

Public Skating Facility Guidelines

March 2005



Loss Prevention Department
800-537-6655
www.tmlirp.org

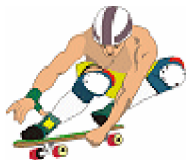


City of Ingleside Skate Park

GUIDELINES FOR PUBLIC SKATING FACILITIES

INTRODUCTION

Skateboarding and aggressive in-line skating continue to be a rapidly growing enjoyment or sport activity in the United States. Because skating is often performed on city streets, sidewalks and other public and private places, the activity has caught the attention of many local government officials. Some communities have created parks for aggressive skating. Such parks are intended to provide a place for skaters to go and limit the municipality's concerns of skaters on streets, sidewalks and other areas intended for pedestrians or automobiles.



Skateboards that are used for enjoyment or sport are made of wood, aluminum, plastic or fiberglass and are usually used in the street or a specialized arena. It is not uncommon to find skateboarding and in-line skating occurring at one facility. Therefore, the term "skating" will be used in these guidelines to apply to these activities.



The increased popularity of skating brings the potential for increased exposure for accidents. The Consumer Product Safety Commission states: "Skateboard riding requires good balance and body control, yet many young skateboarders have not developed the necessary balance and do not react quickly enough to prevent injury." (CPSC Publication #93)

According to the Consumer Product Safety Commission, more than 104,000 persons were treated in hospital emergency rooms in 2001 with skateboard related injuries and that sprains, fractures, contusions and abrasions were the most common types of injuries.

As with any recreational activity, the inherent risk at a skate park is evident. Learning how to manage the risk is a challenge for municipalities. The following is intended as a loss prevention guideline for skateboarding and aggressive in-line skating facilities. Also, a copy of Chapter 75 of the Texas Civil Practices and Remedies code, as of February 2005, is included in this document. Refer to your entity's legal advisor for legal guidance.

DESIGN CONSIDERATIONS

Design will greatly impact the success of a skate park, including risk management. The skating facility should be designed and constructed with a priority commitment to reducing the risk of injury to spectators and users and to reduce the liability exposure to the local government. The purpose of the skating facility, park, ramp, or "area" should be to give skaters a safer alternative to skating on streets, sidewalks, and in parking lots. If the goal of the skate park is to reduce skating in other public areas, the local government could consider enacting ordinances that ban skating in other places and involve the skaters in the design of the park so they will utilize the facility. Skater involvement can increase the park's chances of success. Without skater involvement, the park may be ill-designed and result in little use of the park.

There are designers and manufacturers with experience with skate park sports and equipment and carry product liability and other related insurance coverage. The municipality should obtain a commitment from the contractor indicating that the facility meets any Consumer Product Safety Commission (CPSC) or American National Standards Institute (ANSI) standards, if applicable. If possible, obtain an indemnity agreement from the contractor.

It is not advisable for an entity to construct ramps on its own, using free ramp plans from the Internet or those purchased from someone. Generally, these obstacles in the plans are all wood, which do not hold up well under the typical usage that a city park would experience. Subsequent maintenance and liability issues will more likely arise with substandard equipment.

TML-IRP should be notified prior to the opening of any skating facility for an explanation of the necessary special endorsement and coverage cost. Prior to installation, it is a good idea to forward drawings and/or specifications of pieces of equipment that are being considered to the TML-IRP Loss Prevention Department. Copies of construction specifications should be provided where possible. The ideal location for a facility is in a park with access to restrooms, telephone, drinking fountains, bike racks, trash receptacles (non-movable) and shade. The facility should be well-lit if open after dark and highly visible to city personnel such as police or parks employees. The facility should also be easily accessible for emergency vehicles.



In the design process, take into consideration skaters' differing abilities. The facility should be divided into areas designated for beginners and more experienced skaters. Structures such as ramps 3 feet or less in height are generally safer than taller ramps. In general, ramp height should be limited to no higher than six feet in open public parks since most skaters will not have the abilities to skate such ramps.

A park designer can assist with creating a park that will have different areas for different skating abilities. Skateboard runs should be clearly labeled as to degree of difficulty. Children younger than 10 years of age should not use the skate park without a parent or guardian. The American Academy of Pediatrics recommends that children younger than 10 years old should not use skateboards without close supervision by an adult or responsible adolescent. Children younger than 5 years old should not use skateboards. Younger children have a higher center of gravity, their neuromuscular system is not well developed, and they are not sufficiently able to protect themselves from injury (American Academy of Pediatrics, "Skateboard and Scooter Injuries", Pediatrics, March 2002).

