

HB

134

Memo



To: House Judiciary Committee
From: Chris Ross
CC:
Date: 03/24/99
Re: Testimony for Judiciary Hearing on HB 134

Good day Mr. Chairman and Committee Members.

My name is Chris Ross, and I am the Corporate Health, Safety and Environmental Manager for NANA Development Corporation (that's my day job). I also serve on the Alaska Safety Advisory Council. Today, however, I would like to address you from the perspective of my volunteer job, that as a ski patroller at Mt. Alyeska, and as Alaska Division Director of the National Ski Patrol.

HB 134 is a needed piece of legislation to strengthen the existing Ski Area Liability Act (hereinafter referred to as "Act") that the legislature enacted several years ago. This bill will help correct two major oversights in the Act.

The first is to expand the scope of the Act to all ski areas in Alaska, not just the few that are on or about State controlled lands. This will allow ski areas such as Moose Mountain, Birch Hill, Black Rapids, Hilltop, Hillberg, Anchorage Nordic and Eaglecrest the same set of conditions as the other ski areas.

The second part of the bill will provide necessary language to allow bail schedules to be set for violations of the Act.

I have heard some say that this may limit individual freedoms, but I believe exactly the opposite. This is actually all about safety. Safety for me, safety for you, safety for our families.

Under the current law, if a winter recreation user (we can't use the term "skier" anymore, because there are skiers, snowboarders, telemark skiers, "big foot" users and many other "sliders!"), chooses to behave badly at any of the ski areas mentioned above, the Act does not apply. This means that there may be little or no repercussion for the actions of the individual.

Also under the current Act, if a person is skiing or boarding out of control and crashes into a small child at the base of the lift, there is no provision for ticketing - no repercussion - and no future deterrent.

If a skier or snowboarder chooses to duck under an Avalanche Closure sign under the current Act, there may be little or no deterrent that ski area managers have in the form of meaningful citation or fines. This may well put me or other patrollers in jeopardy as we face the decision of whether or not to follow those tracks.

This bill is really about protecting the rights of our guests on the hill, and our patrollers. The most common complaint I hear when I patrol is "can't you do something about that reckless (too fast/ out-of-control/ you pick the adjective) skier/boarder that almost ran us over?"

Ski areas are in the customer service business. No ski area wants to alienate customers, or be perceived as limiting the rights of patrons. Ski areas need happy customers and repeat customers. Therefore, it is highly unlikely that the passage of this bill would cause a huge increase in citations. Rather, I suspect all it would take would be a few tickets issued, and the bad actors would get the picture and (hopefully) act more responsibly.

Thank you for your careful consideration of this matter and I urge you to adopt HB 134. I would be happy to answer any questions you may have.

Chris Ross
PO Box 92207
Anchorage, AK 99509
907-265-4113 phone
907- 265-4382 fax
chris.ross@nana-dev.com



EAGLECREST Ski Area

DATE: March 25, 1999

TO: All Interested Parties

FROM: Gary Mendivil, Vice President
Alaska Ski Areas Association

SUBJECT: Background Information on HB134- Ski Violations Bail Schedule

When the Alaska Ski Safety Act was passed in 1994, it included provisions for issuing citations relating to safety. It specifically limited the citations to the following offenses:

1. Entering a posted closed area
2. Using a ski without a retention device.
3. Crossing the uphill track of a surface lift or placing an object in the uphill track.
4. Using a tramway, ski slope or trail while the skier's ability is impaired by the influence of alcohol or a controlled substance.
5. Knowingly enter upon public or private land from an adjoining ski area when the land has been closed by an owner and is posted by the owner or by the ski area operator.
6. Leaving the scene of a collision without giving their name and address to the other person(s) involved or a ski patroller.

In December of 1994, the Dept. Of Natural Resources contacted the Alaska Court System to get a bail schedule established. In August of 1995, the Court System declined to create a schedule because there was "no clear authorization in the statute for such a schedule". In July of 1997, the Alaska Ski Areas Association met in Juneau and adopted a resolution requesting the Department of Natural Resources to help sponsor legislation to correct this situation. This past fall, the Alaska Ski Areas Association worked with Rep. Hudson's office. since he was helpful in the passage of the original Ski Safety Act.

HB 134 was introduced to carry out the original intent of the bail schedule as contained in the Ski Safety Act of 1994. The original list has not been expanded to include any other offenses. The proposed bail schedule does not address skiers who venture out-of-bounds, although the ski safety act notes that skiers do so at their own risk. There is a specific difference between closed areas and out-of-bounds areas. HB 134 does not address reckless skiing, although the Ski Safety Act of 1994 does require a ski area to have a specific policy for dealing with reckless skiers and revocation of skiing privileges. This legislation does not address skiing out of control, although the Ski Safety Act of 1994 does say that skiers have a duty to ski in control.



Alaska State Legislature

REPRESENTATIVE BILL HUDSON

State Capitol
Juneau, Alaska
99801-1182
(907) 465-3744
Fax (907) 465-2273

COMMITTEES

CHAIR
Fisheries Committee
Utility Restructuring Committee

MEMBER
State Affairs Committee
Transportation Committee

Sponsor Statement HB 134: Ski Violations Bail Schedule

HB 134 amends sections of the Alaska Ski Safety Act that have proven to be unclear and therefore unenforceable. The proposed amendments are technical in nature; they clarify the statutes, allowing for improved enforcement and are consistent with the original provisions of the Alaska Ski Safety Act.

