

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 1, 2007

1:08 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 25

"An Act relating to landowners' immunity for allowing use of land without charge for a recreational activity; relating to landowners' liability where landowner conduct involves gross negligence or reckless or intentional misconduct; relating to claims of adverse possession and prescriptive easements, or similar claims; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 7

"An Act relating to false caller identification."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 25

SHORT TITLE: RECREATIONAL LAND USE LIABILITY/ADV. POSS

SPONSOR(S): REPRESENTATIVE(S) SEATON, WILSON

01/16/07	(H)	PREFILE RELEASED 1/5/07
01/16/07	(H)	READ THE FIRST TIME - REFERRALS
01/16/07	(H)	RES, JUD
01/24/07	(H)	RES AT 1:00 PM CAPITOL 124
01/24/07	(H)	Moved Out of Committee

01/24/07 (H) MINUTE(RES)
 01/25/07 (H) RES RPT 8DP
 01/25/07 (H) DP: GUTTENBERG, EDGMON, SEATON,
 KAWASAKI, WILSON, ROSES, JOHNSON, GATTO
 01/31/07 (H) JUD AT 1:00 PM CAPITOL 120
 01/31/07 (H) Heard & Held
 01/31/07 (H) MINUTE(JUD)
 02/01/07 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 7

SHORT TITLE: FALSE CALLER IDENTIFICATION
 SPONSOR(S): REPRESENTATIVE(S) LYNN, GARDNER

01/16/07 (H) PREFILE RELEASED 1/5/07
 01/16/07 (H) READ THE FIRST TIME - REFERRALS
 01/16/07 (H) JUD
 01/22/07 (H) JUD AT 1:00 PM CAPITOL 120
 01/22/07 (H) Scheduled But Not Heard
 01/24/07 (H) JUD AT 1:00 PM CAPITOL 120
 01/24/07 (H) Heard & Held
 01/24/07 (H) MINUTE(JUD)
 01/31/07 (H) JUD AT 1:00 PM CAPITOL 120
 01/31/07 (H) Heard & Held
 01/31/07 (H) MINUTE(JUD)
 02/01/07 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE PAUL SEATON
 Alaska State Legislature
 Juneau, Alaska
 POSITION STATEMENT: Testified as a prime sponsor of HB 25.

DIRK MOFFATT, Staff
 to Representative Bob Lynn
 Alaska State Legislature
 Juneau, Alaska
 POSITION STATEMENT: Presented HB 7 on behalf of Representative
 Lynn, one of the bills' prime sponsors.

ANNE CARPENETI, Assistant Attorney General
 Legal Services Section-Juneau
 Criminal Division
 Department of Law (DOL)
 Juneau, Alaska
 POSITION STATEMENT: Answered questions and offered comments
 during hearing on HB 7.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at [1:08:08 PM](#). Representatives Lynn, Holmes, Gruenberg, Dahlstrom, Coghill, and Ramras were present at the call to order. Representative Samuels arrived as the meeting was in progress.

HB 25-RECREATIONAL LAND USE LIABILITY/ADV. POSS

[1:09:06 PM](#)

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 25, "An Act relating to landowners' immunity for allowing use of land without charge for a recreational activity; relating to landowners' liability where landowner conduct involves gross negligence or reckless or intentional misconduct; relating to claims of adverse possession and prescriptive easements, or similar claims; and providing for an effective date."

[1:09:37 PM](#)

REPRESENTATIVE PAUL SEATON, Alaska State Legislature, speaking as a joint prime sponsor of HB 25, offered his hope that his memorandum dated February 1, 2007 addressed questions raised at the previous committee hearing. He pointed out that Legislative Legal and Research Services has stated that to include trespassing provisions would "complicate the bill." He requested that the aforementioned provisions be included in a different piece of legislation.

CHAIR RAMRAS commented that a lack of "no trespassing" signs offers broader access to land that might not be utilized otherwise, and noted his reluctance to walk across property that says "no trespassing."

