

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 273(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/29/04

Referred: Rules

Sponsor(s): REPRESENTATIVE MCGUIRE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the right of a parent to waive an unemancipated child's claim of**
2 **negligence against a provider of sports or recreational activities."**

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 FINDINGS AND INTENT. (a) The legislature finds that

7 (1) children of this state should enjoy the maximum opportunity to participate
8 in sports or recreational activities despite the presence of risk in those activities;

9 (2) public, private, and nonprofit entities that provide sports or recreational
10 activities to children of the state need and deserve a measure of protection against lawsuits
11 and, without that measure of protection, may be unwilling or unable to provide the activities;

12 (3) parents have a fundamental right and responsibility to make decisions
13 concerning the care, custody, and control of their children;

14 (4) the law has long presumed that parents are in the best position to determine

1 what is in the best interests of their children;

2 (5) parents are accustomed to making conscious choices on behalf of their
3 children every day regarding the benefits and risk of various activities available to their
4 children; and

5 (6) parental choices, when made voluntarily upon consideration of appropriate
6 information, should not be ignored, but should be afforded the same dignity and legal effect as
7 other parental choices, including choices regarding education and medical treatment.

8 (b) It is the intent of this Act to

9 (1) encourage the availability and affordability of sports or recreational
10 activities to children in this state by recognizing the right of a parent to choose to release, on
11 behalf of the parent's child, prospective negligence-based claims that the child may accrue
12 against the provider of a sports or recreational activity;

13 (2) encourage the broad construction of the Act to shield providers of sports or
14 recreational activities from liability for the negligence-based claims of a child that were
15 released through a waiver or release-style document executed by the child's parent;

16 (3) ensure that this Act is not construed to permit a parent to release or waive
17 claims of a child against a provider of a sports or recreational activity that allege reckless or
18 intentional misconduct.

19 * **Sec. 2.** AS 09.65 is amended by adding a new section to read:

20 **Sec. 09.65.292. Parental waiver of child's negligence claim against**
21 **provider of sports or recreational activity.** (a) Except as provided in (b) of this
22 section, a parent may, on behalf of the parent's child, release or waive the child's
23 prospective claim for negligence against the provider of a sports or recreational
24 activity in which the child participates. The release or waiver must be in writing and
25 shall be signed by the child's parent.

26 (b) A parent may not release or waive a child's prospective claim against a
27 provider of a sports or recreational activity for reckless or intentional misconduct.

28 (c) In this section,

29 (1) "child" means a minor who is not emancipated;

30 (2) "parent" means

31 (A) the child's natural or adoptive parent;

1 (B) the child's guardian or other person appointed by the court
2 to act on behalf of the child;

3 (C) a representative of the Department of Health and Social
4 Services if the child is in the legal custody of the state;

5 (D) a person who has power of attorney concerning the child
6 from a natural parent of the child; or

7 (E) the child's grandparent, aunt, uncle, sister, or brother with
8 whom the child lives;

9 (3) "provider" has the meaning given in AS 09.65.290;

10 (4) "sports or recreational activity" has the meaning given in
11 AS 09.65.290.

12 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 **APPLICABILITY.** This Act applies to acts or omissions that occur on or after the
15 effective date of sec. 2 of this Act.