

SB

1988

ALASKA STATE SENATE



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SB 198 Sponsor Statement

An Act Relating to Recovery of Civil Damages by a Peace Officer or Firefighter

Senate Bill 198 revises the common law known as the "Firefighter's Rule". This rule precludes firefighters and peace officers from recovering civil damages for injuries caused by any negligent act inflicted while on duty. The "Firefighters Rule" does not distinguish between negligent acts requiring the firefighter's or peace officer's response from negligent acts that are *unrelated* to the reason the firefighter or peace officer was required to respond.

For example, as currently employed, the "Firefighters Rule" precludes a police officer from suing for damages for injuries suffered as a result of being struck by a drunk driver during the course of transporting a prisoner to the courthouse. This despite the fact that the negligent act, in this case the drunk driving, is unrelated to the duty the officer was performing at the time. Senate bill 198 corrects this incongruity. Yet, on the other hand, this bill does nothing to change the case where the police officer is injured during the course of a pursuit of the drunk driver. This is considered a foreseeable risk associated with the profession and, accordingly, well within that which the "Firefighter's Rule" should cover.

Therefore, Senate bill 198 makes a distinction between negligence that is related to the reason the firefighter or peace officer is responding and negligence that is unrelated to the reason the firefighter or peace officer is responding. In the first instance, it *does not* allow a civil action. Instead the firefighter or peace officer must rely on the state's workers compensation system. However, in the case where injury was caused by a negligent act *not related* to the reason for the firefighter or peace officer's response, then—under this legislation—a civil action can be brought against the at-fault party.

CS FOR SENATE BILL NO. 198(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 5/9/03

Referred: Judiciary

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to recovery of civil damages by a peace officer or fire fighter; and**
2 **providing for an effective date."**

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

4 *** Section 1.** AS 09.65 is amended by adding a new section to read:

5 **Sec. 09.65.290. Liability involving a peace officer or fire fighter.** (a) A
6 peace officer or fire fighter injured while in the line of duty or the personal
7 representative of a peace officer or fire fighter who died in the line of duty may not
8 bring a civil action to recover damages for a negligent act or omission if the negligent
9 act or omission created the need for the activity being performed by the peace officer
10 or fire fighter.

11 (b) This section does not apply to a negligent act or omission that is unrelated
12 to the activity that created the need for the presence of the peace officer or fire fighter.

13 (c) In this section, "fire fighter" means a person employed by a municipal fire
14 department or who is a member of a volunteer fire department registered with the state

- 1 fire marshal, or a person registered for purposes of workers' compensation with the
- 2 state fire marshal as a member of a volunteer fire department.
- 3 * **Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 198
 (S) Publish Date: 5/9/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to recovery of civil damages by BRU Civil Division
a peace officer or firefighter; . . ." Component Special Litigation
 Sponsor Senator Seekins
 Requester Senate State Affairs Committee Component No. 2213

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill would amend common law that precludes a peace officer or firefighter or their representative from recovering civil damages for a negligent act or omission resulting in injury or death in the line of duty to specifically exclude negligent acts or omissions that are unrelated to the activity that created the need for the presence of the peace officer or firefighter.

 Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division Attorney General's Office Date/Time 5/5/03 2:07 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 5/5/2003
 Agency Department of Law

C

Supreme Court of Alaska.

Brent MOODY, Appellant,

v.

DELTA WESTERN, INC., Appellee.

No. S-9625.

Jan. 11, 2002.

Police chief brought negligence action against fuel truck owner, arising from incident in which, after owner's employee left unlocked truck in driveway, with keys in ignition, intoxicated individual entered truck and rammed it into van in which chief was a passenger, causing chief permanent injuries, as chief was responding to reports of recklessly driven fuel truck. Owner moved for summary judgment, which the Superior Court, Third Judicial District, Dillingham, Elaine M. Andrews, J., granted. Chief appealed. The Supreme Court, Matthews, J., held that, in a matter of first impression, the Fireman's Rule applied to bar chief's action against owner.

Affirmed.

West Headnotes

[1] Appeal and Error 893(1)
30k893(1) Most Cited Cases

In reviewing a question of law, Supreme Court applies de novo standard of review, adopting the rule of law which is most persuasive in light of precedent, reason and policy.

