

Introduced: 3/20/87
Referred: Resources and
Judiciary

5-0758A

1 IN THE HOUSE BY HOFFMAN BY REQUEST

2 HOUSE BILL NO. 198

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the permissive and nonpermissive
7 use of land."

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

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

10 CHAPTER 40. RECREATIONAL USE OF LAND.

11 Sec. 05.40.010. RECREATIONAL USE. (a) Except as provided in
12 AS 09.45.795, an owner of land who makes land available to the public
13 without compensation for recreational purposes owes no duty of care to
14 keep the land safe for entry or use by others for recreational pur-
15 poses or to give a warning of a dangerous condition, use, structure,
16 or activity on the land to persons entering for recreational purposes.

17 (b) Except as provided in AS 09.45.795, an owner of land who
18 invites or permits without compensation an individual to use the land
19 for recreational purposes does not

20 (1) make a representation or extend an assurance that the
21 land is safe for any purpose;

22 (2) confer upon the individual who uses the land for recre-
23 ational purposes the legal status of an invitee or licensee to whom a
24 duty of care is owed; or

25 (3) incur liability for injury, loss, or death to an indi-
26 vidual or property caused by an act or omission of the owner.

27 (c) Where the owner of land charges a person who enters or goes
28 on the land for a recreational purpose, unless the land is leased by
29 the owner to the state or a municipality of the state, consideration

1 received by the owner for the lease is not compensation within the
2 meaning of this section.

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

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

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

13 (g) In this section

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

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

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

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

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

1 consent.

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

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

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

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

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

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

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

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

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

29 (c) For the purposes of this section, "unimproved" means land

1 found in its natural condition or if improved, the improvement was
2 placed on the land by a third party without the knowledge or permis-
3 sion of the owner.

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

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

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

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

13 (3) without authority of law goes upon and remains on the
14 premises of another after having been denied entry on the premises
15 either orally or in writing by the person in charge of the premises or
16 after having been forbidden to do so by signs posted under AS 11.46.-
17 350(b);

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

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

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

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

29 (8) enters on the premises of another without permission

1 and damages a part of the premises;

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

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

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

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

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

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

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

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

24 (1) is printed legibly in English;

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

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

29 (4) is placed at each roadway or apparent way of access

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