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## F I S C A L I M P A C T R E P O R T

SPONSOR: Komadina DATE TYPED: 02/03/03 HB                 

SHORT TITLE: Hot Air Balloon Liability Act SB 69

ANALYST: Gilbert

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Administrative Office of the District Attorneys (AODA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 69 limits recovery for injury, loss or damage sustained from the "risk inherent" in hot air balloon activity unless the owner, lessor, renter or lawful possessor of the launch, land or show site, the hot air balloon activity organizer or the hot air balloon operator:

- A. Provides hot air balloon equipment and knows or should know that the equipment is faulty and an injury proximately results from the faulty condition of the equipment;
- B. Provides a hot air balloon and fails to make a reasonable effort to determine the ability of the hot air balloon operator to engage safely in a hot air balloon activity;
- C. Commits an act or omission that constitutes a reckless disregard for the safety of a hot air balloon operator, passenger or observer and an injury proximately results from the act or omission;
- D. Intentionally injures a hot air balloon operator, passenger or observer.

## **Senate Bill 69 -- Page 2**

This bill also requires a hot air balloon park owner to post a clearly visible sign in at least one prominent location in the hot air balloon park. The sign shall include a warning regarding the inherent risks of hot air balloon activities and the limitations on liability of the owner, lessor, renter or lawful possessor of the launch, land or show site, the hot air balloon activity organizer and the hot air balloon operator.

### **Significant Issues**

According to the Attorney General's Office (AGO), this bill would significantly change the common law protections granted to "business invitees". Traditionally, those who enter upon the land of another upon his invitation are owed an affirmative duty to be protected, not only against dangers of which the invitor knows, but also against those, which with reasonable care, he might discover. This bill would reduce the standard of care that a business owed to his invitee and would only permit an invitee to recover for damages sustained for "reckless disregard" for the invitee's safety.

### **OTHER SUBSTANTIVE ISSUES**

According to the AGO, SB69 is not clear with respect to what constitutes the "risks inherent" in hot air balloon activity or how an equipment supplier could or should determine the ability of an operator in order to avoid liability. The proposed language is also not clear as to whether an activity organizer or an owner, lessor, renter or possessor of a hot air balloon launch site would be liable for injury if the injury resulted from the equipment suppliers breach; or whether an equipment supplier would be liable for injury if the organizer or the site shows reckless disregard.

### **POSSIBLE QUESTIONS**

SB69 only requires posting of warning signs at balloon parks. How would the general public, who may be injured by a hot air balloon away from park grounds, be made aware of this liability limitation?

RLG/prr:njw