ASSEMBLY, No. 2938

STATE OF NEW JERSEY

219th LEGISLATURE

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Sponsored by:
Assemblyman JAY WEBBER
District 26 (Essex, Morris and Passaic)

SYNOPSIS

Limits liability for operators of buildings, facilities, or premises for certain sports, games, and amusement activities.

CURRENT VERSION OF TEXT

As introduced.

AN ACT limiting liability for operators of buildings, facilities, or premises for certain sports, games, and amusement activities, and supplementing Title 5 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. a. As used in this section:

"Inherent risk of a physically-exerting recreational activity" means a danger to person or property which is an integral part of a particular physically-exerting recreational activity, arising from participating in or observing that recreational activity.

"Operator" means a person or entity who owns, manages, controls, or directs the operation of a building, facility, or premises used for sports, games, or amusement at which a participant may engage in a physically-exerting recreational activity. An operator shall include any person or entity acting on behalf of an operator concerning some or all of the physically-exerting recreational activities for a building, facility, or premises, and shall also include the State and any agency or instrumentality thereof, and any political subdivision of the State and any agency or instrumentality thereof.

"Participant" means any person, whether an amateur or professional, engaging in a physically-exerting recreational activity, whether or not a fee is paid to an operator to engage in that activity.

"Physically-exerting recreational activity" means any activity requiring a participant, as a patron, paying or otherwise, of a building, facility, or premises used for sports, games, or amusement, to use physical exertion to voluntarily engage in that recreational activity, which is the intended recreational activity of the building, facility, or premises. A physically-exerting recreational activity shall include, but is not limited to, gymnastics, football, baseball, softball, basketball, volleyball, soccer, lacrosse, hockey, field hockey, tennis, racket ball, and other sports, trampoline jumping, rope and rock climbing, bicycling, go-karting, and other forms of racing.

"Spectator" means any person who is present within a building, facility, or premises used for sports, games, or amusement at which a participant may engage in a physically-exerting recreational activity, for the purpose of observing the recreational activity whether or not an invitee.

b. (1) Except as otherwise set forth under P.L.1979, c.29 (C.5:13-1 et seq.) concerning skiing, the "New Jersey Roller Skating Rink Safety and Fair Liability Act," P.L.1991, c.28 (C.5:14-1 et seq.) concerning roller skating, P.L.1997, c.287 (C.5:15-1 et seq.), concerning equine animal activities, or any other law establishing or limiting the liability of an operator of a building, facility, or premises that is used for sports, games, or amusement

related to a particular physically-exerting recreational activity, a participant and a spectator are deemed to assume any inherent risk of participating in or observing a physically-exerting recreational activity. Each participant is additionally assumed to know the range of his own ability to participate in a physically-exerting recreational activity, and it shall be the duty of each participant to act within the limits of his own ability in order to refrain from acting in a manner which may cause or contribute to the injury of the participant, other participants, or spectators, or damage to the property thereof.

(2) The assumption of risk set forth in this subsection shall be a complete bar of suit and shall serve as a complete defense to a suit against an operator by a participant or spectator for injuries arising from an assumed risk of a physically-exerting recreational activity, notwithstanding the provisions of P.L.1973, c.146 (C.2A:15-5.1 et seq.) relating to comparative negligence. Nothing in this subsection shall immunize an owner against any liability arising from any act of gross negligence, or willful or wanton misconduct.

(3) The limits on liability set forth in this subsection are cumulative with the defenses available under the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., when that act is applicable.

2. This act shall take effect immediately.

STATEMENT

This bill would limit liability for operators of buildings, facilities, or premises used for sports, games, or amusement at which participants and spectators may engage in or observe physically-exerting recreational activities. A "physically-exerting recreational activity" is defined under the bill as any activity requiring a participant, as a patron, paying or otherwise, of a building, facility, or premises used for sports, games, or amusement, to use physical exertion to voluntarily engage in that recreational activity, which is the intended recreational activity of the building, facility, or premises.

A physically-exerting recreational activity would include, but not be limited to, gymnastics, football, baseball, softball, basketball, volleyball, soccer, lacrosse, hockey, field hockey, tennis, racket ball, and other sports, trampoline jumping, rope and rock climbing, bicycling, go-karting, and other forms of racing. Any such activity that is specifically subject to another statutory law detailing the liabilities of owners, such as skiing (P.L.1979, c.29 (C:5:13-1 et seq.)), roller skating (the "New Jersey Roller Skating Rink Safety and Fair Liability Act," P.L.1991, c.28 (C.5:14-1 et seq.)), or equine animal activities (P.L.1997, c.287 (C.5:15-1 et seq.)), would not be covered by the provisions of the bill. This would leave intact the

establishment or limitations of owner liability provided by the particulars of those other, specifically targeted statutory enactments.

Under the bill, a participant and a spectator of an applicable recreational activity would be deemed to assume any inherent risk of participating in or observing that activity. Each participant additionally would be assumed to know the range of his own ability to participate in the physically-exerting recreational activity, and it would be the duty of each participant to act within the limits of his own ability in order to refrain from acting in a manner which could cause or contribute to the injury of the participant, other participants, or spectators, or damage to the property thereof.

The assumption of risk set forth in the bill would be a complete bar of suit and would serve as a complete defense to a suit against an operator by a participant or spectator for injuries arising from an assumed risk of a physically-exerting recreational activity, notwithstanding the provisions of P.L.1973, c.146 (C.2A:15-5.1 et seq.) relating to comparative negligence. However, nothing in the bill would immunize an owner against any liability arising from any act of gross negligence, or willful or wanton misconduct.

Because an owner is defined under the bill to include governmental entities, and their agencies or instrumentalities, the limits on liability set forth in the bill would also be deemed to be cumulative with the defenses available under the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., when that act is applicable.