Enacted by the 18th Alaska State Legislature, the Alaska Ski Safety Act defines the rights and responsibilities of both ski areas and skiers. However, under current statutes all ski areas are not included in the enforcement provisions under AS 05.45.100 (h). HB 134 creates a level playing field by allowing for citations to be issued in all ski areas in accordance with the Alaska Ski Safety Act. Additionally, in 1995 the Alaska Supreme Court determined that current law does not provide them with adequate authorization to establish the bail forfeiture schedule. HB 134 provides the Court with the necessary authority to adopt the bail forfeiture schedule for the specific violations included in AS 05.45.100. These measures will allow for full implementation of the enforcement provisions within the Alaska Ski Safety Act.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 17, 1999

SUBJECT: Citation for skiing violations - (HB 134)

TO: Representative Bill Hudson
Attn: Paulyn Swanson

FROM: Michael F. Ford *M.F.*
Legislative Counsel

You have asked for an explanation of the changes to existing law made by HB 134. Section 1 of the bill expands the authority of the Department of Natural Resources in a manner that provides for issuance of citations in all ski areas. This change is necessary because existing law limits the department's authority to those ski areas over which the state has jurisdiction, which excludes a number of ski areas in the state. Section 2, requires the Alaska Supreme Court to establish a schedule of bail amounts for ski citations. This change is necessary because the court system believes that existing law (AS 05.45.100(h)) is insufficient to require that a bail schedule be established. Finally, section 3 concerns a provision of law providing that the cited person is not required to sign the citation. This section is not necessary to accomplish the goal of issuing citations in all ski areas of the state, but the change is consistent with other provisions of law regarding similar citations.

Please contact me if you have further questions.

MFF:glc
99-111.glc

FAX TRANSMISSION

ADNR/DIV OF LAND
3601 C Street, Suite 1080
Anchorage, Alaska 99503-5937
907-269-8566
Fax 907-269-8913

To: Paulyn Swanson
Fax #: 465-2273
From: Mike Sullivan
Subject: ski act

Date: March 8, 1999
Pages: 1 (including this cover sheet)

COMMENTS:

Greetings Paulyn--In regards to "state jurisdiction" in my discussion with Mike Ford, he believed that means on state lands.

Prior to discussing the issue with Mike F. My original interpretation was that the phrase "over which the state has jurisdiction" referred to ski areas that were required under 5.45.040 to submit operations plans to ADNR for approval. However, this phrase is not included in the portion of the bill that requires submittal of operation plans to ADNR or on the sections detailing signage requirements for lifts and trails. I defer to his expertise and opinion and more importantly see no harm in deleting the phrase in question from the law. This should serve to avoid any future discussion over its meaning

It was pointed out to me by Gary Mendevil that deleting the phrase entirely would mean that this section now applies to the military ski areas at places like Hillberg in Anch., the Coast Guard lift on Kodiak and ski areas on military land at Delta and Ft. Wainwright. All these areas are specifically exempt from providing operations plans to the state in AS 5.45.040. Gary and I discussed this and agreed that by removing the phrase from 5.45.100(b) we aren't requiring these areas to do anything new, they could choose to use the provision or not. Our guess is none of them would as out of bounds skiing has only been an issue for Eaglecrest and Alyeska though past operators of Alpenglow (arcic valley in anch) have indicated they would also like to be able to cite out of bounds skiers.

In regards to what areas are within state jurisdiction ...upper slopes at Alyeska are on a state land lease, otherwise Alpenglow is on an old state land lease issued in the 60's, however the surrounding land is federal land part of an old military reservation but title is held by BLM. BLM has entered into an agreement with Chugach State Park Officials allowing the property to be managed as part of the park but it's really not state land. As to whether or not that qualifies as within state jurisdiction....?

This is probably more info than you wanted but I suppose most important is that I support proposed change as best way to get Eaglecrest and Alyeska the tools they need to protect their boundaries and limit the # of times they or the local boro has to send employees on rescue missions to retrieve errant skiers in dangerous backcountry areas.ms

Subject: Re: Ski Areas

Date: Wed, 24 Mar 1999 07:33:04 -0900

From: "Mike Sullivan" <mikes@dnr.state.ak.us>

To: Paulyn Swanson <Paulyn_Swanson@legis.state.ak.us>

Paulyn--no problem and the answer is

1. Alyeska Resort in Girdwood
2. Eaglecrest
3. Moose Mtn in Fairbanks
4. Skiland in Fbks
5. Eyak ski area in Cortiova
6. Homer Ski club rope tow in Homer
7. Hilltop in Anchorage
8. Alpenglow (Arctic Valley) in Anch
9. Russian Jack ski tow in Anch.

Of these Alpenglow, Alyeska and Eaglecrest have indicated they have problems with out of bounds skiers and would like to be able to issue citations. Eaglecrest and Alyeska are the two most concerned. Hope this helps.ms> Hi Mike;

>

> I need a bit more information. Please send me a list of all of the
> ski areas that are required to submit an operations plan to DNR
> as directed under AS 05.45.040.

>

> Thanks!

> Paulyn Swanson

> Staff to Rep. Hudson

>

>

>

THE
FOLLOWING
DOCUMENT(S)
ARE
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ORIGINAL
COPIES

MEMO

To: Paulyn Swanson
From: Mike Sullivan
Subject: Ski Safety Act
Date: February 22, 1999

Paulyn--got your 2/17/99 note with the changes to the ski act. As you know the reason behind this "tweeking" of the ski safety act was the need to get a bail forfeiture schedule for violations of the original ski act. Apparently court officials didn't believe the original bill included authority to establish a bail schedule for the offenses listed in AS 5.45.100.

Currently the Division of Land is using AS 41 21 955 (this statute applies only to state parks and recreation facilities) and 11 AAC 12.335 to enforce out of bounds skiing and this only applies to Alyeska ski resort as Alyeska is located on state land and was formally designated as a recreational facility in 11 AAC 20.956. Also the current fine is only \$50.00 for conducting an activity in an area closed to that use such as camping or building campfires away from fire pits in parks, an insufficient amount in the view of resort managers who want to return to the higher fine amounts that applied during the USFS's administration of the ski area that ended in 1994. At present this is the only place in the state where the Division of Land is authorized to issue written citations. Therefore, as a 20 year Div of Land employee I have minimal experience with issuing citations but I've been told that before we can issue citations we need a number of statutes or regulations in place:

1st. The activity must be clearly stated to be against state law--AS 5.45.100 should satisfy this.

