

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1129 Roller Skating Rink Safety
SPONSOR(S): Civil Justice Subcommittee, Plasencia and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1458

FINAL HOUSE FLOOR ACTION: 117 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 1129 passed the House on May 2, 2023, as CS/SB 1458.

There are fewer than 50 roller skating rinks operating in Florida, most of which are owned by individual owners and operators. These small business owners are currently faced with raised costs associated with real estate prices, insurance premiums, and even difficulties obtaining insurance coverage.

Premises liability refers to the duty of an individual or entity that owns or controls real property to reasonably operate and maintain such property for the safety of those who enter or remain on the property. Unlike ordinary negligence, which is based upon active negligence, a premises liability claim may be based upon passive negligence; that is, a premises liability claim may stem from the tortfeasor's failure to act to prevent harm to the injured party and not from any affirmative actions of the tortfeasor. Skating rinks are currently susceptible to such premise liability claims. Other common premises liability claims include slip and fall accidents, dog bites, trip or misstep accidents, and swimming pool accidents.

Ordinarily, a person is liable for his or her own torts. However, liability may be avoided or reduced through the tort law doctrine of "assumption of risk," whereby the defendant asserts that the plaintiff has assumed a particular risk of injury. There are two primary ways that assumption of risk may be established: through informed participation ("implied" assumption of the risk) or through verbal or written contractual assumption of risk agreements ("express" assumption of the risk).

The bill creates s. 768.395, F.S., to provide statutory standards for owners and operators of skating rinks, as well as for roller skaters. The bill limits the liability of a skating rink owner or operator who meets certain standards and requirements, and as long as there is no gross negligence. The bill brings privately owned skating facilities more in line with the protections offered to public skate facilities.

The bill provides that owners and operators are not responsible to roller skaters or spectators for the inherent risks associated with roller skating. The bill also specifies that an owner, operator, or skater who takes or fails to take certain actions acts negligently.

The bill also provides a statement of legislative finding that roller skating is a healthy and wholesome activity beloved by Floridians, and that the allocation of risks and costs of roller skating is an important matter of public policy.

The bill was approved by the Governor on May 11, 2023, ch. 2023-56, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Roller Skating Rinks

There are fewer than 50 roller skating rinks operating in Florida, most of which are owned by individual owners and operators.¹ These small business owners are currently faced with raised costs associated with real estate prices, insurance premiums, and even difficulties obtaining insurance coverage.² Currently, eleven other states have dedicated roller skating statutes, including Alabama, Georgia, Illinois, Indiana, Maine, Michigan, New Jersey, North Carolina, Ohio, South Carolina, and Texas.

Premises Liability

Premises liability refers to the duty of an individual or entity that owns or controls real property to reasonably operate and maintain such property for the safety of those who enter or remain on the property. Unlike ordinary negligence, which is based upon active negligence, a premises liability claim may be based upon passive negligence; that is, a premises liability claim may stem from the tortfeasor's failure to act to prevent harm to the injured party and not from any affirmative actions of the tortfeasor.³

Skating rinks are currently susceptible to such premise liability claims. Other common premises liability claims include slip and fall accidents, dog bites, trip or misstep accidents, and swimming pool accidents. A landowner or possessor may be liable to an invitee if such landowner or possessor:

- Negligently failed to maintain the premises in a reasonably safe condition;
- Negligently failed to correct a dangerous condition about which the defendant either knew or should have known, by the use of reasonable care; or
- Negligently failed to warn the claimant of a dangerous condition about which the defendant had, or should have had, knowledge greater than that of claimant, and if so, such negligence was a legal cause of loss, injury, or damage.⁴

A premises liability claim may also involve negligent security allegations, in which a person injured by a third party's criminal acts (that is, a third party's intentional tort) on another's property attempts to hold the property owner liable for failing to provide adequate security measures on the property. To prevail on a negligent security claim, the plaintiff must prove that the:

- Plaintiff was lawfully present on the defendant's property;⁵
- Defendant had a duty to provide adequate security on the property but breached such duty;⁶

¹ *Florida Roller Skating Rinks*, Skating Fitness, <https://www.skatingfitness.com/Roller-Locator-Florida.htm> (last visited May 4, 2023).

² Kimberly Miller, *Palm Beach County's last roller skating rink closing its doors, with years of memories*, Palm Beach Post, <https://www.palmbeachpost.com/story/business/2022/08/18/roller-skating-rink-palm-beach-county-close-under-new-owner/10333462002/> (last visited May 4, 2023).

³ *Nicholson v. Stonybrook Apts., LLC*, 154 So. 3d 490 (Fla. 4th DCA 2015).

⁴ Fla. Std. Jury Instr. 401.20, *Issues on Plaintiff's Claim — Premises Liability*.

⁵ The only duty a property owner owes to an undiscovered trespasser is to refrain from causing intentional harm, while the only duty he or she owes to a known trespasser is to refrain from committing gross negligence or intentional harm and to warn of known dangers that are not readily observable. *Nicholson*, 154 So. 3d at 492.

