

SENATE CS FOR CS FOR HOUSE BILL NO. 12(TRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

Offered: 5/10/98

Referred: Labor and Commerce, Judiciary

Sponsor(s): REPRESENTATIVES DAVIS, Hudson, James, Mulder

SENATORS Mackie, Leman

A BILL

FOR AN ACT ENTITLED

**1 "An Act relating to civil liability for commercial recreational activities and certain
2 skating and cycling activities; and providing for an effective date."**

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

4 * Section 1. PURPOSE. It is the purpose of sec. 2 of this Act to establish the
**5 responsibilities of operators of commercial recreational activities and persons who participate
6 in those recreational activities and to decrease uncertainty regarding the legal responsibility
7 for injuries that result from participation in commercial recreational activities. It is also the
8 purpose of this Act to encourage the continued availability of commercial recreational
9 activities to the public.**

10 * Sec. 2. AS 05 is amended by adding a new chapter to read:

**11 Chapter 50. Civil Liability for Commercial
12 Recreational Activities.**

13 Sec. 05.50.010. Acceptance of inherent risks. Participation in a commercial
14 recreational activity constitutes acceptance of the inherent risks of the commercial

1 recreational activity that are or should be apparent to an ordinarily prudent person.

2 **Sec. 05.50.020. Contributory negligence.** A person who accepts an inherent
3 risk of a commercial recreational activity as described in AS 05.50.010 is
4 contributorily negligent to the extent that the inherent risk causes injury, death, or
5 property damage. In an action seeking to recover damages for injury or death to a
6 person or harm to property resulting from an inherent risk of a commercial recreational
7 activity, compensatory damages shall be reduced for contributory negligence as
8 provided under AS 09.17.060. In this section, "compensatory damages" do not include
9 benefits paid under an insurance policy.

10 **Sec. 05.50.030. Responsibilities of participants.** A participant in a
11 commercial recreational activity has the responsibility to

- 12 (1) learn about and expressly accept the risks of the activities;
- 13 (2) act within the limits of the person's abilities;
- 14 (3) heed all warnings regarding participation in the commercial
15 recreational activity;
- 16 (4) maintain control of the participant's person, the participant's
17 children, and any equipment, devices, or animals the participant is using;
- 18 (5) refrain from acting in a manner that may cause or contribute to
19 injury of the participant or another person.

20 **Sec. 05.50.040. Responsibilities of operators of commercial recreational**
21 **activities.** An operator of a business that offers a commercial recreational activity
22 shall

- 23 (1) explain to a participant the
 - 24 (A) fundamental inherent risks of the commercial recreational
25 activity; and
 - 26 (B) skills or equipment required to participate in the commercial
27 recreational activity that are not apparent to an inexperienced participant;
- 28 (2) require that employees who are responsible for assisting participants
29 in the actual performance of a commercial recreational activity have training in basic
30 first aid and cardiopulmonary resuscitation and explain to those employees how to use
31 emergency medical services available in the area;

- 1 (3) maintain recreational equipment and facilities in good repair;
 2 (4) provide trained and competent personnel; and
 3 (5) act in a reasonably safe and competent manner.

4 **Sec. 05.50.050. Interaction with other laws.** This chapter does not affect the
 5 immunity of an owner of unimproved land under AS 09.65.200 or of a ski area
 6 operator under AS 05.45.010.

7 **Sec. 05.05.100. Definitions.** In this chapter,

- 8 (1) "children" means persons under 18 years of age;
 9 (2) "commercial recreational activity" means a recreational activity for
 10 which the participants pay compensation;
 11 (3) "recreational activity" means an outdoor activity undertaken for the
 12 purpose of exercise, education, relaxation, pleasure, or sport or as a hobby but does not
 13 include the transportation of the participant by plane, bus, boat, vessel, or other legally
 14 regulated mode of conveyance of the participant by the commercial operator.

15 * **Sec. 3.** AS 05 is amended by adding a new chapter to read:

16 **Chapter 55. Municipal Skating and Cycling Liability and Responsibility.**

17 **Sec. 05.55.010. Limitation on actions arising from recreational activities.**

18 Notwithstanding any other provision of law, a person may not bring an action against
 19 a municipality for an injury occurring at a municipal skating and cycling facility if the
 20 injury results from an inherent danger and risk of using the facility.

21 **Sec. 05.55.020. Effect of violations.** (a) A municipality or person who
 22 violates a requirement of this chapter is negligent and civilly liable to the extent the
 23 violation causes injury to a person or damage to property.

24 (b) Notwithstanding the provisions of AS 09.17.080,

- 25 (1) the limitation of liability described under AS 05.55.010 is a
 26 complete defense in an action against a municipality for an injury if an inherent danger
 27 or risk of the skating or cycling activity is determined to be a contributory factor in
 28 the resulting injury, unless the municipality has violated a requirement of this chapter;
 29 (2) a violation of the person's duties imposed under AS 05.55.030 is
 30 a complete defense in an action against a municipality if the violation is determined
 31 to be a contributory factor in the resulting injury, unless the municipality has violated

1 a requirement of this chapter.

2 (c) If the municipality is determined to have violated a requirement of this
3 chapter, the provisions of AS 09.17.080 apply in an action against a municipality for
4 an injury resulting from the violation.

