

Committee Substitute for Senate Bill No. 1790

An act relating to exemptions from liability for governmental property owners or lessees and public employees; amending s. 316.0085, F.S.; including the game of paintball in the exemption from liability granted to governmental property owners or lessees and public employees; requiring governmental entities to post rules indicating that written parental consent is required for minors; revising the exemptions from immunity provided by the act; providing for liability of independent concessionaires or other persons or organizations for certain injuries or damages; providing for the assumption of certain risks; providing requirements for participants in the game of paintball; providing an effective date.

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

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

316.0085 Skateboarding; inline skating; freestyle bicycling; paintball; definitions; liability.—

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

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

(a) “Governmental entity” means:

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

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

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

(3) This section does not grant authority or permission for a person to engage in skateboarding, inline skating, paintball, or freestyle bicycling on property owned or controlled by a governmental entity unless such governmental entity has specifically designated such area for skateboarding, inline skating, paintball, or ~~and~~ freestyle bicycling. Each governmental entity shall post a rule in each specifically designated area that identifies all

authorized activities and indicates that a child under 17 years of age may not engage in any of those activities until the governmental entity has obtained written consent, in a form acceptable to the governmental entity, from the child's parents or legal guardians.

(4) ~~A No~~ governmental entity or public employee ~~is not shall be~~ liable to any person who voluntarily participates in skateboarding, inline skating, paintball, or freestyle bicycling for any damage or injury to property or persons which arises out of a person's participation in such activity, and which takes place in an area designated for such activity.

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

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

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

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

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

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

(7)(a) Any person who participates in or assists in skateboarding, inline skating, paintball, or freestyle bicycling assumes the known and unknown inherent risks in these activities irrespective of age, and is legally responsible for all damages, injury, or death to himself or herself or other persons or property which result from these activities. Any person who observes skateboarding, inline skating, paintball, or freestyle bicycling assumes the known and unknown inherent risks in these activities irrespective of age, and is legally responsible for all damages, injury, or death to himself or herself which result from these activities. ~~A No~~ governmental entity that

which sponsors, allows, or permits skateboarding, inline skating, paintball, or freestyle bicycling on its property is not required to eliminate, alter, or control the inherent risks in these activities.

(b) While engaged in skateboarding, inline skating, paintball, or free-style bicycling, irrespective of where such activities occur, a participant is responsible for doing all of the following:

1. Acting within the limits of his or her ability and the purpose and design of the equipment used.
2. Maintaining control of his or her person and the equipment used.
3. Refraining from acting in any manner which may cause or contribute to death or injury of himself or herself, or other persons.

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

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

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

Approved by the Governor June 10, 2004.

Filed in Office Secretary of State June 10, 2004.