[2] Automobiles 210
48Ak210 Most Cited Cases

Firefighter's Rule, which holds that firefighters and police officers who are injured may not recover based on negligent conduct that required their presence, applied to bar police chief's negligence action against fuel truck owner arising from incident in which, after owner's employee left unlocked truck in driveway, with keys in ignition, intoxicated individual entered truck and rammed it into van in which chief was a passenger, causing chief permanent injuries, as chief was responding to reports of recklessly driven fuel truck.

[3] Negligence 570

272k570 Most Cited Cases

"Firefighter's Rule," which holds that firefighters and police officers who are injured may not recover based on the negligent conduct that required their presence, bars only recovery for negligence that creates the need for the public safety officer's service, and thus does not apply to negligent conduct occurring after the police officer or firefighter arrives at the scene or to misconduct other than that which necessitates the officer's presence; such misconduct may include failure to warn of pre-existing known but hidden dangers.

[4] Negligence 1204(1)
272k1204(1) Most Cited Cases

[4] Negligence 1311
272k1311 Most Cited Cases

"Contractor for repairs" exception to the general duty of reasonable care which holds that an owner is under no duty to protect the contractor against risks arising from the condition the contractor is hired to repair, and thus is not liable even if the condition was the product of the owner's negligence, is grounded in necessity and fairness.

*1139 Kristen D. Pettersen, Ray R. Brown, Dillon & Findley, P.C., Anchorage, for Appellant.

Richard A. Weinig, Pletcher, Weinig, Fisher & Dennis, Anchorage, for Appellee.

William B. Aitchison, Aitchison & Vick, Inc., Portland, Oregon, for Amicus Curiae Anchorage Police Department Employees Association.

Before: FABE, Chief Justice, MATTHEWS, EASTAUGH, and BRYNER, Justices.

OPINION

MATTHEWS, Justice.

The question in this case is whether the so-called Firefighter's Rule applies in Alaska. The Firefighter's Rule holds that firefighters and police officers who are injured may not recover based on the negligent conduct that required their presence. For public policy *1140 reasons we join the overwhelming majority of states that have adopted the rule.

I. FACTS AND PROCEEDINGS

The facts of this case are undisputed. On or around July 25, 1996, a Delta Western employee left a fuel truck owned by Delta Western in a driveway in Dillingham. The keys were in the ignition, the door was unlocked, and the truck contained fuel and weighed over 10,000 pounds. Delta Western had a policy of removing the keys from the ignitions of its trucks. Delta Western enacted this policy because of past incidents involving the theft and unauthorized entry of its trucks.

Joseph Coolidge, who was highly intoxicated, entered the unlocked truck and proceeded to drive around Dillingham. He ran cars off the road, nearly collided with several vehicles, and drove at speeds exceeding seventy miles per hour. Brent Moody, the chief of the Dillingham Police Department, was one of the officers who responded to the reports of the recklessly driven fuel truck. The driver of the van in which Moody was a passenger attempted to stop the truck after moving in front of it, but Coolidge rammed the van, throwing Moody against the dashboard and windshield. Moody suffered permanent injuries.

Moody filed suit against Delta Western, alleging that the company (through its employe) negligently failed to remove the truck's keys from the ignition. In its amended answer, Delta Western argued that the "Firefighter's Rule" barred Moody's cause of action. Delta Western moved for summary judgment based on its Firefighter's Rule defense. The superior court granted Delta Western's motion, holding that the Firefighter's Rule bars police officers from recovering for injuries caused by the "negligence which creates the very occasion for their engagement."

Moody now appeals.

II. STANDARD OF REVIEW

[1] The question presented is one of law and of first impression: whether Alaska should adopt the Firefighter's Rule. We therefore apply the de novo standard of review, "adopt[ing] the rule of law which is most persuasive in light of precedent, reason and policy." [FN1]

FN1. *Newton v. Magill*, 872 P.2d 1213, 1215 (Alaska 1994) (quoting *Ford v. Municipality of Anchorage*, 813 P.2d 654, 655 (Alaska 1991)).

