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MEMORANDUM

DATE: February 23, 2016
TO: Senator Mike Dunleavy, Chairman, Senate Education Committee
FROM: Matt Cooper, Associate General Counsel, University of Alaska 
RE: Immunity provision in SB 174

At the February 18 Senate Education Committee hearing, Senator Huggins asked the university to provide a memorandum explaining the immunity language in SB 174. The proposed immunity language reads as follows:

(e) 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.

SB 174 reserves regulation of firearms and knives to the legislature and significantly prescribes University policy regarding firearms and knives. The Legislature may and in many instances has granted statutory immunity from civil liability where it has determined that limiting litigation is consistent with public policy. This is often the case when the Legislature is directing or encouraging specific policy or actions. The following is our understanding of the intent of this provision, which was drafted by Legislative Legal Services.¹

¹ Our conclusions are informed by and consistent with the February 17, 2016, opinion on this topic by Legislative Counsel Hilary Martin.

Under the first part of the provision the University could not be held civilly liable for claims resulting from policy or regulation under this provision.² For example, in a situation where a concealed handgun or knife is used and an injury or death occurs, the injured party may sue claiming that the injury resulted because the university either had a policy allowing concealed handguns and knives, or that the university failed to have a policy, resulting in injury. Without an immunity provision, the University would have to establish in court through expensive litigation that state law restricted policy. The immunity provision would allow the university to seek dismissal of such claims without the cost of protracted litigation.

Of course a litigant would likely structure a claim to avoid the policy immunity provision. Thus the second part of the provision grants immunity from claims arising from firearms or knives on University premises. This second provision is required to maintain the effectiveness of the first provision, which otherwise could be circumvented through artful drafting. If an injury involves a weapon, the injured party may assert negligence claims against the university that are not based on policy or regulation. For example, an injured party may claim the university had a duty to protect students from 3rd party intentional or accidental harm involving weapons.³

The immunity provision is important to reduce litigation that may result from compliance with legislative policy. As noted at the hearing, an immunity provision in itself will not prevent all lawsuits, and may not preclude liability in every case. Good lawyers will find creative ways to bring claims when an injury occurs. However, an immunity provision at least gives the university a basis to seek immediate dismissal of the types of claims discussed above.

Please contact my office if we can be of further assistance.

cc: Senator Gardner
Senator Giesel
Senator Huggins
Senator Stevens
Senator Kelly

² A civil liability immunity provision would not preclude suit to enforce the statute.

³ While there are no cases addressing this special duty in Alaska, courts in other jurisdictions have held that schools owe a special duty of care to students under 18 years of age to protect them from foreseeable harm.