

**CS FOR HOUSE BILL NO. 245(MLV)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS

Offered: 4/16/03

Referred: Judiciary, Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

**A BILL**

**FOR AN ACT ENTITLED**

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

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

8 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
9 to read:

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

11 (1) provide the State of Alaska and state military and other personnel, through  
12 the immunity provided in this Act, with the same protection from civil actions for damages  
13 that the federal government and federal military personnel are provided under federal case law

1 and statute;

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

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

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

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

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

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

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

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

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

28 **Sec. 26.05.145. Suits by members of the military services.** (a) A civil  
29 action for damages may not be brought by or on behalf of a member of the military  
30 services against the state or against any employee of the state or any member or  
31 former member of the Alaska militia for wrongful death, personal injury, or other tort

1 claim or injury arising out of activities that were incident to the member's military  
2 service.

3 (b) In this section, "military service" means service in the United States  
4 military, the militia described in AS 26.05.010(b), or the national guard of another  
5 state.

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

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

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

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

26 \* **Sec. 7.** AS 26.20.140 is amended to read:

27 **Sec. 26.20.140. Immunity of government, [AND] employees, and**  
28 **authorized volunteers or other persons.** (a) **The** [NEITHER THE] state, **a** [NOR  
29 ANY] district of the state, **and** [NOR] the **employees,** agents, or representatives of the  
30 state or district **are not** [, IS] liable for personal injury or property damage sustained  
31 by any person appointed or acting as a [VOLUNTEER] civilian defense **or homeland**

1 **security** worker. This provision does not affect the right of a person to receive  
 2 benefits or compensation to which the person might otherwise be entitled under the  
 3 workers' compensation law or a pension law or an Act of Congress.

4 (b) **The** [NEITHER THE] state, **a** [NOR] district [PERSONNEL] of the state,  
 5 **an employee, agent, or representative** [NOR, EXCEPT IN CASES OF WILFUL  
 6 MISCONDUCT, GROSS NEGLIGENCE, OR BAD FAITH, THE EMPLOYEES,  
 7 AGENTS, OR REPRESENTATIVES] of the state or **a** district, **or** [NOR] a volunteer  
 8 or auxiliary civilian defense **or homeland security** worker or member of an agency  
 9 engaged in civilian defense **or homeland security** activity, complying with or  
 10 reasonably attempting to comply with this chapter [,] or an order or regulation adopted  
 11 under this chapter, or under an ordinance relating to blackout or other precautionary  
 12 measures enacted by a district director of the state, is **not** liable for the death of or  
 13 injury to persons, or for damage to property, as a result of the activity, **except when**  
 14 **malice or reckless indifference to the interests, rights, or safety of others is shown**  
 15 **by clear and convincing evidence.**

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

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

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

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

25 (3) a contractor to the state, a municipality or other political  
 26 subdivision of the state, or a governmental instrumentality of the state, or an officer or  
 27 employee of the contractor;

28 (4) an officer or a member of the state's organized militia on active  
 29 state service under AS 26.05.070;

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

31 (6) a volunteer authorized by the state, a municipality or other political

1 subdivision of the state, or a federal agency to engage in a civil defense or homeland  
2 security activity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (3) any organization authorized to prevent, control, or suppress fires;  
18 or

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

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

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

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