

**SUBJECT:** Landowner's liability for injuries incurred during recreational activities

**COMMITTEE:** Civil Practices — committee substitute recommended

**VOTE:** 8 ayes — Nixon, Rose, P. King, Madden, Martinez Fischer, Raymond, Strama, Woolley

0 nays

1 absent — Talton

**WITNESSES:** None

**BACKGROUND:** Civil Practice and Remedies Code, sec. 75.002(c) limits a landowner's, including a lessee or occupant, liability for injuries occurring on his or her property in certain circumstances. A landowner who invites or allows another to enter the landowner's property for the purposes of engaging in recreational activities does not assure that the land is safe for the purposes of recreation, owes that person no greater duty than he would to a trespasser, and does not assume responsibility or incur liability for any injury suffered by that person. The landowner's liability, however, is not limited if he or she acted with gross negligence, with malicious intent, or in bad faith. This section applies only to land that is not agricultural land, and it applies to private owners and to the state, a municipality, or a county when it owns such land.

Recreational activities are defined in sec. 75.001 as: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study (including bird watching), cave exploration, waterskiing and other water sports, and any other activity associated with enjoying nature or the outdoors. Under sec. 75.002(e), when the landowner is the state, a municipality, or a county, the definition of recreational activities is expanded to cover certain other activities. Sec. 75.002(g) requires that the government entity post a clearly visible sign with specific language on its properties on which recreational activities occur. The sign must state that the liability of the state, municipality, or county is limited for damages arising from the other activities — hockey, in-line hockey, skating, in-line skating, roller-skating, skateboarding, or roller-blading on the premises.

DIGEST:

CSHB 2070 would expand the definition of recreational activities to include off-road motorcycling, off-road automobile driving, use of all-terrain vehicles, bicycling, mountain biking, disc golf, and dog walking. This definition would apply to a private or a government owner of land.

The bill also would expand governmental coverage to include any “governmental unit,” which is defined in Civil Practice and Remedies Code, sec. 101.001 as:

- the state, including all its agencies, departments, bureaus, boards, commissions, offices, agencies, councils, and courts;
- a political subdivision of the state, including any city, county, school district, junior college district, or special-purpose district;
- an emergency service organization; and
- any other organ of the government that derives its status and authority from Texas laws or the Constitution.

In reference to a governmental unit, the bill would remove language stating that a governmental unit’s liability would not be limited if it acted with gross negligence, malicious intent, or bad faith and replace it with language stating that the governmental unit would owe a person it invited or allowed onto its land for recreational activities no greater duty than it would owe to a trespasser.

The bill also would require that posted signs warning of limited liability state that the liability of a “government entity,” rather than the liability of “the state and a municipality or county,” would be limited.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005, and would apply to a cause of action that accrued on or after the effective date.

SUPPORTERS  
SAY:

CSHB 2070 would honor the intent Civil Practice and Remedies Code, ch. 75 by adding recreational activities that have become increasingly common in recent years to the list of activities for which the liability of private and government landowners is limited. In addition, the bill would extend liability protections to government entities other than the state, municipalities, and counties, which also would follow the intent of the chapter. Extending limited liability coverage to government entities such

as school districts and special purpose districts would ensure fair treatment and equal protection for all types of governmental units.

OPPONENTS  
SAY:

No apparent opposition.

NOTES:

HB 2070 as introduced would have protected only governmental units, rather than all landowners, from liability due to damages arising from bicycling, mountain biking, disc golf, and dog walking. The substitute also added to the definition of recreational activities off-road motorcycling, off-road automobile driving, and the use of all-terrain vehicles.

HB 2070 as introduced would have left intact language stating that a governmental unit's liability is not limited if it acted with gross negligence, malicious intent, or bad faith and would not have replaced it with the statement that a governmental unit owes a person it invites or allows onto its land for recreational activities no greater duty than is owed to a trespasser.

The companion bill, SB 1224 by Duncan, passed the Senate on the Local and Uncontested Calendar on April 21 and was reported favorably, without amendment, by the House Civil Practices Committee on May 3, making it eligible to be considered in lieu of HB 2070.

A related bill, HB 616 by Callegari, which would expand the definition of recreational activities to include bicycling or bicycle motocrossing and add soap box derby to the definition of recreation applicable to a governmental unit, passed the House on April 29 and has been referred to the Senate State Affairs Committee.

In the fiscal note, the Legislative Budget Board estimates that changing the posted signs would cost the state \$250 per sign, for a total of \$30,000 to change signs at approximately 120 sites. The cost to local government also would be \$250 per sign, and the total cost would vary based on how many signs each government unit had to replace.