

CS FOR HOUSE BILL NO. 41(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 2/10/93

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES PHILLIPS, Hudson, Porter, Toohy

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for skiing accidents, operation of ski areas, and
2 duties of ski area operators and skiers; and providing for an effective date."

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

4 * **Section 1. LEGISLATIVE FINDINGS AND PURPOSE.** (a) The legislature finds that

5 (1) the sport of skiing is practiced by a large number of citizens of the state
6 and also attracts a large number of nonresidents, providing significant contributions to the
7 economy of the state through construction and operation of skiing facilities, and through the
8 money spent by citizens of the state and nonresidents;

9 (2) the sport of skiing serves important public social and policy goals in the
10 state given the dominance of the winter season; skiing contributes to the health and well-being
11 of Alaskans, including the physically and mentally challenged; it is highly desirable and
12 necessary that Alaskans have convenient and inexpensive access to the sport of skiing;

13 (3) skiing is an active sport conducted in the outdoor alpine environment; this
14 environment consists of several elements, including terrain, weather, snow conditions, and

1 amenities created and maintained by the ski area operator;

2 (4) the terrain necessary for downhill skiing is characterized by large amounts
3 of land, that vary tremendously in steepness and feature bumps, hillocks, drops, cliffs, gullies,
4 ridges, and knobs of infinite variety; the surface and subsurface include trees, bushes,
5 undergrowth, rocks, stumps, branches, roots, and other debris;

6 (5) weather that produces the snow necessary for skiing also produces factors
7 that complicate the sport; weather varies from sunny and warm to bitterly cold and windy,
8 with various forms of precipitation, including sleet, hail, varieties of snow, fog, mist, drizzle,
9 rain, and showers; weather complicates the snow surface by constantly altering the snow
10 consistency and snow level, covering, uncovering, and sculpting the terrain features described
11 above;

12 (6) snow is a generic term covering a wide variety of solid precipitation and
13 the frozen state of water as it exists and evolves on the ground; there are many different kinds
14 of snow precipitation; in addition, snow on the ground is constantly changing until it either
15 melts or sublimates; this metamorphism depends on many variable factors and produces snow
16 of substantially different texture and consistency, often in short periods of time; on any given
17 day, the snow conditions vary substantially from location to location and from time to time
18 during the day;

19 (7) in order to facilitate the sport, ski area operators construct facilities,
20 including ski runs, trails, roads, aerial tramways, snowmaking equipment, buildings, and signs;
21 while these facilities may alter the natural conditions, the facilities are obvious and necessary
22 to the sport;

23 (8) because of the size, power, and variation of the winter alpine environment,
24 ski area operators are financially and physically incapable of controlling all the conditions
25 under which skiing takes place;

26 (9) ski area operators have a limited ability to alter terrain features; some
27 terrain features may offer a hazard to the skier but at the same time offer additional challenge
28 or enjoyment for skiers; there will always be natural and artificial hazards in the sport of
29 skiing and the skier must accept these hazards as a part of the risk of skiing;

30 (10) ski area operators do not have control over natural weather conditions;

31 (11) under the proper weather conditions, ski area operators can and do make

1 a form of snow and can spread the snow on the surface of the terrain; however, it is not
2 possible nor is it desirable to groom all snow to a particular finish;

3 (12) skiing is an exhilarating sport, the enjoyment of which includes several
4 components: exercise, enjoyment of the outdoor environment, physical and mental challenge
5 of a sporting activity, companionship of family and friends, and the excitement of taking
6 physical risks;

7 (13) falling is an ordinary, obvious, and necessary component of the sport; all
8 skiers, even expert skiers, fall on all kinds of terrain; a particular fall is no indication of the
9 risks of a particular slope or set of conditions; the same factors that offer the excitement of
10 skiing contribute to its inherent risks; skiers may slide when they fall, and they may encounter
11 obstacles or other skiers; skiers can be injured while skiing due to the intrinsic risks of the
12 sport, whether natural or man-made.

