a chance for the state to cash in on the burgeoning \$304 billion private space industry.<sup>4</sup> Though HB 1 does not directly authorize a spaceport in Camden, it lays the groundwork for space flight entities to build a spaceport by making Georgia more attractive to these entities.<sup>5</sup>

Private space flight is a relatively new idea to most Americans, but companies like SpaceX, Moon Express, and Planetary Resources have invested millions of dollars to advance space flight technology with the hope of marketing it to consumers.<sup>6</sup> SpaceX, the biggest contender in the industry, recently completed its first successful mission.<sup>7</sup> SpaceX launched the Falcon 9 rocket to put satellites into orbit and then safely landed the rocket booster back on Earth.<sup>8</sup> Planetary Resources, a new start-up company, is planning a mission to send the Arkyd 6 spacecraft to explore whether water exists on an asteroid.<sup>9</sup> Another start-up, Moon Express, recently leased launch space at Cape Canaveral to support its mission of landing on and

---

1. See generally Steve L. Howard, Camden County Board of Commissioners, *NASA Moving Towards Privatization*, SPACEPORT CAMDEN, <http://spaceportcamden.us/download/Why%20Develop%20a%20Spaceport%20and%20NASA%20Privatization%20202.pdf> (last visited Sept. 9, 2017). Thiokol Chemical Corporation used the site to test rocket motors in the 1960s and at one point test fired the world’s most powerful rocket motor at this site. *Id.*

2. See *id.* at 2.

3. Interview with Sen. Bruce Thompson (R-14th) at 5 min., 43 sec. (Mar. 24, 2017) (on file with Georgia State University Law Review) [hereinafter Thompson Interview].

4. *Why Camden County, Georgia – U.S.A.?*, SPACEPORT CAMDEN, <http://spaceportcamden.us/why.php> (last visited Sept. 9, 2017).

5. Thompson Interview, *supra* note 3, at 3 min., 54 sec.; *id.* at 7 min., 30 sec.

6. See Michael Sheetz, *For These Private Space Companies, The Future is Now, and The Final Frontier is in Reach*, CNBC (Feb. 18, 2017, 9:00 AM), <http://www.cnbc.com/2017/02/17/commercial-space-companies-pioneer-the-final-frontier.html>.

7. Azadeh Ansari, *SpaceX Returns to Flight, Nails Rocket Landing*, CNN (Jan. 14, 2017, 6:39 PM), <http://www.cnn.com/2017/01/14/us/spacex-falcon-9-launch/index.html>.

8. *Id.*

9. Sheetz, *supra* note 6.

taking high definition photographs of the moon.<sup>10</sup> Private space flight entities are reaching for the stars with lofty goals, aiming to create an infrastructure in outer space that will support human colonies and even businesses.<sup>11</sup> However, these companies need launch sites, like Spaceport Camden, to grow and expand their businesses, which creates a golden opportunity for coastal states like Georgia to jump on board this exciting new industry.<sup>12</sup>

Space flight entities consider the existence of laws immunizing tort liability a major factor when determining whether to locate in a particular state.<sup>13</sup> Space flight is an inherently dangerous venture. Without some protection from liability, the risk of litigation drastically increases the cost of operating in a particular state.<sup>14</sup> Thus, without HB 1, Spaceport Camden and the rockets that may one day be launched there could never get off the ground.<sup>15</sup> The risk of doing business in Georgia would simply be too high.<sup>16</sup> Standard tort law would apply, and a space flight entity could be liable for any injuries resulting from the inherent risks of space flight.<sup>17</sup> HB 1 sought to change this by giving space flight entities limited immunity from ordinary negligence lawsuits by spacecraft passengers.<sup>18</sup> HB 1 does not create immunity from suits alleging gross negligence or intentional misconduct.<sup>19</sup>

HB 1 is not the first time the General Assembly considered space flight legislation. During the 2015-2016 session, Representative Spencer introduced HB 734.<sup>20</sup> HB 734 restricted nuisance suits and

---

10. *Id.*

11. *Id.*

12. *See, e.g., Colorado Pursuing Spaceport Designation*, DENVER POST (May 2, 2016, 10:35 AM), <http://www.denverpost.com/2011/12/07/colorado-pursuing-spaceport-designation/> (explaining “[a] spaceport designation would allow for the creation of a facility from which space-bound payloads can be launched. The sites are viewed by many as important economic development tools because of the potential growth in commercial space payloads and eventually space tourists.”).

