

HB 0699

2004

1 A bill to be entitled
 2 An act relating to paintball activities; amending s.
 3 316.0085, F.S.; including paintball in activities made
 4 available to the public by governmental entities on
 5 designated property; providing for liability; providing
 6 responsibilities of governmental entities and paintball
 7 participants; providing responsibility for damages,
 8 injury, or death; providing an effective date.

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

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12 Section 1. Section 316.0085, Florida Statutes, is amended
 13 to read:

14 316.0085 Skateboarding; inline skating; paintball;
 15 freestyle bicycling; definitions; liability.--

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

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

28 (a) "Governmental entity" means:

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29 1. The United States, the State of Florida, any county or
 30 municipality, or any department, agency, or other
 31 instrumentality thereof.

32 2. Any school board, special district, authority, or other
 33 entity exercising governmental authority.

34 (b) "Inherent risk" means those dangers or conditions that
 35 are characteristic of, intrinsic to, or an integral part of
 36 skateboarding, inline skating, paintball, and freestyle
 37 bicycling.

38 (3) This section does not grant authority or permission
 39 for a person to engage in skateboarding, inline skating,
 40 paintball, or freestyle bicycling on property owned or
 41 controlled by a governmental entity unless such governmental
 42 entity has specifically designated such area for skateboarding,
 43 inline skating, paintball, and freestyle bicycling.

44 (4) No governmental entity or public employee shall be
 45 liable to any person who voluntarily participates in
 46 skateboarding, inline skating, paintball, or freestyle bicycling
 47 for any damage or injury to property or persons which arises out
 48 of a person's participation in such activity, and which takes
 49 place in an area designated for such activity.

50 (5) This section does not limit liability which would
 51 otherwise exist for any of the following:

52 (a) The failure of the governmental entity or public
 53 employee to guard against or warn of a dangerous condition of
 54 which a participant does not and cannot reasonably be expected
 55 to have notice.

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

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58 (c) The failure of a governmental entity that provides a
59 designated area for skateboarding, inline skating, paintball, or
60 freestyle bicycling to obtain the written consent, in a form
61 acceptable to the governmental entity, from the parents or legal
62 guardians of any child under 17 years of age before authorizing
63 such child to participate in skateboarding, inline skating,
64 paintball, or freestyle bicycling in such designated area,
65 unless that child's participation is in violation of posted
66 rules governing the hours of authorized use of the designated
67 area.

68
69 Nothing in this subsection creates a duty of care or basis of
70 liability for death, personal injury, or damage to personal
71 property. Nothing in this section shall be deemed to be a waiver
72 of sovereign immunity under any circumstances.

73 (6) Nothing in this section shall limit the liability of
74 an independent concessionaire, or any person or organization
75 other than a governmental entity or public employee, whether or
76 not the person or organization has a contractual relationship
77 with a governmental entity to use the public property, for
78 injuries or damages suffered in any case as a result of the
79 operation of skateboards, inline skates, paintball equipment, or
80 freestyle bicycles on public property by the concessionaire,
81 person, or organization.

82 (7)(a) Any person who participates in or assists in
83 skateboarding, inline skating, paintball, or freestyle bicycling
84 assumes the known and unknown inherent risks in these activities
85 irrespective of age, and is legally responsible for all damages,
86 injury, or death to himself or herself or other persons or

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87 property which result from these activities. Any person who
 88 observes skateboarding, inline skating, paintball, or freestyle
 89 bicycling assumes the known and unknown inherent risks in these
 90 activities irrespective of age, and is legally responsible for
 91 all damages, injury, or death to himself or herself which result
 92 from these activities. No governmental entity which sponsors,
 93 allows, or permits skateboarding, inline skating, paintball, or
 94 freestyle bicycling on its property is required to eliminate,
 95 alter, or control the inherent risks in these activities.

96 (b) While engaged in skateboarding, inline skating,
 97 paintball, or freestyle bicycling, irrespective of where such
 98 activities occur, a participant is responsible for doing all of
 99 the following:

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

102 2. Maintaining control of his or her person and the
 103 equipment used.

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

107
 108 Failure to comply with the requirements of this paragraph shall
 109 constitute negligence.

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

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