13 (b) The purpose of this Act is to repeal and revise state law relating to skiing enacted
14 by ch. 80, SLA 1980, as interpreted by the Alaska Supreme Court in *Hiibschman v. City of*
15 *Valdez*, 821 P.2d 1354, (Alaska 1991). It is also the purpose of this Act to

16 (1) define the responsibilities of ski area operators and their agents and
17 employees;

18 (2) define the responsibilities of skiers using ski areas;

19 (3) define those areas of responsibility and affirmative acts for which ski area
20 operators may be liable for loss, damage, injury, or death, and to define those risks that the
21 skier expressly assumes as an inherent danger and risk of skiing; and

22 (4) provide that where an injury is the result only of an inherent risk of skiing,
23 a comparative negligence or comparative fault analysis does not apply.

24 * Sec. 2. AS 05 is amended by adding a new chapter to read:

25 CHAPTER 45. SKI LIABILITY, SAFETY, AND RESPONSIBILITY.

26 Sec. 05.45.010. LIMITATION ON ACTIONS ARISING FROM SKIING;
27 APPORTIONMENT OF FAULT. Notwithstanding any other provision of law

28 (1) a person may not bring an action against a ski area operator for an
29 injury resulting from an inherent danger and risk of skiing;

30 (2) if a person is injured as a result of an inherent danger and risk of
31 skiing and negligence by the ski area operator, in determining percentages of fault the

1 trier of fact may not treat the inherent danger and risk of skiing, to the extent it
2 contributed to the injury, as part of the fault attributed to the ski area operator.

3 Sec. 05.45.020. VIOLATIONS THAT CONSTITUTE NEGLIGENCE. (a)
4 A person who violates a requirement of this chapter is negligent and civilly liable to
5 the extent the violation causes injury to a person or damage to property.

6 (b) A ski area operator who violates a requirement of this chapter or a
7 regulation adopted by the Department of Labor under AS 05.20.070 is negligent and
8 civilly liable to the extent the violation causes injury to a person or damage to
9 property.

10 Sec. 05.45.030. DUTIES OF PASSENGERS. (a) A passenger may not board
11 a tramway if the passenger does not have

12 (1) sufficient physical dexterity or ability; and

13 (2) knowledge to negotiate or use the facility safely.

14 (b) A passenger may not

15 (1) embark upon or disembark from a tramway except at a designated
16 area unless reasonably necessary to prevent injury to the passenger or others; this
17 paragraph does not apply if the tramway stops and the operator assists the passengers
18 to disembark from the tramway;

19 (2) intentionally throw or expel an object from a tramway while riding
20 on the tramway, except as permitted by the operator;

21 (3) act while riding on a tramway in a manner that may interfere with
22 proper or safe operation of the tramway;

23 (4) engage in conduct that may contribute to or cause injury to a
24 person;

25 (5) intentionally place in an uphill track of a J-bar, T-bar, platter pull,
26 rope tow, or another surface lift an object that could cause another skier to fall;

27 (6) embark upon a tramway marked as closed;

28 (7) disobey instructions posted in accordance with this chapter or oral
29 instructions by the ski area operator regarding the proper or safe use of a tramway
30 unless the oral instructions are contrary to this chapter or contrary to posted
31 instructions.

1 **Sec. 05.45.040. REQUIRED PLAN AND PATROL BY SKI AREA**
2 **OPERATORS.** (a) A ski area operator shall prepare a plan of operation for each ski
3 season and shall implement the plan throughout the ski season. A plan of operation
4 must include provisions for ski patrol, avalanche control, avalanche rescue, grooming
5 procedures, tramway evacuation, hazard marking, missing person procedures, and first
6 aid. Before the operation of the ski area for that season, the plan shall be reviewed
7 and approved by the commissioner of public safety.

8 (b) A ski area operator shall provide a ski patrol with qualifications meeting
9 or exceeding the standards of the National Ski Patrol System, Inc.

