

Spaceport wants protections from tourist lawsuits

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ALBUQUERQUE, N.M. (AP) -- Spaceport America officials are urging legislators to limit potential lawsuits from wealthy outer space tourists who take off from New Mexico, saying such a bill is crucial to the future of the project.

Legal experts, however, say there is no way to know whether the so-called informed consent laws will offer any protection to spacecraft operators and suppliers in the event something goes wrong.

"Since this has never happened yet, we have no precedent," said Joanne Irene Gabrynowicz, director of the space law program at the University of Mississippi.

Such measures are being pushed by states trying to compete in the fledgling commercial space travel arena, and Spaceport America officials say that New Mexico risks losing out on a project that was intended to boost the economy in the mostly rural state.

They say New Mexico needs to pass a bill to retain anchor tenant Virgin Galactic and to recruit new space business to the state.

At issue is liability for passengers who pay to take spaceflights - like those planned by Richard Branson's Virgin Galactic for \$200,000 a head - from the spaceport near the city of Truth or Consequences.

New Mexico lawmakers several years ago passed a bill that exempts Virgin Galactic from being sued by passengers in the event of an accident provided they have been informed of the risks. Officials have refused, however, to follow a handful of other states in expanding that exemption to suppliers.

Spaceport America Executive Director Christine Anderson has blamed New Mexico's refusal during the last two legislative sessions to expand the law as the reason the spaceport has been passed over by companies in favor of states such as Texas and Florida.

Virgin Galactic, meanwhile, has hinted it will leave New Mexico if an expansion isn't passed this year.

"I understand the impetus to try to match other states, but right now there is no guarantee it's enforceable," said Guigi Carminati with the Weil Law Firm in Houston. "That really is the bottom line."

She and Gabrynowicz said the only comparable laws cover adventure sports or

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amusement parks - and their effectiveness varies.

If someone gets hurt on a roller coaster, for example, Gabrynowicz said, the operator generally is not exempt from liability just because a posted sign says passengers at their own risk.

Those "don't hold up" in court, she said.

She added that while there is "lot of case law regarding those kinds of activities. There is none yet for state law for space launches."

The effectiveness of laws protecting extreme and adventure sports operators is harder to know, said Carminati.

"Nobody has sat down and actually looked at the nitty gritty of what does immunizing legislation that works look like," she said.

There are also many questions, Gabrynowicz said, about whether federal law pre-empts state law in this area, whether state law would still apply if the accident happened over another state or country and whether it would cover passengers from countries that don't allow such exemptions.

Federal law exempts spacecraft operators from liability, requiring them to warn passengers in writing of associated risks.

Gabrynowicz said that states are now trying to create an even more advantageous position for operators "so they can promote the industry."

In New Mexico, the strong trial lawyer lobby has been successful in persuading the Democrat-controlled legislature against expanding the exemption.

Senate Majority Leader Michael Sanchez says he is hopeful an agreement can be reached this year, but he emphasizes "you always have to be careful about precluding someone from being able to file an action."

Despite the uncertainty, aerospace consultant Patti Grace Smith, a former FAA official responsible for regulating the U.S. commercial space transportation industry, says that since other states have extended the liability exemption to suppliers, New Mexico must do the same to remain competitive.

"The whole sector is an evolving sector," she said, noting the legal frameworks are needed "enable the industry to go forward in a positive way."

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