While designing the park, the issue of bicycles at the park may have to be considered since there are many bicycle users. Bicycles are heavier and have pegs that can damage the equipment. Depending upon the equipment and design, BMX bicycles might be permitted at the facility, but consult with the designer and manufacturer. Allowing bicycles may necessitate a larger or separate facility. If bicycles are permitted, then hours may have to be designated because the mix of skaters and freestyle bikers might cause safety problems. Note that the section of Chapter 75 of the Texas Civil Practices and Remedies Code that addresses skating does not specifically include BMX activities. Contact your legal advisor for guidance and interpretation of the statute. (See Resources).

There are generally three types of skateboarding structures: half-pipes, bowls and street skating features. Each type of skating is different. Design must be carefully considered and implemented. The park will benefit from skater involvement in design.



This equipment is shaped like a "U" and can range from 2 – 10 feet high. A half pipe 4 feet or higher is considered advanced equipment and designed for experienced skaters. Since large ramps are not appropriate for beginning skaters, the average park should not implement large advanced ramps.

Half-Pipe Structures

These structures can be described as a large empty swimming pool with rounded edges and moguls contained inside of it. The bowls are generally constructed of concrete. Other features are often included in a park, such as street features, in order to provide different skating experiences.



Bowl Structure



Street Skating Structure

These are pieces of equipment that reflect obstacles found on public streets and sidewalks. Examples of such pieces are rails, pyramid and fun box.



CONSTRUCTION

There are various materials being used in skate park obstacle and ramp construction. Obstacles utilizing wood or masonite over wood may be subject to deterioration caused by temperature change, rain, and heavy use. Time and money spent repairing such items may be substantial. Items made out of steel, or concrete, or composite materials over a wood or steel frame might be better suited for your environment, despite the higher initial costs.

Obstacles made of steel are durable and movable. The skating surface can be precision-engineered 12-gauge steel, with a textured surface applied to the steel surface in order to give riders grip. However, steel is considered noisier than other skating surfaces.

Composite materials with steel framing combine advantages of wood, plastic and metal into one material. The surface is typically laminated or screwed on to base layers of wood, plastic or steel. These materials provide a good smooth skating surface that stands up quite well to typical rider use. These materials may be resistant to weather and high usage. However, the surface may have to be replaced periodically as part of normal maintenance. When selecting materials, consider maintenance and operations costs in addition to initial capital costs. Carefully review advantages and disadvantages of materials with your skate park consultant.

Consideration should be given to providing handrails, intermediate rails, side rails and/or toeboards for those pieces of equipment over four feet in height that have platforms. If kickboards and/or steps are provided, these should be painted in a contrasting color to help alert visitors of potential trip and fall hazards. Sharp angles and edges next to the platforms on ramps should be constructed with curved railings. Ramp platforms over four feet in height should have 42-inch high side and back protection with a mid-rail capable of sustaining a force of two hundred pounds applied in any direction. Exterior access such as a stairway with a handrail to the platform might be added.

Placement of modular equipment is very important to skaters, and seek feedback from skaters of all ability levels. Refer to carefully researched design of the park layout. Once larger ramps or pieces of equipment are in their permanent positions, consideration should be given to anchoring these pieces in place. Bolt extensions should be limited to no more than two threads and covered with an acorn-style bolt nut. Equipment should be arranged so that it does not interfere with other skating and/or rollerblading activities and/or maneuvers. The joining of skating equipment should only be done where recommended by the manufacturer. Joining of grindrails should be discouraged due to potential gaps between the grindrails, unevenness of the pieces and the possibility of catching any skateboard or rollerblade wheel in the gap which may increase the likelihood of injury.

Concrete is durable, but may be more costly, depending upon the size of the park. Larger concrete parks may be more economical than large modular parks. Site selection and design are very important. If concrete is utilized, keep in mind that construction crews should be experienced. Edges and concrete work must be done with the skating application in mind. Some cities in the country have had problems with concrete construction, including bowls that were built without drains, resulting in water in the bowls, often rendering them useless. Even with excellent design, inadequate construction can ruin a project.