10 **Sec. 05.45.050. REQUIRED SIGNS FOR TRAMWAYS; DUTIES OF**
11 **OPERATORS.** (a) A ski area operator who operates a tramway shall maintain a sign
12 system with concise, simple, and pertinent information for the protection and
13 instruction of passengers. Signs shall be prominently placed on each tramway,
14 readable in conditions of ordinary visibility, and where applicable adequately lighted
15 for nighttime passengers. Signs shall be posted

16 (1) at or near the loading point of each tramway, regardless of the type,
17 advising that a person not familiar with the operation of the device must ask the
18 operator of the device for assistance and instruction;

19 (2) in the interior of each two-car and multicar tramway showing

20 (A) the maximum capacity in pounds of the car and the
21 maximum number of passengers allowed;

22 (B) instructions for procedures in emergencies;

23 (3) in a conspicuous place at each loading area of two-car and multicar
24 tramways stating the maximum capacity in pounds of the car and the maximum
25 number of passengers allowed;

26 (4) at all chair lifts stating the following:

27 (A) "Prepare to Unload," which shall be located not less than
28 50 feet ahead of the unloading area;

29 (B) "Keep Ski Tips Up," which shall be located ahead of any
30 point where the skis may come in contact with a platform or the snow surface;

31 (C) "Unload Here," which shall be located at the point

1 designated for unloading;

2 (D) "Safety Gate," which shall be located where applicable;

3 (E) "Remove Pole Straps from Wrists," which shall be located

4 prominently at each loading area;

5 (F) "Check for Loose Clothing and Equipment," which shall be

6 located before the "Prepare to Unload" sign;

7 (5) at all J-bars, T-bars, platter pulls, rope tows, and any other surface

8 lift, stating the following:

9 (A) "Remove Pole Straps from Wrists," which shall be placed

10 at or near the loading area;

11 (B) "Stay in Tracks," "Unload Here," and "Safety Gate," which

12 shall be located where applicable;

13 (C) "Prepare to Unload," which shall be located not less than

14 50 feet ahead of each unloading area;

15 (6) near the boarding area of all J-bars, T-bars, platter pulls, rope tows,

16 and any other surface lift, advising passengers to check to be certain that clothing,

17 scarves, and hair will not become entangled with the lift;

18 (7) at or near the boarding area of all lifts, stating the skier's duty set

19 out in AS 05.45.100(c)(2).

20 (b) Signs not specified by (a) of this section may be posted at the discretion

21 of the ski area operator.

22 (c) A ski area operator, before opening the tramway to the public each day,

23 shall inspect the tramway for the presence and visibility of the signs required by (a)

24 of this section.

25 (d) A ski area operator shall post and maintain signs that are required by (a)

26 of this section in a manner that they may be viewed during conditions of ordinary

27 visibility.

28 **Sec. 05.45.060. REQUIRED SIGNS FOR TRAILS AND SLOPES; DUTIES**

29 **OF OPERATORS.** (a) A ski area operator shall maintain a sign and marking system

30 as required in this section in addition to that required by AS 05.45.050. All signs

31 required by this section shall be maintained so as to be readable and recognizable

1 under conditions of ordinary visibility.

2 (b) A ski area operator shall post a sign recognizable to skiers proceeding to
3 the uphill loading point of each base area lift that depicts and explains signs and
4 symbols that the skier may encounter at the ski area. The sign must include the
5 following:

6 (1) the least difficult trails and slopes, designated by a green circle and
7 the word "easiest";

8 (2) the most difficult trails and slopes, designated by a black diamond
9 and the words "most difficult";

10 (3) the trails and slopes that have a degree of difficulty that falls
11 between the green circle and the black diamond designation, designated by a blue
12 square and the words "more difficult";

13 (4) danger areas designated by a red exclamation point inside a yellow
14 triangle with a red band around the triangle and the word "danger" printed beneath the
15 emblem;

16 (5) closed trails or slopes designated by a sign with a red circle or
17 octagon around a white interior containing a black figure in the shape of a skier with
18 a black band running diagonally across the sign from the upper right-hand side to the
19 lower left-hand side and with the word "Closed" printed beneath the emblem.

