

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 Rules

BILL: CS/SB 1458

INTRODUCER: Commerce and Tourism Committee and Senator Yarborough

SUBJECT: Roller Skating Rink Safety

DATE: April 18, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------|----------------|-----------|------------------|
| 1. | <u>Baird</u> | <u>McKay</u> | <u>CM</u> | Fav/CS |
| 2. | <u>Bond</u> | <u>Cibula</u> | <u>JU</u> | Favorable |
| 3. | <u>Baird</u> | <u>Twogood</u> | <u>RC</u> | Favorable |

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.

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, and most rinks are owned by individual owners or operators.¹ These small business owners are currently faced with higher costs associated with real estate prices and liability insurance premiums.²

Currently eleven other states have dedicated roller skating liability 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

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

Florida Has Addressed Inherently Risky Activities 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 limited immunity from liability for governmental entities that set aside areas for skateboarding, inline skating, and freestyle bicycling.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 Chapter 99-133, Laws of Fla., 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.”

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.⁶ According to the statute, a governmental entity, which may include a federal, state, or local governmental entity, that authorizes or permits a person to engage in these inherently risky activities by posting a sign designating an area for a specific activity,⁷ is generally immune from liability for damages or injuries to a person 17 years of age or older as a result of the person 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.⁸

Although existing law provides liability protections to governmental entities, a governmental entity can be held 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.⁹

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.¹⁰

Assumption of Inherent Risks

Assumption of risk is a concept that can reduce or eliminate the amount that a plaintiff is entitled to recover in a tort claim.¹¹ 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.¹² 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.¹³

⁶ Section 316.0085(2)(b), F.S.

⁷ Section 316.0085(2)(a) and (3), F.S.

⁸ Section 316.0085(3), F.S.

⁹ Section 316.0085(5), F.S.

¹⁰ Section 316.0085(7)(b), F.S.

¹¹ *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).

¹² 38 Fla. Jur 2d Negligence § 118.

¹³ 38 Fla. Jur 2d Negligence § 110.

Ordinarily, a minor is liable for personal torts directly committed by the minor that are not connected with and do not arise out of contracts,¹⁴ and likewise, a mentally incompetent person is ordinarily responsible for his or her own torts.¹⁵

Waiver of Claims on Behalf of Minor Children

Section 744.301(3), F.S., authorizes natural guardians,¹⁶ 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 risk¹⁷ 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 provided they meet certain requirements:

- Conspicuously post in at least three areas on the premises the responsibilities of roller skaters and spectators listed in the bill and the responsibilities of the skating rink that are listed in this 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;
- 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;

¹⁴ Fla. Jur. 2d, Family Law § 549.

¹⁵ Fla. Jur. 2d, Incompetent and Incapacitated Persons § 47.

¹⁶ 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 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.

¹⁷ 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.

- 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.

Requirements for Roller Skater or Spectator

The bill provides that a skating rink operator will not be responsible to roller skaters or spectators for the inherent risks associated with roller skating. Roller skaters and spectators may be considered 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.

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The bill takes effect July 1, 2023.

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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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 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.