REPRESENTATIVE SEATON concurred, adding that the whole purpose of HB 25 is to provide landowners with more security, along with a basic understanding that if free public access to privately owned land is allowed, the landowner will not be sued for negligence.

CHAIR RAMRAS offered his understanding that his business would be covered under HB 25 because it has a privately owned boat dock which the public is allowed to use. He noted that there

are no "no trespassing" signs posted, adding that he would be disappointed if his business was sued as a result of providing free access for recreational purposes. He therefore asked to be excused from voting on this issue.

REPRESENTATIVE LYNN and REPRESENTATIVE GRUENBERG objected; thus requiring Chair Ramras to vote.

REPRESENTATIVE SEATON, in response to a question from Chair Ramras, explained that currently, if an individual owns "unimproved land," the same protections apply. He stated that the definition of "improved" versus "unimproved" has been determined different ways for different court cases.

REPRESENTATIVE HOLMES, referring to Section 1(a), requested clarification as to the meaning of "indirectly allow."

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REPRESENTATIVE SEATON explained that originally, the bill required "oral or written permission." He explained that this was too restrictive for the situations that occur across the state. Legislative Legal and Research Services, he said, came up with the current language as a way to address areas where a person is not available to give "oral or written permission," such as hiking and ski trails.

REPRESENTATIVE HOLMES questioned at what point a person would be "indirectly allowing" trespassing.

REPRESENTATIVE SEATON surmised that this is specific to each case. He stated that he is able to explain the intent of the law; however, a judge would look at the specific fact and case findings in order to decide this.

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REPRESENTATIVE HOLMES offered her understanding that an individual who does not attempt to post "no trespassing" signs or simply doesn't care is covered, while all others are a separate issue.

REPRESENTATIVE SEATON replied that this is correct.

REPRESENTATIVE COGHILL asked whether land without a strict prohibition may be used without any notification.

REPRESENTATIVE SEATON offered his belief that the bill doesn't address this. He explained that this bill simply addresses the landowner's duty of care. Referring to information included in members' packets, he pointed out that many other states have passed similar legislation. Gross negligence and intentional misconduct are not allowed. He said "There's nothing in here that is saying that anyone has a right to use your land. It just says that if someone is using your land with your indirect or direct permission, your duty is not to go out and Sheppard them around and make sure they don't get hurt. ... On simple negligence, it's their responsibility."

[1:18:57 PM](#)

REPRESENTATIVE COGHILL opined that once this type of language is in statute, it becomes a barrier.

[Following was brief introduction by participants of the Junior Alaska Close Up program from North Pole, Alaska, and Hoonah, Alaska.]

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REPRESENTATIVE GRUENBERG offered his understanding that "direct and indirect" is a term of art used in regard to "contempt of court," and is not used in tort law. He expressed concern regarding this phrase, and surmised that lawyers and judges would not understand the intent behind it. He suggested that an alternate phrase be considered, such as "explicitly or implicitly allows a recreational activity." He gave a brief interpretation of the aforementioned phrase.

REPRESENTATIVE SEATON replied that he is not sure that the aforementioned terms are appropriate.

REPRESENTATIVE HOLMES suggested adding the phrase "a landowner who does not prohibit recreational activity." She opined that this would include a situation in which a landowner is unaware that the land is being utilized for recreational purposes, who has not posted any signs prohibiting such activity.

[1:25:01 PM](#)

REPRESENTATIVE SEATON offered his belief that this language would change the dynamics of the bill. The intent is not to allow use of private land unless prohibited, but rather to

eliminate the simple negligence standard, if the use is directly or indirectly allowed.

REPRESENTATIVE DAHLSTROM commented that Legislative Legal and Research Services advised that this language be used, and offered her belief that changing this language would change the intent of the bill.

