

HOUSE BILL NO. 245

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 4/4/03

Referred: House Special Committee on Military and Veterans' Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to certain suits and claims by members of the military services or**
2 **regarding acts or omissions of the organized militia; relating to liability arising out of**
3 **certain search and rescue, civil defense, homeland security, and fire management and**
4 **firefighting activities; and providing for an effective date."**

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

6 * **Section 1.** The uncodified law of the State of Alaska is amended to read:

7 PURPOSE. The purpose of secs. 3 - 6 of this Act is to

8 (1) provide the State of Alaska and state military and other personnel, through
9 the immunity provided in this Act, with the same protection from civil actions for damages
10 that the federal government and federal military personnel are provided under federal caselaw
11 and statute;

12 (2) ensure that military service decisions are based on the judgment and needs
13 of the militia rather than on concerns for possible tort exposure; and

14 (3) recognize that injured military service members or their families are

1 entitled to various federal military and veteran's benefits for injuries or death occurring in the
 2 course of the member's military service for the Alaska National Guard while not on state
 3 active duty;

4 (4) recognize that the federal government and not the State of Alaska is
 5 responsible for providing benefits to injured military service members or their families for
 6 injuries or death occurring in the course of the member's military service for the Alaska
 7 National Guard while not on state active duty;

8 (5) recognize that the federal government and not the State of Alaska is
 9 responsible for property damage, injuries, or death, resulting from the acts or omissions of
 10 members of the Alaska National Guard who are under the command of the federal
 11 government.

12 * **Sec. 2.** AS 18.60 is amended by adding a new section to read:

13 **Sec. 18.60.125. Civil liability.** A person may not bring a civil action for
 14 damages against the state, a political subdivision of the state, or the officers, agents, or
 15 employees of either, for a death, personal injury, or property damage that results from
 16 an act or omission in performing or failing to perform activities or duties authorized
 17 under AS 18.60.120 - 18.60.175.

18 * **Sec. 3.** AS 26.05.140 is amended by adding a new subsection to read:

19 (b) The State of Alaska has not waived its sovereign immunity and is not
 20 liable for the acts or omissions of members of the organized militia, unless those
 21 members were ordered into active state service by the governor under AS 26.05.070
 22 and the members were acting in the line of duty of those orders.

23 * **Sec. 4.** AS 26.05 is amended by adding a new section to read:

24 **Sec. 26.05.145. Suits by members of the military services.** (a) A civil
 25 action for damages may not be brought by or on behalf of a member of the military
 26 services against the State of Alaska or against any employee of the State of Alaska or
 27 any member or former member of the Alaska militia for wrongful death, personal
 28 injury, or other tort claim or injury arising out of activities that were incident to the
 29 member's military service.

30 (b) In this section, "military service" means service in the United States
 31 military, the militia described in AS 26.05.010(b), or the national guard of another

1 state.

2 * **Sec. 5.** AS 26.05.260(d) is amended to read:

3 (d) A member of the organized militia who, while performing duties under
4 AS 26.05.070, including transit to and from the member's home of record, suffers an
5 injury or disability in the line of duty is entitled to all compensation and benefits
6 available under AS 23.30 (Alaska Workers' Compensation Act). For a member of the
7 Alaska State Defense Force, compensation and benefits under this subsection are
8 provided as though the member were a state employee. **A member of the organized**
9 **militia who has not been ordered into active state service by the governor under**
10 **AS 26.05.070 is not entitled to compensation and benefits under AS 23.30 (Alaska**
11 **Workers' Compensation Act).**

12 * **Sec. 6.** AS 26.05.260(e) is amended to read:

13 (e) If a member of the organized militia dies as a result of an injury or
14 disability suffered in the line of duty while performing duties under AS 26.05.070,
15 including transit to and from the member's home of record, death benefits shall be paid
16 to the persons in the amounts specified in AS 23.30.215. For a member of the Alaska
17 State Defense Force, the death benefits under this subsection are provided as though
18 the member were a state employee. **A person is not entitled to death benefits as**
19 **specified in AS 23.30.215 for a member of the organized militia who dies as a**
20 **result of injury or disability suffered in the line of duty but who had not been**
21 **ordered into active state service by the governor under AS 26.05.070.**

22 * **Sec. 7.** AS 26.20.140 is amended to read:

23 **Sec. 26.20.140. Immunity of government, [AND] employees, and**
24 **authorized volunteers or other persons.** (a) Neither the state nor any district of the
25 state, nor the **employees,** agents, or representatives of the state or district, is liable for
26 personal injury or property damage sustained by any person appointed or acting as a
27 [VOLUNTEER] civilian defense **or homeland security** worker. This provision does
28 not affect the right of a person to receive benefits or compensation to which the person
29 might otherwise be entitled under the workers' compensation law or a pension law or
30 an Act of Congress.