13. *See* Thompson Interview, *supra* note 3, at 7 min., 19 sec.

14. *Id.*

15. *See Id.*

16. *See Id.*

17. SENATE STUDY COMMITTEE ON THE CAMDEN COUNTY SPACEPORT, 2016 REPORT, at 5 (2016) [hereinafter STUDY COMMITTEE REPORT].

18. O.C.G.A. § 51-3-43 (Supp. 2017).

19. *Id.*

20. Georgia General Assembly, HB 734, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/734>.

noise pollution regulation based on space flight activity.<sup>21</sup> Although HB 734 passed the House, it failed in the Senate Science and Technology Committee because some Senators felt the issue needed further study to determine the potential impact of a spaceport in Camden.<sup>22</sup>

Over the summer of 2016, Senator Bruce Thompson (R-14th) chaired a study committee to resolve the issues between the proponents and opponents of the bill so it would have a better chance of passing during the 2017 legislative session.<sup>23</sup> Those opposed to the legislation felt particularly concerned about the environmental impact a spaceport in Camden could have on Cumberland Island and Little Cumberland Island.<sup>24</sup>

A horizontal launch from the proposed Spaceport Camden site would fly over Little Cumberland Island, requiring evacuation of the island during launches and potentially damaging the island, should a mishap occur.<sup>25</sup> Additionally, any launches from the site would pass over King's Bay Naval Nuclear Missile Submarine Base, raising additional safety concerns.<sup>26</sup>

During the 2017 legislative session, the bulk of the opposition to HB 1 came from local residents concerned about the impact of the proposed Spaceport on their businesses and wellbeing. Environmentalists, concerned about the impact to Little Cumberland Island, also opposed the bill.<sup>27</sup> Property owners around the proposed spaceport feared potential damage to their land from falling space debris.<sup>28</sup> Twenty-one private residences on Little Cumberland Island

21. HB 734, as introduced, p. 1, ll. 1–8, 2016 Ga. Gen. Assemb.; *id.* § 2, p. 2, ll. 22–29.

22. State of Georgia Final Composite Status Sheet, HB 734, May 5, 2016; Georgia House of Representatives Voting Record, HB 734, #681 (Feb. 29, 2016); Thompson Interview, *supra* note 3, at 0 min., 29 sec.

23. SR 1159, as passed, 2016 Ga. Gen. Assemb.; Thompson Interview, *supra* note 3, at 1 min., 14 sec.

24. Electronic Mail Interview with Representative Stacey Evans (D-42nd) (Apr. 19, 2017) (on file with Georgia State University Law Review) [hereinafter Evans Interview]; Thompson Interview, *supra* note 3, at 0 min., 57 sec.

25. STUDY COMMITTEE REPORT, *supra* note 17, at 6–7, 9.

26. *Georgia Spaceflight Act*, SIERRA CLUB, <https://sierraclub.org/georgia/legislation/2017/georgia-spaceflight-act> (last visited May 19, 2017).