REPRESENTATIVE COGHILL said:

That was the point of trying to get it on the record. Because, if ever it does go to court, one of the things they ... try to do ... is figure out: What was the intention? And if ... we're going to put a strict prohibition, that if somebody prohibits [use of land], and give this liability, I am fearful that then, we say "all comers on my property, unless I strictly prohibit." And I don't know that we want to start down that road. However, if you've allowed certain accesses on your land ... I would hate to think that someone felt that they had a right to that piece of property, just because you allowed certain things. I am concerned about that.

REPRESENTATIVE HOLMES agreed with this concern. She reiterated an earlier statement that this does not give permission to use private land. She stated that this broadens the landowner protections. In response to a question from Chair Ramras, she restated and explained her earlier suggestion to replace "directly or indirectly allows" with "does not prohibit."

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CHAIR RAMRAS said that he is uncomfortable with this language. In regard to "explicit or implicit," he stated that he does not find this "superior" to the language drafted by Legislative Legal and Research Services. As a layperson, he said, he finds the current language to be clearer.

REPRESENTATIVE GRUENBERG commented that an individual who is "prohibited" is not given many rights. He opined that only those who are not trespassers are given rights.

[1:32:45 PM](#)

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

REPRESENTATIVE GRUENBERG, continuing on, stated that if a person is not trespassing, he or she may sue. The question, he said, is in regard to the standard of negligence that must be shown. He has not seen any examples of a "simple negligence standard." He opined that HB 25 simply raises the "simple negligence standard" to a "gross negligence standard."

REPRESENTATIVE SEATON said that "trespass" means that an individual "knowingly remained on the premises after personally being ordered to leave, and recklessly disregarded the lawful order that [he or she] not remain. The bill is intended to apply to landowners who allow free recreational use of private land. He added that this does not eliminate negligence for any other situations.

REPRESENTATIVE GRUENBERG pointed out that, if passed, this legislation would be used as the basis of jury instruction. Therefore, it must be easily understood.

The committee took an at-ease from 1:37 p.m. to 1:38 p.m.

[1:37:56 PM](#)

REPRESENTATIVE GRUENBERG reiterated that the language must be "clear and easily understood."

REPRESENTATIVE HOLMES commented that "a landowner that does not prohibit" broadens the statute beyond the sponsor's original intent.

REPRESENTATIVE GRUENBERG commented that the term "allow" is a "good term." He surmised that a person may allow something without verbal permission, and added that the goal is to find a term which clearly states this.

REPRESENTATIVE COGHILL suggested that a Legislative Legal and Research Services drafter come before the committee to address the aforementioned concerns, as well as the Department of Law (DOL). He stated that, generally, the intention of government is to prohibit activities. He pointed out that in HB 25, the language in the body of the bill is "negative," while the language in the enabling paragraph is not. He said "I think before we start wandering off into how we have a positive statement in a negative manner, we want to take a look at that."

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VICE CHAIR DAHLSTROM suggested that the bill be brought before the committee at the next hearing, allowing time for the sponsor(s) to meet with Legislative Legal and Research Services.

REPRESENTATIVE SEATON agreed with this. He explained that "directly or indirectly" was left in the bill to allow for case-by-case consideration.

VICE CHAIR DAHLSTROM suggested that any additional questions be submitted in writing to Chair Ramras and Representative Seaton.

REPRESENTATIVE GRUENBERG opined that adding a definition of "directly or indirectly" to the bill would be helpful.

[HB 25 was held over.]

HB 7-FALSE CALLER IDENTIFICATION

[1:43:20 PM](#)

VICE CHAIR DAHLSTROM announced that the final order of business would be HOUSE BILL NO. 7, "An Act relating to false caller identification."

REPRESENTATIVE LYNN, speaking as a prime sponsor of HB 7, noted that a conceptual amendment would be offered in an effort to address concerns brought up at a previous committee hearing.

[1:44:18 PM](#)

DIRK MOFFATT, staff to Representative Bob Lynn, Alaska State Legislature, one of the bills' prime sponsors, explained that the conceptual amendment before the committee was intended to address multiple caller identification offenses. A person who exceeds five offenses is guilty of a class A misdemeanor. If a person enters false information into a system which automatically calls thousands of people, each display would count as one offence. If this information is entered into an individual call system the same rule would apply. Each display on the caller ID screen would be considered a separate act, regardless of whether or not the information is the same.

