

CS FOR SENATE BILL NO. 44(JUD) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Amended: 2/9/94
Offered: 4/18/93

Sponsor(s): SENATOR KELLY

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 and
 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, a
28 person may not bring an action against a ski area operator for an injury resulting from
29 an inherent danger and risk of skiing.

30 **Sec. 05.45.020. VIOLATIONS THAT CONSTITUTE NEGLIGENCE. (a)**

31 A person who violates a requirement of this chapter is negligent and civilly liable to

1 the extent the violation causes injury to a person or damage to property.

2 (b) A ski area operator who violates a requirement of this chapter, a provision
3 of a ski area plan of operation, or a regulation adopted by the Department of Labor
4 under AS 05.20.070 is negligent and civilly liable to the extent the violation causes
5 injury to a person or damage to property.

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

8 (1) sufficient physical dexterity or ability; and

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

10 (b) A passenger may not

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

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

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

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

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

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

24 (7) disobey instructions posted in accordance with this chapter or oral
25 instructions by the ski area operator regarding the proper or safe use of a tramway
26 unless the oral instructions are contrary to this chapter or contrary to posted
27 instructions.

28 Sec. 05.45.040. REQUIRED PLAN AND PATROL BY SKI AREA
29 OPERATORS. (a) A ski area operator shall prepare a plan of operation for each ski
30 season and shall implement the plan throughout the ski season. A plan of operation
31 must include provisions for ski patrol, avalanche control, avalanche rescue, grooming

1 procedures, tramway evacuation, hazard marking, missing person procedures, and first
2 aid. Before the operation of the ski area for that season, the plan shall be reviewed
3 and approved by the

4 (1) commissioner of natural resources; or

5 (2) agency of the United States that manages land on which the ski area
6 operates.

7 (b) A ski area operator shall provide a ski patrol with qualifications meeting
8 or exceeding the standards of the National Ski Patrol System, Inc. This subsection
9 does not apply to a ski area if the operator transports skiers using only a single
10 tramway consisting of a rope tow, the rope tow does not transport skiers more than
11 500 vertical feet, and the ski area is operated by a nonprofit corporation or a
12 municipality. In this subsection, "nonprofit corporation" means a corporation that
13 qualifies for exemption from taxation under 26 U.S.C. 501(c)(3) or (4) (Internal
14 Revenue Code).

15 (c) Notwithstanding any other provision of law, the state is not liable for civil
16 damages resulting from review and approval of a plan of operation under (a) of this
17 section.

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

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

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

28 (A) the maximum capacity in pounds of the car and the
29 maximum number of passengers allowed;

30 (B) instructions for procedures in emergencies;

31 (3) in a conspicuous place at each loading area of two-car and multicar

1 tramways stating the maximum capacity in pounds of the car and the maximum
2 number of passengers allowed;

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

4 (A) "Prepare to Unload," which shall be located not less than
5 50 feet ahead of the unloading area;

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

8 (C) "Unload Here," which shall be located at the point
9 designated for unloading;

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

11 (E) "Remove Pole Straps from Wrists," which shall be located
12 prominently at each loading area;

13 (F) "Check for Loose Clothing and Equipment," which shall be
14 located before the "Prepare to Unload" sign;

15 (5) at all J-bars, T-bars, platter pulls, rope tows, and any other surface
16 lift, stating the following:

17 (A) "Remove Pole Straps from Wrists," which shall be placed
18 at or near the loading area;

19 (B) "Stay in Tracks," "Unload Here," and "Safety Gate," which
20 shall be located where applicable;

21 (C) "Prepare to Unload," which shall be located not less than
22 50 feet ahead of each unloading area;

23 (6) near the boarding area of all J-bars, T-bars, platter pulls, rope tows,
24 and any other surface lift, advising passengers to check to be certain that clothing,
25 scarves, and hair will not become entangled with the lift;

26 (7) at or near the boarding area of all lifts, stating the skier's duty set
27 out in AS 05.45.100(c)(2).

28 (b) Signs not specified by (a) of this section may be posted at the discretion
29 of the ski area operator.

30 (c) A ski area operator, before opening the tramway to the public each day,
31 shall inspect the tramway for the presence and visibility of the signs required by (a)

1 of this section.

2 (d) A ski area operator shall post and maintain signs that are required by (a)
3 of this section in a manner that they may be viewed during conditions of ordinary
4 visibility.

5 **Sec. 05.45.060. REQUIRED SIGNS FOR TRAILS AND SLOPES; DUTIES**
6 **OF OPERATORS.** (a) A ski area operator shall maintain a sign and marking system
7 as required in this section in addition to that required by AS 05.45.050. All signs
8 required by this section shall be maintained so as to be readable and recognizable
9 under conditions of ordinary visibility.

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

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

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

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

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

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

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

30 **WARNING: This lift services (most difficult)**
31 **or (most difficult and more difficult) or**

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(more difficult) slopes only.

