

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2019-2020 Regular Session

SB 1003 (Jones)
Version: February 13, 2020
Hearing Date: May 22, 2020
Fiscal: No
Urgency: Yes
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SUBJECT

Skateboard parks: other wheeled recreational devices: safety and liability

DIGEST

This bill expands the law providing public entities qualified immunity, if certain attendant requirements are met, in connection with skateboarding in skateboard parks to also include the riding of other wheeled recreational devices, as defined. Similar to skateboarding, the riding of other wheeled recreational devices will be considered a "hazardous recreational activity."

EXECUTIVE SUMMARY

Existing law provides a qualified immunity to public entities and public employees in connection with injuries and damages arising from a person's participation in "hazardous recreational activities." (Gov. Code § 831.7.) The law extends that qualified immunity to local public agencies that operate public skateboarding parks, provided that they meet certain requirements, including requiring persons who skateboard to wear helmets, elbow pads, and knee pads. This bill extends that same qualified immunity, subject to the same requirements, to injuries or damage arising from the use of "other wheeled recreational devices," as defined, in these skateboard parks.

Other wheeled recreational devices were previously added to the statute in 2015, but a sunset date was placed on the expansion. The statute adding such devices sunset on January 1, 2020 without any extension. This bill once again extends the qualified immunity afforded to public agencies in connection with skateboarding to other wheeled devices, by again making the riding of such devices a hazardous recreational activity.

This bill is sponsored by the County of San Diego. There is no other known support or opposition. The bill contains an urgency clause.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Defines “hazardous recreational activity” as a recreational activity conducted on property of a public entity that creates a substantial, as distinguished from a minor, trivial, or insignificant, risk of injury to a participant or a spectator. This includes animal riding, archery, bicycle racing, rodeo, and body contact sports. (Gov. Code § 831.7(b).)
- 2) Limits the liability of a public entity and a public employee to any person who participates in a hazardous recreational activity, including any person who assists the participant, for any damage or injury to property or persons arising out of that hazardous recreational activity. This qualified immunity also applies to claims of spectators who knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury to themselves and were voluntarily in the place of risk, or having the ability to do so failed to leave. (Gov. Code § 831.7(a), (c).)
- 3) Provides that riding a skateboard at a facility or park owned or operated by a public entity as a public skateboard park, as specified, shall be deemed a hazardous recreational activity within the meaning of Government Code Section 831.7 (“Section 831.7”) if all of the following conditions are met:
 - a) the person riding the skateboard is 12 years of age or older;
 - b) the riding of the skateboard that caused the injury was stunt, trick, or luge riding; and
 - c) the skateboard park is on public property that complies with the requirements laid out below. (Health & Saf. Code § 115800(d)(1).)
- 4) Prohibits an operator of a skateboard park from permitting a person to ride a skateboard in the park, unless that person is wearing a helmet, elbow pads, and knee pads. (Health & Saf. Code § 115800(a).) These requirements may be satisfied, with respect to a facility, owned or operated by a local public agency, that is designed and maintained for the purpose of riding a recreational skateboard, and that is not supervised on a regular basis, by compliance with the following:
 - a) adoption by the local public agency of an ordinance requiring a person riding a skateboard at the facility to wear a helmet, elbow pads, and knee pads; and
 - b) the posting of signs at the facility affording reasonable notice that a person riding a skateboard in the facility must wear a helmet, elbow pads, and knee pads, and that a person failing to do so will be subject to citation under the above ordinance. (Health & Saf. Code § 115800(b).)

- 5) Requires the local public agency to maintain a record of all known or reported injuries incurred by a person riding a skateboard in a public skateboard park or facility. The local public agency shall also 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. (Health & Saf. Code § 115800(d)(4).)
- 6) Provides that a public entity that owns or operates a dog park shall not be held liable for injury or death of a person or pet resulting solely from the actions of a dog in the dog park. (Gov. Code § 831.7.5.)

This bill:

- 1) Defines “other wheeled recreational device” to mean nonmotorized bicycles, scooters, inline skates, roller skates, or wheelchairs.
- 2) Includes other wheeled recreational devices in Health and Safety Code Section 115800 (“Section 115800”), applying the same requirements and affording the same qualified immunity as currently provided to skateboarding in skateboard parks.
- 3) Applies the qualified immunity afforded above to injuries that occur while operating other wheeled recreational devices on or after the effective date of the legislation.
- 4) Provides that it is an urgency measure to take effect immediately.

