SB 89

Alaska State Legislature

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Senate Judiciary Committee

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MEMORANDUM

TO: Judiciary Committee Members

FROM: Senator Jan Faiks, Chairman
Senate Judiciary Committee

SUBJECT: SB 89 An Act relating to civil liability of zoos and zoo operators

SB 89 has been referred to the Senate Judiciary Committee for consideration. The purpose of this bill is to modify the civil liability of zoos and zoo operators in Alaska.

SB 89 addresses the standard of care to be applied in liability cases which may be brought against zoos and zoo operators.

It provides that a zoo operated by a government entity or a nonprofit organization may not be held absolutely liable for personal or property injuries sustained as a result of an inherent risk of attendance at the zoo. Recovery for damages must be based upon negligence on the part of the zoo operator. Accordingly, the bill requires the zoo operator to use reasonable care to prevent the injury, and to post warning signs at prominent places within the zoo and at each entrance.

"Inherent risk of attendance" is defined as the dangers or conditions that are an integral part of the physical proximity of wild animals.

There are two theories of liability which have been applied to such keepers of wild animals. The rule of "absolute liability" is that one who keeps wild animals on his premises must

see to it at his peril that they do no damage to others. Stated differently, one who harbors a wild animal, which by its very nature is vicious and unpredictable, does so at his peril, and liability for injuries inflicted by such animal is absolute, regardless of fault.

This theory of "absolute liability" has been refuted in several cases throughout the country involving city-owned zoos, in favor of a duty of reasonable care. The argument that maintenance of a caged polar bear creates absolute liability for any injuries sustained was first rejected in a 1952 California case. The court found that the bear was properly caged and that the injury occurred when the victim strained against the barrier and brought his hand close to the bear's mouth in trying to feed it sugar. McKinney v. City and County of San Francisco, 241 P.2d 1060 (Cal. 1952). The most recent case on point, Kennedy v. City and County of Denver, 506 P.2d 764 (Colo. App. 1972), held that the rule of absolute liability does not extend to situations where a municipality maintains and operates a zoo for the benefit of the public and in response to the public's obvious desires. The wild animal rule has been held inapplicable in the context of today's society and present zoological techniques, as it would be unrealistic to hold that operation of a municipal zoo exposes the public to inordinate risk. City and County of Denver v. Kennedy, 476 P.2d 762 (Colo. App. 1970).

However, that line of cases has been applied only to zoos which are owned by municipalities. There are no city-owned zoos in Alaska; the Alaska Zoo is owned and operated by a nonprofit organization for the benefit of the public.

The purpose of this legislation is to hold the Alaska Zoo, and other zoos which may be established in Alaska by government entities or nonprofit organizations, to a standard of reasonable care, rather than to the theory of absolute liability. I believe that it is reasonable to hold zoos operated by nonprofit organizations to the same standard of care to which a government-operated zoo would be held by the common law.

Should you need any additional information, please let me know.

obligor requests a hearing, an income assignment may not take effect until the conclusion of the hearing. The court shall hold a hearing requested under this section within 15 days after the date the obligor requests the hearing. If the obligor pays all support payments due before the hearing, an income assignment order may not take effect.

(e) The obligee or person or public agency that requested the income assignment order shall immediately send a copy of the income assignment order by certified mail to persons who may owe money to an obligor. An income assignment order made under this section is binding upon a person, employer, political subdivision, or department of the state immediately upon receipt of a copy of the income assignment order.

(f) An employer may not discharge an obligor on the basis of an assignment under this section.

(g) An income assignment under this section has priority over all other attachments, executions, garnishments, or other assignments unless otherwise ordered by the court. An income assignment is not limited to the wages of an obligor but may include all money owed to the obligor not otherwise exempt by law. The exemptions from execution by judgment debtors under AS 09.35.080(a) and the restrictions from execution by judgment debtors under AS 09.35.080(b)(1) do not apply to income assignments under this section; however, 50 percent of the gross wages of the obligor or $100 a week, whichever is less, is exempt from execution under this section.

(h) The court may order an obligor to pay all court costs involved in an income assignment proceeding under this section. (§ 1 ch 96 SLA 1981; am §§ 16, 17 ch 59 SLA 1982; am § 1 ch 118 SLA 1982)

Effect of amendments. — The first 1982 amendment added "and by filing that statement with the court" at the end of subsection (c) and rewrote subsection (e).

The second 1982 amendment, in subsection (b), substituted "the obligor's" for "his" and inserted "obligee or, where the order is issued to the" and "or collections are being made through the child support enforcement agency, to that agency."

Editor's notes. — Section 12, chapter 96, SLA 1981, provides: "AS 09.65.132 added in sec. 1 of this act has the effect of changing Rule 77 of the Alaska Rules of Civil Procedure by establishing a procedure and time limits for court review of an income assignment order which differ from those generally applicable in civil actions."

AS 09.35.080, referred to in subsection (g), was repealed by § 14, ch. 62, SLA 1982. For present exemption provisions, see AS 09.38.

Sec. 09.65.135. Limitations on claims arising from skiing. (a) A skier may not recover from a ski area operator for injury resulting from an inherent risk of skiing unless the injury occurred when the ski area operator was not providing the information required by (b) of this section.

(b) A ski area operator shall post trail signs at prominent locations within a ski area which shall include a list of the inherent risks of skiing and the limitation on liability of the ski area operator provided by this section.

(c) In this section

(1) "inherent risks of skiing" means the dangers or conditions which are an integral part of the sport of skiing, including, but not limited to,

(A) changing weather conditions;

(B) variations or steepness in terrain;

(C) snow or ice conditions;

(D) surface or subsurface conditions such as bare spots, forest growth, and rocks;

(E) collisions with lift towers, other structures, and their components unless the skier is on the lift;

(F) collisions with other skiers; and

(G) a skier's failure to ski within the limits of the skier's ability;

(2) "injury" means a personal injury or property damage or loss;

(3) "skier" means a person in a ski area engaged in the sport of skiing, sliding downhill on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, or other device for recreation in snow;

(4) "ski area" means all ski slopes, trails and other places under the control of a ski area operator and administered as a single enterprise in the state;

(5) "ski area operator" means the operator of a ski area. (§ 2 ch 80 SLA 1980)

Cross references. — For required snow safety and operation plan, see AS 18.60.822; for legislative intent, see § 1, ch. 80, SLA 1980, in Temporary and Special Acts.

Chapter 70. General Provisions.

Section
10. Applicability of title
20. Short title

Sec. 09.70.010. Applicability of title. This title governs all proceedings in actions brought after January 1, 1963, and all further proceedings in actions then pending, except to the extent that, in the opinion of the court, their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event, the laws in effect before January 1, 1963, apply. (§ 31.03 ch 101 SLA 1962)

NOTES TO DECISIONS

Cited in Turkington v. City of Kachemak, Sup. Ct. Op. No. 141 (File No. 177), 380 P.2d 593 (1963).