Designers and manufacturers have more information on materials and construction, including product warranties and maintenance recommendations.

SUPERVISION

Consideration should be given as to whether a facility will be staffed or unstaffed. An unstaffed park demonstrates that the park truly is 'skate at your own risk', while a staffed park has more ability to promote safety rules and equipment usage. Part-time supervision may present problems in that skaters will know when they can go to the park and break safety rules. There are firms that contract with cities to operate skate parks, in exchange for utilities and the ability to have a pro shop. Any such agreements should be reviewed by legal counsel and require appropriate insurance coverage and additional insured status.

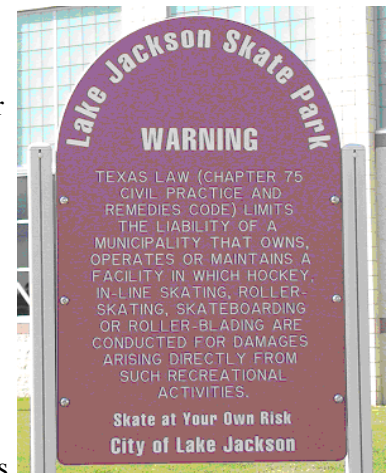
If staffed, employees should be trained regarding all safety rules and procedures, operational procedures, management requirements, equipment requirements, etc. All training and orientation given to skating area employees should be documented and retained on file. An adequate emergency plan should be developed for the skating operation and should be appropriately communicated to all employees. Employees should be certified in a first aid course from a nationally recognized agency such as Red Cross or National Safety Council and an appropriate first aid kit should be readily available on site. Appropriate police and ambulance phone numbers, as well as ready access to a telephone, should be maintained.

If the facility is attended by employees, the skating facility supervisors (employees) should be stationed such that the entire area may be viewed and monitored. Facility personnel should have sufficient knowledge of skating and in-line skating to enable a review and determination of a skater's skill level, before permitting use of the facility. The number of people allowed in the area should be limited to minimize injuries resulting from collisions. The Facility Director or whoever is in charge should determine the patron limit based upon the size of the skating area, the number of employees on duty, seasonal demand, etc. This will help ensure a safe management ratio between supervisors and users. Unsupervised facilities should consider patrols by entity personnel and carefully consider signage so that rules are followed.

Another option for providing a presence at the park on occasion would be to implement a staffed program at the park. Riders would sign up and pay a fee for instruction. Other riders would come and go as they please. Several groups certify skateboard instructors.

Skating also requires good balance and body control skills. Many of the young skaters have not developed these skills and do not react quickly enough to prevent injury. It is important for supervisors to review and train skaters how to fall in case of an accident. This brief review course with skaters helps them reduce their chances of being injured. The following is a list of the **Consumer Product Safety Commission's recommended falling techniques**:

1. Learning how to fall helps reduce your chances of being seriously injured.
2. If you are losing your balance, crouch down so that you will not have so far to fall.
3. In a fall, try to land on the fleshy parts of your body.
4. If you fall, try to roll, rather than absorb the force with your arms.
5. Even though it may be difficult, during a fall try to relax your body, rather than stiffen.



ACCIDENT/INCIDENT REPORTING

A **complete accident report** should be filed by employees following any accident or injury occurring at the skating facility. If there is no supervisor, there should be a person prepared to investigate and report on accidents. This documentation should include:

1. the date
2. the time of day
3. the injured person's name, address and phone number
4. the name of the injured person's parent or guardian, if a minor child
5. the names and phone numbers of any witnesses
6. a complete description of the events and circumstances surrounding the accident or injury
7. the cause of the accident, corrective actions felt necessary that may prevent reoccurrence

All incident and accident reports should be kept on file. If a claim is filed, the entity should develop and follow claim reporting procedures.

The issue of waivers can also be considered. Before using the facility, skaters and their parents or guardians could sign waivers. Consult with an attorney familiar with your legal climate. Waivers may deter claims, but they might not be a defense in a lawsuit. Upon getting waivers in a staffed facility, a supervisor should issue cards in order to monitor usage.

