

HB

12

FISCAL NOTE

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

BILL NO. CSHB 12 (FIN)

Revision Date (Note if correction) _____	Dept. Affected <u>Law</u>
Title <u>An Act relating to civil liability for commercial recreational activities; and providing for an effective date.</u>	BRU <u>Civil Division</u>
Sponsor <u>Representative Davis</u>	Component <u>Special Litigation</u>
Requester <u>House Finance Committee</u>	Component Serial No. <u>2213</u>

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS						
Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

CSHB 12 (FIN) is intended to establish the responsibilities of operators of commercial recreational activities and participants in those activities and to decrease uncertainty regarding the legal responsibility for injuries that result from participation. The bill establishes that participation in a commercial recreational activity constitutes acceptance of the inherent risks of the activity, and that acceptance of the risks means a person is contributorily negligent to the extent the inherent risk causes injury, death, or property damage. Compensatory damages awarded in a case resulting from injury, death, or property damage shall be reduced for contributory negligence. CSHB 12 (FIN) further sets out certain responsibilities of the operator of the commercial recreational activity, including explaining risks to participants, requiring employees be trained and competent, and maintaining equipment and facilities in good repair.

CSHB 12 (FIN) will have no fiscal impact on the Department of Law.

Prepared by <u>Joan M. Kasson</u>	Phone <u>465-5370</u>
Division <u>Attorney General's Office</u>	Date <u>4/10/98</u>
Approved by Commissioner <u>Bruce M. Botelho, Attorney General</u>	Date <u>4/10/98</u>
Agency <u>Department of Law</u>	

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MEMORANDUM

DATE: April 30, 1998

TO: Legislative Legal

FROM: Lydia A. Jones 
Senate Transportation Committee

RE: Senate Transportation CS for CSHB 12

Please prepare a Senate Transportation CS for CSHB 12 making this legislation identical to the original version of the bill (0-L.S0097/A).

Thank you.

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 30, 1998

SUBJECT: Civil liability for equine activities - (SCSCSHB 12(TRA))

TO: Senator Jerry Ward
Attn: Lydia Jones

FROM: Michael F. Ford 
Legislative Counsel

The work draft you requested is enclosed. As you may know, changing the bill's title is a violation of the Uniform Rules of the Alaska Legislature. (See Uniform Rule 41((b)) If you would also like a resolution suspending the uniform rules regarding this bill's title, please let me know.

MFF:glc
98-260.glc

Enclosure

**SENATE CS FOR CS FOR HOUSE BILL NO. 12(TRA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION**

BY THE SENATE TRANSPORTATION COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES DAVIS, Hudson, James, Mulder

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to civil liability for injuries or death resulting from equine**
2 **activities."**

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

4 *** Section 1. AS 09.65 is amended by adding a new section to read:**

5 **Sec. 09.65.145. Immunity for injuries resulting from equine activities. (a)**

6 **Except as provided in (b) of this section, a person, and the personal representative of**
7 **a person, who suffers an injury or death resulting from an inherent risk of an equine**
8 **activity may not recover civil damages from an equine activity sponsor, an equine**
9 **professional, or an equine owner.**

10 **(b) This section does not affect a civil action for damages resulting from**

11 **(1) gross negligence or reckless or intentional misconduct of the equine**
12 **activity sponsor, equine professional, or equine owner, or agents or employees of the**
13 **equine activity sponsor, equine professional, or equine owner;**

14 **(2) a dangerous latent condition that is known or should have been**

1 known to the equine activity sponsor, equine professional, or equine owner and for
2 which warning signs have not been conspicuously posted if the equine activity sponsor,
3 equine professional, or equine owner owns, leases, rents, or is otherwise in lawful
4 possession and control of the land or facilities where the injury or injuries resulting in
5 death occurred;

6 (3) faulty or defective equipment, tack, or a product provided by the
7 equine activity sponsor, equine professional, or equine owner;

8 (4) the failure of the equine activity sponsor, equine professional, or
9 equine owner who provided the equine to make reasonable efforts to determine the
10 ability of the injured person to participate safely in the equine activity and to safely
11 manage the equine involved in the equine activity;

12 (5) injury or death of a spectator.