2nd Statute must say what type of infraction the activity is. AS 5.45.100(h) addresses this and identifies these rules infractions as "violations" as defined in AS 11.81.900.

3rd State law must then include a specific penalty for the infraction, for "violations" as defined above, this is done thru a bail forfeiture schedule. This is the missing piece of the enforcement chain for the ski safety act and based on my experience the proposed language should correct this. I trust someone at Dept of Law will be looking this over to verify this info.

In regards to your question about what if someone wants to contest the, it's again my understanding that for AS 81.900 violations court appearances are not mandatory but if the accused elects to contest the citation they appear before a magistrate much as folks do who got a minor traffic ticket. There is no prosecutor other than the policeman who issued the traffic ticket, in the case of the ski act likely either someone from the Division of Land and/or a ski patroller or ski area official would appear. For Anchorage I'm sure we'd go for Juneau I doubt we'd go unless our presence was particularly important. This has happened once since we took over the Alyeska program, a staff person from here attended along with the ski patrol director from Alyeska. The offender basically said he wasn't out of bounds, we said he was, the magistrate asked if we had authority to issue citation, we said yes, offender was found guilty and fined.

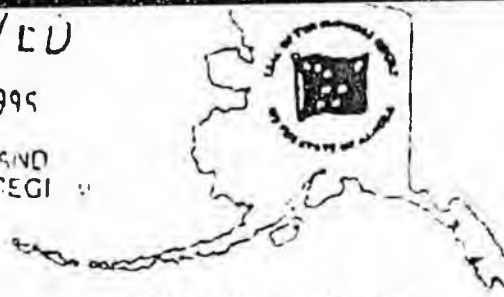
For Juneau we'd do the same as we do for Alyeska when an out of bounds skier is caught, resort forwards a report to us, we may call responsible resort employee to double check info, then we write citation and mail via certified mail. This is the same way it was handled at Alyeska under the USFS.

Hope this helps, I'm at 269-8566.ms

RECEIVED

AUG 21 1995

LAND
REGISTRATION



Alaska Court System
State of Alaska
OFFICE OF THE ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, Alaska 99501-2099

Susan Miller
Office of Special Projects

Phone: (907) 264-8229
Fax: (907) 258-4968

August 16, 1995

Mike Sullivan
Natural Resource Manager
Division of Land
Department of Natural Resources
PO Box 107005
Anchorage AK 99510-7005

Dear Mr. Sullivan:

On August 8 the Alaska Supreme Court discussed your December 21, 1994 request that a bail forfeiture schedule be adopted for the new skiing offenses defined in AS 05.45.100. The court declined to create such a schedule because there is no clear authorization in the statute for such a schedule. Administrative Rule 43(a) states: "The supreme court will consider adopting a bail forfeiture schedule only when so authorized by statute...." The court decided the language in AS 05.45.100(h) is not an adequate authorization.

Please give me a call when you get a chance. A copy of Administrative Rule 43 is attached.

Sincerely,

Susan Miller

Susan Miller
Office of Special Projects

SM:lb

Enclosure

Memorandum

Alaska Court System

103 K Street, Anchorage, AK 99501-2099
Phone: 254-8229 Fax: 258-4668

TO: Christine Johnson
Court Rules Attorney

DATE: July 24, 1995

FROM: Susan Miller
Special Projects

SUBJ: Ski Area Bail Forfeiture Schedule

Issue: Can the new Alaska Ski Safety Act offenses in AS 05.45.100 be added to the Parks Bail Forfeiture Schedule?

It is my understanding that the supreme court will not create bail forfeiture schedules without a clear mandate from the legislature. The Department of Natural Resources has requested that a bail forfeiture schedule be adopted for six of the new downhill skiing offenses created by the Alaska Ski Safety Act of 1994. A copy of the request and a copy of the new law (ch 63 SLA 1994) are attached.

There is no explicit requirement in this legislation that the court create a bail forfeiture schedule for these offenses. However, Mike Sullivan, author of the attached memorandum from the Department of Natural Resources, believes it was the intent of the drafters of the legislation that such a schedule be created. He points to AS 05.45.100(h) as the authority for this. Paragraph (h) states:

(h) A person who violates a provision of (c) or (g) of this section is guilty of a violation as defined in AS 11.81.900. The commissioner of natural resources, a person designated by the ski area operator who is authorized by the commissioner, or an employee of the Department of Natural Resources authorized by the commissioner may issue a citation in accordance with the provisions of AS 41.21.960 to a person who violates (c) or (g) of this section within a ski area over which the state has jurisdiction.

Apparently the drafters thought all that was required to make the new offenses eligible to be on a bail forfeiture schedule was to make them "violations" rather than misdemeanors. This is, of course, not correct. Alternatively, they apparently believed that the reference to AS 41.21.960 in the last sentence was enough to make it clear that the court should add the offenses to the Parks Bail Schedule.

AS 41.21.960(a) authorizes issuance of a citation for "a misdemeanor offense committed within a park or recreational facility subject to the department's supervision." Paragraph (b) of the statute requires the supreme court to create a bail forfeiture schedule for "those offenses that are amenable to disposition without court appearance." The statute is not completely clear about which offenses can be included in the bail schedule. Arguably, however, "those offenses" means misdemeanors defined in AS 41.21 or a regulation adopted under AS 41.21 which are committed within a park or recreational facility subject to the supervision of the Department of Natural Resources. See AS 41.21.950 and AS 41.21.960(a), attached.

The new downhill skiing offenses in Title 5 do not seem to qualify under this interpretation of AS 41.21.960(b). They are not misdemeanors, they are not offenses defined in AS 41.21 or a regulation adopted under AS 41.21, and it is not clear that they would be committed within a park or recreational facility subject to the supervision of DNR. So, the question becomes: Is the supreme court willing to add these offenses to the Parks Bail Forfeiture Schedule based on the second sentence in AS 05.45.100(h) quoted above?