INSPECTIONS AND MAINTENANCE

Skate park structures will take a beating, regardless of construction or materials. There is no such thing as a maintenance-free park. There should be documented regularly scheduled checks of the facility for any visible hazards or repair needs. Irregular riding surfaces accounted for many skateboarding injuries according to a Consumer Product Safety Commission publication (CPSC Publication #93, "Skateboards"). There should be a complete documented inspection performed by the maintenance supervisor at least once monthly and more frequently as necessary. Included in all inspections should be any walking or standing surfaces, fencing, steps, handrails, spectator areas, and/or any construction deficiencies. Perimeter areas such as sidewalks, parking areas, driveways, etc. should be inspected periodically for any deterioration that may contribute to trip and fall injuries. All maintenance and repair work should be documented as to the type of maintenance performed, the name of the employee performing the work, and the date completed. Regarding graffiti removal, check with the manufacturer of the equipment for appropriate products as some treatments may affect the smoothness of the skating surface. For light cleanup, some entities provide a broom so that skaters can remove rocks and sand. Skaters can be involved with the park and report deficiencies.

Safety equipment should be worn at all times while using the facility. This equipment shall include, but is not limited to, the following: **appropriate skateboard or in-line skates in good working condition, helmet, knee and elbow pads, wrist supports, and proper shoes.** Protective equipment will help reduce injuries. The most important feature to look for in protective equipment is comfort, design and function. The equipment should not interfere with the skater's hearing, movement and/or vision. Any skating facility supervisors should prohibit skaters from using the facility if their equipment is not deemed satisfactory. Shoes should be checked for dirt, rocks and debris prior to use.



ENVIRONMENT

Skating should be allowed only in designated areas. Loss prevention measures include:

1. If fenced, the entrance should be secured with a lock during all closed hours.
2. Rules and regulations, including hours of operation, should be posted in a conspicuous location. “No Parking” signs should be posted for areas that may affect the safety of participants and or visitors. Additional “Slow Down-Children at Play” signs should be considered if there are drive ways and/or parking areas in close proximity to the skating facility.
3. The area should be designed according to appropriate safety standards. If open at night, the facility must be adequately lit. High visibility to police will also help facilitate police patrols and reduce potential problems.
4. All design specifications, assembly instructions, and maintenance/operations recommendations from the developer, engineer, and/or manufacturer should be retained on file. Certificates of insurance should be required from all third party individuals and reviewed annually.
5. Consideration should be given to fencing the facility to protect passers-by and spectators and to help prevent vandalism. The fence should preferably be a type that cannot be climbed, such as wrought iron or mesh type chain link that has 1-2 inch wide holes. The fence should be located away from the edge of the skating surface to allow for a hazard-free “fall zone” before reaching the fence. One recommended length of such a zone is 8 feet. The park designer or equipment manufacturer may have recommendations. The fence should provide for adequate protection to spectator from flying boards, other debris and/or falling skaters, and should also help protect skaters from interference and distractions by spectators and passers by. Any benches should be properly secured and detached from the skate park, to prevent users from moving and riding them.

RULES AND WARNING SIGNS

Well thought-out rules should be established, used and posted throughout the facility. If the facility is meant for skating, rollerblading and biking, then signage, accident report forms, applications, waivers and other documents should have the wording for skating or include both aspects. Rules and regulations should also address procedures if inclement weather occurs (i.e., cold weather, rain, frozen puddles of water). Rules should include, but are not limited to, the following:

1. No alcohol or drugs are permitted in the facility;
2. No bicycles (or post the hours bicycles are permitted at the facility);
3. All skaters should wear, at a minimum, safety equipment which includes elbow pads, knee pads, helmets and proper shoes;
4. Skaters should enter and exit designated areas one at a time;
5. Supervisors should develop rules prohibiting specific maneuvers that are deemed particularly hazardous for a skater’s experience or age; (Consider limiting to skaters 10 years and up.)
6. A sign containing a warning of the hazards of skating should be posted at the entrance and throughout the facility. “This facility is used by both experienced and inexperienced skaters. Serious injury may result from being hit by a skateboard, falling or colliding. The City does not assume responsibility for injuries—**SKATING IS AT YOUR OWN RISK.**”
7. Only one person per skateboard;

8. Complicated tricks require careful practice. Only at specifically designated areas and times will tricks be performed and only under the supervision of the facility managers and supervisors.

Please see attached sample skate park rules. The park should retain the right to revoke skating privileges of participants who do not abide by the rules.