13 (c) In this section,

14 (1) "equine" means a horse, pony, mule, donkey, or hinny;

15 (2) "equine activity" means a show, fair, competition, performance, or
16 parade involving an equine, equine riding, inspecting, evaluating, boarding, training,
17 or teaching;

18 (3) "equine activity sponsor" means a person who provides an equine,
19 land, or facilities for an equine activity;

20 (4) "equine professional" means a person who receives compensation
21 for instructing during an equine activity, for sponsoring an equine activity, or for the
22 use of an equine;

23 (5) "inherent risk of an equine activity" means a danger or condition
24 that is an integral part of an equine activity, including

25 (A) the propensity of an equine to behave in a way that may
26 result in injury, harm, or death to a person on or around the equine;

27 (B) the unpredictability of an equine's reaction to a sound,
28 sudden movement, or unfamiliar object, person, or other animal;

29 (C) collisions with other equines, objects, or a person; or

30 (D) the potential of a person to act in a negligent manner that
31 may contribute to injury to the person or others.

1 * Sec. 2. This Act applies to a civil action that accrues on or after the effective date of this
2 Act.

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fx 907/465-3835
800/463-2693

Representative Gary Davis

MEMORANDUM

To: Senator Jerry Ward, Chair
Senate Transportation Committee

From: Representative Gary Davis

Re: Amendments to HB 12

Date: May 2, 1998

I am aware that members of the Transportation committee have recently received a letter of support for HB 12 distributed by the Alaska Municipal League (AML). My office subsequently received a list of proposed amendments to HB 12 proposed by AML. I am in favor of these amendments as they are drafted on the accompanying attachment.

Thank you for scheduling HB 12 in the Senate Transportation committee on Tuesday, May 5th. I would appreciate any consideration you and the members of your committee can give to the proposed amendments.

Please contact myself or Darwin in my office if you have any further questions or need further assistance.

*Representing House District 8
Cooper Landing, Funny River, Hope, Moose Pass, Seward, Sterling, Soldotna*

Representative_Gary_Davis@legis.state.ak.us

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Representative Gary Davis

amend adopted

Suggested amendments to HB 12

- The following amendments are intended to clarify that the provisions of Sec. 2 cover municipal as well as private commercial recreation. In many municipalities, including up to the size of Juneau, there may not be the base population to support a private commercial recreation business like a skating rink, rock climbing wall, etc. The municipality may be required to offer it, if it is offered at all.
- Also, the first two changes on page 1 need to be made to better accommodate the new skateboard section.

On page 1, line 5, change "...persons who operate..." to "...operators of..."

On page 1, line 8-9, delete "...businesses that offer..."

On page 2, line 21, change "A person who operates..." to "An operator of..."

*Representing House District 8
Cooper Landing, Funny River, Hope, Moose Pass, Seward, Sterling, Soldotna*

Representative_Gary_Davis@legis.state.ak.us

CITY OF SEWARD

P.O. BOX 167
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- Fire (907) 224-3445
- Telecopier (907) 224-3248

May 5, 1998

Representative Gary Davis
House of Representatives
State Capital Building, Room 513
Juneau, AK 99801

Dear Representative Davis:

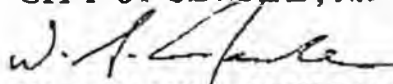
The City of Seward supports House Bill Number 12, "An Act relating to civil liability for commercial recreational activities and certain skating and cycling activities." The issue of liability for claims arising from the inherent hazards of skateboarding, in-line skating, bicycling and other non-motorized, wheel-based activities is important to all municipalities.

In Seward we have a reputation for caring for our youth. Two years ago we constructed a skate park for two reasons. We wanted to give the kids a designated, safe, visible place to practice their chosen sport. We also needed to move the users out of busy pedestrian areas like sidewalks, parking lots and community plazas. We felt we did a great thing when we built the park. However, the City assumes this inherent risk on a daily basis. Restrictions placed on the users by our insurance carrier include that athletes are required to wear 4 pieces of safety gear and sign a detailed Use Agreement. Though positive, these requirements still leave all municipalities open for liability. In addition, this inherently dangerous sport often precludes private business from opening a park due to possible, future litigation. I am positive that House Bill No. 12 will reduce the battles our community daily faces among skateboarders, in-line skaters, city officials and concerned citizens.

