

# LEGAL SERVICES

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## MEMORANDUM

February 17, 2016

**SUBJECT:** Immunity from civil liability  
(SB 174; Work Order No. 29-LS1306\H)

**TO:** Senator Pete Kelly  
Attn: Joe Byrnes

**FROM:** Hilary V. Martin   
Legislative Counsel

You have asked about the civil liability immunity section in SB 174. You want to know what the ramifications are of including this section, what sort of liability the University is open to without this section, what liability the University is protected from with this section, and a hypothetical scenario in which those liabilities come into play.

The civil liability immunity section at page 2 of the draft states:

The University of Alaska, the Board of Regents, and any officers, employees, or agents of the University of Alaska are immune from civil liability for any act or omission resulting from a policy or regulation adopted or enforced under this section by the Board of Regents or the president of the University of Alaska, or a claim arising from the possession, ownership, use, carrying, registration, or transportation of firearms or knives by any person.

The civil liability immunity section is absolute, regardless of the recklessness of the University's action or inaction. The provision prevents a person from suing the University, or an officer, employee, or agent of the University, for any act or omission resulting from a policy adopted or enforced regarding firearms or knives and from bringing a claim arising from the use or possession of a firearm on University property. Because the adoption and enforcement of a policy is discretionary under the bill draft, immunity would also apply for failure to adopt a policy.

The most likely scenario where the civil liability immunity provision would be relevant is in a school shooting. Someone who is injured or the family of a person who is killed or injured may sue the University. If the University had adopted policies but not enforced them, a litigant might try to argue that because the University failed to enforce its own policies, they have liability for the shooting. If the University does not adopt any policies relating to guns or knives, a litigant may argue that the University is liable because they

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failed to adopt appropriate policies for the safety of the students, employees, and visitors. In either of these cases, the civil liability immunity provision should insulate the University from suit.<sup>1</sup>

If I may be of further assistance, please advise.

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<sup>1</sup> This situation is a hypothetical, and it is impossible to predict what type of lawsuit might be brought against the University and if the civil liability immunity section would protect them in every situation.