

By Senator Posey

24-1417-04

1 A bill to be entitled
2 An act relating to exemptions from liability
3 for governmental property owners or lessees and
4 public employees; amending s. 316.0085, F.S.;
5 including the game of paintball in the
6 exemption from liability granted to
7 governmental property owners or lessees and
8 public employees; providing for liability of
9 independent concessionaires or other persons or
10 organizations for certain injuries or damages;
11 providing for the assumption of certain risks;
12 providing requirements for participants in the
13 game of paintball; providing an effective date.

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15 Be It Enacted by the Legislature of the State of Florida:

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17 Section 1. Section 316.0085, Florida Statutes, is
18 amended to read:

19 316.0085 Skateboarding; inline skating; freestyle
20 bicycling; paintball; definitions; liability.--

21 (1) The purpose of this section is to encourage
22 governmental owners or lessees of property to make land
23 available to the public for skateboarding, inline skating,
24 paintball, and freestyle bicycling. It is recognized that
25 governmental owners or lessees of property have failed to make
26 property available for such activities because of the exposure
27 to liability from lawsuits and the prohibitive cost of
28 insurance, if insurance can be obtained for such activities.
29 It is also recognized that risks and dangers are inherent in
30 these activities, which risks and dangers should be assumed by
31 those participating in such activities.

- 1 (2) As used in this section, the term:
- 2 (a) "Governmental entity" means:
- 3 1. The United States, the State of Florida, any county
- 4 or municipality, or any department, agency, or other
- 5 instrumentality thereof.
- 6 2. Any school board, special district, authority, or
- 7 other entity exercising governmental authority.
- 8 (b) "Inherent risk" means those dangers or conditions
- 9 that are characteristic of, intrinsic to, or an integral part
- 10 of skateboarding, inline skating, paintball, and freestyle
- 11 bicycling.
- 12 (3) This section does not grant authority or
- 13 permission for a person to engage in skateboarding, inline
- 14 skating, paintball, or freestyle bicycling on property owned
- 15 or controlled by a governmental entity unless such
- 16 governmental entity has specifically designated such area for
- 17 skateboarding, inline skating, paintball, or ~~and~~ freestyle
- 18 bicycling.
- 19 (4) A ~~No~~ governmental entity or public employee is not
- 20 ~~shall be~~ liable to any person who voluntarily participates in
- 21 skateboarding, inline skating, paintball, or freestyle
- 22 bicycling for any damage or injury to property or persons
- 23 which arises out of a person's participation in such activity,
- 24 and which takes place in an area designated for such activity.
- 25 (5) This section does not limit liability that ~~which~~
- 26 would otherwise exist for any of the following:
- 27 (a) The failure of the governmental entity or public
- 28 employee to guard against or warn of a dangerous condition of
- 29 which a participant does not and cannot reasonably be expected
- 30 to have notice.
- 31

1 (b) An act of gross negligence by the governmental
2 entity or public employee that is the proximate cause of the
3 injury.

4 (c) The failure of a governmental entity that provides
5 a designated area for skateboarding, inline skating,
6 paintball, or freestyle bicycling to obtain the written
7 consent, in a form acceptable to the governmental entity, from
8 the parents or legal guardians of any child under 17 years of
9 age before authorizing such child to participate in
10 skateboarding, inline skating, paintball, or freestyle
11 bicycling in such designated area, unless that child's
12 participation is in violation of posted rules governing the
13 hours of authorized use of the designated area.

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15 Nothing in this subsection creates a duty of care or basis of
16 liability for death, personal injury, or damage to personal
17 property. Nothing in this section shall be deemed to be a
18 waiver of sovereign immunity under any circumstances.

19 (6) Nothing in this section shall limit the liability
20 of an independent concessionaire, or any person or
21 organization other than a governmental entity or public
22 employee, whether or not the person or organization has a
23 contractual relationship with a governmental entity to use the
24 public property, for injuries or damages suffered in any case
25 as a result of the operation of skateboards, inline skates,
26 paintball, or freestyle bicycles on public property by the
27 concessionaire, person, or organization.

28 (7)(a) Any person who participates in or assists in
29 skateboarding, inline skating, paintball, or freestyle
30 bicycling assumes the known and unknown inherent risks in
31 these activities irrespective of age, and is legally

1 responsible for all damages, injury, or death to himself or
2 herself or other persons or property which result from these
3 activities. Any person who observes skateboarding, inline
4 skating, paintball, or freestyle bicycling assumes the known
5 and unknown inherent risks in these activities irrespective of
6 age, and is legally responsible for all damages, injury, or
7 death to himself or herself which result from these
8 activities. A ~~No~~ governmental entity that ~~which~~ sponsors,
9 allows, or permits skateboarding, inline skating, paintball,
10 or freestyle bicycling on its property is not required to
11 eliminate, alter, or control the inherent risks in these
12 activities.

13 (b) While engaged in skateboarding, inline skating,
14 paintball, or freestyle bicycling, irrespective of where such
15 activities occur, a participant is responsible for doing all
16 of the following:

17 1. Acting within the limits of his or her ability and
18 the purpose and design of the equipment used.

19 2. Maintaining control of his or her person and the
20 equipment used.

21 3. Refraining from acting in any manner which may
22 cause or contribute to death or injury of himself or herself,
23 or other persons.

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25 Failure to comply with the requirements of this paragraph
26 shall constitute negligence.

27 (8) The fact that a governmental entity carries
28 insurance which covers any act described in this section shall
29 not constitute a waiver of the protections set forth in this
30 section, regardless of the existence or limits of such
31 coverage.

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Section 2. This act shall take effect July 1, 2004.

SENATE SUMMARY

Includes the game of paintball with the liability exemptions granted to governmental property owners or lessees and public employees for skateboarding, inline skating, or freestyle bicycling.