III. DISCUSSION

[2] Nearly all of the courts that have considered whether or not to adopt the Firefighter's Rule have in fact adopted it. [FN2] Only *1141 one court has rejected it. [FN3] The New Jersey Supreme Court's reasoning in *Berko v. Freda* is typical of that of modern courts that have adopted the rule. [FN4] The superior court relied on *Berko* and explained the case as follows:

FN2. See *Grable v. Varela*, 115 Ariz. 222, 564 P.2d 911, 912 (App.1977); *Waggoner v. Troutman Oil Co.*, 320 Ark. 56, 894 S.W.2d 913, 915 (1995); *Walters v. Sloan*, 20 Cal.3d 199, 142 Cal.Rptr. 152, 571 P.2d 609, 610 (1977) (abolished by Cal. Civil Code § 1714.9); *Kaminski v. Town of Fairfield*, 216 Conn. 29, 578 A.2d 1048, 1053 (1990); *Carpenter v. O'Day*, 562 A.2d 595, 601 (Del.Super.1988), *aff'd*, 553 A.2d 638 (Del.1988); *Kilpatrick v. Sklar*, 548 So.2d 215, 216-18 (Fla.1989) (limited by Fla. Stat. Ann. § 112.182); *Martin v. Gaither*, 219 Ga.App. 646, 466 S.E.2d 621, 624 (1995); *Thomas v. Pane*, 72 Haw. 191, 811 P.2d 821, 824 (1991); *Winn v. Frasher*, 116 Idaho 500, 777 P.2d 722, 725 (1989); *Court v. Grzelinski*, 72 Ill.2d 141, 19 Ill.Dec. 617, 379 N.E.2d 281, 285 (1978) (rule employed in premises liability cases); *Sports Bench, Inc. v. McPherson*, 509 N.E.2d 233, 234-35 (Ind.App.1987); *Pottebaum v. Hinds*, 347 N.W.2d 642, 643 (Iowa 1984); *Calvert v. Garvey Elevators, Inc.*, 236 Kan. 570, 694 P.2d 433, 438 (1985); *Sallee v. GTE South, Inc.*, 839 S.W.2d 277, 279 (Ky.1992); *Holloway v. Midland Risk Ins. Co.*, 759 So.2d 309, 313-14 (La.App.2000); *Flowers v. Rock Creek Terrace Ltd.*, 308 Md. 432, 520 A.2d 361, 368 (1987); *Wynn v. Sullivan*, 294 Mass. 562, 3 N.E.2d 236, 237 (1936) (limited by Mass. Gen. Laws ch. 41 § § 100, 111F); *Kreski v. Modern Wholesale Elec. Supply Co.*, 429 Mich. 347, 415 N.W.2d 178, 188-89 (1987) (abolished by M.C.L. § § 600.2965-2967); *Armstrong v. Mailand*, 284 N.W.2d 343, 350 (Minn.1979) (abolished by Minn.Stat. § 604.06); *Phillips v. Hallmark Cards, Inc.*, 722 S.W.2d 86, 89 (Mo.1986); *Nared v. School Dist. of Omaha*, 191 Neb. 376, 215 N.W.2d

115, 117-18 (1974); *Moody v. Manny's Auto Repair*, 110 Nev. 320, 871 P.2d 935, 940 (1994) (limited by Nev.Rev.Stat. § 41.139); *Matarese v. Nationwide Mut. Ins. Co.*, 141 N.H. 311, 682 A.2d 258, 258- 61 (1996); *Krauth v. Geller*, 31 N.J. 270, 157 A.2d 129, 132-33 (1960) (abolished by N.J. Stat. Ann. § 2A:62A-21); *Moreno v. Marrs*, 102 N.M. 373, 695 P.2d 1322, 1325 (App.1984); *Santangelo v. State*, 71 N.Y.2d 393, 526 N.Y.S.2d 812, 521 N.E.2d 770, 772 (1988) (limited by Gen. Mun. § 205-a-e; Gen. Oblig. § 11-106); *Scheurer v. Trustees of Open Bible Church*, 175 Ohio St. 163, 192 N.E.2d 38, 43 (1963); *Smith v. Tully*, 665 A.2d 1333, 1335 (R.I.1995); *Carson v. Headrick*, 900 S.W.2d 685, 690 (Tenn.1995); *Campus Memt., Inc. v. Kimball*, 991 S.W.2d 948, 950 (Tex.App.1999) (rule employed in premises liability cases only); *Commonwealth v. Millsans*, 232 Va. 502, 352 S.E.2d 311, 315-16 (1987); *Maltman v. Sauer*, 84 Wash.2d 975, 530 P.2d 254, 257 (1975); *Huss v. Chicago & N.W. Ry. Co.*, 48 Wis.2d 321, 179 N.W.2d 885, 887-88 (1970).