27. Evans Interview, *supra* note 24; Thompson Interview, *supra* note 3, at 0 min., 57 sec.; *id.* at 5 min., 43 sec.

28. *See generally* Video Recording of House Judiciary Committee Meeting at 1 hr., 4 min., 2 sec. (Jan. 31, 2017) (remarks by Mr. Dick Parker), <http://www.gpb.org/lawmakers/2017/day-19> [hereinafter House Judiciary Committee Video]

and seventeen on Cumberland Island lie within the proposed trajectory zone of any rocket launch from Spaceport Camden.<sup>29</sup> During the legislative session, these homeowners expressed concern over evacuating their homes because of launches.<sup>30</sup> Mr. Dick Parker, a Camden property owner, testified before the House Judiciary Committee that requiring homeowners to leave their property so private companies can conduct business “amounts to an unconstitutional taking.”<sup>31</sup>

Some opponents of the bill believed a law protecting space flight entities was unwarranted because no spaceport currently exists in Camden, and other spaceports already exist around the country that space flight companies can use.<sup>32</sup> In contrast, supporters argue the bill will help build Georgia’s space flight industry, despite the fact that a Camden spaceport remains years away from development, assuming one is ever developed at all.<sup>33</sup> Despite opposition, the passage of the Georgia Space Flight Act into law lays the groundwork for Spaceport Camden to come to life.

### *Bill Tracking of HB 1*

#### *Consideration and Passage by the House*

Representative Jason Spencer (R-180th) sponsored HB 1 in the House.<sup>34</sup> The House read the bill for the first time on January 23, 2017, and it was committed to the House Judiciary Committee.<sup>35</sup> The

---

29. *Id.*; Jeremy Spencer, *Key House Committee Launches Space Bill Despite Opposition*, ALL ON GA. (Jan. 31, 2017), <http://muscogee.allongorgia.com/key-house-committee-launches-space-bill-despite-opposition/>.

30. *See, e.g.*, House Judiciary Committee Video, *supra* note 28, at 1 hr., 4 min., 2 sec. (remarks by Mr. Dick Parker); Spencer, *supra* note 29.

31. House Judiciary Committee Video, *supra* note 28 at 1 hr., 4 min., 43 sec. (remarks by Mr. Dick Parker). Mr. Parker testified before the House Judiciary Committee that “a launch operator may initiate flight only if no member of the public is present within the land hazard area.” *Id.*

32. Gordon Jackson, *Opposition to Space Flight Act Continues*, BRUNSWICK NEWS (Oct. 26, 2016), [http://goldenisles.news/news/local\\_news/opposition-to-space-flight-act-continues/article\\_ea60e3f1-3389-501c-8977-12d2e01bbb05.html](http://goldenisles.news/news/local_news/opposition-to-space-flight-act-continues/article_ea60e3f1-3389-501c-8977-12d2e01bbb05.html).

33. Thompson Interview, *supra* note 3, at 7 min., 30 sec.; *id.* at 8 min., 46 sec.

34. Georgia General Assembly, HB 734, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/734>.

35. State of Georgia Final Composite Status Sheet, HB 1, May 11, 2017.

House read the bill for the second time on January 24, 2017.<sup>36</sup> On January 31, 2017, the House Judiciary Committee amended the bill in part and favorably reported the bill by substitute.<sup>37</sup>

The Committee substitute did not include any substantial changes;<sup>38</sup> it merely altered the language included in the bill's warning and waiver.<sup>39</sup> Specifically, it removed the language "signed by the space flight participant on behalf of the space flight participant and any heirs, executors, administrators, successors, and assignees of the space flight participant."<sup>40</sup> The Committee replaced this language with "signed by the space flight participant."<sup>41</sup> It also inserted another provision describing the effect of the warning and waiver.<sup>42</sup> The Committee substitute stated:

A warning and agreement that is in writing and signed by a space flight participant that is in compliance with the requirements of this Code section shall be considered effective and enforceable as to the heirs, executors, administrators, successors, and assignees of the space flight participant with respect to a space flight entity's civil liability or criminal responsibility for a space flight participant injury to such space flight participant.<sup>43</sup>

In committee, Representative Stacey Evans (D-42nd) offered two amendments.<sup>44</sup> Her first amendment proposed inserting the language "that have been reviewed by the United States Federal Aviation Administration as part of issuing the license" before the semicolon on line 65.<sup>45</sup> According to Representative Evans, this language would

---

36. *Id.*

37. *Id.*

38. *Compare* HB 1, as introduced, 2015 Ga. Gen. Assemb., *with* HB 1 (HCS), 2017 Ga. Gen. Assemb.