REPRESENTATIVE COGHILL inquired as to the difference between a class A misdemeanor and a class B misdemeanor.

MR. MOFFATT explained that a "class A misdemeanor" carries a sentence of up to one year in prison, while a "class B misdemeanor" carries a three month sentence.

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VICE CHAIR DAHLSTROM questioned whether Representative Samuels had seen conceptual amendment 5.

REPRESENTATIVE COGHILL asked that the bill be held over, in order to give Legislative Legal and Research Services time to incorporate any conceptual amendments that may be adopted, thus allowing the committee to "look at it in context."

REPRESENTATIVE LYNN agreed that this would be a good idea.

[1:49:12 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), expressed concern with the addition of "intent to defraud or cause harm." She stated that "intent to defraud" is defined in [AS 11.46.990]; however "cause harm" is unclear. She offered her understanding that this is used in federal law, although it is not a term used in state criminal law. She recommended the removal of this language, as "intent to defraud" is broadly defined and would most likely cover the instances in question.

REPRESENTATIVE GRUENBERG stated that the aforementioned statute should be referenced in HB 7.

MS. CARPENETI agreed. In regard to the penalty, she suggested that in Section 2(c), language similar to "violation of A of this section is a class B misdemeanor, if the information is forwarded to less than 25 telephones, and it's a class A misdemeanor if the information is forwarded to 25 or more telephones" be added.

[1:51:32 PM](#)

MS. CARPENETI, in response to a question from Vice Chair Dahlstrom, explained that the definition of "intent to defraud" be inserted after line 5 on page 2. In addition, she explained that line 4 of page 1 be reworded to reflect this language.

REPRESENTATIVE GRUENBERG asked if this would be incorporated into the new committee substitute (CS).

VICE CHAIR DAHLSTROM replied yes.

MS. CARPENETI also agreed.

REPRESENTATIVE GRUENBERG stated that he does not object to this.

REPRESENTATIVE DAHLSTROM noted that this would be conceptual Amendment 6.

[Although no formal motion was made, conceptual Amendment 6 was treated as adopted.]

REPRESENTATIVE GRUENBERG pointed out that an amendment is needed to delete the phrase "or cause harm." He explained that "spoofing" means to use another persons name and phone number in order to give a misimpression of who is actually calling. This might be done for a variety of reasons, he said, adding that to defraud is only one reason. He commented that this may also be used to stalk, intimidate, or threaten. He opined that "intent to defraud" narrows the scope of the bill.

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MS. CARPENETI, referring to AS 11.46.990, reiterated that the definition of "intent to defraud" is "pretty broad," and opined that this would cover the aforementioned situations.

REPRESENTATIVE GRUENBERG said that while he has no objection to this, he would like to ensure that no cases unintentionally "fall between the cracks."

MR. MOFFATT agreed.

VICE CHAIR DAHLSTROM stated her intention to hold the bill until the next committee hearing, thus allowing the sponsor(s) time to meet with members to address concerns, in addition to addressing the aforementioned conceptual amendments. She noted that conceptual amendment 5 was not moved or adopted.

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REPRESENTATIVE LYNN, referring to Conceptual Amendment 5, suggested changing the minimum for a class A misdemeanor from 5 to 25.

VICE CHAIR DAHLSTROM recommended incorporating this into [a committee substitute (CS)].

MS. CARPENETI, in response to a question from Representative Gruenberg, offered her understanding that the ability to obtain phone records makes it easier to prosecute these cases. She said "if you have one piece of information ... that reached 1,000 phones, I don't know that it would be that difficult to get the records to prove that."

REPRESENTATIVE GRUENBERG suggested that this be considered prior to the next meeting.

VICE CHAIR DAHLSTROM requested that the sponsor(s) research this issue in order to come up with a reasonable number.

[HB 7 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 1:59 p.m.