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

(e) A ski area operator shall

(1) place a sign at or near the beginning of each trail or slope, which must contain the appropriate symbol of the relative degree of difficulty of that particular trail or slope as described in (b) of this section; this paragraph does not apply to a slope or trail designated "easiest" that to a skier is substantially visible in its entirety under conditions of ordinary visibility before beginning to ski the slope or trail;

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

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

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

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

(6) post and maintain signs that contain the warning notice specified

1 in (g) of this section; the notice shall be placed in a clearly visible location at the ski
2 area where lift tickets and ski school lessons are sold and in a position to be
3 recognizable as a sign to skiers proceeding to the uphill loading point of each base
4 area lift; the signs may not be smaller than three feet by three feet and must be white
5 with black and red letters as specified in this paragraph; the word "WARNING" must
6 appear on the sign in red letters; the warning notice specified in this paragraph must
7 appear on the sign in black letters with each letter to be a minimum of one inch in
8 height.

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

12 (g) The signs described in (e)(6) of this section and the lift tickets described
13 in (f) of this section must contain the following warning notice:

14 **WARNING**

15 Under Alaska law, the risk of an injury to person or property
16 resulting solely from any of the inherent dangers and risks of
17 skiing rests with the skier. A skier may not recover from a ski
18 area operator for an injury resulting solely from any of the
19 inherent dangers and risks of skiing, including changing weather
20 conditions, existing and changing snow conditions, bare spots,
21 rocks, stumps, trees, collisions with natural objects, man made
22 objects, or other skiers, variations in terrain, and the failure of
23 skiers to ski within their own abilities. A ski area operator is
24 responsible if the ski area operator's own negligence is a cause
25 of an injury or death.

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

29 (b) When maintenance equipment is being employed to maintain or groom a
30 ski slope or trail while the ski slope or trail is open to the public, the ski area operator
31 shall place a conspicuous notice regarding the maintenance or grooming at or near the

1 top of that ski slope or trail.

2 (c) A motor vehicle operated on the ski slope or trails of a ski area shall be
3 equipped with at least

- 4 (1) one lighted head lamp;
- 5 (2) one lighted red tail lamp;
- 6 (3) a brake system maintained in operable condition; and
- 7 (4) a fluorescent flag at least 40 square inches mounted at least six feet
8 above the bottom of the tracks.

9 (d) 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. REQUIRED SKIER POLICY; REVOCATION OF SKIING
19 PRIVILEGES. (a) A ski area operator shall develop and maintain a written policy
20 covering situations involving reckless skiers, including a definition of reckless skiing,
21 procedures for approaching and warning skiers regarding reckless conduct, and
22 procedures for taking action against reckless skiers, including revocation of ski
23 privileges. A ski area operator shall designate ski patrol personnel responsible for
24 implementing the ski area operator's policy regarding reckless skiers.

25 (b) A ski area operator, upon finding a person skiing in a careless and reckless
26 manner, may revoke that person's skiing privileges.

27 (c) This section may not be construed to create an affirmative duty on the part
28 of the ski area operator to protect skiers from their own or from another skier's
29 carelessness or recklessness.

30 Sec. 05.45.100. DUTIES AND RESPONSIBILITIES OF SKIERS. (a) A
31 skier is responsible for knowing the range of the skier's own ability to negotiate a ski

1 slope or trail and to ski within the limits of the skier's ability. A skier is responsible
2 for an injury to a person or property resulting from an inherent danger and risk of
3 skiing, except that a skier is not precluded under this chapter from suing another skier
4 for an injury to person or property resulting from the other skier's acts or omissions.

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

9 (c) A skier may not

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

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

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

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

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

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

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

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

1 ski slope or trail.

2 (g) A skier involved in a collision with another skier or person that results in
3 an injury may not leave the vicinity of the collision before giving the skier's name and
4 current address to an employee of the ski area operator or a member of the voluntary
5 ski patrol, except for the purpose of securing aid for a person injured in the collision.
6 A person who leaves the scene of a collision to obtain aid shall give the person's name
7 and current address as required by this subsection after obtaining aid.

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

13 Sec. 05.45.110. RELEASE FROM LIABILITY PROHIBITED. A ski area
14 operator may not require a skier to sign an agreement releasing the ski area operator
15 from liability in exchange for the right to ski in the ski area. A ski area operator who
16 violates this section is subject to a civil penalty of \$10,000 in an action brought by the
17 state.

18 Sec. 05.45.200. DEFINITIONS. In this chapter,

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

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

23 (3) "inherent danger and risk of skiing" means a necessary condition
24 that is an integral part of the sport of skiing and that may not be eliminated or
25 mitigated; the term "inherent danger and risk of skiing" does not include the
26 negligence of a ski area operator under AS 05.45.020(b), or acts or omissions of a ski
27 area operator involving the use or operation of ski lifts;

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

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

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

1 country ski trail;

2 (7) "ski area operator" means a person having operational responsibility
3 for a downhill ski area, and includes an agency of the state or a political subdivision
4 of the state;

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

7 (A) skiing;

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

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

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

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

16 Sec. 05.45.210. SHORT TITLE. This chapter may be cited as the Alaska Ski
17 Safety Act of 1994.

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

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