Susan

Valdez	3VA
Whitmer	3WH
Fourth District	
Aniak	4AA
Bethel	4BE
Delta Junction	4DJ
Fairbanks	4FA
Fort Yukon	4FY
Galena	4GA
Healy	4HE
Kauaiuk (closed)	4KS
McGrath	4MC
Mekoryuk	4ME
Nesana	4NE
Quinhagak	4QU
Rampart (closed)	4RA
Tazewell	4TA
Tek	4TO
Tosovak	4TU

(Adopted by SCO 412 effective July 1, 1980; amended by SCO 478 effective August 17, 1981; by SCO 541 effective October 1, 1982; by SCO 564 effective April 4, 1983; by SCO 565 effective May 3, 1983; by SCO 617 effective May 15, 1985; by SCO 672 effective June 15, 1986; by SCO 1034 effective June 14, 1990; by SCO 1035 effective nunc pro tunc February 1, 1991; and by SCO 1132 effective July 15, 1993)

Cross References

CROSS-REFERENCES: Administrative Bulletin No. 7 (Case Numbering)

Rule 42. Docketing.

There shall be no court docket kept on any case filed in the district or superior court. Any dockets prepared prior to the effective date of this rule shall continue to be maintained until a final disposition has been entered in the case. No rule of court shall be interpreted to require docketing of documents or hearings.

(Adopted by SCO 412 effective July 1, 1980; amended by SCO 554 effective April 4, 1983; by SCO 630 effective September 15, 1985; and by SCO 656 effective September 15, 1989)

Rule 43. Bail Forfeiture Schedules.

(a) Procedure for Adopting Bail Forfeiture Schedule. The supreme court will consider adopting a bail forfeiture schedule only when so authorized by statute. The agency charged with enforcement under a statute for which a bail forfeiture schedule has been authorized shall forward to the administrative director its recommendations for a proposed schedule, listing offenses by number, describing the offenses, and proposing a bail forfeiture amount. The

proposed schedule shall be accompanied by commentary explaining the basis for the agency's recommendation, and by a copy of the proposed citation form. The supreme court shall consider the recommendation, and shall determine whether to adopt a bail forfeiture schedule, and if so, shall determine which offenses are amenable to disposition by bail forfeiture and whether the bail forfeiture amounts are appropriate. The administrative director shall notify the agency when an order adopting the schedule is issued.

(b) Procedures for Amending Bail Forfeiture Schedules.

(1) By July 1 of each year, each agency charged with enforcement under a statute for which a bail forfeiture schedule has been authorized shall forward to the administrative director of the Alaska Court System its written recommendation concerning whether the schedule must be amended to reflect any legislative and regulatory changes, or whether policy considerations warrant revisions. Any proposed amendments shall be accompanied by commentary. The supreme court shall consider the agency's recommendations and determine by October 1 whether to adopt them. If it will be impractical for the court to respond by that date, the administrative director will inform the agency of the date by which the response can be expected. The administrative director shall notify the agency when an order amending the schedule is issued.

(2) In addition to the provisions of paragraph (b)(1), an agency may request a bail forfeiture schedule amendment whenever the need arises.

(3) Any person or agency may request a bail forfeiture schedule amendment at any time by proposing an amendment in writing to the chief justice or to the administrative director.

(Adopted by SCO 412 effective July 1, 1980; amended by SCO 651 effective July 1, 1985; and by SCO 1180 effective July 15, 1993)

Rule 43.1. Traffic Bail Forfeiture Schedule.

Pursuant to AS 28.05.151, the following vehicle and traffic offenses are amenable to disposition without court appearance upon payment and forfeiture of the bail amounts listed. If a person charged with one of these offenses appears in court and is found guilty, the penalty imposed for the offense may not exceed the bail amount for that offense listed below. An offense for which a bail forfeiture amount has been established shall be charged on a citation which meets the requirements of District Court Criminal Rule 8(c) and shall not be filed, numbered or processed as a criminal case.

Effective January 1, 1996, as a condition of the

MEMORANDUM State of Alaska

Department of Natural Resources

Division of Land, Southcentral Region

TO: Susan Miller
Special Projects
Ak Court System

DATE: December 21, 1994

THRU: Rick Thompson *RJT*
Regional Manager

FILE NO.:

TELEPHONE NO: 762-2270

FROM: Mike Sullivan *MS*
Natural Resource Manager

SUBJECT: Bail Schedule
Ak Ski Safety Act

The 1994 legislature enacted a new state law dealing with the expanding downhill ski industry in Alaska (chapter 63 SLA 1994). This legislation was patterned after a similar Colorado law which clarifies the responsibilities and duties of both skiers and ski area operators. This bill was sponsored and supported by the Alaska Ski Areas Association. The purpose of this memorandum is to request that a bail forfeiture schedule be adopted for specific violations of the act as included in AS 05.45.090 (c) and (g). Enforcement of out of bounds and closed area skiing is especially important to ski area operators because out of bounds skiers pose a danger not only to themselves but also to ski area employees. Out of bounds skiers often enter terrain highly susceptible to avalanches. Rescuing or otherwise assisting lost or injured skiers is extremely hazardous for both the rescuer's and the wayward skier. This danger is particularly acute at Mt. Alyeska but is also present at other Alaskan ski areas. In the past the United States Forest Service (USFS) has issued citations for out of bounds skiing at Alyeska. These violations carried a \$150.00 fine pursuant to 36 CFR 261.53(e). This enforcement tool was fairly effective in deterring out of bounds skiers. In April of 1993 the property was transferred to the state.

ADNR believes reckless skiing offenses are appropriate for inclusion in a bail forfeiture schedule because the legislature directed in AS 5.45.100(h) that such offenses be treated as "violations" rather than misdemeanors.

December 21, 1994

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AK Ski Safety Act

Before preparing specific recommendations for these violations contact were made with the USFS (the majority of ski areas on public lands in the US are in National Forests) and the states of Colorado and Utah (Colorado has more skier visits than any other state and has a ski safety act). Both Colorado and Utah treat out of bounds skiing as misdemeanors or petty crimes. The offense is subject to a fine and/or jail time. Typical fines in Colorado are \$300.00 and in Utah \$185.00. Provisions are also included to charge for cost of rescues. As previously referenced the USFS has a \$150.00 fine, though in states like Utah or Colorado state or county officials handle such violations. These entities make no distinction between skiing on a closed trail or skiing on adjacent lands closed to skiing. Colorado requires drunk skiers or skiers leaving the scene of an accident to appear in court with possible fines up to \$300.00 and/or jail time.

