

CHAMBER ACTION

1 The Committee on Local Government & Veterans' Affairs recommends
2 the following:

3
4 **Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to exemptions from liability for
8 governmental property owners or lessees and public
9 employees; amending s. 316.0085, F.S.; including the game
10 of paintball in the exemption from liability granted to
11 governmental property owners or lessees and public
12 employees; requiring governmental entities to post rules
13 indicating that written parental consent is required for
14 minors to participate in certain activities; revising the
15 exemptions from immunity; providing for liability of
16 independent concessionaires or other persons or
17 organizations for certain injuries or damages; providing
18 for the assumption of certain risks; providing requirements
19 for participants in the game of paintball; providing an
20 effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:
23

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24 Section 1. Section 316.0085, Florida Statutes, is amended
25 to read:

26 316.0085 Skateboarding; inline skating; paintball;
27 freestyle bicycling; definitions; liability.--

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

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

40 (a) "Governmental entity" means:

41 1. The United States, the State of Florida, any county or
42 municipality, or any department, agency, or other
43 instrumentality thereof.

44 2. Any school board, special district, authority, or other
45 entity exercising governmental authority.

46 (b) "Inherent risk" means those dangers or conditions that
47 are characteristic of, intrinsic to, or an integral part of
48 skateboarding, inline skating, paintball, and freestyle
49 bicycling.

50 (3) This section does not grant authority or permission
51 for a person to engage in skateboarding, inline skating,

52 | paintball, or freestyle bicycling on property owned or
 53 | controlled by a governmental entity unless such governmental
 54 | entity has specifically designated such area for skateboarding,
 55 | inline skating, paintball, and freestyle bicycling. Each
 56 | governmental entity shall post a rule in each specifically
 57 | designated area that identifies all authorized activities and
 58 | indicates that a child under 17 years of age may not engage in
 59 | any of those activities until the governmental entity has
 60 | obtained written consent, in a form acceptable to the
 61 | governmental entity, from the child's parent or legal guardian.

62 | (4) No governmental entity or public employee shall be
 63 | liable to any person who voluntarily participates in
 64 | skateboarding, inline skating, paintball, or freestyle bicycling
 65 | for any damage or injury to property or persons which arises out
 66 | of a person's participation in such activity, and which takes
 67 | place in an area designated for such activity.

68 | (5) This section does not limit liability which would
 69 | otherwise exist for any of the following:

70 | (a) The failure of the governmental entity or public
 71 | employee to guard against or warn of a dangerous condition of
 72 | which a participant does not and cannot reasonably be expected
 73 | to have notice.

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

76 | (c) The failure of a governmental entity that provides a
 77 | designated area for skateboarding, inline skating, paintball, or
 78 | freestyle bicycling to obtain the written consent, in a form
 79 | acceptable to the governmental entity, from the parent ~~parents~~

80 | or legal guardian ~~guardians~~ of any child under 17 years of age
 81 | before authorizing such child to participate in skateboarding,
 82 | inline skating, paintball, or freestyle bicycling in such
 83 | designated area, unless that child's participation is in
 84 | violation of posted rules governing the hours of authorized use
 85 | of the designated area.

86 |
 87 | Nothing in this subsection creates a duty of care or basis of
 88 | liability for death, personal injury, or damage to personal
 89 | property. Nothing in this section shall be deemed to be a waiver
 90 | of sovereign immunity under any circumstances.

91 | (6) Nothing in this section shall limit the liability of
 92 | an independent concessionaire, or any person or organization
 93 | other than a governmental entity or public employee, whether or
 94 | not the person or organization has a contractual relationship
 95 | with a governmental entity to use the public property, for
 96 | injuries or damages suffered in any case as a result of the
 97 | operation of skateboards, inline skates, paintball equipment, or
 98 | freestyle bicycles on public property by the concessionaire,
 99 | person, or organization.

100 | (7)(a) Any person who participates in or assists in
 101 | skateboarding, inline skating, paintball, or freestyle bicycling
 102 | assumes the known and unknown inherent risks in these activities
 103 | irrespective of age, and is legally responsible for all damages,
 104 | injury, or death to himself or herself or other persons or
 105 | property which result from these activities. Any person who
 106 | observes skateboarding, inline skating, paintball, or freestyle
 107 | bicycling assumes the known and unknown inherent risks in these

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108 activities irrespective of age, and is legally responsible for
 109 all damages, injury, or death to himself or herself which result
 110 from these activities. No governmental entity which sponsors,
 111 allows, or permits skateboarding, inline skating, paintball, or
 112 freestyle bicycling on its property is required to eliminate,
 113 alter, or control the inherent risks in these activities.

114 (b) While engaged in skateboarding, inline skating,
 115 paintball, or freestyle bicycling, irrespective of where such
 116 activities occur, a participant is responsible for doing all of
 117 the following:

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

120 2. Maintaining control of his or her person and the
 121 equipment used.

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

125
 126 Failure to comply with the requirements of this paragraph shall
 127 constitute negligence.

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

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