39. *Id.*

40. *Compare* HB 1, as introduced, § 2, p. 5, ll. 144–45, 2017 Ga. Gen. Assemb., *with* HB 1 (HCS), § 2, p. 5, l. 144, 2017 Ga. Gen. Assemb.

41. *Compare* HB 1, as introduced, § 2, p. 5, ll. 144–45, 2017 Ga. Gen. Assemb., *with* HB 1 (HCS), § 2, p. 5, l. 144, 2017 Ga. Gen. Assemb.

42. HB 1 (HCS), § 2, p. 5, ll. 148–52, 2017 Ga. Gen. Assemb.

43. *Id.*

44. House Judiciary Committee Video, *supra* note 28, at 1 hr., 22 min., 40 sec. (remarks by Rep. Stacey Evans (D-42nd)).

45. HB 1 (HCS), § 2, p. 3, l. 65, 2017 Ga. Gen. Assemb.; House Judiciary Committee Video, *supra*

limit an otherwise broad application of the immunity granted in lines 64–65.<sup>46</sup>

Representative Spencer maintained that the Department of Defense and the Federal Aviation Administration (FAA) already have oversight over aerospace manufacturers, so qualifying language like that of Florida’s law would be redundant.<sup>47</sup> Another Judiciary Committee member argued that this extra step maintained “rigor” and a high threshold for granting this immunity, and therefore provided a safer atmosphere.<sup>48</sup> However, the amendment failed and the bill did not change from Representative Spencer’s initial proposal.<sup>49</sup> Representative Evans discussed how lowering safety standards in the interest of competing with Florida and other states “sends a terrible message” to Georgia citizens going forward.<sup>50</sup> She mentioned that the Act “foregoes the safety of Georgia citizens by providing exclusions from liability that far exceed any other state . . . .”<sup>51</sup>

Her second amendment proposed adding a fourth section to the bill containing a sunset provision with a date of September 30, 2025, mirroring federal regulation.<sup>52</sup> Representative Evans stated by that time, the industry should be able to stand on its own two feet.<sup>53</sup> The House Judiciary Committee rejected both proposed amendments.<sup>54</sup>

The House read the bill for the third time on February 16, 2017.<sup>55</sup> The body offered no floor amendments or objections.<sup>56</sup> The House adopted the Committee substitute of HB 1 on February 16, 2017, and passed the bill by a vote of 162 to 5.<sup>57</sup>

---

note 28, at 1 hr. 22 min., 40 sec., (remarks by Rep. Stacey Evans (D-42nd)).

46. House Judiciary Committee Video, *supra* note 28, at 1 hr., 21 min.,

47. *Id.* at 49 min., 41 sec. (remarks by Rep. Jason Spencer (R-180th)).

48. *Id.* at 48 min., 55 sec. (remarks by Rep. Stacey Evans (D-42nd)).

49. *Id.* at 1 hr., 22 min., 30 sec.

50. *Id.* at 1 hr., 21 min., 50 sec.

51. Evans Interview, *supra* note 24.

52. House Judiciary Committee Video, *supra* note 28, at 1 hr., 25 min., 20 sec. (remarks by Rep. Stacey Evans (D-42nd)).

53. *Id.*

54. *Id.* at 1 hr., 26 min., 15 sec. (remarks by Rep. Wendell Willard (R-49th)).

55. State of Georgia Final Composite Status Sheet, HB 1, May 11, 2017.

56. Video Recording of House Floor Proceedings at 1 hr., 55 min., 42 sec. (Feb. 16, 2017) (remarks by Speaker David Ralston (R-7th)), <http://www.gpb.org/lawmakers/2017/day-19> [hereinafter House Floor Proceedings Video].