We know from experience that the athletes who choose these sports are already knowledgeable about the inherent risks. They purposefully choose to participate without a park, thus are already assuming their personal liability.

The City of Seward thanks you for sponsoring this legislature. We request your continued support of House Bill Number 12. Thank you for your thoughtful consideration of this important youth issue.

Sincerely,
CITY OF SEWARD, ALASKA


W. S. JANKE, CITY MANAGER

907.224.4047
907.224.4038 fax
citymgr@seward.net

**MATANUSKA-SUSITNA BOROUGH****Borough Manager**350 E. Dahlia Avenue, Palmer, Alaska 99645-6488
Phone (907) 745-9689 • FAX (907) 745-9845

May 4, 1998

Senator Jerry Ward, Chair
Senate Transportation Committee
State Capitol
Juneau, Alaska 99811**Re: Support for HB 12, Civil Liability for Commercial Recreational Activities
and Certain Skating and Cycling Activities**

Dear Senator Ward:

HB 12 provides private businesses and municipalities the opportunity to provide needed recreational opportunities for all Alaskans. HB 12 strikes a balance between inherently risk-sensitive recreational activities and self-initiated participation in such activities that may lead to injury or death. The Mat-Su Borough is self-insured and operates an ice arena, gymnasium, parks, and swimming pools. Civil liability is a real concern when people believe a private business or government should shoulder the financial responsibility for injury or death due to participation in an inherently risk-sensitive recreational activity.

Without HB 12, private and public sector development of recreational opportunities will continue to be "chilled" due to unfair liability exposure. Using the contributory negligence standard as a means to balance responsibility sends a clear message to individuals who knowingly and willingly initiate participation in a risk-sensitive activity. HB 12 ensures personal responsibility is properly weighed on the scales of justice.

Your support of HB 12 to include all recreational facilities and programs will spark new interest and investment in recreational services and facilities by both the private and public sectors.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Scott".

Michael J. Scott
Borough Managercc: Senator Lyda Green
Senator Rick Halford
MSB Assembly
AML
City of Wasilla

Alaska State Legislature

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Representative Gary Davis

SPONSOR STATEMENT

CSHB 12(FIN) am

"An Act relating to civil liability for commercial recreational activities; and providing for an effective date."

CSHB 12(FIN) am is intended to provide reasonable protection against frivolous lawsuits for operators of commercial recreational activities. Whenever an individual participates in a commercial recreational activity, they assume an inherent risk that accompanies that activity. Many of the unfortunate accidents that result from recreational activities are intrinsic in nature. If the operator is not obviously negligent, the operator should not be held accountable simply for monetary compensation.

This bill addresses specific guidelines a participant and an operator must follow in order to minimize the possibility of an accident that results in injury, death or property damage. As long as these guidelines are followed, and an accident still occurs, the participant would be responsible under this legislation. However, if a participant in a recreational activity suffers an accident and files a civil liability lawsuit against the operator, there is still a provision in this legislation that allows a jury to find the operator negligent to a degree if there is sufficient proof.

There is an additional provision in the bill to establish liability limitations for municipal skating and cycling activities. The intent is to encourage municipalities to proceed with development of areas for outdoor recreation without increasing their liability unnecessarily.

Additionally, this legislation is offered to provide the opportunity for owners and operators of commercial recreational activities to obtain affordable insurance policies. This legislation will provide some statutory protection against civil litigation so these businesses can continue to operate under proper insurance coverage.

Some of the more inherently dangerous recreational activities that would be included under this bill are; horseback riding, bicycling, car racing, 4-H competitions, rodeos, skateboarding in municipal parks, and other related activities.

*Representing House District 8
Cooper Landing, Funny River, Hope, Moose Pass, Seward, Sterling, Soldotna*

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Representative Gary Davis

SECTIONAL ANALYSIS

CSHB 12 (FIN) am

“An Act relating to civil liability for commercial recreational activities; and providing for an effective date.”

Section 1 sets out the purposes of the bill -- to establish the respective responsibilities of persons who operate commercial recreational activities and persons who participate in them, to decrease uncertainty about liability for damages for injuries resulting from participating in commercial recreational activities, and to encourage the continued availability of commercial recreational activities.

