

SUBJECT: Adding paintball to recreational activities covered by limited liability

COMMITTEE: Civil Practices —favorable, without amendment

VOTE: 5 ayes — B. Cook, Strama, P. King, Raymond, Talton

0 nays

4 absent — Madden, Martinez Fischer, Miller, Woolley

WITNESSES: For — Carole Scharth, Commissioner Steve Radack, Harris County Precinct 3; (*Registered, but did not testify*: Cathy Sisle, Harris County)

Against — (*Registered, but did not testify*: Jay Harvey, Texas Trial Lawyers Association)

BACKGROUND: Civil Practice and Remedies Code, sec. 75.002(c) limits the liability of a landowner, lessee, or occupant for permitted or invited recreational users of their land. A landowner who invites or allows recreational use of his or her land neither assures the premises are safe for that purpose, nor owes a greater degree of care than is owed to a trespasser, nor assumes responsibility for any injury resulting from that use. This section does not limit liability for a landowner who acts with gross negligence, with malicious intent, or in bad faith.

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, bicycling, mountain biking, disc golf, walking dogs on- or off-leash, and any other activity associated with enjoying nature or the outdoors

Under sec. 75.002(e), when the landowner is a government unit — including the state, any political subdivision of the state, or an emergency service organization — recreational activities are expanded to cover other activities. Sec. 75.002(g) requires the government entity to post a clearly visible sign specifically warning recreational users that the liability of the government unit is limited for damages arising directly from hockey, in-line hockey, skating, in-line skating, roller-skating, skateboarding, roller-blading, or soap box derby on the premises.

**DIGEST:** HB 1560 would add “paintball use” to the recreational activities listed in sec. 75.002(e) and to the warning sign posted by governmental units.

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, 2007.

**SUPPORTERS SAY:** HB 1560 would add the increasingly popular activity of paintball to the list of activities for which the liability of government landowners is limited. According to the Sporting Goods Manufacturer’s Association, more than 10 million people annually play paintball in the United States, and the activity has a large and growing fan base in Texas. For example, Harris County residents have expressed an interest in using county parks and recreational facilities for paintball. By extending limited liability to paintball use on government land, HB 1560 would better enable officials in Harris County, and across the state, to enhance their residents’ quality of life and opportunities for physical activity by making land available for paintball.

**OPPONENTS SAY:** Paintball can cause injuries, and the range of paintball guns can extend beyond the boundaries of properties hosting paintball games. This bill would prevent an innocent bystander on a separate piece of property from recovering damages caused by a stray paintball pellet even though the bystander was not a willing participant in the game.

This bill would go too far to limit the liability of governmental entities. Existing insurance and tort claim caps adequately protect the government from loss, so no further limits on liability in statute are required.

**NOTES:** The identical companion bill, SB 774 by Jackson, has been referred to the Senate State Affairs Committee.

According to the Legislative Budget Board, the cost to post each new warning sign would be \$250 for local governmental entities affected by the bill. There would be no cost to the state because the Texas Parks and Wildlife Department does not allow paintball use in state parks.