Colorado has also charged skiers involved in collisions with assault and manslaughter. They have (in special or unique circumstances) charged people skiing without ski brakes with reckless endangerment. Skiing across surface lifts has not been a problem for Colorado and state law does not address this activity. Utah officials would also look to similar existing statutes to enforce violations of this type.

Federal law does not specifically address any of the violations included in the Alaska law except skiing out of bounds. Federal law does provide for a \$100.00 fine for atv use by someone under the influence (36 CFR 261.13e) and a similar fine for reckless or careless conduct that could endanger others (36 CFR 261.13g).

After considering this information and the existing bail schedule used by the Department of Natural Resources, Division of Parks (Administrative Rule 43.3, Supreme Court Order #992), the Division of Lands recommends the following bail amounts for violations referenced in the Alaska Ski Safety Act of 1994:

AS 05.45.100(c)1	Skiing on a closed slope or trail	\$150.00
AS 05.45.100(c)2	Use a ski w/o a stopping device	\$ 50.00

December 21, 1994

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Ak Ski Safety Act

AS 05.45.100(c)3	Cross uphill track of surface lift	\$ 50.00
AS 05.45.100(c)4	Ski or ride lifts under influence of alcohol or drugs	\$100.00
AS 05.45.100(c)5	^{INCLUDED PERMANENT} Ski outside ski area boundaries	\$150.00
AS 05.45.100(g)	Skier involved in collision leaves the scene of accident	\$150.00

If you have any questions please feel free to contact me.



EAGLECREST Ski Area

January 25, 1999

JAN 27 1999

Representative Hudson
State Capitol, Room 108
Juneau, AK 99801-1182

Dear Representative Hudson,

Thank you for your past support of the ski industry in Alaska. Your help was instrumental in the passage of the Alaska Ski Safety Act of 1994. That legislation more clearly defined all parties rights and responsibilities.

The Alaska Ski Safety Act allows the Commissioner of the Department of Natural Resources to designate authorized individuals who may issue citations to reckless skiers. Unfortunately, the Alaska Court system determined that the bail schedule was not specified clearly in the Act and that there is not sufficient authority to establish the bail schedule. It is our understanding that this situation can be corrected by legislative amendment. The bail schedule would specifically cover the following items noted in the ski safety act:

- AS 05.45.100(c)3 Crossing the uphill track of a surface lift or rope tow except at locations designated by the operator, or place an object in the uphill track.
- AS 05.45.100(c)4 moving uphill on a tramway or use a ski slope or trail while the skier's ability is impaired by the influence of alcohol or a controlled substance as defined in AS11.71.900 or other drug.
- AS 05.45.100(c)5 knowingly enter upon public or private land from an adjoining ski area when the land has been closed by an owner and is posted by the owner or by the ski area operator.
- AS 05.45.100(g) Except for the purpose of securing aid for a person injured in the collision, a skier involved in a collision with another skier or person that results in an injury may not leave the vicinity of the collision before giving the skiers name and current address to the other person involved in the collision and to an employee of the ski area operator or a member of the voluntary ski patrol. A person who leaves the scene of a collision to obtain aid shall give the person's name and current address as required by this subsection after obtaining aid.

As an attachment, I have included the proposed amendment to the Alaska Ski Safety Act, the bail schedule proposed by the Department of Natural Resources and a list of the members of the Alaska Ski Areas Association. The Alaska Ski Areas Association would be happy to work with you and your staff in any way during the coming legislative session.

I have asked our other ski area members to contact their respective legislators to ask for their help with this amendment to the Alaska Ski Safety Act of 1994. If you would be interested in co-sponsoring this legislation, we will certainly keep you advised of any progress we are able to make in this regard.

Sincerely

A handwritten signature in black ink, appearing to read 'Gary Mendivil', with a long horizontal line extending to the right.

Gary Mendivil
Vice-Chairman
Alaska Ski Areas Association

January 11, 1999

Senator Sean Parnell
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Representative Con Bunde
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182



ALYESKA RESORT

Re: Bail Schedule of Alaska Ski Safety Act of 1994

Dear Senator Parnell,

In 1994, the legislature passed a bill itemizing the responsibilities of both the ski areas and the skiers. This bill has been very useful to the ski areas and to the state.

There is a weakness in the bill however. The bill gives the Department of Natural Resources (DNR) authority to fine skiers who disregard provisions of the act. Unfortunately, the court has ruled that the bail forfeiture schedule was not specific in the act and therefore not enforceable above the \$50.00 level. This makes enforcement of area boundaries and avalanche closures much more difficult.

Commissioner Shively of the DNR is supportive of the ski industry's request. We would hope that you would be willing to work with the DNR on this issue.

I hope we can work together on this matter. Please feel free to contact me on this issue if I can be of assistance.

Sincerely,

Larry K. Daniels, General Manager
- Alyeska Ski Area & The Anchorage Golf Course

P.O. Box 249
GIRDWOOD, ALASKA 99507
TELEPHONE (907) 754-1111
FAX (907) 754-2200

xc. John Shnively, Commissioner - DNR

Chapter 05.45. SKI LIABILITY, SAFETY, AND RESPONSIBILITY

Sec. 05.45.010. Limitation on actions arising from skiing.

Notwithstanding any other provision of law, a person may not bring an action against a ski area operator for an injury resulting from an inherent danger and risk of skiing.

Sec. 05.45.020. Effect of violations.

(a) A ski area operator or other person who violates a requirement of this chapter, a provision of a plan of operation prepared under AS 05.45.040, or a regulation adopted by the Department of Labor under AS 05.20.070 is negligent and civilly liable to the extent the violation causes injury to a person or damage to property.