20 (c) If applicable, a sign shall be placed at or near the loading point of each
21 tramway as follows:

22 **WARNING:** This lift services (most difficult)

23 or (most difficult and more difficult) or

24 (more difficult) slopes only.

25 (d) If a particular trail or slope or portion of a trail or slope is closed to the
26 public by a ski area operator, the operator shall place a sign notifying the public of
27 that fact at each identified entrance of each portion of the trail or slope involved. This
28 subsection does not apply if the trail or slope is closed with ropes or fences.

29 (e) A ski area operator shall

30 (1) place a sign at or near the beginning of each trail or slope, which
31 must contain the appropriate symbol of the relative degree of difficulty of that

1 particular trail or slope as described in (b) of this section; this paragraph does not
2 apply to a slope or trail designated "easiest" that to a skier is substantially visible in
3 its entirety under conditions of ordinary visibility before beginning to ski the slope or
4 trail;

5 (2) mark the ski area boundaries in a fashion readily visible to skiers
6 under conditions of ordinary visibility;

7 (3) mark that portion of the boundary with signs as required by (b)(5)
8 of this section if the owner of land adjoining a ski area closes all or part of the land
9 and advises the ski area operator of the closure;

10 (4) mark hydrants, water pipes, and all other man-made structures on
11 slopes and trails that are not readily visible to skiers under conditions of ordinary
12 visibility from a distance of at least 100 feet and adequately and appropriately cover
13 man-made structures that create obstructions with a shock absorbent material that will
14 lessen injuries; any type of marker is sufficient, including wooden poles, flags, or
15 signs, if the marker is visible from a distance of 100 feet and if the marker itself does
16 not constitute a serious hazard to skiers; in this paragraph, "man-made structures" does
17 not include variations in steepness or terrain, whether natural or as a result of slope
18 design, snow making, grooming operations, roads and catwalks, or other terrain
19 modifications;

20 (5) mark exposed forest growth, rocks, stumps, streambeds, trees, or
21 other natural objects that are located on groomed slopes or trails and that are not
22 readily visible to skiers under conditions of ordinary visibility from a distance of at
23 least 100 feet;

24 (6) mark roads, catwalks, cliffs, or other terrain modifications that are
25 not readily visible to skiers under conditions of ordinary visibility from a distance of
26 at least 100 feet;

27 (7) post and maintain signs that contain the warning notice specified
28 in (g) of this section; the notice shall be placed in a clearly visible location at the ski
29 area where lift tickets and ski school lessons are sold and in a position to be
30 recognizable as a sign to skiers proceeding to the uphill loading point of each base
31 area lift; the signs may not be smaller than three feet by three feet and must be white

1 with black and red letters as specified in this paragraph; the word "WARNING" must
2 appear on the sign in red letters; the warning notice specified in this paragraph must
3 appear on the sign in black letters with each letter to be a minimum of one inch in
4 height.

5 (f) A ski lift ticket sold or made available for sale to skiers by a ski area
6 operator must contain in clearly readable print the warning notice specified in (g) of
7 this section.

8 (g) The signs described in (e)(7) of this section and the lift tickets described
9 in (f) of this section must contain the following warning notice:

10 **WARNING**

11 Under Alaska law, the risk of an injury to person or property
12 resulting from any of the inherent dangers and risks of skiing
13 rests with the skier. A skier may not recover from a ski area
14 operator for an injury resulting from any of the inherent dangers
15 and risks of skiing, including changing weather conditions,
16 existing and changing snow conditions, bare spots, rocks,
17 stumps, trees, collisions with natural objects, man made objects,
18 or other skiers, variations in terrain, and the failure of skiers to
19 ski within their own abilities.