Section 2 enacts a new chapter relating to “Civil Liability for Commercial Recreational Activities,” and adds five new statutory provisions – Sec. 05.50.010 through Sec. 05.50.100.

Sec. 05.50.010 provides that a person who participates in a commercial recreational activity accepts the risk that an injury might occur as a result of participating in the activity.

Sec. 05.50.020 provides that if the risk inherent in the activity causes an injury, and the injured person has accepted that risk, then the person’s damages, if any, will be reduced by the percentage of fault that the court or jury determines is attributable to the acceptance of the risk.

Sec. 05.50.030 sets out the responsibilities of a person who participates in a commercial recreational activity. Those responsibilities include learning about the risks; acting within the limits of the person’s abilities; heeding all warnings; maintaining control over oneself, children, equipment, or animals; and refraining from actions that might cause or contribute to an injury.

Sec. 05.50.040 sets out the operator’s responsibilities, which include explaining the risks inherent in the activity and the skills and equipment required to participate; requiring that employees directly assisting participants have first aid and CPR training; maintaining all facilities and equipment in good repair; providing trained and competent personnel; and acting in a reasonably safe and competent manner.

Representing House District 8

Cooper Landing, Funny River, Hope, Moose Pass, Seward, Sterling, Soldotna

Sec. 05.50.050 makes it clear that the provisions of the bill do not affect existing statutes relating to the immunity of an owner of unimproved land or of the operator of a ski area.

Sec. 05.100 defines the terms "children" (a person under 18 years of age), "commercial recreational activity" (an activity for which participants pay compensation), and "recreational activity" (an outdoor activity for the purpose of exercise, education, relaxation, pleasure, sport or hobby).

Section 3 enacts a new chapter relating to "Municipal Skating and Cycling Liability and Responsibility," and adds seven new statutory provisions – Sec. 05.55.010 through Sec. 05.55.100.

Sec. 05.50.010 prohibits a person from bringing a lawsuit against a municipality, for an injury resulting from an inherent danger and risk of skateboarding or cycling at a municipal skateboarding or cycling facility.

Sec. 05.50.020 describes the effect of a violation of AS 05.50. A municipality or other person who violates AS 05.50 is negligent and civilly liable to the extent the violation causes injury or property damage. This section provides that if an injury occurs and an inherent danger and risk of skateboarding was a contributory factor or the injured person violated a provision of AS 05.50, a municipality is not liable unless the municipality also violated a provision of AS 05.50.

Sec. 05.50.030 sets out the duties of a person who uses a municipal skateboarding or cycling facility.

Sec. 05.50.040 requires that municipalities maintain a sign system for protection and instruction of skateboarders and cyclists.

Sec. 05.50.050 sets out the duties and responsibilities of a skateboarder or a cyclist who uses a municipal skateboarding or cycling facility.

Sec. 05.50.060 requires that a municipality must allow a person participating in a skateboard or cycling competition to visually inspect the course or area. This section also provides that a person participating in a skateboard or cycling competition assumes certain risks and cannot hold the municipality liable for the assumed risks.

Sec. 05.50.100 provides additional definitions.

Section 4 makes the Act applicable only to acts or omissions that occur on or after the effective date of the Act.

Section 5 provides that the Act will take effect July 1, 1998.

May 4, 1998

Senator Jerry Ward
Alaska State Legislature
State Capitol
Juneau, AK
Via Facsimile 907-465-3766



ALYESKA RESORT

Dear Senator Ward:

On behalf of Alyeska Resort (Alyeska Prince Hotel, Alyeska Ski Resort & the Anchorage Golf Course), we greatly appreciate your support of CSHB 12 (Fin)Am, a recreational liability bill.

Our hotel and resort industry has very stringent safety standards for all our clients as it should be!

However, in any recreational business and sport there is a certain element of risk. We believe this bill is necessary to avoid unfair and unreasonable claims that make it very difficult to provide recreational and outdoor adventures because of extremely high insurance and legal costs.

The entire Alaska visitor industry greatly appreciates your help and support to pass this bill.

Thank you.

Sincerely,

Chris von Imhof
Alyeska Resort, Vice President & Managing Director
AVA, Vice President, Government Relations

P.O. Box 243

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