(b) Notwithstanding the provisions of AS 09.17.080,

(1) the limitation of liability described under AS 05.45.010 is a complete defense in an action against a ski area operator for an injury if an inherent danger or risk of skiing is determined to be a contributory factor in the resulting injury, unless the ski area operator has violated a requirement of this chapter, a provision of a plan of operation prepared under AS 05.45.040, or a regulation adopted by the Department of Labor under AS 05.20.070;

(2) a violation of the passenger duties imposed under AS 05.45.030 or skier duties imposed under AS 05.45.100 is a complete defense in an action against a ski area operator if the violation is determined to be a contributory factor in the resulting injury, unless the ski area operator has violated a requirement of this chapter, a provision of a plan of operation prepared under AS 05.45.040, or a regulation adopted by the Department of Labor under AS 05.20.070.

(c) If the ski area operator is determined to have violated a requirement of this chapter, a provision of a plan of operation prepared under AS 05.45.040, or a regulation adopted by the Department of Labor under AS 05.20.070, the provisions of AS 09.17.080 apply in an action against a ski area operator for an injury resulting from the violation.

Sec. 05.45.030. Duties of passengers.

(a) A passenger may not board a tramway if the passenger does not have

(1) sufficient physical dexterity or ability and knowledge to negotiate or use the facility safely; or

(2) the assistance of a person authorized by the ski area operator to assist a skier.

(b) A passenger may not

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

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

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

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

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

(6) embark upon a tramway marked as closed;

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

Sec. 05.45.040. Required plan and patrol by ski area operators.

(a) A ski area operator shall prepare a plan of operation for each ski season and shall implement the plan throughout the ski season. A plan of operation must include written provisions for ski patrol, avalanche control, avalanche rescue, grooming procedures, tramway evacuation, hazard marking, missing person procedures, and first aid. Before the operation of the ski area for that season, the plan shall be reviewed and approved by the commissioner of natural resources except that if an agency of the United States manages the land on which the ski area operates, the plan shall be reviewed and approved by that agency. The commissioner of natural resources may require a ski area operator to pay a fee not to exceed the department's cost of reviewing the plan, and may adopt regulations to implement this subsection.

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

(c) Notwithstanding any other law, the state and the commissioner of natural resources are not civilly liable for damages resulting from an act or omission in reviewing, approving, or disapproving a plan of operation under (a) of this section.

Sec. 05.45.050. Required signs for tramways; duties of operators.

(a) A ski area operator who operates a tramway shall maintain a sign system with concise, simple, and pertinent information for the protection and instruction of passengers. Signs shall be prominently placed on each tramway, readable in conditions of ordinary visibility, and where applicable adequately lighted for nighttime passengers. Signs shall be posted

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

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

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

(B) instructions for procedures in emergencies;

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

(4) at all chair lifts stating the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 05.45.060. Required signs for trails and slopes; duties of operators.

(a) A ski area operator shall maintain a sign and marking system as required in this section in addition to that required by AS 05.45.050. All signs required by this section shall be maintained so as to be readable and recognizable under conditions of ordinary visibility.

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

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

(2) the most difficult trails and slopes, designated by a black diamond and the words "most difficult"; trails intended for expert skiers may be marked with a double black diamond and the words "expert only";

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

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

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

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

follows:

difficult) slopes only.

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

(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. A slope without an entrance defined by terrain or forest growth may be closed with a line of signs in a manner readily visible to skiers under conditions of ordinary visibility. 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 "easier" 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 notifies the ski area operator of the closure;

(4) mark hydrants, water pipes, 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 variations in steepness or terrain, whether natural or as a result of slope design, snow making, grooming operations, roads and catwalks, or other terrain modifications;

(5) mark exposed forest growth, rocks, stumps, streambeds, trees, or other natural objects that are located on a slope or trail that is regularly used by skiers or that is regularly packed and prepared by a ski area operator using a snow vehicle and attached implements and that are not readily visible to skiers under conditions of ordinary visibility from a distance of at least 100 feet;

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

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

(f) A ski lift ticket sold or made available for sale to skiers by a ski area operator must

contain in clearly readable print the warning notice specified in (g) of this section.

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

WARNING

Under Alaska law, the risk of an injury to person or property resulting from any of the inherent dangers and risks of skiing rests with the skier. Inherent dangers and risks of skiing include changing weather conditions; existing and changing snow conditions; bare spots, rocks, stumps and trees; collisions with natural objects, man-made objects, or other skiers; variations in terrain; and the failure of skiers to ski within their own abilities.

Sec. 05.45.070. Other duties of ski area operators.

(a) A ski area operator shall equip a motorized snow-grooming vehicle with a light visible at any time the vehicle is moving on or in the vicinity of a ski slope or trail.

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

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

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

(d) A ski area operator shall make available at reasonable fees, instruction and education regarding the inherent danger and risk of skiing and the duties imposed on skiers under this chapter. Notice of the availability of the instruction and education required under this subsection shall be placed in a clearly visible location at the ski area where lift tickets and ski school lessons are sold, in a position to be recognizable as a sign to skiers proceeding to the uphill loading point of each base area lift, and printed on equipment rental agreements.

Sec. 05.45.080. Skiers outside marked boundaries.

A ski area operator does not have a duty arising out of the operator's status as a ski area operator to a skier skiing beyond the area boundaries if the boundaries are marked as required by AS 05.45.060(e)(2).

Sec. 05.45.090. Reckless skiers; revocation of skiing privileges.

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

(b) A ski area operator, upon finding a person skiing in a careless and reckless manner, may revoke that person's skiing privileges. This section may not be construed to create an affirmative duty on the part of the ski area operator to protect skiers from their own or from another skier's carelessness or recklessness.

Sec. 05.45.100. Duties and responsibilities of skiers.