20 Sec. 05.45.070. OTHER DUTIES OF SKI AREA OPERATORS. (a) A ski
21 area operator shall equip a motorized snow-grooming vehicle with a light visible at any
22 time the vehicle is moving on or in the vicinity of a ski slope or trail.

23 (b) When maintenance equipment is being employed to maintain or groom a
24 ski slope or trail while the ski slope or trail is open to the public, the ski area operator
25 shall place a conspicuous notice regarding the maintenance or grooming at or near the
26 top of that ski slope or trail.

27 (c) A snowmobile operated on the ski slope or trails of a ski area shall be
28 equipped with at least

- 29 (1) one lighted head lamp;
30 (2) one lighted red tail lamp;
31 (3) a brake system maintained in operable condition; and

1 (4) a fluorescent flag at least 40 square inches mounted at least six feet
2 above the bottom of the tracks.

3 (d) A ski area operator shall develop and maintain a written policy covering
4 situations involving reckless skiers, including a definition of reckless skiing, procedures
5 for approaching and warning skiers regarding reckless conduct, and procedures for
6 taking action against reckless skiers, including revocation of ski privileges. A ski area
7 operator shall designate ski patrol personnel responsible for implementing the ski area
8 operator's policy regarding reckless skiers.

9 (e) A ski area operator shall make available at reasonable fees, instruction and
10 education regarding the inherent danger and risk of skiing and the duties imposed on
11 skiers under this chapter. Notice of the times and places of the instruction and
12 education required under this subsection shall be conspicuously posted at locations
13 likely to be seen by skiers and printed on equipment rental agreements.

14 Sec. 05.45.080. SKIERS OUTSIDE MARKED BOUNDARIES. A ski area
15 operator does not have a duty arising out of the operator's status as a ski area operator
16 to a skier skiing beyond the area boundaries if the boundaries are marked as required
17 by AS 05.45.060(e)(2).

18 Sec. 05.45.090. REVOCATION OF SKIING PRIVILEGES. A ski area
19 operator, upon finding a person skiing in a careless and reckless manner, may revoke
20 that person's skiing privileges. This section may not be construed to create an
21 affirmative duty on the part of the ski area operator to protect skiers from their own
22 or from another skier's carelessness or recklessness.

23 Sec. 05.45.100. DUTIES AND RESPONSIBILITIES OF SKIERS. (a) A
24 skier is responsible for knowing the range of the skier's own ability to negotiate a ski
25 slope or trail and to ski within the limits of the skier's ability. A skier is responsible
26 for an injury to a person or property resulting from an inherent danger and risk of
27 skiing, except that a skier is not precluded under this chapter from suing another skier
28 for an injury to person or property resulting from the other skier's acts or omissions.
29 Notwithstanding any other provision of law, the risk of a skier's collision with another
30 skier is not an inherent danger or risk of skiing in an action by one skier against
31 another.

1 (b) A skier has the duty to maintain control of the skier's speed and course at
2 all times when skiing and to maintain a proper lookout so as to be able to avoid other
3 skiers and objects. However, a person skiing downhill has the primary duty to avoid
4 collision with a person or object below the skier.

5 (c) A skier may not

6 (1) ski on a ski slope or trail that has been posted as "Closed" under
7 AS 05.45.060(b)(5) and (d);

8 (2) use a ski unless the ski is equipped with a strap or other device
9 capable of stopping the ski should the ski become unattached from the skier;

10 (3) cross the uphill track of a J-bar, T-bar, platter pull, or rope tow
11 except at locations designated by the operator, or place an object in an uphill track;

12 (4) move uphill on a tramway or use a ski slope or trail while the
13 skier's ability is impaired by the influence of alcohol or a controlled substance as
14 defined in AS 11.71.900 or other drug;

15 (5) knowingly enter upon public or private land from an adjoining ski
16 area when the land has been closed by an owner and is posted by the owner or by the
17 ski area operator under AS 05.45.060(e)(3).

