

HB

273

Alaska State Legislature

Session
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Chair, Judiciary Committee
Vice-Chair, House Committee on
Economic Development,
Trade and Tourism

Member
Oil & Gas Committee

Representative Lesil McGuire *House District 28*

MEMORANDUM

To: Senator Seekins, Chair,
Senate Judiciary Committee

From: Representative Lesil McGuire 

Date: April 30, 2004

Re: Request for Hearing

I respectfully request that CSSSHB 273(JUD) am: Parents' Waiver of Child's Sports Claim, be scheduled for a hearing in the Senate Judiciary Committee at your earliest convenience. Please refer to the attached bill packet for background information.

If you have any questions please feel free to contact me personally, or my staff, Vanessa Tondini, at 4990.

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House District 28

Sponsor Statement

CSSSHB 273(JUD) am

"An Act relating to the right of a parent to waive an unemancipated child's claim of negligence against a provider of sports or recreational activities."

CSSSHB 273(JUD)am encourages the availability and affordability of sports and recreational activities to children by recognizing the right of a parent to choose to release, on behalf of his or her child, prospective negligence-based claims that the child may accrue against the provider of such activities.

As a result of a recent Colorado Supreme Court case, Cooper v. Aspen Skiing Co., wherein the Court refused to uphold or recognize the mother of a seventeen year old skier's signature on a release document used in a juvenile race camp program, the outdoor industry has been trying to respond to the myriad problems and potentially severe ramifications created by this holding. This erroneous rationale is contrary to a body of authority derived from Midwestern and Eastern states, which find that parents do specifically have the legally binding right to sign release documents on behalf of their minor children. In these states, the courts have articulately stated that prohibiting a parent's right to release or waive on behalf of a minor child would detrimentally chill school, scouting, athletic, and other extra-curricular programs. There exists a well-settled legal history of recognizing parental rights regarding making decisions on behalf of minor children regarding education and medical treatment. To not extend the same logic to recreational activities in Alaska would be legally illogical and unfair.

The practical consequences of not recognizing this parental authority are profound. If an outdoor recreation company is found to have been operating without a valid release/waiver document, either insurance coverage will not be offered or will be voided. Very few programs will stay in business without proper insurance in place. As an outdoor recreation-oriented and supported state, Alaska simply cannot stand by and watch this type of result.

In addition, it is important to note that this bill would not defeat in any way a parent or guardian's right to sue an operator that is not providing a safe service or program. An ordinary release/waiver document provides only a release to causes of action sounding in negligence. Claims of reckless or intentional misconduct are never released in a release/waiver document. It is also crucial to remember that, with respect to pre-recreation releases, these documents regard activities that are totally voluntary in nature; they are activities that regard personal choice for the participant. As such, participants and parents of participants should have the freedom to decide which sports or recreational activities they want to participate in or that they want to have their children participate in and should have the freedom to contract regarding these activities. That fundamental right to make choices regarding a child's activities is what is being protected here; the bill does not negate a parent's rights, it in fact strengthens them.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSSHB 273((JUD))
(H) Publish Date: 3/29/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title "An Act relating to the rights of a parent to waive a child's claim of negligence against a provider of sports..." RDU CIVIL
Sponsor Representative McGuire Component Torts & Workers' Compensation
Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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						
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CHANGE IN REVENUES ()						
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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 (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill allows a parent to waive prospective claims of negligence by a child against providers of sports or recreational activities in Alaska. It excepts cases that allege willful, wanton, reckless, or grossly negligent acts or omissions.

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

Prepared by: Kathryn A. Daughhete, Director
Division Administrative Services
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General
Agency Department of Law

Phone 465-3673
Date/Time 3/21/04 10:58 AM
Date 3/21/2004