

CS FOR SENATE BILL NO. 175(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 4/30/03

Referred: Judiciary

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to civil liability for inherent risks in sports or recreational activities;**
2 **and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 FINDINGS AND INTENT. (a) The legislature finds that

7 (1) all sports or recreational activities involve inherent risks that provide the
8 challenge and excitement that entice people to participate in those activities;

9 (2) people should accept the risks inherent in sports or recreational activities
10 and be responsible for injuries and damages resulting from those inherent risks;

11 (3) the state has a legitimate interest in maintaining the economic viability of
12 the sports or recreational activities industry by discouraging claims based on injuries and
13 damages resulting from risks inherent in sports or recreational activities;

14 (4) providers of sports or recreational activities should not be required to alter

1 the challenge and excitement of the activities by controlling risks inherent in the activities;
2 and

3 (5) the liability of providers of sports or recreational activities should be
4 limited to negligence that is not associated with the inherent risks of sports or recreational
5 activities.

6 (b) It is the intent of this Act to

7 (1) limit or eliminate the liability of a provider of a sports or recreational
8 activity to a participant in the activity when an injury or damage caused by or to the
9 participant is the result of risks inherent in the activity; and

10 (2) encourage the broad construction of the Act to shield providers of sports or
11 recreational activities from liability for injuries and damages caused by the inherent risks of
12 sports or recreational activities.

13 * **Sec. 2.** AS 05.25.040 is amended to read:

14 **Sec. 05.25.040. Owner's civil liability. Except as provided under**
15 **AS 09.65.290, the** [THE] owner of a boat is liable for injury or damage caused by the
16 negligent operation of the owner's boat whether the negligence consists of a violation
17 of a state statute or the failure to exercise ordinary care in the operation of the boat as
18 the rules of the common law require. The owner is not liable, however, unless the
19 boat is used with the owner's express or implied consent. It is presumed that the boat
20 is being operated with the knowledge and consent of the owner if, at the time of the
21 injury or damage, it is under the control of the owner's spouse, father, mother, brother,
22 sister, son, daughter, or other member of the owner's immediate family. This chapter
23 does not relieve any other person from a liability that the person would otherwise
24 incur and does not authorize or permit recovery in excess of injury or damage actually
25 incurred.

26 * **Sec. 3.** AS 09.65 is amended by adding a new section to read:

27 **Sec. 09.65.290. Civil liability for sports or recreational activities.** (a) A
28 person who participates in a sports or recreational activity assumes the inherent risks
29 in that sports or recreational activity, whether those risks are known or unknown, and
30 is legally responsible for all injuries or death to the person or other persons and for all
31 damage to property that results from the inherent risks in that sports or recreational

1 activity.

2 (b) This section does not require a provider to eliminate, alter, or control the
3 inherent risks within the particular sports or recreational activity that is provided.

4 (c) This section does not apply to a civil action based on the

5 (1) negligence of a provider if the injury, death, or damage was not the
6 result of an inherent risk of the sports or recreational activity that was provided; or

7 (2) design or manufacture of sports or recreational equipment or
8 products or safety equipment used incidental to or required by a sports or recreational
9 activity.

10 (d) Nothing in this section shall be construed to conflict with or render as
11 ineffectual a liability release agreement between a person who participates in a sports
12 or recreational activity and a provider.

13 (e) In this section,

14 (1) "inherent risks" means those dangers or conditions that are
15 characteristic of, intrinsic to, or an integral part of a sport or recreational activity;

16 (2) "provider" means a person or a federal, state, or municipal agency
17 that promotes, offers, or conducts a sports or recreational activity, whether for pay or
18 otherwise;

19 (3) "sports or recreational activity"

20 (A) means a commonly understood sporting activity, whether
21 undertaken with or without permission, including baseball, softball, football,
22 soccer, basketball, hockey, bicycling, hiking, swimming, horseback riding and
23 other equine activity, dude ranching, mountain climbing, river floating,
24 whitewater rafting, canoeing, kayaking, hunting, fishing, backcountry trips,
25 mushing, backcountry or helicopter-assisted skiing, alpine skiing, nordic
26 skiing, snowboarding, telemarking, snow sliding, snowmobiling, off-road and
27 all-terrain vehicle use;

28 (B) does not include

29 (i) boxing contests, sparring or wrestling matches or
30 exhibitions that are subject to the requirements of AS 05.10;

31 (ii) activities involving the use of devices that are

1 subject to the requirements of AS 05.20; or

2 (iii) skiing or sliding activities at a ski area that are
3 subject to the requirements of AS 05.45.

4 * **Sec. 4.** Section 9, ch. 28, SLA 2000 is amended to read:

5 Sec. 9. AS 05.25.040 is repealed and reenacted to read:

6 **Sec. 05.25.040. Owner's civil liability. Except as provided under**
7 **AS 09.65.290, the** [THE] owner of a watercraft is liable for injury or damage caused
8 by the negligent operation of the owner's watercraft whether the negligence consists of
9 a violation of a state statute or neglecting to observe ordinary care in the operation of
10 the watercraft as the rules of the common law require. The owner is not liable,
11 however, unless the watercraft is used with the owner's express or implied consent. It
12 is presumed that the watercraft is being operated with the knowledge and consent of
13 the owner if, at the time of the injury or damage, it is under the control of the owner's
14 spouse, father, mother, brother, sister, son, daughter, or other member of the owner's
15 immediate family. This chapter does not relieve any other person from a liability that
16 the person would otherwise incur and does not authorize or permit recovery in excess
17 of injury or damage actually incurred.

18 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 APPLICABILITY. This Act applies to acts or omissions that occur on or after the
21 effective date of sec. 3 of this Act.

22 * **Sec. 6.** Section 4 of this Act takes effect on the date sec. 9, ch. 28, SLA 2000, takes
23 effect.

24 * **Sec. 7.** Except as provided in sec. 6 of this Act, this Act takes effect July 1, 2003.