57. State of Georgia Final Composite Status Sheet, HB 1, May 11, 2017; Georgia House of Representatives Voting Record, HB 1, Vote #64 (Mar. 15, 2017).

*Consideration and Passage by the Senate*

Senator Bruce Thompson (R-14th) sponsored HB 1 in the Senate.<sup>58</sup> The Senate read HB 1 for the first time on February 17, 2017, and it was assigned to the Senate Science and Technology Committee.<sup>59</sup> The Science and Technology Committee adopted one amendment to HB 1.<sup>60</sup> The Committee struck line 9 of HB 1, removing the title.<sup>61</sup> The amendment garnered no objections.<sup>62</sup> The Committee then favorably reported the bill by substitute on March 10, 2017.<sup>63</sup>

The Senate read the bill for the second time on March 13, 2017.<sup>64</sup> The Senate then read the bill for the third time on March 16, 2017, and passed HB 1 by substitute with a vote of 44 to 6.<sup>65</sup> On March 22, 2017, the House agreed to the Senate substitute by a vote of 151 to 6.<sup>66</sup> The House sent the bill to Governor Nathan Deal (R) on April 3, 2017.<sup>67</sup> Governor Deal signed the bill into law on May 8, 2017, and the bill became effective on July 1, 2017.<sup>68</sup>

*The Act*

The Act amends Chapter 3 of Title 51 of the Official Code of Georgia Annotated, relating to torts, so as to add Article 4, entitled Liability of Space Flight Entities.<sup>69</sup> The Act's overall purpose is to facilitate the commercial space flight industry in the state by limiting

---

58. Georgia General Assembly, HB 734, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/734>.

59. State of Georgia Final Composite Status Sheet, HB 1, May 11, 2017.

60. Audio Recording of Senate Science and Technology Committee at 2 min., 50 sec. (Mar. 9, 2017) (remarks by Sen. Bruce Thompson (R-14th)) (on file with the Georgia State University Law Review) [hereinafter Senate Science and Technology Committee Recording].

61. Compare HB 1, (HCS), § 1, p. 1, l. 9, 2017 Ga. Gen. Assemb., with HB 1 (SCS), § 1, p. 1, l. 9, 2017 Ga. Gen. Assemb.

62. Senate Science and Technology Committee Recording, *supra* note 60, at 2 min., 50 sec.

63. State of Georgia Final Composite Status Sheet, HB 1, May 11, 2017.

64. *Id.*

65. State of Georgia Final Composite Status Sheet, HB 1, May 11, 2017; Georgia Senate Voting Record, HB 1, Vote #195 (Mar. 16, 2017).

66. State of Georgia Final Composite Status Sheet, HB 1, May 11, 2017; Georgia House of Representatives Voting Record, HB 1, Vote #295 (Mar. 22, 2017).

67. State of Georgia Final Composite Status Sheet, HB 1, May 11, 2017.

68. *Id.*; See O.C.G.A. § 1-3-4.

69. 2017 Ga. Laws 348.

liability for injuries sustained by participants who have signed waivers before boarding a space craft.<sup>70</sup> The Act focuses on certain types of immunity for space flight across Georgia in general, rather than on the impact of Spaceport Camden specifically.<sup>71</sup> The prospect of Spaceport Camden, however, undeniably underlies the Act, with the sponsors pointing out that “[Spaceport Camden] brings legitimacy to this project.”<sup>72</sup>

Section 1 of the Act, the Act’s only substantive section, adds Article 4 to Chapter 3 of Title 51.<sup>73</sup> The Act adds four new Code sections under Article 4.<sup>74</sup> The Act first creates Code section 51-3-41.<sup>75</sup> Code section 51-3-41 defines sixteen new words and phrases related to the space flight industry used throughout Article 4.<sup>76</sup>

