

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 1458

INTRODUCER: Commerce and Tourism Committee and Senator Yarborough

SUBJECT: Roller Skating Rink Safety

DATE: March 28, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Baird</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1458 creates s. 768.395, F.S., which provides that roller skating rink operators will not be liable to a roller skater or spectator for any damages or personal injuries resulting from the inherent risks of roller skating if certain requirements are met by the operator, which include: signage to be posted on the premises, requiring a roller skating rink supervisor or manager for every 200 skaters and the maintenance, safety, and lighting of the roller skating rink itself.

The bill does not limit the liability of any roller skating rink operator for acts of gross negligence by the operator or their employees.

The bill also provides that a roller skater assumes the inherent risks of skating at a roller skating rink. While skating at a rink, roller skaters must maintain control and awareness, obey signage, and refrain from acting in a manner that may cause or contribute to their own personal injury or the personal injury of another.

Failure by a roller skating rink operator to perform their specified duties and responsibilities constitutes negligence, and failure by a roller skater to perform their specified duties and responsibilities constitutes negligence.

The bill takes effect July 1, 2023.

II. Present Situation:

Roller Skating Rinks

There are less than 50 roller skating rinks in Florida that are mostly 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 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 is based upon passive negligence; that is, a premises liability claim stems 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. As to an invitee, a landowner or possessor is liable if he/she/it:

- 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

¹ *Florida Roller Skating Rinks*, Skating Fitness, <https://www.skatingfitness.com/Roller-Locator-Florida.htm> (last visited March 24, 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 March 24, 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.

- Defendant had a duty to provide adequate security on the property but breached such duty;⁶
- 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

Florida Has Addressed Inherently Risky Behavior Before

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

Today, 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 According to the statute, 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 as a result of participating in an inherently risky activity. However, for a participant who is younger than 17 years of age, the governmental entity has the benefit of this limited liability only if it obtains the written consent of a parent of the child.¹²

Although existing law provides significant liability protections to governmental entities, a governmental entity can be held liable for damages or injuries if it:

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).

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 Chapter 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 Section 316.0085(2)(b), F.S.

¹¹ Section 316.0085(2)(a) and (3), F.S.

¹² Section 316.0085(3), F.S.

- 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

A person is ordinarily liable for their torts committed. However, liability can be avoided through the tort law concept, assumption of risk. Assumption of risk is a concept that can reduce or eliminate the amount that a plaintiff is entitled to recover.¹⁵ There are two primary ways that assumption of risk can be established, through informed participation (implied) or through verbal or written contractual assumption of risk agreements (express).

Where the plaintiff's conduct is properly characterized as implied assumption of the risk, the plaintiff's conduct must be evaluated by the jury under the principles of comparative negligence.¹⁶ For 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 plaintiff was assuming the particular conduct by which the defendant caused the plaintiff's injury.¹⁷

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,¹⁸ and likewise, a mentally incompetent person is ordinarily responsible for his or her own torts.¹⁹

Waiver of Claims on Behalf of Minor Children

Section 744.301(3), F.S., authorizes natural guardians,²⁰ on behalf of any of their minor children, to waive and release, in advance, any claim or cause of action against a commercial activity

¹³ Section 316.0085(5), F.S.

¹⁴ Section 316.0085(7)(b), F.S.

¹⁵ *Gorday v. Faris*, 523 So. 2d 1215 (Fla. 1st DCA 1988); *Hall v. Holton*, 330 So. 2d 81 (Fla. 2d DCA 1976); *Parker v. Maule Industries, Inc.*, 321 So. 2d 106 (Fla. 1st DCA 1975), decision approved, 348 So. 2d 287 (Fla. 1977); *Rea v. Leadership Housing, Inc.*, 312 So. 2d 818 (Fla. 4th DCA 1975), decision approved, 348 So. 2d 287 (Fla. 1977).

¹⁶ 38 Fla. Jur 2d Negligence § 118.

¹⁷ 38 Fla. Jur 2d Negligence § 110.

¹⁸ Fla. Jur. 2d, Family Law § 549.

¹⁹ Fla. Jur. 2d, Incompetent and Incapacitated Persons § 47.

²⁰ 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. If a child is the subject of any proceeding under chapter 39, the parents may act as natural guardians under this section unless the court division with jurisdiction over guardianship matters finds that it is not in the child's best interests. If one parent dies, the surviving parent remains the sole natural guardian even if he or she remarries. If the marriage between the parents is dissolved, the natural guardianship belongs to the parent to whom sole parental responsibility has been granted, or if the parents have been granted shared parental responsibility, both continue as natural guardians. If the marriage is dissolved and neither parent is given parental responsibility for the child, neither may act

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 risk²¹ 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.

III. Effect of Proposed Changes:

Requirements for Skating Rink Operators

The bill limits liability for skating rink operators unless they fail to meet certain requirements:

- Conspicuously post in at least three areas on the premises, the responsibilities of roller skaters and spectators under subsections 5 and 6;
- 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;
- 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 reasonably should have been known.

Failure to perform these specified duties and responsibilities constitutes negligence. An operator is liable for personal injuries or damages caused by an act of gross negligence by the operator or his or her employees.

as natural guardian of the child. The mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless the court enters an order stating otherwise. *See* 744.301(1), F.S.

²¹ 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. The term includes, but is not limited to: (1) The failure by the activity provider to warn the natural guardian or minor child of an inherent risk; and (2) The risk that the minor child or another participant in the activity may act in a negligent or intentional manner and contribute to the injury or death of the minor child. A participant does not include the activity provider or its owners, affiliates, employees, or agents. *See* s. 744.301(3)(a), F.S.

Requirements for Roller Skater or Spectator

The bill creates an assumption of the risk for roller skaters and spectators at a roller skating rink. Operators will not be responsible to roller skaters or spectators for the inherent risks associated with roller skating. Roller skaters and spectators will be deemed to be negligent if they do not meet the following requirements:

- 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 their 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.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None identified.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill could potentially limit lawsuits against roller skating rinks.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 768.395 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism Committee on March 27, 2023:

The committee substitute provides that in order to be covered by the limitation on liability, a roller skating rink operator must take reasonable action to correct a dangerous condition that is known or reasonably should have been known.

- B. **Amendments:**

None.