(a) A skier is responsible for knowing the range of the skier's own ability to negotiate a ski slope or trail and to ski within the limits of the skier's ability. A skier is responsible for an injury to a person or property resulting from an inherent danger and risk of skiing, except that a skier is not precluded under this chapter from suing another skier for an injury to person or property resulting from the other skier's acts or omissions. Notwithstanding any other provision of law, the risk of a skier's collision with another skier is not an inherent danger or risk of skiing in an action by one skier against another.

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

(c) A skier may not

(1) ski on a ski slope or trail that has been posted as "closed" under AS 05.45.060(b)(5) and (d):

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

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

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

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

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

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

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

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

(h) A person who violates a provision of (c) or (g) of this section is guilty of a violation as defined in AS 11.81.900. The commissioner of natural resources, a person designated by the ski area operator who is authorized by the commissioner, or an employee of the Department of Natural Resources authorized by the commissioner may issue a citation in accordance with the provisions of AS 41.21.960 to a person who violates (c) or (g) of this section within a ski area over which the state has jurisdiction.

Sec. 05.45.110. Competition; immunity for ski area operator.

(a) The ski area operator shall, before the beginning of a ski competition, allow an athlete who will ski in the competition a reasonable visual inspection of the course or area where the competition is to be held.

(b) An athlete skiing in competition assumes the risk of all course or area conditions, including weather and snow conditions, course construction or layout, and obstacles that a visual inspection would have revealed. A ski area operator is not liable for injury to an athlete who skis in competition and who is injured as a result of a risk described in this subsection.

Sec. 05.45.120. Use of liability releases.

(a) A ski area operator may not require a skier to sign an agreement releasing the ski area operator from liability in exchange for the right to ride a ski area tramway and ski in the ski area. A release that violates this subsection is void and may not be enforced.

(b) Notwithstanding (a) of this section, a ski area operator may

(1) require a special event coach, participant, helper, spectator, or rental customer to sign an agreement releasing the ski area operator from liability in exchange for the right to coach, participate, assist in, or observe the special event; or

(2) use a release agreement required by a third party as a condition of operating a rental program or special event at the ski area.

(c) In this section, "special event" means an event, pass, race, program, rental program, or service that offers competition or other benefits in addition to a ticket representing the right to ride a ski area tramway and ski on the ski slopes or trails, whether or not additional consideration is paid.

Sec. 05.45.200. Definitions.

In this chapter,

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

(2) "conditions of ordinary visibility" means daylight or, where applicable, nighttime, in nonprecipitating weather;

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

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

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

(6) "ski area" means all downhill ski slopes or trails and other places under the

control of a downhill ski area operator: "ski area" does not include a cross-country ski trail;

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

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

(A) skiing;

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

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

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

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

Sec. 05.45.210. Short title.

This chapter may be cited as the Alaska Ski Safety Act of 1994.

Sec. 41.21.960. Form and issuance of citation.

(a) When a peace officer stops or contacts a person concerning the commission of a misdemeanor offense committed within a park or recreational facility subject to the department's supervision, the officer may issue a citation to the person, subject to the provisions of AS 12.25.180 - 12.25.230. The person receiving the citation may not be required to endorse the citation.

(b) The state supreme court shall identify those offenses that are amenable to disposition without court appearance and shall establish by rule or order a schedule of bail amounts, not to exceed fines prescribed by law, for those offenses. Before establishing or amending the schedule of bail amounts required by this subsection, the supreme court shall appoint and consult with an advisory committee consisting of two persons from the department, two district court judges, one member of the House Resources Committee, and one member of the Senate Resources Committee of the legislature. If the offense for which the citation is issued is one that may be disposed of without court appearance, the citing officer shall write on the citation the amount of bail applicable to the cited offense.

(c) A person cited for an offense for which a bail amount has been established under (b) of this section may, within 15 days from the date of the citation, mail or personally deliver to the clerk of the court having jurisdiction over the place where the offense occurred

(1) the amount of bail indicated on the citation for that offense; and

(2) a copy of the citation indicating the offender's waiver of appearance, plea of no contest, and direction to forfeit the bail and any items seized from the offender.

(d) When bail has been forfeited under this section, a judgment of conviction shall be entered. Forfeiture under this section of bail and items seized from the offender is a complete satisfaction for the offense, and the clerk of the court shall provide the offender with a receipt stating that fact if requested.

(e) If the person cited fails to pay the bail amount or appear in court as required, the citation shall be considered a summons for a misdemeanor charge and the offender shall be proceeded against in the manner prescribed by law.

(f) Notwithstanding other provisions of law, if a person cited for a misdemeanor for which a bail amount has been established under (b) of this section appears in court and is found guilty, the penalty that is imposed for the offense may not exceed the bail amount for that offense established under (b) of this section.

Sec. 11.81.900. Definitions.

(a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(b) In this title, unless otherwise specified or unless the context requires otherwise,

(1) "affirmative defense" means that

(A) some evidence must be admitted which places in issue the defense;

and

(B) the defendant has the burden of establishing the defense by a preponderance of the evidence;

(2) "benefit" means a present or future gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary;

(3) "building", in addition to its usual meaning, includes any propelled vehicle or structure adapted for overnight accommodation of persons or for carrying on business; when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered a separate building;

(4) "cannabis" has the meaning ascribed to it in AS 11.71.900(10), (11), and (14);

(5) "conduct" means an act or omission and its accompanying mental state;

(6) "controlled substance" has the meaning ascribed to it in AS 11.71.900(4);

(7) "correctional facility" means premises, or a portion of premises, used for the confinement of persons under official detention;

(8) "credit card" means any instrument or device, whether known as a credit card, credit plate, courtesy card, or identification card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining property or services on credit;

(9) "crime" means an offense for which a sentence of imprisonment is authorized; a crime is either a felony or a misdemeanor;

(10) "criminal street gang" means a group of three or more persons

(A) who have in common a name or identifying sign, symbol, tattoo or other physical marking, style of dress, or use of hand signs; and

(B) who, individually, jointly, or in combination, have committed or attempted to commit, within the preceding three years, for the benefit of, at the direction of, or in association with the group, two or more offenses under any of, or any combination of, the following:

(i) AS 11.41;

(ii) AS 11.46; or

(iii) a felony offense.

