

HOUSE BILL NO. 273

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE MCGUIRE

Introduced: 4/16/03

Referred: Transportation, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to civil liability for boat owners, for commercial recreational activities,**
2 **and for guest passengers on an aircraft or watercraft; and providing for an effective**
3 **date."**

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

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

7 PURPOSE OF SECTION 3. It is the purpose of sec. 3 of this Act to establish the
8 responsibilities of persons who operate commercial recreational activities and persons who
9 participate in those recreational activities and to decrease uncertainty regarding the legal
10 responsibility for injuries that result from participation in commercial recreational activities.
11 It is also the purpose of sec. 3 of this Act to encourage the continued availability of businesses
12 that offer commercial recreational activities to the public.

13 * **Sec. 2.** AS 05.25.040 is amended to read:

14 **Sec. 05.25.040. Owner's civil liability. Except as provided under AS 05.50**

1 **and AS 09.65.112, the** [THE] owner of a boat is liable for injury or damage caused by
 2 the negligent operation of the owner's boat whether the negligence consists of a
 3 violation of a state statute or the failure to exercise ordinary care in the operation of
 4 the boat as the rules of the common law require. The owner is not liable, however,
 5 unless the boat is used with the owner's express or implied consent. It is presumed
 6 that the boat is being operated with the knowledge and consent of the owner if, at the
 7 time of the injury or damage, it is under the control of the owner's spouse, father,
 8 mother, brother, sister, son, daughter, or other member of the owner's immediate
 9 family. This chapter does not relieve any other person from a liability that the person
 10 would otherwise incur and does not authorize or permit recovery in excess of injury or
 11 damage actually incurred.

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

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

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

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

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

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

- 28 (1) learn about and expressly accept the risks of the activities;
 29 (2) act within the limits of the person's abilities and as allowed by the
 30 person's health;
 31 (3) heed all warnings regarding participation in the commercial

1 recreational activity;

2 (4) maintain control of the participant's person, a minor under the
3 control of the participant, and any equipment, devices, or animals the participant is
4 using or that are under the control of the participant;

5 (5) refrain from acting in a manner that may cause or contribute to
6 injury of the participant or another person.

7 **Sec. 05.50.040. Responsibilities of operators of commercial recreational**
8 **activities.** A person who operates a business that offers a commercial recreational
9 activity shall

10 (1) explain to a participant

11 (A) the fundamental inherent risks of the commercial
12 recreational activity; and

13 (B) the skills and equipment required to participate in the
14 commercial recreational activity that are not apparent to an inexperienced
15 participant;

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

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

21 (4) provide trained and competent personnel; and

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

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

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

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

31 (1) "commercial recreational activity" means a recreational activity for

1 which the participants pay compensation;

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

4 * **Sec. 4.** AS 09.65 is amended by adding a new section to read:

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

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

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

12 (1) for damages resulting from

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

14 (B) an act or omission of an owner or operator of an aircraft or
15 watercraft who is a common carrier; or

16 (C) an act or omission of an owner or operator of an aircraft or
17 watercraft that occurs while demonstrating an aircraft or watercraft to a
18 prospective buyer; or

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

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

24 (B) does not have insurance that would compensate a person
25 being transported as described under (a) of this section for civil damages
26 awarded against the owner or operator and, before the person being transported
27 enters the aircraft or watercraft, the owner or operator fails to provide notice to
28 the person being transported that the owner or operator is uninsured as
29 described in this subparagraph.

30 * **Sec. 5.** Section 9, ch. 28, SLA 2000 is amended to read:

31 Sec. 9. AS 05.25.040 is repealed and reenacted to read:

1 **Sec. 05.25.040. Owner's civil liability. Except as provided under AS 05.50**
 2 **or AS 09.65.112, the** [THE] owner of a watercraft is liable for injury or damage
 3 caused by the negligent operation of the owner's watercraft whether the negligence
 4 consists of a violation of a state statute or neglecting to observe ordinary care in the
 5 operation of the watercraft as the rules of the common law require. The owner is not
 6 liable, however, unless the watercraft is used with the owner's express or implied
 7 consent. It is presumed that the watercraft is being operated with the knowledge and
 8 consent of the owner if, at the time of the injury or damage, it is under the control of
 9 the owner's spouse, father, mother, brother, sister, son, daughter, or other member of
 10 the owner's immediate family. This chapter does not relieve any other person from a
 11 liability that the person would otherwise incur and does not authorize or permit
 12 recovery in excess of injury or damage actually incurred.

13 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
 14 read:

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

17 * **Sec. 7.** Section 5 of this Act takes effect on the date sec. 9, ch. 28, SLA 2000, takes
 18 effect.

19 * **Sec. 8.** Except as provided in sec. 7 of this Act, this Act takes effect July 1, 2003.