**South Carolina General Assembly**

118th Session, 2009-2010

**H. 3784**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Sottile, Limehouse, Bowen, Daning, Millwood, Parker, Rice, Scott, Stringer and Wylie

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Introduced in the House on March 26, 2009

Currently residing in the House Committee on **Judiciary**

Summary: Municipality or county

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/26/2009 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2009\03-26-09.docx)‑4

3/26/2009 House Referred to Committee on **Judiciary** [HJ](file:///h:\HJ%20Archive\2009\03-26-09.docx)‑4

**VERSIONS OF THIS BILL**

[3/26/2009](file:///p:\pprever\2009-10\3784_20090326.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 5‑7‑320 SO AS PROVIDE THAT A MUNICIPALITY OR COUNTY OR ITS EMPLOYEES ARE NOT LIABLE FOR DAMAGE OR INJURY CAUSED TO A PERSON WHO PARTICIPATES IN AN ALTERNATIVE RECREATIONAL ACTIVITY ON MUNICIPAL OR COUNTY PROPERTY, TO PROVIDE EXCEPTIONS, AND TO APPLY THE LIMITS OF THE SOUTH CAROLINA TORT CLAIMS ACT WHERE LIABILITY EXISTS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 7, Title 5 of the 1976 Code is amended by adding:

“Section 5‑7‑320. (A)(1) As used in this section, ‘alternative recreational activity’ means a recreational activity conducted on property of a municipality or county which creates a substantial risk, as distinguished from a minor, trivial, or insignificant risk, of injury to a participant or a spectator.

(2) ‘Alternative recreational activity’ also means:

(a) water contact activities, except diving, in places where or at a time when lifeguards are not provided and reasonable warning of this has been given or the injured party should reasonably have known that there was no lifeguard provided at the time;

(b) any form of diving into water from other than a diving board or diving platform, or at a place or from a structure where diving is prohibited and reasonable warning of this has been given;

(c) animal riding, including equestrian competition, archery, bicycle racing or jumping, mountain bicycling, boating, cross‑country and downhill skiing, hang gliding, kayaking, motorized vehicle racing, off‑road motorcycling or four‑wheel driving of any kind, orienteering, pistol and rifle shooting, rock climbing, rocketeering, rodeo, spelunking, sky diving, sport parachuting, paragliding, body contact sports in which there is rough bodily contact with one or more participants, surfing, trampolining, tree climbing, tree rope swinging, water skiing, white water rafting, rollerblading, skateboarding, and windsurfing. For the purposes of this item, ‘mountain biking’ does not include riding a bicycle on paved pathways, roadways, or sidewalks.

(B) A municipality or a county or an employee of a municipality or county is not liable to a person who participates in an alternative recreational activity, including a person who assists the participant, or to a spectator who knew or reasonably should have known that the alternative recreational activity created a substantial risk of injury to himself and was voluntarily in the place of risk, or having the ability to do so failed to leave, for damage or injury to property or a person arising out of that alternative recreational activity.

(C)(1) Notwithstanding the provisions of subsection (B), a municipality or a county or an employee of a municipality or county is liable within the limits established pursuant to the South Carolina Tort Claims Act for:

(a) failure of the municipality or county or its employee to guard or warn of a known dangerous condition or of another alternative recreational activity known to the public entity or employee that is not reasonably assumed by the participant as inherently a part of the alternative recreational activity out of which the damage or injury arose;

(b) damage or injury suffered in a case where permission to participate in the alternative recreational activity was granted for a specific fee. For the purposes of this item, a ‘specific fee’ does not include a fee or consideration charged for a general purpose such as a general park admission charge, a vehicle entry or parking fee, or an administrative or group use application or permit fee, as distinguished from a specific fee charged for participation in the specific alternative recreational activity out of which the damage or injury arose;

(c) injury suffered to the extent proximately caused by the negligent failure of the municipality or county or its employee to properly construct or maintain in good repair a structure, recreational equipment, or machinery, or substantial work or improvement utilized in the alternative recreational activity out of which the damage or injury arose;

(d) damage or injury suffered in a case where the municipality or county or its employee recklessly or with gross negligence promoted the participation in or observance of an alternative recreational activity. For purposes of this item, promotional literature or a public announcement or advertisement which merely describes the available facilities and services on the property does not in itself constitute a reckless or grossly negligent promotion; and

(e) an act of gross negligence by a municipality or county or its employee which is the proximate cause of the injury.

(2) Nothing in this subsection creates a duty of care or basis of liability for personal injury or for damage to personal property.

(D) Nothing in this section limits the liability of an independent concessionaire, or a person or an organization other than the municipality or county, whether or not the person or organization has a contractual relationship with the municipality or county to use the public property, for injuries or damages suffered in any case as a result of the operation of a alternative recreational activity on public property by the concessionaire, person, or organization.”

SECTION 2. This act takes effect upon approval by the Governor.

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