FN3. See *Christensen v. Murphy*, 296 Or. 610, 678 P.2d 1210, 1218 (1984).

FN4. 93 N.J. 81, 459 A.2d 663 (1983).

In *Berko*, the defendant parked a Cadillac in a supermarket parking lot and left the keys in the ignition. Two juveniles stole the car and engaged in a high-speed chase with Officer Berko. The officer was injured while apprehending the juveniles and brought suit against the owner of the vehicle for negligence in leaving the keys in the ignition. The New Jersey Supreme Court held that, notwithstanding its finding that the car owner was negligent, the Firefighter's Rule insulated him from liability of the officer. The court stated:

Both [firefighters and police officers] are paid to confront crises and allay dangers by an uncircumspect citizenry, a circumstance that serves to distinguish firefighters and police from most other public employees. Citizens summon police and firefighters to confront danger. Government entities maintain police and fire departments in anticipation of those inevitable physical perils that burden the human condition, whereas most public employment posts are created not to confront dangers that will arise but to perform some other

public function that may incidentally involve risk ... [.]

This fundamental concept rests on the assumption that government entities employ firefighters and police officers, at least in part, to deal with the hazards that may result from their taxpayers' own future acts of negligence ... [.] Exposing the negligent taxpayer to liability for having summoned police would impose upon him multiple burdens for that protection.

There is at work here a public policy component that strongly opposes the notion that an act of ordinary negligence would expose the actor to liability for injuries sustained in the course of a public servant's performance of necessary, albeit hazardous, public duties. In absence of a legislative expression of contrary policy, a citizen should not have to run the risk of a civil judgment against him for negligent acts that occasion the presence of a firefighter at the scene of a carelessly set fire or of a police officer at a disturbance or unlawful incident resulting from negligent conduct.[FN5]

FN5. *Moody v. Delta W., Inc.*, No. 3DI-98-63-CI (Alaska Super., February 7, 2000) (quoting *Berko*, 459 A.2d at 666-67 (alteration in original)).

[3] Jurisdictions adopting the Firefighter's Rule emphasize its narrowness; the doctrine bars only recovery for the negligence that creates the need for the public safety officer's service.[FN6] Thus the Firefighter's Rule does not apply to negligent conduct occurring after the police officer or firefighter arrives at the scene or to misconduct other than that which necessitates the officer's presence.[FN7] Such misconduct may include failure to warn of pre-existing known but hidden dangers.[FN8]

FN6. See, e.g., *Kreski*, 415 N.W.2d at 183.

FN7. See *Neigharger v. Irwin Indus., Inc.*, 8 Cal.4th 532, 34 Cal.Rptr.2d 630, 882 P.2d 347, 352 (1994); see also *Gail v. Clark*, 410 N.W.2d 662, 666 (Iowa 1987) (holding firefighter's rule does not bar recovery where police officer is injured while performing a law enforcement activity unrelated to violation that necessitated his presence at the scene); *Kreski*, 415 N.W.2d at 189 (recognizing exceptional cases, such

as those involving willful misconduct, in which courts have refused to apply firefighter's rule to bar action; similarly adopting flexible approach to address "different fact patterns as they are presented").

FN8. See *Flowers*, 520 A.2d at 369.

Modern courts stress interrelated reasons, based on public policy, for the rule. The negligent party is said to have no duty to the public safety officer to act without negligence in creating the condition that necessitates the officer's intervention because the officer is employed by the public to respond to such conditions and receives compensation and benefits for the risks inherent in such responses. Requiring members of the public to pay for injuries resulting from such responses effectively imposes a double payment obligation on them. Further, because negligence is at the root of many calls for public safety officers, allowing recovery would compound the growth of litigation. FN9

FN9. See *Krauth*, 157 A.2d at 131 ("[I]n the final analysis the policy decision is that it would be too burdensome to charge all who carelessly cause or fail to prevent fires with the injuries suffered by the expert retained with public funds to deal with those inevitable, although negligently created, occurrences."); *Walters*, 142 Cal. Rptr. 152, 571 P.2d at 613 ("[A]bolition of the fireman's rule would burden our courts with litigation among the employer public agency, the retirement system, and the negligence insurer.").