18 (d) A skier shall stay clear of snow grooming equipment, vehicles, lift towers,
19 signs, and other equipment on the ski slopes and trails.

20 (e) A skier has the duty to heed all posted information and other warnings and
21 to refrain from acting in a manner that may cause or contribute to the injury of the
22 skier or others. Evidence that the signs required by AS 05.45.050 and 05.45.060 were
23 present, visible, and readable at the beginning of a given day creates a presumption
24 that all skiers using the ski area on that day have seen and understood the signs.

25 (f) Before beginning to ski from a stationary position or before entering a ski
26 slope or trail from the side, a skier has the duty to avoid moving skiers already on the
27 ski slope or trail.

28 (g) A skier involved in a collision with another skier or person that results in
29 an injury may not leave the vicinity of the collision before giving the skier's name and
30 current address to an employee of the ski area operator or a member of the voluntary
31 ski patrol, except for the purpose of securing aid for a person injured in the collision.

1 A person who leaves the scene of a collision to obtain aid shall give the person's name
2 and current address as required by this subsection after obtaining aid.

3 (h) A person who violates a provision of (c) or (g) of this section is guilty of
4 a violation as defined in AS 11.81.900. The commissioner of natural resources or an
5 employee of the Department of Natural Resources authorized by the commissioner may
6 issue a citation in accordance with the provisions of AS 41.21.960 to a person who
7 violates (c) or (g) of this section on state land.

8 Sec. 05.45.200. DEFINITIONS. In this chapter,

9 (1) "base area lift" means a tramway that skiers ordinarily use without
10 first using some other tramway;

11 (2) "conditions of ordinary visibility" means daylight or nighttime in
12 nonprecipitating weather;

13 (3) "inherent danger and risk of skiing" means a danger or condition
14 that is an integral part of the sport of skiing, including changing weather conditions;
15 snow conditions as they exist or may change, including ice, hard pack, powder, packed
16 powder, wind pack, corn, crust, slush, cut-up snow, and machine-made snow; surface
17 or subsurface conditions including bare spots, forest growth, rocks, stumps, streambeds,
18 and trees, or other natural objects, and collisions with natural objects; impact with lift
19 towers, signs, posts, fences or enclosures, hydrants, water pipes, other man-made
20 structures, and their components; variations in steepness or terrain, whether natural or
21 as a result of slope design, snowmaking or grooming operations, including roads and
22 catwalks or other terrain modifications; collision with other skiers; and the failure of
23 skiers to ski within their own abilities; the term "inherent danger and risk of skiing"
24 does not include the negligence of a ski area operator under AS 05.45.020(b), or acts
25 or omissions of a ski area operator involving the use or operation of ski lifts;

26 (4) "injury" means property damage, personal injury, or death;

27 (5) "passenger" means a person who is lawfully using a tramway;

28 (6) "ski area" means all downhill ski slopes or trails and other places
29 under the control of a downhill ski area operator; "ski area" does not include a cross-
30 country ski trail;

31 (7) "ski area operator" means a person having operational responsibility

1 for a downhill ski area, and includes an agency of the state or a political subdivision
2 of the state;

3 (8) "skier" means an individual using a downhill ski area for the
4 purpose of

5 (A) skiing;

6 (B) sliding downhill on snow or ice on skis, a toboggan, a sled,
7 a tube, a ski-bob, a snowboard, or another skiing device; or

8 (C) using any of the facilities of a ski area, including ski slopes
9 and trails;

10 (9) "ski slopes or trails" means those areas designated by a ski area
11 operator to be used by a skier;

12 (10) "tramway" means a device that is a passenger tramway, aerial or
13 surface lift, ski lift, or rope tow regulated under AS 05.20.

14 Sec. 05.45.210. SHORT TITLE. This chapter may be cited as the Alaska Ski
15 Safety Act of 1993.

16 * Sec. 3. AS 09.65.135 and AS 18.60.822 are repealed.

17 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).