

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 774

Short Title: Liability at Public Skateboard Parks.

(Public)

Sponsors: Senators Dalton; and Lucas.

Referred to: Judiciary II.

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE DUTIES OF OPERATORS OF SKATEBOARD PARKS, TO ESTABLISH THE DUTIES OF PERSONS WHO ENGAGE IN CERTAIN HAZARDOUS RECREATIONAL ACTIVITIES, AND TO LIMIT THE LIABILITY OF GOVERNMENTAL ENTITIES FOR DAMAGE OR INJURIES THAT ARISE OUT OF A PERSON'S PARTICIPATION IN CERTAIN HAZARDOUS RECREATIONAL ACTIVITIES AND THAT OCCUR IN AN AREA DESIGNATED FOR CERTAIN HAZARDOUS RECREATIONAL ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 99E of the General Statutes is amended by adding a new Article to read:

"Article 3.

"Hazardous Recreation Parks Safety and Liability.

"§ 99E-21. Purpose.

The purpose of this Article is to encourage governmental owners or lessees of property to make land available to a governmental entity for hazardous recreational activities. 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 the activities.

"§ 99E-22. Definitions.

The following definitions apply in this Article:

(1) Governmental entity. –

a. The State, any county or municipality, or any department, agency, or other instrumentality thereof.

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

1 (2) Hazardous recreational activity. – Skateboarding, inline skating, or
2 freestyle bicycling.

3 (3) Inherent risk. – Those dangers or conditions that are characteristic of,
4 intrinsic to, or an integral part of skateboarding, inline skating, and
5 freestyle bicycling.

6 **"§ 99E-23. Duties of operators of skateboard parks.**

7 (a) No operator of a skateboard park shall permit any person to ride a skateboard
8 therein, unless that person is wearing a helmet, elbow pads, and knee pads.

9 (b) For any facility, owned or operated by a governmental entity, that is designed
10 and maintained for the purpose of recreational skateboard use, and that is not supervised
11 on a regular basis, the requirements under subsection (a) of this section are satisfied
12 when all of the following occur:

13 (1) The governmental entity adopted an ordinance requiring any person
14 riding a skateboard at the facility to wear a helmet, elbow pads, and
15 knee pads.

16 (2) Signs are posted at the facility affording reasonable notice that any
17 person riding a skateboard in the facility must wear a helmet, elbow
18 pads, and knee pads, and that any person failing to do so will be
19 subject to citation under the ordinance under subdivision (1) of this
20 subsection.

21 **"§ 99E-24. Duties of persons engaged in hazardous recreational activities.**

22 (a) Any person who participates in or assists in hazardous recreational activities
23 assumes the known and unknown inherent risks in these activities, irrespective of age,
24 and is legally responsible for all damages, injury, or death to himself or herself or other
25 persons or property that result from these activities. Any person who observes
26 hazardous recreational activities assumes the known and unknown inherent risks in
27 these activities, irrespective of age, and is legally responsible for all damages, injury, or
28 death to himself or herself that result from these activities. No public entity that
29 sponsors, allows, or permits skateboarding, inline skating, or freestyle bicycling on its
30 property is required to eliminate, alter, or control the inherent risks in these activities.

31 (b) While engaged in hazardous recreational activities, irrespective of where such
32 activities occur, a participant is responsible for doing all of the following:

33 (1) Acting within the limits of his or her ability and the purpose and
34 design of the equipment used.

35 (2) Maintaining control of his or her person and the equipment used.

36 (3) Refraining from acting in any manner that may cause or contribute to
37 death or injury of himself or herself, or other persons.

38 (c) Failure to comply with the requirement of subsection (b) of this section
39 constitutes negligence.

40 **"§ 99E-25. Liability of governmental entities.**

41 (a) This section does not grant authority or permission for a person to engage in
42 hazardous recreational activities on property owned or controlled by a governmental
43 entity unless such governmental entity has specifically designated such area for these
44 activities.

1 (b) No governmental entity or public employee shall be liable to any person who
2 voluntarily participates in hazardous recreation activities for any damage or injury to
3 property or persons that arises out of a person's participation in the activity and that
4 takes place in an area designated for the activity.

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

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

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

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

15 (e) Nothing in this section limits the liability of an independent concessionaire,
16 or any person or organization other than a governmental entity or public employee,
17 whether or not the person or organization has a contractual relationship with a
18 governmental entity to use the public property, for injuries or damages suffered in any
19 case as a result of the operation of equipment for hazardous recreational activities on
20 public property by the concessionaire, person, or organization.

21 (f) The fact that a governmental entity carries insurance that covers any activity
22 subject to this Article does not constitute a waiver of the liability limits under this
23 section, regardless of the existence or limits of the coverage."

24 **SECTION 2.** This act becomes effective January 1, 2003, and applies to
25 activities engaged in on or after that date and to actions that arise on or after that date.