SUBJECT: Revising landowner liability for injuries from recreational activities

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 8 ayes — Nixon, Rose, King, Madden, Raymond, Strama, Talton, Woolley

0 nays

1 absent — Martinez Fischer

WITNESSES: For — Carole Lenz, Harris County Commissioner Steve Radack – Pct. 3; Ann Travis, City of Houston – Office of the Mayor

Against — None

On — George Nachtigall, Harris County and Harris County Attorney's Office

BACKGROUND: Civil Practice and Remedies Code, sec. 75.002(c) limits the liability of a landowner, including a lessee or occupant, 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 the landowner 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 hockey, in-line hockey, skating, in-line skating, roller-skating, skateboarding, or roller-blading on the premises.

Civil Practice and Remedies Code, sec. 101.001 defines a "governmental unit" as:

- the state, including all its agencies, department, 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; or
- any other organ of the government that derives its status and authority form Texas laws or the Constitution.

DIGEST:

CSHB 616 would expand the definition of recreational activities to include bicycling or bicycle motocrossing. This definition would apply to a private or a governmental owner of land. The bill also would add soap box derby use to the definition of “recreation” as it applies to a governmental unit.

The bill would expand governmental coverage to include any governmental unit. The bill would repeal 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 “governmental unit,” rather than the liability of “the state and a municipality or county,” would be limited. The signs would have to warn that governmental units receive limited liability protection from damages arising from soap box derby use (in addition to other activities already stated on such signs) occurring on government land.

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 616 would honor the intent of 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 616 as introduced referenced soap box derby racing rather than soap box derby use. It also would have included soap box derby racing in the general definition of "recreation" such that both private and government owners of land would receive limited liability protection from damages arising from that activity on its property. The bill as introduced also would not have expanded governmental coverage to include any "governmental unit." Nor would it have replaced the language stating that a governmental unit's liability would not be limited if it acted with gross negligence, malicious intent, or bad faith.

HB 2070 by Rose contains provisions similar to those in HB 616. It would limit landowners' liability for activities such as off-road driving by cars or motorcycles, bicycling, mountain biking, disc golf, and dog walking. HB 2070 was placed on the General State Calendar for April 20 and was postponed until May 2. Its companion bill, SB 1224 by Duncan, passed the Senate on the Local and Uncontested Calendar on April 21.