CONCLUSION

If your local government is considering a skating facility, the most important areas are **maintenance, safety inspections, supervision, protective gear, and rules/warning signs. TML-IRP should be notified prior to the opening of any skating facility for an explanation of the necessary special endorsement and coverage cost.**

If your local government wants to set up a skating facility, one way to transfer the entity's risk is by the way of waivers or via a private contract. The transfer of risk to a contractor is a method by which a skating facility is managed and maintained through a lease with a private contractor. The private contractor indemnifies the local government for any negligence and places the local government on its insurance policy as an additional insured. Competitions should be restricted to sponsoring organizations that are able to provide separate insurance coverage and a contract holding the city harmless and indemnified.

Texas House Bill 1058, enacted as of September 1, 1999, effectively shields municipalities from liability arising out of the use of skateboard and other recreational facilities, except for gross negligence and acts conducted in bad faith or with malicious intent. H.B. 1058 also requires cities to post a sign at each facility with the following specific language: *Texas Law (Chapter 75, Civil Practices and Remedies Code) limits the liability of a municipality that owns, operates or maintains a facility in which hockey, in-line hockey, skating, in-line skating, roller-skating, skateboarding or roller-blading are conducted for damages arising directly from such recreational activities. Additional signage is recommended from a risk management perspective to warn and inform participants of rules and conditions of using the facility. (See Sample Skating Rules for additional information.)*

The above recommendations are made from a Loss Prevention perspective. Recommendations may not eliminate all risk exposure. However, implementation of recommendations may minimize the potential for accidents, injury or loss. Final skating facility policies and procedures should be reviewed by city management, risk management, and/or legal counsel to insure that the needs of your local government are met.

If there are questions regarding this issue or other loss prevention matter, please contact the Loss Prevention Department at 1-800-537-6655.

RESOURCES

Note: No claims can be made as to accuracy of the information at these sites or if the information applies to your entity's specific situation. Legal questions should be posed of your legal counsel. TML-IRP does not endorse any products provided by vendors.

In addition, you might consider talking with another city that has a skate park. Ask manufacturers and designers for references, preferably Texas cities. For more information contact your loss prevention representative.

www.spausa.org

The Skatepark Association of the United States of America assists individuals and cities interested in building skate parks. A skate park guide is provided free on the website.

www.socalskatepark.org

The Southern California Skate Park Coalition was developed as a regional forum for identifying concerns, sharing ideas, and developing solutions related to the design, construction, and operation of municipal skate parks. The organization has helped people throughout the country.

www.nrpa.org

The National Recreation and Park Association conferences and magazine feature skate park designers and equipment manufacturers.

www.tonyhawkfoundation.org

The Tony Hawk Foundation supports free public parks through grants. The organization also provides technical assistance on design and construction, as well as promotional and training materials.

www.skatepark.org

This website promotes skating, including the building of skate parks.

www.iisa.org

The International Inline Skating Association provides information on inline skating in particular.

www.skateparkguide.com

This website offers a guidebook for sale that addresses concrete skate parks.

www.skateboardiasc.org

The International Association of Skateboard Companies provides information, along with links to companies and other organizations.

In addition, there are many companies design skate parks, manufacture skating ramps and other features, too many to list. Some of these companies are affiliated with playground equipment manufacturers.

SAMPLE FACILITY REGULATIONS

SKATE PARK RULES

Hours of Operation:

WARNING

Texas Law (Chapter 75, Civil Practices and Remedies Code) limits the liability of a municipality that owns, operates, or maintains a facility in which hockey, in-line hockey, skating, in-line skating, roller-skating, skateboarding, or roller-blading are conducted for damages arising directly from such recreational activities.

Know your limits and abilities. You are responsible for your safety. This park is designed for ages 10 and up.*

Proper safety equipment is required at all times – including helmets, proper shoes, knee and elbow pads, and wrist guards.

Only skaters will be allowed in skating area – all others must watch from behind fence.

No bicycles allowed in skating area. (Note: Some entities disallow roller skates. It is up to your facility to determine. If bicycles are allowed, consider priority hours for skating versus bicycling.)

One skater on ramp or rail at a time.** One skater per skateboard.

Skating allowed in authorized areas only.

No personal ramps or rails are allowed.

Skatepark will close if wet or raining.

No alcohol, tobacco products or illegal substances allowed.

