

CS FOR HOUSE BILL NO. 245(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 5/7/03

Referred: 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, fire**
5 **management, and fire fighting activities; and providing for an effective date."**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 service.

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

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

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

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

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

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

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

1 which the person might otherwise be entitled under the workers' compensation law or
2 a pension law or an Act of Congress.

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

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

15 (c) In this section, "civilian defense worker" means a worker engaged in a
16 civil defense activity in an official capacity or at the direction of the state, including

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

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

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

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

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

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

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

31 (1) "civil defense" means the protection and defense of the civilian

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

10 * **Sec. 10.** AS 26.23.210 is amended by adding a new subsection to read:

11 (c) The provisions of AS 26.20.140, providing for immunity of government,
 12 employees, and other authorized persons in certain circumstances, apply when the
 13 entities or persons covered by AS 26.20.140 perform duties under AS 26.23.010 -
 14 26.23.220, except as otherwise provided in AS 26.23.136 for entities or other persons
 15 providing assistance to the state under a compact in a form substantially as contained
 16 in AS 26.23.136.

17 * **Sec. 11.** AS 41.15 is amended by adding a new section to read:

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

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

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

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

27 or

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

30 * **Sec. 12.** AS 41.17 is amended by adding a new section to read:

31 **Sec. 41.17.081. Civil immunity.** Notwithstanding other provisions of law, a

1 person may not bring a civil action for damages for death, personal injury, or property
 2 damage that results from an act or omission in performing or failing to perform
 3 activities or duties arising out of prevention, monitoring, control, or suppression of
 4 fires authorized to be performed under regulations adopted under AS 41.17.080(a)(8)
 5 against

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

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

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

10 or

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

13 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
 14 read:

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

17 * **Sec. 14.** This Act takes effect immediately under AS 01.10.070(c).