

SKATEBOARDING IMMUNITY LAWS LIMIT LIABILITY

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Recently, I was asked whether there was any applicable law on the issue of skate park liability. In this particular instance, a municipal parks and recreation department was apparently contemplating the closure of a skateboard park "because the skaters aren't wearing helmets and pads all of the time":

There is a sign stating that helmets and pads are mandatory, but the parks and recreation department thinks if they don't staff it to ensure compliance, the town/county would be held liable if someone not wearing the proper equipment were to be injured... I live in North Carolina and the standard of care seems to be across the board for skate parks.

In this all too common scenario, ignorance of applicable state law and the perceived fear of liability may unnecessarily limit or eliminate public recreational opportunities and activities, like skateboarding. In general, a failure to enforce park rules, in this case ensure compliance with equipment rules, is not a basis for governmental liability, particularly in unsupervised facilities. More significantly, however, existing statutes in North Carolina and other jurisdictions would provide significant governmental immunity against any liability for skateboarding injuries.

Despite jurisdictional variations, these state laws are quite similar in that they generally preclude any governmental liability for injuries arising out of the inherent risks associated with participation in skateboarding. While some states have adopted immunity legislation specific to skateboarding and similarly hazardous recreational activities, other jurisdictions have included skateboarding within the context of more generic immunity laws such as state recreational use statutes. As illustrated by the state laws described herein, in the case of skateboarding, the legislative trend clearly reflects a public policy which favors governmental immunity over liability.

HAZARDOUS RECREATION

In North Carolina, the expressed legislative purpose of the "Hazardous Recreation Parks Safety and Liability" statute (N.C. Gen. Stat. § 99E-21 to 25) is "to encourage governmental owners or lessees of property to make land available to a governmental entity for skateboarding, inline skating, or freestyle bicycling" without fearing liability:

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.

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To address such liability concerns, this law provides that no governmental entity or public employee will be liable "for any damage or injury to property or persons that arises out of a person's participation in the [hazardous recreation] activity and that takes place in an area designated for the activity." The law, however, distinguishes between supervised and unsupervised facilities. Under the law, operators of supervised skateboard parks have a legal duty not to "permit any person to ride a skateboard therein, unless that person is wearing a helmet, elbow pads, and kneepads." For any governmental facility designed for recreational skateboard use, but "not supervised on a regular basis," the applicable legal duty is satisfied when all of the following occur:

- (1) The governmental entity adopted an ordinance requiring any person riding a skateboard at the facility to wear a helmet, elbow pads, and kneepads.
- (2) Signs are posted at the facility affording reasonable notice that any person riding a skateboard in the facility must wear a helmet, elbow pads, and kneepads and that any person failing to do so will be subject to citation under the ordinance...

Further, the law provides that any person who "participates in or assists in hazardous recreational activities assumes the known and unknown inherent risks in these activities, irrespective of age." Moreover, pursuant to the statute, "[n]o public entity that sponsors, allows, or permits skateboarding, inline skating, or freestyle bicycling on its property is required to eliminate, alter, or control the inherent risks in these activities." Rather, pursuant to the statute, the participant in hazardous recreational activities is held "legally responsible for all damages, injury, or death to himself or herself or other persons or property that result from these activities." While engaged in hazardous recreational activities, irrespective of where such activities occur, the law holds the participant responsible for negligent failure to comply with the ordinance requirement that any person riding a skateboard at an unsupervised facility must wear a helmet, elbow pads, and kneepads.

The hazardous recreation law, however, does not limit liability that would otherwise exist for any of the following:

- (1) The failure of the governmental entity or public employee to guard against or warn of a dangerous condition of which a participant does not have and cannot reasonably be expected to have had notice.
- (2) An act of gross negligence by the governmental entity or public employee that is the proximate cause of the injury.

In California, there is a virtually identical "skateboard park" law which requires helmets, elbow pads, and knee pads (California Health and Safety Code, Section 115800). The California law also requires local public agencies to "maintain a record of all known or reported injuries incurred by a skateboarder in a public skateboard park or facility." Local public agencies are further required to "maintain a record of all claims, paid and not paid, including any lawsuits and their results, arising from those incidents that were filed against the public agency."

Similar legislation in Hawaii limits "liability for skateboarding activities in public skateboard parks" and also requires public entities to "maintain a record of all known or reported injuries incurred by skateboard users in a public skateboard park and all claims paid for such injuries." In this particular law, the Hawaii legislature also requested public entities to make "any recommendations regarding the need for further immunity from liability."

PARTICIPATION RISKS

In contrast to the North Carolina and California statutes described above, the operative language of the Hawaii statute is much simpler in providing public entities with immunity to liability for skateboarding injuries:

No public entity or public employee shall be liable to any person for injury or damage sustained when using a public skateboard park, except when injury or damage is caused by a condition resulting from the public entity's failure to maintain or repair the skateboard park. HRS § 662-19 (2008)

In so doing, there is no requirement in the Hawaii statute regarding helmets, elbow pads, and knee pads in skateboard parks.

