

By the Committee on Governmental Oversight and Productivity;
and Senator Posey

302-2223-04

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; requiring governmental
9 entities to post rules indicating that written
10 parental consent is required for minors;
11 revising the exemptions from immunity provided
12 by the act; providing for liability of
13 independent concessionaires or other persons or
14 organizations for certain injuries or damages;
15 providing for the assumption of certain risks;
16 providing requirements for participants in the
17 game of paintball; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 316.0085, Florida Statutes, is
22 amended to read:

23 316.0085 Skateboarding; inline skating; freestyle
24 bicycling; paintball;definitions; liability.--

25 (1) The purpose of this section is to encourage
26 governmental owners or lessees of property to make land
27 available to the public for skateboarding, inline skating,
28 paintball,and freestyle bicycling. It is recognized that
29 governmental owners or lessees of property have failed to make
30 property available for such activities because of the exposure
31 to liability from lawsuits and the prohibitive cost of

1 insurance, if insurance can be obtained for such activities.
2 It is also recognized that risks and dangers are inherent in
3 these activities, which risks and dangers should be assumed by
4 those participating in such activities.

5 (2) As used in this section, the term:

6 (a) "Governmental entity" means:

7 1. The United States, the State of Florida, any county
8 or municipality, or any department, agency, or other
9 instrumentality thereof.

10 2. Any school board, special district, authority, or
11 other entity exercising governmental authority.

12 (b) "Inherent risk" means those dangers or conditions
13 that are characteristic of, intrinsic to, or an integral part
14 of skateboarding, inline skating, paintball, and freestyle
15 bicycling.

16 (3) This section does not grant authority or
17 permission for a person to engage in skateboarding, inline
18 skating, paintball, or freestyle bicycling on property owned
19 or controlled by a governmental entity unless such
20 governmental entity has specifically designated such area for
21 skateboarding, inline skating, paintball, or ~~and~~ freestyle
22 bicycling. Each governmental entity shall post a rule in each
23 specifically designated area that identifies all authorized
24 activities and indicates that a child under 17 years of age
25 may not engage in any of those activities until the
26 governmental entity has obtained written consent, in a form
27 acceptable to the governmental entity, from the child's
28 parents or legal guardians.

29 (4) A ~~No~~ governmental entity or public employee is not
30 ~~shall be~~ liable to any person who voluntarily participates in
31 skateboarding, inline skating, paintball, or freestyle

1 bicycling for any damage or injury to property or persons
2 which arises out of a person's participation in such activity,
3 and which takes place in an area designated for such activity.

4 (5) This section does not limit liability that ~~which~~
5 would otherwise exist for any of the following:

6 (a) The failure of the governmental entity or public
7 employee to guard against or warn of a dangerous condition of
8 which a participant does not and cannot reasonably be expected
9 to have notice.

10 (b) An act of gross negligence by the governmental
11 entity or public employee that is the proximate cause of the
12 injury.

13 (c) The failure of a governmental entity that provides
14 a designated area for skateboarding, inline skating,
15 paintball, or freestyle bicycling to obtain the written
16 consent, in a form acceptable to the governmental entity, from
17 the parents or legal guardians of any child under 17 years of
18 age before authorizing such child to participate in
19 skateboarding, inline skating, paintball, or freestyle
20 bicycling in such designated area, unless that child's
21 participation is in violation of posted rules governing the
22 ~~hours of~~ authorized use of the designated area.

23
24 Nothing in this subsection creates a duty of care or basis of
25 liability for death, personal injury, or damage to personal
26 property. Nothing in this section shall be deemed to be a
27 waiver of sovereign immunity under any circumstances.

28 (6) Nothing in this section shall limit the liability
29 of an independent concessionaire, or any person or
30 organization other than a governmental entity or public
31 employee, whether or not the person or organization has a

1 contractual relationship with a governmental entity to use the
2 public property, for injuries or damages suffered in any case
3 as a result of the operation of skateboards, inline skates,
4 paintball equipment, or freestyle bicycles on public property
5 by the concessionaire, person, or organization.

6 (7)(a) Any person who participates in or assists in
7 skateboarding, inline skating, paintball, or freestyle
8 bicycling assumes the known and unknown inherent risks in
9 these activities irrespective of age, and is legally
10 responsible for all damages, injury, or death to himself or
11 herself or other persons or property which result from these
12 activities. Any person who observes skateboarding, inline
13 skating, paintball, or freestyle bicycling assumes the known
14 and unknown inherent risks in these activities irrespective of
15 age, and is legally responsible for all damages, injury, or
16 death to himself or herself which result from these
17 activities. A ~~No~~ governmental entity that ~~which~~ sponsors,
18 allows, or permits skateboarding, inline skating, paintball,
19 or freestyle bicycling on its property is not required to
20 eliminate, alter, or control the inherent risks in these
21 activities.

22 (b) While engaged in skateboarding, inline skating,
23 paintball, or freestyle bicycling, irrespective of where such
24 activities occur, a participant is responsible for doing all
25 of the following:

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

28 2. Maintaining control of his or her person and the
29 equipment used.

30
31

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

4
5 Failure to comply with the requirements of this paragraph
6 shall constitute negligence.

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

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

13
14 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
15 COMMITTEE SUBSTITUTE FOR
16 Senate Bill 1790

17 The committee substitute clarifies that governmental entities
18 must post rules identifying authorized activities and
19 indicating that children under 17 years of age may not
20 participate without written parental or legal guardian
21 consent. It also provides that the section's immunity applies
whenever a child participates in one of the listed activities
in violation of posted rules, even if the governmental entity
has failed to obtain written parental or legal guardian
consent.