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1 IN THE SENATE

BY DUNCAN

2

SENATE BILL NO. 447

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to liability for damage or in-  
7 jury resulting from hazardous recreational activi-  
8 ties."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 09.50.250 is amended to read:

11 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person  
12 or corporation having a contract, quasi-contract, or tort claim  
13 against the state may bring an action against the state in the superi-  
14 or court. A person who may present the claim under AS 44.77 may not  
15 bring an action under this section except as set out in AS 44.77.-  
16 040(c). A person who may bring an action under AS 36.30.560 - 36.30.-  
17 695 may not bring an action under this section except as set out in  
18 AS 36.30.685. However, an [NO] action may not be brought under this  
19 section if the claim

20 (1) is an action for tort, and is based upon an act or  
21 omission of an employee of the state, exercising due care, in the  
22 execution of a statute or regulation, whether or not the statute or  
23 regulation is valid; or is an action for tort, and based upon the  
24 exercise or performance or the failure to exercise or perform a dis-  
25 cretionary function or duty on the part of a state agency or an em-  
26 ployee of the state, whether or not the discretion involved is abused;

27 (2) is for damages caused by the imposition or establish-  
28 ment of a quarantine by the state;

29 (3) arises out of assault, battery, false imprisonment,

1 false arrest, malicious prosecution, abuse of process, libel, slander,  
2 misrepresentation, deceit, or interference with contract rights;

3 (4) is an action for property damage or personal injury  
4 arising out of the person's participation in a hazardous recreational  
5 activity conducted on property owned, managed, or leased by the state.

6 \* Sec. 2. AS 09.50.250 is amended by adding new subsections to read:

7 (b) The provisions of (a)(4) of this section do not limit lia-  
8 bility that would otherwise exist for

9 (1) damage or injury suffered by a participant in a hazard-  
10 ous recreational activity if

11 (A) the damage or injury resulted from a different  
12 hazardous recreational activity or dangerous condition;

13 (B) the state or an employee of the state

14 (i) knew of the different activity or condition;

15 and

16 (ii) failed to protect or warn the participant;

17 and

18 (C) the participant, acting reasonably, did not assume  
19 that damage or injury from the different activity or condition  
20 was an inherent risk of the participation in the hazardous recre-  
21 ational activity;

22 (2) damage or injury suffered in a case in which permission  
23 to participate in the hazardous recreational activity was granted for  
24 a specific fee;

25 (3) injury suffered to the extent proximately caused by the  
26 negligent failure of the state or an employee of the state to properly  
27 construct or maintain in good repair a structure, recreational equip-  
28 ment or machinery, or substantial work of improvement used in the  
29 hazardous recreational activity from which the damage or injury arose;

1 (4) damage or injury suffered in a case in which the state  
2 or an employee of the state recklessly or with gross negligence pro-  
3 moted the participation in a hazardous recreational activity; for  
4 purposes of this paragraph, promotional literature or a public an-  
5 nouncement or advertisement that merely describes the available facil-  
6 ities and services on the property does not in itself constitute a  
7 reckless or grossly negligent promotion; or

8 (5) an act of gross negligence by the state or an employee  
9 of the state that is the proximate cause of the damage or injury.

10 (c) Nothing in (b) of this section creates a duty of care or  
11 basis of liability for personal injury or for damage to personal  
12 property.

13 (d) Nothing in this section limits the liability of an indepen-  
14 dent concessionaire, or any person or organization other than the  
15 state, whether or not the person or organization has a contractual  
16 relationship with the state to use the property owned, managed, or  
17 leased by the state, for injury or damage suffered as a result of a  
18 hazardous recreational activity operated by the concessionaire, per-  
19 son, or organization on property owned, managed, or leased by the  
20 state.

21 (e) In this section,

22 (1) "hazardous recreational activity" means a recreational  
23 activity that creates a substantial risk of injury to a participant,  
24 and includes activities such as

25 (A) water contact activities, except diving, in places  
26 where or at a time when lifeguards are not provided and reason-  
27 able warning has been given or the injured party should reason-  
28 ably have known that there was no lifeguard provided at the time;

29 (B) diving into water from other than a diving board

1 or diving platform, or at a place or from a structure where  
2 diving is prohibited and reasonable warning has been given;

3 (C) airplane flying, animal riding and equestrian  
4 activities, archery, bicycling, boating, cross-country and down-  
5 hill skiing, gymnastics, hang gliding, hockey and roller hockey,  
6 ice skating, kayaking, motorized vehicle racing, off-road motor-  
7 cycling, off-road four-wheel driving, orienteering, pistol and  
8 rifle shooting, rock climbing and ice climbing, rocketeering,  
9 rodeo, scuba diving, skateboarding, sky diving, spelunking, sport  
10 parachuting, sports in which it is reasonably foreseeable that  
11 there will be rough bodily contact by participants, surfing,  
12 track and field sports, trampolining, tree climbing, tree rope  
13 swinging, water skiing, white water rafting, and wind surfing;

