

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 4/14/04

Offered: 3/29/04

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 to the extent the waiver is otherwise valid. The
25 release or waiver must be in writing and 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 a valid power of attorney concerning the
6 child; or

7 (E) for a child not living with the child's natural or adoptive
8 parent, the child's grandparent, aunt, uncle, sister, or brother who have reached
9 the age of majority and with whom the child lives;

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

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

13 * **Sec. 3.** 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 sec. 2 of this Act.