No graffiti allowed. Park will be closed until graffiti is removed.

Dispose of all trash properly. No food or drink allowed in skating area.

All other park rules and ordinances apply.

Have fun, be safe, and respect your fellow skaters.

*Ask the manufacturer of the equipment if there is a minimum age requirement. There may be an age limitation for each piece of equipment. If so, mark the equipment should be grouped accordingly. Possible markings could be like ski slope trails – green circle for beginners, blue diamond for intermediate, etc. The manufacturer and designer may have other ideas.

**More than one skater may be able to wait on the platform. Check with the manufacturer on this and all other recommended number of users.

Check with park designer and manufacturer on suggested rules as well.

Infractions of the above rules may result in loss of skating privileges.

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CIVIL PRACTICE & REMEDIES CODE

CHAPTER 75. LIMITATION OF LANDOWNERS' LIABILITY

Sec. 75.001. DEFINITIONS. In this chapter:

- (1) 'Agricultural land' means land that is located in this state and that is suitable for:
 - (A) use in production of plants and fruits grown for human or animal consumption, or plants grown for the production of fibers, floriculture, viticulture, horticulture, or planting seed;
 - (B) forestry and the growing of trees for the purpose of rendering those trees into lumber, fiber, or other items used for industrial, commercial, or personal consumption; or
 - (C) domestic or native farm or ranch animals kept for use or profit.
- (2) 'Premises' includes land, roads, water, watercourse, private ways, and buildings, structures, machinery, and equipment attached to or located on the land, road, water, water course, or private way.
- (3) 'Recreation' means an activity such as:
 - (A) hunting;
 - (B) fishing;
 - (C) swimming;
 - (D) boating;
 - (E) camping;
 - (F) picnicking;
 - (G) hiking;
 - (H) pleasure driving;
 - (I) nature study, including bird-watching;
 - (J) cave exploration;
 - (K) waterskiing and other water sports; or
 - (L) any other activity associated with enjoying nature or the outdoors.
- (4) 'Governmental unit' has the meaning assigned by Section 101.001.
Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 62, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 736, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 520, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 56, Sec. 1, eff. Sept. 1, 1997.

Sec. 75.002. LIABILITY LIMITED.

- (a) An owner, lessee, or occupant of agricultural land:
 - (1) does not owe a duty of care to a trespasser on the land; and
 - (2) is not liable for any injury to a trespasser on the land, except for wilful or wanton acts or gross negligence by the owner, lessee, or other occupant of agricultural land.
- (b) If an owner, lessee, or occupant of agricultural land gives permission to another or invites another to enter the premises for recreation, the owner, lessee, or occupant, by giving the permission, does not:
 - (1) assure that the premises are safe for that purpose;
 - (2) owe to the person to whom permission is granted or to whom the invitation is extended a greater degree of care than is owed to a trespasser on the premises; or

- (3) assume responsibility or incur liability for any injury to any individual or property caused by any act of the person to whom permission is granted or to whom the invitation is extended.
- (c) If an owner, lessee, or occupant of real property other than agricultural land gives permission to another to enter the premises for recreation, the owner, lessee, or occupant, by giving the permission, does not:
 - (1) assure that the premises are safe for that purpose;
 - (2) owe to the person to whom permission is granted a greater degree of care than is owed to a trespasser on the premises; or
 - (3) assume responsibility or incur liability for any injury to any individual or property caused by any act of the person to whom permission is granted.
- (d) Subsections (a), (b), and (c) shall not limit the liability of an owner, lessee, or occupant of real property who has been grossly negligent or has acted with malicious intent or in bad faith.
- (e) In this section, 'recreation' means, in addition to its meaning under Section 75.001, the following activities only if the activities take place on premises owned, operated, or maintained by the state or a municipality or county for the purposes of those activities:
 - (1) hockey and in-line hockey; and
 - (2) skating, in-line skating, roller-skating, skateboarding, and roller-blading.
- (f) This section limits the liability of the state or a municipality or county only for those damages arising directly from a recreational activity described in Subsection (e) but does not limit the liability of the state or a municipality or county for gross negligence or acts conducted in bad faith or with malicious intent.
- (g) Any premises the state or a municipality or county owns, operates, or maintains and on which the recreational activities described in Subsection (e) are conducted shall post and maintain a clearly readable sign in a clearly visible location on or near the premises. The sign shall contain the following warning language:

