

CS FOR HOUSE BILL NO. 319(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/16/02

Referred: Rules

Sponsor(s): REPRESENTATIVES KOTT, Dyson, McGuire

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to civil liability for commercial recreational activities and for guest**
2 **passengers on an aircraft or watercraft; 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 PURPOSE OF SECTION 2. It is the purpose of sec. 2 of this Act to establish the
7 responsibilities of persons who operate commercial recreational activities and persons who
8 participate in those recreational activities and to decrease uncertainty regarding the legal
9 responsibility for injuries that result from participation in commercial recreational activities.
10 It is also the purpose of sec. 2 of this Act to encourage the continued availability of businesses
11 that offer commercial recreational activities to the public.

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

13 **Chapter 50. Civil Liability for Commercial**
14 **Recreational Activities.**

1 **Sec. 05.50.010. Acceptance of inherent risks.** Participation in a commercial
2 recreational activity constitutes acceptance of the inherent risks of the commercial
3 recreational activity that are or should be apparent to an ordinarily prudent person.

4 **Sec. 05.50.020. Contributory negligence.** (a) A person who accepts an
5 inherent risk of a commercial recreational activity as described in AS 05.50.010 is
6 contributorily negligent to the extent that the inherent risk causes injury, death, or
7 property damage.

8 (b) In an action seeking to recover damages for injury or death to a person or
9 harm to property resulting from an inherent risk of a commercial recreational activity,
10 compensatory damages shall be reduced for contributory negligence as provided under
11 AS 09.17.060.

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

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

24 **Sec. 05.50.040. Responsibilities of operators of commercial recreational**
25 **activities.** A person who operates a business that offers a commercial recreational
26 activity shall

- 27 (1) explain to a participant
28 (A) the fundamental inherent risks of the commercial
29 recreational activity; and
30 (B) the skills and equipment required to participate in the
31 commercial recreational activity that are not apparent to an inexperienced

1 participant;

2 (2) require that employees who are directly responsible for assisting
3 participants in the field in the actual performance of a commercial recreational activity
4 have training in basic first aid and cardiopulmonary resuscitation and explain to those
5 employees how to use emergency medical services available in the area;

6 (3) maintain recreational equipment and facilities in good repair;

7 (4) provide trained and competent personnel; and

8 (5) act in a reasonably safe and competent manner.

9 **Sec. 05.50.050. Interaction with other laws.** This chapter does not affect the
10 immunity of an owner of unimproved land under AS 09.65.200 or of a ski area
11 operator under AS 05.45.

12 **Sec. 05.50.060. Effect of violations.** A person who operates a business that
13 offers a commercial recreational activity and who violates AS 05.50.040 is negligent
14 and civilly liable to the extent the violation causes injury to a person or damage to
15 property.

16 **Sec. 05.50.100. Definitions.** In this chapter,

17 (1) "commercial recreational activity" means a recreational activity for
18 which the participants pay compensation;

19 (2) "recreational activity" means an outdoor activity undertaken for the
20 purpose of exercise, education, relaxation, pleasure, sport, or as a hobby.

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

22 **Sec. 09.65.112. Civil liability for aircraft and watercraft guest passengers.**

23 (a) An owner or operator of an aircraft or watercraft is not liable for the civil damages
24 of a person being transported in the owner's or operator's aircraft or watercraft if the
25 owner or operator is not for hire or being compensated for the transportation. In this
26 subsection, "compensated" means a substantial payment in money, services, or
27 materials, but does not include a token payment.

28 (b) This section does not apply to a civil action

29 (1) for damages resulting from

30 (A) gross negligence or reckless or intentional misconduct;

31 (B) an act or omission of an owner or operator of an aircraft or

1 watercraft who is a common carrier; or

2 (C) an act or omission of an owner or operator of an aircraft or
3 watercraft that occurs while demonstrating an aircraft or watercraft to a
4 prospective buyer; or

5 (2) described under (a) of this section if the owner or operator

6 (A) has insurance that would compensate the claimant for civil
7 damages awarded against the owner or operator; an owner or operator who is
8 insured as described in this subparagraph is not liable for civil damages
9 described in (a) of this section that exceed the applicable insurance; or

10 (B) does not have insurance that would compensate a person
11 being transported as described under (a) of this section for civil damages
12 awarded against the owner or operator and, before the person being transported
13 enters the aircraft or watercraft, the owner or operator fails to provide notice to
14 the person being transported that the owner or operator is uninsured as
15 described in this subparagraph.

16 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 **APPLICABILITY.** This Act applies to acts or omissions that occur on or after the
19 effective date of this Act.

20 * **Sec. 5.** This Act takes effect July 1, 2002.