5 **Sec. 05.55.030. Duties of municipal skating and cycling facility users.** A
6 person using a municipal skating or cycling facility may not

7 (1) enter or leave except at a designated area unless reasonably
8 necessary to prevent injury to the person or others;

9 (2) intentionally throw or expel an object onto the facility;

10 (3) take food, drink, or glass containers on the facility;

11 (4) act while using the facility in a manner that may interfere with
12 proper or safe condition of the facility;

13 (5) engage in conduct that may contribute or cause injury to a person
14 other than those associated with inherent dangers and risks of the activity; for purposes
15 of this paragraph, an injury that results from a violation of the rules of the activity is
16 not one that is associated with inherent dangers and risks of the activity;

17 (6) enter the facility when the facility is marked as closed;

18 (7) disobey instructions posted in accordance with this chapter or any
19 other instructions required by local laws consistent with this chapter.

20 **Sec. 05.55.040. Duties of municipalities.** (a) In a municipal skating or
21 cycling facility, a municipality shall maintain a sign system with concise, simple, and
22 pertinent information for the protection and instruction of a person who uses the
23 facility. Signs shall be prominently placed at each facility.

24 (b) At least one sign posted at each facility must contain language substantially
25 similar to the following warning notice:

26 **WARNING**

27 Under Alaska law, the risk of an injury to person or property
28 resulting from any of the inherent dangers of using a municipal
29 skating or cycling facility rests with the user. Inherent dangers
30 and risks of using the facility include collisions with man-made
31 objects, collisions with other persons, variations in slope, falling,

1 and the failure of a person to recreate within their own abilities.

2 (c) A municipality shall clearly delineate the boundaries of a municipal skating
3 or cycling facility with fencing or another type of enclosing or surrounding structure.

4 (d) A municipality may not construct or maintain a municipal skating or
5 cycling facility in a negligent manner.

6 **Sec. 05.55.050. Skating and cycling duties and responsibilities.** (a) A
7 person who is skating or cycling at a municipal skating or cycling facility

8 (1) is responsible for knowing the range of the person's own ability to
9 negotiate a skating or cycling facility and to recreate within the limits of the person's
10 ability; in the case of a minor, the minor's parent or legal guardian is responsible for
11 determining whether the minor satisfies the requirements of this paragraph;

12 (2) is responsible for an injury to a person or property resulting from
13 an inherent danger and risk of the activity, except that a person is not precluded under
14 this chapter from suing another person for an injury to person or property resulting
15 from the other person's acts or omissions; notwithstanding any other provision of law,
16 the risk of collision with another person is not an inherent danger or risk of using a
17 skating or cycling facility in an action by one user of the facility against another;

18 (3) has the duty to

19 (A) maintain control of the person's speed and course at all
20 times when using the facility and to maintain a proper lookout so as to be able
21 to avoid other persons, objects, and debris; however, a person on a downhill
22 slope has a primary duty to avoid collision with a person or object below the
23 person;

24 (B) perform a visual inspection of the facility before each use;

25 (C) ensure that all areas of the facility the person intends to use
26 are free and clear of natural or manmade debris that would interfere with the
27 person's use of the facility;

28 (D) heed all posted information and other warnings and to
29 refrain from acting in a manner that may cause or contribute to the injury of
30 the person; evidence that signs as required by AS 05.55.040 or as required by
31 consistent local laws were present, visible, and readable at the beginning of a

1 given day creates the presumption that a person using the facility on that day
2 has seen and understood the sign; and

3 (4) may not use a skating or cycling facility

4 (A) while the person's ability is impaired by the influence of
5 alcohol or a controlled substance as defined in AS 11.71.900 or other drugs;

6 (B) if the person does not have sufficient physical dexterity or
7 ability and knowledge to negotiate or use the facility safely; in the case of a
8 minor who uses a municipal skating or cycling facility, the minor's parent or
9 legal guardian is responsible for determining whether the minor satisfies the
10 requirements of this paragraph;

11 (C) if the person is not wearing knee pads, elbow pads, shoes,
12 and a helmet at all times.

13 (b) A person may not skateboard or cycle at a municipal skating or cycling
14 facility if the facility has been posted as "closed."

15 **Sec. 05.55.060. Competition: immunity for municipality operating a**
16 **skating or cycling facility.** (a) A municipality shall, before beginning recreational
17 competition at a municipal skating or cycling facility, allow an athlete who will
18 participate in the competition a reasonable visual inspection of the course or area
19 where the competition is to be held.

20 (b) A person in competition at a municipal skating or cycling facility assumes
21 the risk of all course or area conditions, course construction or layout, and obstacles
22 that a visual inspection would have revealed. A municipality is not liable for injury
23 to a person who competed at a municipal skating or cycling facility operated by the
24 municipality and who is injured as a result of a risk described in this subsection.

25 **Sec. 05.55.100. Definitions.** In this chapter,

26 (1) "inherent dangers and risks of the activity" means a danger or
27 condition that is an integral part of the activity, including collisions with man-made
28 objects; impact with ramps, signs, posts, fences, or enclosures, or other man-made
29 structures and their components; variations in slope and steepness; collisions with other
30 persons; and the failure of a person to perform the activity within their own abilities;
31 the term "inherent dangers and risks of the activity" does not include the negligence

1 of a municipality that is responsible for a municipal facility;

2 (2) "injury" means property damage, personal injury, or death;

3 (3) "skating or cycling" means skateboarding, cycling, coasting, roller-
4 skating, or in-line skating or a combination of those activities.

5 * **Sec. 4.** This Act applies to acts or omissions that occur on or after the effective date of
6 this Act.

7 * **Sec. 5.** This Act takes effect July 1, 1998.