Code section 51-3-42(a) immunizes space flight entities, as defined in section 51-3-41, from civil and criminal liability for injuries that a participant sustains as a result of the “inherent risks associated with any space flight activities,” if the participant has signed a valid waiver with written, informed consent as required by federal law.<sup>77</sup> However, under subsection (b.1) a space flight entity is not immune from liability for injuries either “proximately caused by the [entity’s] gross negligence” or “intentionally caused by the space flight entity.”<sup>78</sup> Subsection (b.2) provides that the Act does not limit liability for injuries to any person other than the space flight

---

70. See 2017 Ga. Laws 348–52.

[A] space flight entity shall not be civilly liable to or criminally responsible for any person for a space flight participant injury arising out of inherent risks associated with activities occurring in or originating from this state if the space flight participant has:

- (1) Signed the warning and agreement required by Code Section 51-3-43; and
- (2) Given written informed consent as may be required by 51 U.S.C. Section 50905 or other federal law.

*Id.*

71. See House Judiciary Committee Video, *supra* note 28, at 1 hr., 16 min., 40 sec. (remarks by Mr. John Simpson).

72. Jackson, *supra* note 32.

73. 2017 Ga. Laws 348–52.

74. 2017 Ga. Laws 348–52.

75. 2017 Ga. Laws 348–50.

76. O.C.G.A. § 51-3-41 (Supp. 2017).

77. O.C.G.A. § 51-3-42(a) (Supp. 2017).

78. O.C.G.A. § 51-3-42(b) (Supp. 2017).

participant.<sup>79</sup> Additionally, (b.4) would not protect space flight entities from suits by the federal government or the State of Georgia.<sup>80</sup> Subsection (c) explains that space flight entities may also be afforded all other liability protections provided elsewhere by law.<sup>81</sup>

Code section 51-3-43 contains the statutory form for the waiver of liability.<sup>82</sup> Subsection (a) mandates that all space flight participants must sign “a warning and agreement” before they participate in any space flight activity within the state.<sup>83</sup> Additionally, subsection (a) provides specific language which must be included in the waiver.<sup>84</sup> Subsection (b) lists six strict requirements of an enforceable waiver, including specific formatting rules.<sup>85</sup> Further, the subsection provides waivers must be signed by both the participant and a competent witness at least twenty-four hours in advance of any space flight activity.<sup>86</sup> A waiver executed in accordance with subsection (b) is binding on all heirs, executors, administrators, successors, and assignees of the participant, as laid out in subsection (c).<sup>87</sup> Subsection (d) is a reiteration of the exception to the limitation of liability in Code section 51-3-42(b.1).<sup>88</sup> This subsection also provides that,

---

79. *Id.*

80. *Id.*

81. O.C.G.A. § 51-3-42(c) (Supp. 2017).

82. O.C.G.A. § 51-3-43 (Supp. 2017).

83. O.C.G.A. § 51-3-43(a) (Supp. 2017). The waiver gives immunity from liability for any injuries resulting from the inherent risks of space flight, and includes a list of several horrific injuries that could be suffered as a result of normal space flight activity. *Id.*

84. *Id.*

85. O.C.G.A. § 51-3-43(b) (Supp. 2017).

The warning and agreement under subsection (a) of this Code section shall be considered effective and enforceable if it is:

- (1) In writing;
- (2) In a document separate from any other agreement between the space flight participant and the space flight entity other than a warning, consent, or assumption of risk statement required under federal law or under applicable laws of another state;
- (3) Printed in capital letters in not less than 10-point bold type;
- (4) Signed by the space flight participant;
- (5) Signed by a competent witness; and
- (6) Provided to the space flight participant at least 24 hours prior to such space flight participant’s participation in any space flight activity.

