

Introduced: 2/17/86
Referred: Resources,
Judiciary and Finance

1 IN THE HOUSE

BY BINKLEY

2

HOUSE BILL NO. 660

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act regulating the use of land."

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

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* Section 1. AS 05 is amended by adding a new chapter to read:

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CHAPTER 40. RECREATIONAL USE OF LAND.

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Sec. 05.40.010. RECREATIONAL USE. (a) Except as provided in

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AS 09.45.795, an owner of land who makes land available to the public

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without compensation for recreational purposes owes no duty of care to

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keep the land safe for entry or use by others for recreational pur-

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poses or to give a warning of a dangerous condition, use, structure or

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activity on the land to persons entering for recreational purposes.

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(b) Except as provided in AS 09.45.795, an owner of land who

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invites or permits without compensation an individual to use the land

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for recreational purposes does not

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(1) make a representation or extend an assurance that the

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land is safe for any purpose;

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(2) confer upon the individual who uses the land for recre-

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ational purposes the legal status of an invitee or licensee to whom a

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duty of care is owed; or

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(3) incur liability for injury, loss or death to an indi-

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vidual or property caused by an act or omission of the owner.

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(c) Where the owner of land charges a person who enters or goes

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on the land for a recreational purpose, unless the land is leased by

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the owner to the state or a municipality of the state, consideration

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received by the owner for the lease is not compensation within the

1 meaning of this section.

2 (d) This section does not limit the liability of an owner of
3 land for a wilful or malicious failure to guard or warn against a
4 dangerous condition, use, structure, or activity.

5 (e) This section may not be construed to relieve a person using
6 the land of another for recreational purposes from an obligation to
7 exercise care in the use of the land and in activities on the land, or
8 from the legal consequences of a failure to employ care.

9 (f) An individual using the land of another for recreational
10 purposes, with or without permission, is liable for damages to the
11 property caused while on the property.

12 (g) In this section

13 (1) "compensation" does not include a processing or appli-
14 cation fee for a permit to use land for recreational purposes;

15 (2) "land" means private land, roads, water, watercourses,
16 private ways and buildings, structures, and machinery or equipment
17 when attached to the land;

18 (3) "owner" means the possessor of a fee interest, a
19 tenant, lessee, occupant or person in control of the premises;

20 (4) "recreational purposes" includes hunting, fishing,
21 swimming, boating, camping, picnicking, hiking, pleasure driving,
22 nature study, water skiing, snowmobiling, winter sports, and viewing
23 or enjoying historical, archaeological, scenic or scientific sites,
24 when done without charge of the owner.

25 Sec. 05.40.020. PERMISSIVE RECREATIONAL USE. (a) An owner of
26 land who invites or permits a person to use land for recreational
27 purposes without compensation does not give the person a right to
28 continue the use of the land for a recreational purpose without
29 consent.

1 (b) The permission of an owner of land for recreational use of
2 land without posting or fencing or otherwise restricting use of the
3 land does not raise a presumption that the owner intended to give the
4 public a right to use the land.

5 * Sec. 2. AS 09.45.730 is amended by adding a new subsection to read:

6 (b) A person who enters upon the land of another to gather
7 geotechnical data or take mineral resources without lawful authority
8 or license, is liable to the owner of that land for treble the amount
9 of damages that may be assessed in a civil action. If the trespass is
10 inadvertent, or the defendant had probable cause to believe that the
11 land on which the trespass was committed was the defendant's own or
12 that of the person in whose service or by whose direction the act was
13 done, only actual damages may be recovered.

14 * Sec. 3. AS 09.45.795 is amended to read:

15 Sec. 09.45.795. CIVIL LIABILITY FOR PERSONAL INJURIES OR DEATH
16 OCCURRING ON IMPROVED OR UNIMPROVED LAND. A land [AN] owner [OF
17 UNIMPROVED LAND] is not liable in tort for damages for the injury to
18 or death of a person who enters onto or remains on the unimproved
19 portion of land if

20 (1) the injury or death resulted from a natural condition
21 of the unimproved portion of the property; or [AND]

22 (2) the person had no responsibility to compensate the
23 owner for the person's use or occupancy of the property.

24 * Sec. 4. AS 09.45.795 is amended by adding new subsections to read:

25 (b) A landowner is not liable in tort for damages for the injury
26 to or death of a person who trespasses on the land of another in
27 violation of AS 11.46 whether the land is improved or unimproved.

28 (c) For the purposes of this section, "unimproved" means land
29 found in its natural condition or if improved, the improvement was

1 placed on the land by a third party without the knowledge or permis-
2 sion of the owner.

3 * Sec. 5. AS 11.46.320 is amended by adding a new subsection to read:

4 (c) A person violates (a) of this section if the person

5 (1) wilfully enters or remains unlawfully on the premises
6 of another knowing that the consent to enter or remain on the premises
7 has been denied or withdrawn by a person in charge of the premises;

8 (2) wilfully enters on premises owned, operated, or con-
9 trolled by the state or a municipality of the state knowing that
10 consent to enter the premises has been denied or withdrawn by the
11 person in charge of the premises;

12 (3) without authority of law goes upon and remains on the
13 premises of another after having been denied entry on the premises
14 either orally or in writing by the person in charge of the premises or
15 after having been forbidden to do so by signs posted under AS 11.46.-
16 350(b);

17 (4) enters enclosed premises of another or premises of
18 another posted under AS 11.46.350(b) on foot or by a vehicle without
19 the express or implied consent of the person in charge of the premises
20 except through a road, airstrip, or other apparent way of access;

21 (5) hunts, fishes, traps or removes animal, vegetable, or
22 mineral material on the premises of another without permission;

23 (6) enters the premises of another to remove or use the
24 property of another without the permission of the person in charge of
25 the premises;

26 (7) wilfully enters on or crosses over private premises to
27 gain access to a valid easement or navigable water;

28 (8) enters on the premises of another without permission
29 and damages a part of the premises;

1 (9) knowingly or unlawfully enters or remains on the premi-
2 ses of another to acquire geotechnical, geological, geophysical, or
3 geochemical data for the purpose of locating minerals;

4 (10) being a person engaged in business for profit, includ-
5 ing hunting or fishing guides, river guides, recreation guides, air
6 taxi operators, and commercial air carriers, enters and remains on the
7 premises of another without the permission of the person in charge of
8 the premises.

9 * Sec. 6. AS 11.46.350(b) is amended to read:

10 (b) For purposes of this section, a person who, without intent
11 to commit a crime on the land, enters or remains upon unimproved and
12 apparently unused land, which is neither fenced nor otherwise enclosed
13 in a manner designed to exclude intruders, is privileged to do so
14 unless

15 (1) notice against trespass is personally communicated to
16 that person by the owner of the land or some other authorized person;
17 or

18 (2) notice against trespass is given by posting in the
19 manner described in (c) of this section [IN A REASONABLY CONSPICUOUS
20 MANNER UNDER THE CIRCUMSTANCES].

21 * Sec. 7. AS 11.46.350 is amended by adding a new subsection to read:

22 (c) A notice against trespass is given if the notice

23 (1) is printed legibly in English;

24 (2) is at least 144 square inches in size;

25 (3) contains the name and address of the person under whose
26 authority the property is posted and the name and the address of the
27 person who is authorized to grant permission to enter the property;

28 (4) is placed at each roadway or apparent way of access
29 onto the property; and

1 (5) states any specific prohibition that the posting is
2 directed against such as "no trespassing," "no hunting," "no fishing,"
3 "no digging," or a similar prohibition.