⁶ Generally, a property owner has no duty to protect another person from criminal acts committed by third parties on his or her property, but such a duty may arise where a special relationship exists between the property owner and the victim or between the property owner and the third party such that the property owner has a duty to control the third party's conduct. Special relationships recognized by Florida courts include landlord-tenant, hotel-guest, employer-employee, proprietor-patron, and school-student; all involve a person who has entered upon the property of another and in so doing lost a measure of control in providing for his or her own protection. See *Stevens v. Jefferson*, 436 So. 2d 33 (Fla. 1983); *K.M. ex rel. D.M. v. Publix Super Markets, Inc.*, 895 So. 2d 1114 (Fla. 4th DCA 2005); *Gross v. Fam. Servs. Agency, Inc.*, 716 So. 2d 337 (Fla. 4th DCA 1998); *Salerno v. Hart Fin. Corp.*, 521 So. 2d 234 (Fla. 4th DCA 1988); Restatement 2d Torts s. 315; Frederic S. Zinober, *Litigating the Negligent Security Case: Who's In Control Here?*, 44 Stetson L. Rev. 289 (2015).

- Plaintiff was injured because of a third party's criminal act, which act was reasonably foreseeable to the defendant and would not have occurred but for the defendant's breach;⁷ and
- Plaintiff incurred actual damages.⁸

Previous Treatment of Risky Activities in Florida

As skateboarding and inline skating gained in popularity in Florida, citizens called for an increase in public skate parks and other facilities. Local government officials, however, declined to create these parks and set aside areas out of concern for liability exposure. The 1999 Legislature addressed these concerns by providing immunity from liability for governmental entities that set aside areas for skateboarding, inline skating, and freestyle bicycling.⁹

S. 316.0085, F.S., addresses, and considers as inherently risky, the activities of skateboarding, inline skating, paintball, and freestyle, mountain, and off-road bicycling.¹⁰ Under current law, a governmental entity, which may include a federal, state, or local governmental entity, authorizes or permits a person to engage in these inherently risky activities by posting a sign designating an area for a specific activity.¹¹ The governmental entity is generally immune from liability for damages or injuries to a person 17 years of age or older who injures himself or herself as a result of participating in an inherently risky activity. However, for a participant under 17 years of age, the governmental entity must obtain written consent from the child's parent to receive the benefit of the limited liability.¹²

A governmental entity may still be liable for damages or injuries if it:

- Fails to warn of a dangerous condition which a participant cannot reasonably be expected to notice; or
- Commits gross negligence that is the proximate cause of a participant's injury.¹³

Additionally, s. 316.0085, F.S., does not limit the liability of individuals who are negligent while participating in an inherently dangerous activity. A participant is negligent if he or she fails to:

- Act within the limits of his or her ability and the purpose and design of the equipment used;
- Remain in control of his or her equipment and himself or herself; or
- Refrain from acting in a way that may cause or contribute to death or injury of himself or herself or others.¹⁴

Assumption of Inherent Risks

Each person is ordinarily liable for the torts he or she commits. However, liability may be avoided or reduced through the tort law doctrine of "assumption of risk," whereby the defendant asserts that the plaintiff has assumed a particular risk of injury. There are two primary ways that assumption of risk may be established: through informed participation ("implied" assumption of the risk) or through verbal or written contractual assumption of risk agreements ("express" assumption of the risk).

⁷ Generally, a negligent person is not liable for the damages suffered by another when some separate force or action is an intervening cause of the harm, but where the intervening cause is foreseeable, the original negligent actor may still be held liable. Thus, a negligent security claim's success often hinges on the foreseeability of the crime committed, as property owners are not expected to prevent all possible crimes which may occur on their property. Whether or not a crime was foreseeable is a question of fact, but evidence of foreseeability may include the crime rate in the premises' immediate area, whether similar crimes have previously been committed on the premises, and the nature of the property itself (in other words, is the property of a type that is likely to attract crime). *Stevens*, 436 So.2d at 34-35; *Gibson v. Avis Rent-A-Car System, Inc.*, 386 So.2d 520 (Fla. 1980); *Williams v. Office of Sec. & Intelligence, Inc.*, 509 So.2d 1282 (Fla. 3d DCA 1987).

⁸ *Globe Sec. Systems Co. v. Mayor's Jewelers, Inc.*, 458 So.2d 828 (Fla. 3d DCA 1984).

⁹ Ch. 99-133, L.O.F., expressly recognizes "that governmental owners or lessees of property have failed to make property available for [skateboarding, inline skating, and freestyle bicycling] because of the exposure to liability from lawsuits and the prohibitive cost of insurance, if insurance can be obtained for such activities."

¹⁰ S. 316.0085(2)(b), F.S.

¹¹ S. 316.0085(2)(a) and (3), F.S.

¹² S. 316.0085(3), F.S.

¹³ S. 316.0085(5), F.S.

¹⁴ S. 316.0085(7)(b), F.S.