Like Hawaii, New Hampshire state law is also quite clear in severely limiting governmental liability for injuries sustained while engaging in skateboarding and similar activities on public land:

A municipality or school district, which without charge permits any person to use a facility operated by the municipality or school district for the purpose of skateboarding, rollerblading, stunt biking, or rollerskiing, shall not be liable for personal injury or property damage resulting from the person's participation in such activity, in the absence of gross and wanton negligence. (507-B:11 Use of Municipal and School District Facilities for Skateboarding, Rollerblading, Stunt Biking, or Rollerskiing.)

Similarly, the "skateboard" immunity statute in Florida states that "a governmental entity or public employee is not liable to any person who voluntarily participates in skateboarding, inline skating, paintball, or freestyle or mountain and off-road 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."

Like the North Carolina statute described above, the expressed legislative purpose of this particular Florida statute is "encourage governmental owners or lessees of property to make land available to the public" for skateboarding and other enumerated recreational activities by reducing "the exposure to liability from lawsuits and the prohibitive cost of insurance" by providing statutory immunity. In so doing, the expressed language of the Florida law recognizes the inherent risks and dangers in activities, like skateboarding, and states that such risks and dangers "should be assumed by those participating in such activities." Governmental immunity under the Florida statute, however, would not apply if the governmental entity fails to obtain

written consent "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 or mountain and off-road bicycling" in areas designated for such use. See Fla. Stat. § 316.0085 (2009).

An analogous immunity statute in Alaska is more generic, as opposed to activity specific, in limiting "civil liability for sports or recreational activities," including skateboarding. In pertinent part, the Alaska statute provides that "a person who participates in a sports or recreational activity assumes the inherent risks in that sports or recreational activity and is legally responsible for all injuries or death to the person or other persons and for all damage to property that results from the inherent risks in that sports or recreational activity." Alaska Stat. § 09.65.290 (2009) The statute defines "inherent risks" as "those dangers or conditions that are characteristic of, intrinsic to, or an integral part of a sports or recreational activity."

RECREATIONAL USE STATUTE

Most states have recreational use statutes which provide that a landowner who opens his land free of charge for public recreational use owes no duty to guard, warn, or make the premises reasonably safe for recreational use. As a result, the landowner's legal duty to recreational users is limited to avoiding willful or wanton misconduct. While willful misconduct is egregious behavior tantamount to an intent to injure, wanton misconduct is behavior which demonstrates an utter disregard for the physical well being of others. Enumerated "recreational purposes" under these state recreational use statutes oftentimes include activities in the "true outdoors" such as hunting, fishing, boating, camping, hiking, etc. Several state recreational use statutes, however, have included skateboarding within the enumerated list of recreational purposes. For example, the South Dakota recreational use statute defines "outdoor recreational purpose" as follows:

"Outdoor recreational purpose," includes any of the following activities or any combination thereof: hunting, fishing, swimming other than in a swimming pool, boating, canoeing, kayaking, camping, picnicking, hiking, biking, *skateboarding*, in-line skating, sledding, horseback riding, off-road driving, nature study, water skiing, team sports, snowmobiling, skiing, climbing, spelunking, para-sailing, hang gliding, shooting, observing wildlife, viewing or enjoying historical, archaeological, scenic, or scientific sites, or engaging in any other form of outdoor sport or recreational activity of any sort.

Similarly, the Texas recreational use statute defines "recreation" to include skating, in-line skating, roller-skating, *skateboarding*, and roller-blading" but "only if the activities take place on premises owned, operated, or maintained by a governmental unit for the purposes of those activities." In addition, the Texas statute requires the governmental entity to "post and maintain a clearly readable sign in a clearly visible location on or near the premises" which contains the following "warning language":

Warning: Texas law (chapter 75, civil practice and remedies code) limits the liability of a governmental unit for damages arising directly from hockey, in-line hockey, skating, in-line skating, roller-skating, skateboarding, roller-blading,

paintball use, or soap box derby use on premises that the governmental unit owns, operates, or maintains for that purpose.

STATE TORT CLAIMS ACT

In pertinent part, the Nebraska "Political Subdivisions Tort Claims Act," R.R.S. Neb. § 13-910 (2009), also provides an expressed exemption from governmental liability for any claim "relating to recreational activities for which no fee is charged," including skateboarding. In addition, the Nebraska tort claims act precludes governmental liability for the following:

the design of a skatepark or bicycle motocross park constructed for purposes of skateboarding, inline skating, bicycling, or scootering that was constructed or reconstructed, reasonably and in good faith, in accordance with generally recognized engineering or safety standards or design theories in existence at the time of the construction or reconstruction.