[4] Courts find an analogy in cases in which a contractor is injured while repairing the condition that necessitated his employment. FN10 In these cases, the owner is under no duty to protect the contractor against risks arising from the condition the contractor is hired to repair, and thus is not liable even if the condition was the product of the owner's negligence. FN11 This "contractor for repairs" exception to the general duty of reasonable care is grounded in necessity and fairness. FN12 Property owners should not be deterred by the threat of liability to the contractor from summoning experts to repair their property, regardless of why repairs are needed. Further, owners have paid for the

contractor's expertise at confronting the very danger that injured him and should not have to pay again if the contractor is then injured. FN13 The same factors are found to apply with respect to the public's need to call for the services of public safety officers. FN14

FN10. See, e.g., *Krauth*, 157 A.2d at 131.

FN11. See, e.g., *Peters v. Titan Navigation Co.*, 857 F.2d 1342, 1345 (9th Cir.1988) (affirming summary judgment for shipowner regarding claims brought by hydraulic system repairman who was injured after slipping on spilled hydraulic fluid, because owner owes no duty to protect repairman from risks inherent in very condition he was hired to repair); see also 41 Am.Jur.2d, Independent Contractors § 41, n. 74 (1995) and the cases there cited.

FN12. See *Palenscar v. Michael J. Bobb, Inc.*, 439 Pa. 101, 266 A.2d 478, 481 (1970) ("It would be unjust to find that [the owner was negligent because he] should have repaired the system, and yet hold the company liable to one who had been employed to do exactly that.").

FN13. See *id.* at 480-81; see also *Anicet v. Gant*, 580 So.2d 273, 276 (Fla.App.1991) (describing contractor cases, where "the employee is deemed not to be entitled to a tort recovery arising from a condition for the encountering and correction of which he is specifically paid").

FN14. See *Krauth*, 157 A.2d at 131:
[I]t is the fireman's business to deal with [fire] hazard and hence, perhaps by analogy to the contractor engaged as an expert to remedy dangerous situations, he cannot complain of negligence in the creation of the very occasion for his engagement. In terms of duty, it may be said there is none owed the fireman to exercise care so as not to require the special services for which he is trained and paid.
Cf. *Anicet*, 580 So.2d at 276 (denying mental institution worker recovery for injuries inflicted by violently insane person;

analogizing to contractor cases, and also noting that the firefighter's rule, which at its core provides that "a person specifically hired to encounter and combat particular dangers is owed no independent tort duty by those who have created those dangers--even though ... the landowner or other defendant is actually guilty of negligence or of other fault in creating the dangers," presents "an apt analogy").

38 P.3d 1139

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We agree with the reasoning of the modern courts and with the analogy to contractor cases. The Firefighter's Rule reflects sound public policy. The public pays for emergency responses of public safety officials in the form of salaries and enhanced benefits. [FN15] Requiring members of the public to pay for injuries incurred by officers in such responses asks an individual to pay again for services the community has collectively purchased. Further, negligence is a common factor in emergencies that require the intervention of public safety officers. Allowing recovery would cause a proliferation of litigation aimed at shifting to individuals or their insurers costs that have already been widely shared. To borrow the language of the seminal *1143 *Krauth* case, "in the final analysis the policy decision is that it would be too burdensome to charge all who carelessly cause" conditions requiring a response by a public safety official "with the injuries suffered by the expert retained with public funds to deal with those inevitable, although negligently created," conditions. [FN16]

FN15. See AS 39.35.010-.690 (Public Employees Retirement System); AMC 03.85.010-.180 (Death, Disability and Retirement Benefits for Anchorage Police Officers & Firefighters).

FN16. 157 A.2d at 131.

We thus conclude that the Firefighter's Rule applies in Alaska. We reach this conclusion based on the merits of the rule as accepted by the overwhelming majority of the courts of our sister states. It follows that summary judgment was properly granted.

AFFIRMED.

CARPENETI, Justice, not participating.