*Id.*

86. *Id.*

87. O.C.G.A. § 51-3-43(c) (Supp. 2017).

88. O.C.G.A. § 51-3-43(d) (Supp. 2017).

regardless of an effective waiver, space flight entities may still be held liable for gross negligence or intentional acts.<sup>89</sup> Finally, subsection (e) states that the waiver shall not be regarded as unconscionable or against public policy by the State of Georgia.<sup>90</sup>

Code section 51-3-44 is a choice of law provision which states Georgia law governs in “any” legal action “pertaining to space flight activity” conducted in the state.<sup>91</sup>

### *Analysis*

Representative Jason Spencer (R-180th) introduced the Georgia Space Flight Act to make Georgia more attractive to commercial space flight companies looking for expansion opportunities.<sup>92</sup> The Act reduces the potential risk of litigation for these companies in Georgia by limiting liability for ordinary negligence.<sup>93</sup>

### *Competition with Florida for the Benefits of the Spaceflight Industry*

Representative Spencer intended HB 1 to assist Georgia in competing with Florida for the benefits of the space flight industry.<sup>94</sup> Specifically, Representative Spencer stated that the Act provides the type of immunity for space flight entities that may attract business away from Florida.<sup>95</sup> Others expressed concern, however, over the scope of immunity provided in lines 62 and 63 of the Act.<sup>96</sup> Florida law contains similar protective language for these entities, but the law “limits it specifically to those things that have been reviewed by the US FAA as part of issuing the license . . . .”<sup>97</sup> The Georgia Space

---

89. *Id.*

90. *Id.*; O.C.G.A. § 51-3-43(e) (Supp. 2017).

91. O.C.G.A. § 51-3-44 (Supp. 2017).

92. See Thompson Interview, *supra* note 3, at 7 min., 30 sec.

93. *Id.*

94. House Judiciary Committee Video, *supra* note 28, at 44 min., 40 sec. (remarks by Rep. Jason Spencer (R-180th)).

95. *Id.*

96. *Id.* at 47 min., 41 sec. (remarks by Rep. Stacey Evans (D-42nd)). Lines 62 and 63 provide immunity to “a manufacturer or supplier of components, services, space crafts, launch vehicles, or reentry vehicles used in space flight activities.” O.C.G.A. § 51-3-41 (Supp. 2017) (defining “space flight entity”); O.C.G.A. § 51-3-42(a) (Supp. 2017).

97. House Judiciary Committee Video, *supra* note 28, at 47 min., 41 sec. (remarks by Rep. Stacey

Flight Act is modeled after Texas's "Limited Liability for Space Flight Activities" Act.<sup>98</sup> The Texas Act looks very similar to the Georgia Space Flight Act, except the Texas Act contains provisions prohibiting a space flight entity from accruing liability for nuisance arising from its operations, and the waiver is much less inclusive than the waiver provided in the Act.<sup>99</sup>

Though HB 1's passage will most likely further the development of Spaceport Camden, the language of the bill affects all potential space flight activity across the state. HB 1 is just one step toward making Georgia more attractive to private space flight companies and eventually persuading them to do business in the state. Although attracting the space flight industry would potentially bring money and jobs to Georgia, concerns beyond the scope of HB 1 still need to be addressed.

*Malissa Caroline Barger & Ethan L. Smith*

---

Evans (D-42nd)).

98. TEX. CIV. PRAC. & REM. CODE ANN. § 100A.001-.004 (West 2015); Beau Engler, *Representative Spencer's Georgia Space Flight Act Passes Key House Committee*, WSAV (Feb. 1, 2017, 3:00 PM), <http://wsav.com/2017/02/01/rep-spencers-georgia-space-flight-act-passes-key-house-committee>.

99. Compare O.C.G.A. § 51-3-43 (Supp. 2017) ("[U]nder Georgia law there is no liability for injury, death, or other loss resulting from any inherent risks of space flight activities"), with CIV. PRAC. & REM. § 100A.001-.004 ("I understand and acknowledge that a space flight entity is not liable for any injury to or death of a space flight participant resulting from space flight activities.").