14 (2) "participant" means

15 (A) a participant, regardless of whether the person  
16 was directly involved in the activity in question at the time of  
17 the injury or damage;

18 (B) a person who assists another to participate in the  
19 activity; or

20 (C) a spectator who

21 (i) knew or reasonably should have known that the  
22 activity created a substantial risk of injury to the specta-  
23 tor; and

24 (ii) was voluntarily in the place of risk or,  
25 having the ability to do so, failed to leave;

26 (3) "specific fee"

27 (A) means a fee charged specifically for participation  
28 in the hazardous recreational activity from which the damage or  
29 injury arose;

- 1 (B) does not include  
2 (i) a fee or consideration charged for a general  
3 purpose such as a general park admission charge, a vehicle  
4 entry or parking fee, an administrative or group use appli-  
5 cation or permit fee, or a fee reasonably necessary for the  
6 support of the recreational program that involves the haz-  
7 ardous recreational activity;  
8 (ii) a fee paid in trust to a municipality for the  
9 benefit of a private organization that originates, sponsors,  
10 or conducts a hazardous recreational activity.

11 \* Sec. 3. AS 09.65.070(e) is repealed and reenacted to read:

- 12 (e) In this section  
13 (1) "hazardous recreational activity," "participant," and  
14 "specific fee" have the meanings given in AS 09.50.250(e);  
15 (2) "municipality" has the meaning given in AS 01.10.060  
16 and includes a public corporation established by the municipality;  
17 (3) "nonprofit entity" means an entity  
18 (A) incorporated under AS 10.20; or  
19 (B) exempt from taxation under 26 U.S.C. 501(c)(3)  
20 (Internal Revenue Code of 1954);  
21 (4) "village" means an unincorporated community where at  
22 least 25 people reside as a social unit.

23 \* Sec. 4. AS 09.65.070 is amended by adding new subsections to read:

- 24 (f) A person may not bring an action for property damage or  
25 personal injury arising out of the person's participation in a hazar-  
26 dous recreational activity if the action is against  
27 (1) a municipality, or an agent, officer, or employee of a  
28 municipality, and the activity was conducted  
29 (A) by the municipality; or

1 (B) on property owned, managed, or leased by the  
2 municipality; or

3 (2) a municipality, or a nonprofit entity whose recreation-  
4 al activities are cosponsored by a municipality under the terms of an  
5 ordinance adopted by the municipality for a period of not more than  
6 five years, or an agent, officer, or employee of the municipality or  
7 nonprofit entity, and the activity was conducted by the nonprofit  
8 entity, or jointly by the municipality and the nonprofit entity, on  
9 property owned, managed, or leased by the municipality.

10 (g) The provisions of (f) of this section do not limit liability  
11 that would otherwise exist for

12 (1) damage or injury suffered by a participant in a hazard-  
13 ous recreational activity if

14 (A) the damage or injury resulted from a different  
15 hazardous recreational activity or dangerous condition;

16 (B) a municipality, a nonprofit entity, or an agent,  
17 officer, or employee of the municipality or nonprofit entity

18 (i) knew of the different activity or condition;

19 and

20 (ii) failed to protect or warn the participant;

21 and

22 (C) the participant, acting reasonably, did not assume  
23 that damage or injury from the different activity or condition  
24 was an inherent risk of the participation in the hazardous recre-  
25 ational activity;

26 (2) damage or injury suffered in a case in which permission  
27 to participate in the hazardous recreational activity was granted for  
28 a specific fee;

29 (3) the owner of recreational equipment or machinery, a

1 structure, or a substantial work of improvement used in a hazardous  
2 recreational activity, or an employee of the owner, for injury proxi-  
3 mately caused by the negligent failure by the owner or employee to  
4 properly construct or maintain in good repair the equipment, machin-  
5 ery, structure, or improvement;

6 (4) damage or injury suffered in a case in which a municipi-  
7 tality, a nonprofit entity, or an agent, officer, or employee of a  
8 municipality or nonprofit entity recklessly or with gross negligence  
9 promoted as safe the participation in a hazardous recreational activi-  
10 ty; for purposes of this paragraph, promotional literature or a public  
11 announcement or advertisement that merely describes the available  
12 facilities and services on the property does not in itself constitute  
13 a reckless or grossly negligent promotion; or

14 (5) an act of gross negligence by a municipality, a non-  
15 profit entity, or an agent, officer, or employee of a municipality or  
16 nonprofit entity that is the proximate cause of the damage or injury.

17 (h) Nothing in (g) of this section creates a duty of care or  
18 basis of liability for personal injury or for damage to personal  
19 property.