COMMENTS

1. Hazardous recreational activities

In 1983, California codified a qualified immunity for public entities and public employees for injuries suffered by individuals engaged in “hazardous recreational activities,” currently defined as recreational activities “conducted on property of a public entity that creates a substantial, as distinguished from a minor, trivial, or insignificant, risk of injury to a participant or a spectator.” (§ 831.7.) The law identifies activities considered hazardous for these purposes, including rock climbing, sky diving, and surfing. Section 831.7 makes clear that it is not a complete immunity and explicitly provides that it does not limit liability for certain conduct, such as failure of a public entity or employee to guard or warn of a known dangerous condition; negligent failure of the public entity or public employee to properly construct or maintain in good repair any structure, recreational equipment or machinery, or substantial work of improvement; or for gross negligence on the part of the entity or employee.

In 1997, AB 1296 (Morrow, Ch. 573, Stats. 1997) categorized skateboarding as a hazardous recreational activity for which public entities could receive qualified immunity. (§ 115800.) Local public agencies are afforded the immunity pursuant to Section 115800 only if the person riding the skateboard is 12 years of age or older and the riding that caused the injury was “stunt, trick, or luge riding.” In addition, the skateboard park must meet certain requirements. The public agency operator must not permit a person to ride a skateboard in the park, unless that person is wearing a helmet, elbow pads, and knee pads. However, this requirement can also be met at a facility not supervised on a regular basis through compliance with the following:

- adoption by the local public agency of an ordinance requiring a person riding a skateboard at the facility to wear a helmet, elbow pads, and knee pads; and
- the posting of signs at the facility affording reasonable notice that a person riding a skateboard in the facility must wear a helmet, elbow pads, and knee pads, and that a person failing to do so will be subject to citation.

As stated in previous analyses of legislation amending Section 115800, the qualified immunity encouraged communities to begin building skateboarding parks for use by their residents with requirements that proper safety ordinances first be put into effect.

2. Other wheeled recreational devices

In 2015, AB 1146 (Jones, Ch. 221, Stats. 2015) was enacted to accommodate the use of other wheeled devices in public skateboard parks. AB 1146 expanded the existing qualified immunity of Section 115800 to also cover the use of these other devices in skateboard parks operated by a public entity, deeming the riding of such devices similarly a hazardous recreational activity. The bill defined “other wheeled recreational devices” as “nonmotorized bicycles, scooters, in-line skates, roller skates, or wheelchairs.” The qualified immunity was made subject to the same terms and conditions that applied to the use of skateboards in those parks. The author of this bill illustrates the intent of AB 1146:

Before AB 1146, locals would only open parks to skateboarders, because California Health and Safety Code § 115800 only provides local government immunity for skateboard injuries that occur in the park. However, skate parks were changing: traditionally only skateboards utilized these parks, but a variety of wheeled devices also began to want to utilize the parks. A growing population of skateboarders and other extreme sport riders caused riders to use existing busy public streets, parking lots, and other places to skate and ride. Their use of these areas for recreation resulted in damage to public and private structures, and placed children at risk of injury. AB 1146 allowed locals to open their skate parks to other all-wheeled devices for a safe place to ride and skate.

However, AB 1146 included a sunset of January 1, 2020, on its changes to the law, at which point the statute would revert to the previously existing statute covering only skateboarding.

With no intervening legislation, the statute sunset and the expansion to cover other wheeled recreational devices was removed from Section 115800. This bill again inserts other wheeled recreational devices, defined exactly as in AB 1146, into the provisions of Section 115800. In order to ensure the lapse in qualified immunity in connection with the use of these devices is minimized, the bill will take immediate effect and will cover claims for injuries that occurred on or after that effective date.

SUPPORT

County of San Diego (sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending: None known

Prior:

AB 1818 (Committee on Judiciary, Ch. 637, Stats. 2019) removed the previously existing requirement in Section 115800 that local public agencies provide copies of the records of all claims, paid and not paid, including any lawsuits and their results, arising from injuries incurred by a person riding a skateboard or other wheeled recreational device in a public skateboard park or facility that were filed against the public agency.

AB 1146 (Jones, Ch. 221, Stats. 2015) *See* Comment 2.

AB 1296 (Morrow, Ch. 573, Stats. 1997) *See* Comment 1.