31 (b) Neither the state nor **a** district [PERSONNEL] of the state, nor [, EXCEPT

1 IN CASES OF WILFUL MISCONDUCT, GROSS NEGLIGENCE, OR BAD
 2 FAITH,] the employees, agents, or representatives of the state or district, nor a
 3 volunteer or auxiliary civilian defense **or homeland security** worker or member of an
 4 agency engaged in civilian defense **or homeland security** activity, complying with or
 5 reasonably attempting to comply with this chapter, or an order **issued** or regulation
 6 adopted under this chapter, or under an ordinance relating to blackout or other
 7 precautionary measures enacted by a district director of the state, is liable for the death
 8 of or injury to persons, or for damage to property, as a result of the activity, **except**
 9 **when malice or reckless indifference to the interests, rights, or safety of others is**
 10 **shown by clear and convincing evidence.**

11 * **Sec. 8.** AS 26.20.140 is amended by adding a new subsection to read:

12 (c) In this section, "civilian defense or homeland security worker" means a
 13 worker engaged in a civil defense or homeland security activity in an official capacity
 14 or at the direction of the state, including

15 (1) an officer or employee of the state, a municipality or other political
 16 subdivision of the state, or a governmental instrumentality of the state;

17 (2) a member of a board, commission, or task force created by statute
 18 or by legislative, judicial, or administrative action by the state, a municipality or other
 19 political subdivision of the state, or a governmental instrumentality of the state;

20 (3) a contractor to the state, a municipality or other political
 21 subdivision of the state, or a governmental instrumentality of the state, or an officer or
 22 employee of such a contractor;

23 (4) an officer or employee of a federal agency, a member of the
 24 military or naval forces of the United States, a member of the National Guard while
 25 engaged in training or duty, or a person acting on behalf of a federal agency in an
 26 official capacity, temporarily or permanently in the service of the United States,
 27 whether with or without compensation;

28 (5) an officer or employee of another state; and

29 (6) a volunteer authorized by the state, a municipality or other political
 30 subdivision of the state, or a federal agency to engage in a civil defense or homeland
 31 security activity.

1 * **Sec. 9.** AS 26.20.200(1) is amended to read:

2 (1) "civil defense" means the protection and defense of the civilian
3 population by the organized efforts of the residents of the state other than those in the
4 military service, and includes without limitation, fire fighting, policing, rescue, air raid
5 warning, security, communications, medical service, vaccination and other actions
6 to protect public health, transportation, evacuation of persons, welfare aid, guard
7 duty, anti-espionage and anti-sabotage service, construction of temporary housing and
8 bomb proof shelters, [AND] any other service necessary for the protection of and aid
9 to the public not normally furnished by the military services, and training,
10 preparation, travel, and other activities necessary for the provision of the services
11 described in this paragraph;

12 * **Sec. 10.** AS 26.20.200 is amended by adding a new paragraph to read:

13 (4) "homeland security" means the detection, prevention, preemption,
14 or deterrence of, protection from, and response to, attacks targeted at state territory,
15 population, or infrastructure of this state.

16 * **Sec. 11.** AS 26.23.210 is amended by adding a new subsection to read:

17 (c) The provisions of AS 26.20.140, providing for immunity of government,
18 employees, and other authorized persons in certain circumstances, apply when the
19 entities or persons covered by AS 26.20.140 perform duties under AS 26.23.010 -
20 26.23.220, except as otherwise provided in AS 26.23.136 for entities or other persons
21 providing assistance to the state under a compact in a form substantially as contained
22 in AS 26.23.126.

23 * **Sec. 12.** AS 41.15 is amended by adding a new section to read:

24 **Sec. 41.15.045. Civil liability.** Notwithstanding other provisions of law, a
25 person may not bring a civil action for damages for death, personal injury, or property
26 damage that results from an act or omission in performing or failing to perform
27 activities or duties arising out of prevention, monitoring, control, or suppression of
28 fires authorized to be performed under AS 41.15.010 - 41.15.170 against

29 (1) the state or its officers, agents, and employees;

30 (2) a political subdivision of the state or its officers, agents, and
31 employees;

1 (3) any organization authorized to prevent, control, or suppress fires;
2 or

3 (4) others assisting in the control or suppression of fires at the request
4 of an officer or employee of the United States or the state.

5 * **Sec. 13.** AS 41.17 is amended by adding a new section to read:

6 **Sec. 41.17.081. Civil liability.** Notwithstanding other provisions of law, a
7 person may not bring a civil action for damages for death, personal injury, or property
8 damage that results from an act or omission in performing or failing to perform
9 activities or duties arising out of prevention, monitoring, control, or suppression of
10 fires authorized to be performed under regulations adopted under AS 41.17.080(a)(8)
11 against

12 (1) the state or its officers, agents, and employees;

13 (2) a political subdivision of the state or its officers, agents, and
14 employees;

15 (3) any organization authorized to prevent, control, or suppress fires;
16 or

17 (4) others assisting in the control or suppression of fires at the request
18 of an officer or employee of the United States or the state.

19 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 **APPLICABILITY.** This Act applies to all claims and causes of action accruing on or
22 after the effective date of this Act.

23 * **Sec. 15.** This Act takes effect immediately under AS 01.10.070(c).