Where the plaintiff's conduct is properly characterized as an "implied" assumption of the risk, the plaintiff's conduct must be evaluated by the jury under the principles of comparative negligence.¹⁵ On the other hand, for an "express" assumption of risk to be valid, either by contract or by voluntary participation in an activity, it must be clear that the plaintiff understood that he or she was assuming the particular conduct by which the defendant caused the plaintiff's injury.¹⁶

A minor ordinarily is liable for personal torts directly committed by the minor that are not connected with and do not arise out of contracts,¹⁷ and likewise, a mentally incompetent person is ordinarily responsible for his or her own torts.¹⁸

Waiver of Claims on Behalf of Minor Children

S. 744.301(3), F.S., authorizes natural guardians,¹⁹ on behalf of any of their minor children, to waive and release, in advance, any claim or cause of action against a commercial activity provider, or its owners, affiliates, employees, or agents, which would accrue to a minor child for personal injury, including death, and property damage resulting from an inherent risk²⁰ in the activity. If a waiver or release complies with all of the requirements under s. 744.301, F.S., there is a rebuttable presumption that the waiver or release is valid, and a claimant must demonstrate by a preponderance of the evidence that the waiver or release does not comply with s. 744.301, F.S.

Effect of the Bill

Limitation of Liability for an Operator of a Roller Skating Rink

The bill creates s. 768.395, F.S., to limit the liability for a skating rink operator who meets certain statutory standards and requirements. The bill defines "operator" as a person or entity owning, managing, controlling, directing, or having operational responsibility for a roller skating rink.

The bill provides that an operator is not liable to a roller skater or a spectator at a roller skating rink for any damages or personal injury arising from the "inherent risks" of roller skating—meaning the dangers or conditions that are characteristic of, intrinsic to, or an integral part of, roller skating. The bill further provides that an operator is not required to eliminate or control the inherent risks in roller skating.

Duties of an Operator of a Roller Skating Rink

However, the bill provides that it does not limit the liability of an operator if he or she fails to meet the following standards and requirements:

- Conspicuously post in at least three areas on the premises, the responsibilities of roller skaters and spectators specified in the bill;
- Maintain the stability and legibility of all signs, symbols, and posted notices;
- Have at least one roller skating rink supervisor or manager on duty for every 200 skaters when the roller skating rink is open for business;
- Maintain the skating surface in a reasonably safe condition and clean and inspect the skating surface before each skating session;
- Maintain in good condition the railings, kickboards, and walls surrounding the skating surface;

¹⁵ 38 Fla. Jur 2d Negligence s. 118.

¹⁶ 38 Fla. Jur 2d Negligence s. 110.

¹⁷ Fla. Jur. 2d, Family Law s. 549.

¹⁸ Fla. Jur. 2d, Incompetent and Incapacitated Persons s. 47.

¹⁹ The parents jointly are the natural guardians of their own children and of their adopted children, during minority, unless the parents' parental rights have been terminated. See s. 744.301(1), F.S.

²⁰ The term "inherent risk" means those dangers or conditions, known or unknown, which are characteristic of, intrinsic to, or an integral part of the activity and which are not eliminated even if the activity provider acts with due care in a reasonably prudent manner. See s. 744.301(3)(a), F.S.

- Ensure that all coverings on risers are securely fastened in roller skating rinks with step-up or step-down skating surfaces;
- Install and regularly inspect fire extinguishers;
- Inspect emergency lights at least quarterly to ensure the lights are in proper working order;
- Keep exit lights and service area lights on when skating surface lights are turned off during a skating session;
- Inspect and maintain in good mechanical condition roller skating equipment that the operator leases or rents to roller skaters;
- Comply with all applicable state and local safety codes; and
- Take reasonable action to correct a dangerous condition that is known or should be reasonably known.

The bill also provides that it does not shield the operator from liability if the injuries or damages were caused by the operator's or the operator's employees' gross negligence.

Moreover, while the bill limits the liability of a skating rink operator if he or she abides by these standards and requirements, the bill also provides that the failure of the operator to meet such standards and requirements constitutes negligence.

Responsibilities of a Skater

The bill also creates a list of standards applicable to a roller skater. Under the bill, a roller skater is deemed to be negligent if he or she does not:

- Maintain reasonable control of his or her speed and direction of travel at all time;
- Heed all posted signs and warnings;
- Maintain a proper awareness to avoid other roller skaters and objects;
- Accept responsibility for knowing the range of his or her own abilities to negotiate the intended direction of travel while roller skating and to skate within the limits of that ability; and
- Refrain from acting in a manner that may cause or contribute to his or her own personal injury or the personal injury of another person.

The bill was approved by the Governor on May 11, 2023, ch. 2023-56, L.O.F., and will become effective on July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on the roller skating industry as it limits an operator's liability to be sued for damages arising from the operation of the roller skating rink and a negative impact on a person injured at a roller skating rink. However, to the extent that an operator fails to meet the standards and requirements provided in the bill, such operator may face greater exposure to liability.

D. FISCAL COMMENTS:

None.