

Offered: 3/21/88
Referred: Judiciary

5-1483L

Original sponsor: Duncan

1 IN THE SENATE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

2

CS FOR SENATE BILL NO. 447 (C&RA)

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 injury
7 resulting from hazardous recreational activities; and
8 providing for an effective date."

9

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

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* Section 1. AS 09.50.250 is amended to read:

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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

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(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;

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

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

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

18 (d) In this section,

19 (1) "hazardous recreational activity" means a recreational
20 activity that creates a substantial risk of injury to a participant;

21 (2) "participant" means

22 (A) a participant, regardless of whether the person
23 was directly involved in the activity in question at the time of
24 the injury or damage;

25 (B) a person who assists another to participate in the
26 activity; or

27 (C) a spectator who

28 (i) knew or reasonably should have known that the
29 activity created a substantial risk of injury to the

1 spectator; and

2 (ii) was voluntarily in the place of risk or,
3 having the ability to do so, failed to leave.

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 AS 09.65.070(e) is repealed and reenacted to read:

5 (e) In this section

6 (1) "hazardous recreational activity" and "participant"
7 have the meanings given in AS 09.50.250(d);

8 (2) "municipality" has the meaning given in AS 01.10.060
9 and includes a public corporation established by the municipality;

10 (3) "nonprofit entity" means an entity

11 (A) incorporated under AS 10.20; or

12 (B) exempt from taxation under 26 U.S.C. 501(c)(3)

13 (Internal Revenue Code of 1954);

14 (4) "village" means an unincorporated community where at
15 least 25 people reside as a social unit.

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

17 (f) A person may not bring an action for property damage or
18 personal injury arising out of the person's participation in a hazar-
19 dous recreational activity if the action is against

20 (1) a municipality, or an agent, officer, or employee of a
21 municipality, and the activity was conducted

22 (A) by the municipality; or

23 (B) on property owned, managed, or leased by the
24 municipality; or

25 (2) a municipality, or a nonprofit entity whose recreation-
26 al activities are cosponsored by a municipality under the terms of an
27 ordinance adopted by the municipality for a period of not more than
28 five years, or an agent, officer, or employee of the municipality or
29 nonprofit entity, and the activity was conducted by the nonprofit

1 entity, or jointly by the municipality and the nonprofit entity, on
2 property owned, managed, or leased by the municipality.

3 (g) The provisions of (f) of this section do not limit liability
4 that would otherwise exist for an act of gross negligence by a munic-
5 ipality, a nonprofit entity, or an agent, officer, or employee of a
6 municipality or nonprofit entity that is the proximate cause of the
7 damage or injury.

8 * Sec. 5. This Act takes effect July 1, 1988.