WARNING

TEXAS LAW (CHAPTER 75, CIVIL PRACTICE AND REMEDIES CODE) LIMITS THE LIABILITY OF THE STATE AND A MUNICIPALITY OR COUNTY FOR DAMAGES ARISING DIRECTLY FROM HOCKEY, IN-LINE HOCKEY, SKATING, IN-LINE SKATING, ROLLER-SKATING, SKATEBOARDING, OR ROLLER-BLADING ON PREMISES THAT THE STATE OR THE MUNICIPALITY OR COUNTY OWNS, OPERATES, OR MAINTAINS FOR THAT PURPOSE.

- (h) An owner, lessee, or occupant of real property in this state is liable for trespass as a result of migration or transport of any air contaminant, as defined in Section 382.003(2), Health and Safety Code, other than odor, only upon a showing of actual and substantial damages by a plaintiff in a civil action.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 62, Sec. 2, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 56, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 204, Sec. 21.01, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 739, Sec. 1, eff. Sept. 1, 2003.

Sec. 75.003. APPLICATION AND EFFECT OF CHAPTER.

- (a) This chapter does not relieve any owner, lessee, or occupant of real property of any liability that would otherwise exist for deliberate, wilful, or malicious injury to a person or to property.
- (b) This chapter does not affect the doctrine of attractive nuisance, except that the doctrine may not be the basis for liability of an owner, lessee, or occupant of agricultural land for any injury to a trespasser over the age of 16 years.
- (c) Except for a governmental unit, this chapter applies only to an owner, lessee, or occupant of real property who:
 - (1) does not charge for entry to the premises;
 - (2) charges for entry to the premises, but whose total charges collected in the previous calendar year for all recreational use of the entire premises of the owner, lessee, or occupant are not more than 20 times the total amount of ad valorem taxes imposed on the premises for the previous calendar year; or
 - (3) has liability insurance coverage in effect on an act or omission described by Section 75.004(a) and in the amounts equal to or greater than those provided by that section.
- (d) This chapter does not create any liability.
- (e) Except as otherwise provided, this chapter applies to a governmental unit.
- (f) This chapter does not waive sovereign immunity.
- (g) To the extent that this chapter limits the liability of a governmental unit under circumstances in which the governmental unit would be liable under Chapter 101, this chapter controls.
- (h) In the case of agricultural land, an owner, lessee, or occupant of real property who does not charge for entry to the premises because the individuals entering the premises for recreation are invited social guests satisfies the requirement of Subsection (c)(1).

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 832, Sec. 5, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 62, Sec. 3, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 520, Sec. 2, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 56, Sec. 3, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 429, Sec. 1, eff. Sept. 1, 2003.

Sec. 75.004. LIMITATION ON MONETARY DAMAGES FOR PRIVATE LANDOWNERS.

- (a) Subject to Subsection (b), the liability of an owner, lessee, or occupant of agricultural land used for recreational purposes for an act or omission by the owner, lessee, or occupant relating to the premises that results in damages to a person who has entered the premises is limited to a maximum amount of \$500,000 for each person and \$1 million for each single occurrence of bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property. In the case of agricultural land, the total liability of an owner, lessee, or occupant for a single occurrence is limited to \$1 million, and the liability also is subject to the limits for each single occurrence of bodily injury or death and each single occurrence for injury to or destruction of property stated in this subsection.

- (b) This section applies only to an owner, lessee, or occupant of agricultural land used for recreational purposes who has liability insurance coverage in effect on an act or omission described by Subsection (a) and in the amounts equal to or greater than those provided by Subsection (a). The coverage may be provided under a contract of insurance or other plan of insurance authorized by statute. The limit of liability insurance coverage applicable with respect to agricultural land may be a combined single limit in the amount of \$1 million for each single occurrence.
- (c) This section does not affect the liability of an insurer or insurance plan in an action under Article 21.21, Insurance Code, or an action for bad faith conduct, breach of fiduciary duty, or negligent failure to settle a claim.
- (d) This section does not apply to a governmental unit.
Added by Acts 1995, 74th Leg., ch. 520, Sec. 3, eff. Aug. 28, 1995. Amended by Acts 1997, 75th Leg., ch. 56, Sec. 4, eff. Sept. 1, 1997.