(11) "culpable mental state" means "intentionally", "knowingly", "recklessly", or with "criminal negligence", as those terms are defined in (a) of this section;

(12) "dangerous instrument" means any deadly weapon or anything that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury;

(13) "deadly force" means force that the person uses with the intent of causing, or uses under circumstances that the person knows create a substantial risk of causing, death or serious physical injury; "deadly force" includes intentionally discharging or pointing a firearm in the direction of another person or in the direction in which another person is believed to be and intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument;

(14) "deadly weapon" means any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive;

(15) "deception" means to knowingly

(A) create or confirm another's false impression that the defendant does not believe to be true, including false impressions as to law or value and false impressions as to intention or other state of mind;

(B) fail to correct another's false impression that the defendant previously has created or confirmed;

(C) prevent another from acquiring information pertinent to the disposition of the property or service involved;

(D) sell or otherwise transfer or encumber property and fail to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether or not that impediment is a matter of official record; or

(E) promise performance that the defendant does not intend to perform or knows will not be performed;

(16) "defense", other than an affirmative defense, means that

(A) some evidence must be admitted which places in issue the defense;

and
(B) the state then has the burden of disproving the existence of the defense beyond a reasonable doubt;

(17) "defensive weapon" means an electric stun gun, or a device to dispense mace or a similar chemical agent, that is not designed to cause death or serious physical injury.

(18) "drug" has the meaning ascribed to it in AS 11.71.900(9);

(19) "dwelling" means a building that is designed for use or is used as a person's permanent or temporary home or place of lodging;

(20) "explosive" means a chemical compound, mixture, or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including dynamite, blasting powder, nitroglycerin, blasting caps, and nitrojelly, but excluding salable fireworks as defined in AS 18.72.050, black powder, smokeless powder, small arms ammunition, and small arms ammunition primers;

(21) "felony" means a crime for which a sentence of imprisonment for a term of more than one year is authorized;

(22) "fiduciary" means a trustee, guardian, executor, administrator, receiver, or any other person carrying on functions of trust on behalf of another person or organization;

(23) "firearm" means a weapon, including a pistol, revolver, rifle, or shotgun, whether loaded or unloaded, operable or inoperable, designed for discharging a shot capable of causing death or serious physical injury;

(24) "force" means any bodily impact, restraint, or confinement or the threat of imminent bodily impact, restraint, or confinement, "force" includes deadly and nondeadly force;

(25) "government" means the United States, any state or any municipality or other political subdivision within the United States or its territories; any department, agency, or subdivision of any of the foregoing; an agency carrying out the functions of government; or any corporation or agency formed under interstate compact or international treaty;

(26) "highway" means a public road, road right-of-way, street, alley, bridge, walk, trail, tunnel, path, or similar or related facility, as well as ferries and similar or related facilities;

(27) "includes" means "includes but is not limited to";

(28) "incompetent person" means a person who is impaired by reason of mental illness or mental deficiency to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that person;

(29) "intoxicated" means intoxicated from the use of a drug or alcohol;

(30) "law" includes statutes and regulations;

(31) "leased" includes "rented";

(32) "metal knuckles" means a device that consists of finger rings or guards made of a hard substance and designed, made, or adapted for inflicting serious physical injury or death by striking a person;

(33) "misdemeanor" means a crime for which a sentence of imprisonment for a term of more than one year may not be imposed;

(34) "nondeadly force" means force other than deadly force;

(35) "offense" means conduct for which a sentence of imprisonment or fine is authorized; an offense is either a crime or a violation;

(36) "official detention" means custody, arrest, surrender in lieu of arrest, or actual or constructive restraint under an order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release;

(37) "official proceeding" means a proceeding heard before a legislative, judicial, administrative, or other governmental body or official authorized to hear evidence under oath;

(38) "omission" means a failure to perform an act for which a duty of performance

is imposed by law:

(39) "organization" means a legal entity, including a corporation, company, association, firm, partnership, joint stock company, foundation, institution, government, society, union, club, church, or any other group of persons organized for any purpose;

(40) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders;

(41) "person" means a natural person and, when appropriate, an organization, government, or governmental instrumentality;

(42) "physical injury" means a physical pain or an impairment of physical condition;

(43) "police dog" means a dog used in police work under the control of a peace officer;

(44) "possess" means having physical possession or the exercise of dominion or control over property;

(45) "premises" means real property and any building;

(46) "propelled vehicle" means a device upon which or by which a person or property is or may be transported, and which is self-propelled, including automobiles, vessels, airplanes, motorcycles, snow machines, all-terrain vehicles, sailboats, and construction equipment;

(47) "property" means an article, substance, or thing of value, including money, tangible and intangible personal property including data or information stored in a computer program, system, or network, real property, a credit card, a domestic pet or livestock regardless of value, choses-in-action, and evidence of debt or of contract; a commodity of a public utility such as gas, electricity, steam, or water constitutes property but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment is considered a rendition of a service rather than a sale or delivery of property;

(48) "public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence;

(49) "public record" means a document, paper, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card or other document of any other material, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business and preserved or appropriate for preservation by any agency, municipality, or any body subject to the open meeting provision of AS 44.62.310, as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the state or municipality or because of the informational value in it; it also includes staff manuals and instructions to staff that affect the public;

(50) "public servant" means each of the following, whether compensated or not, but does not include jurors or witnesses:

(A) an officer or employee of the state, a municipality or other political subdivision of the state, or a governmental instrumentality of the state, including legislators, members of the judiciary, and peace officers;

(B) a person acting as an advisor, consultant, or assistant at the request of, the direction of, or under contract with the state, a municipality or other political subdivision of the state, or another governmental instrumentality; in this subparagraph "person" includes an employee of the person;

(C) a person who serves as a member of the board or commission created by statute or by legislative, judicial, or administrative action by the state, a municipality or other political subdivision of the state, or a governmental instrumentality;

(D) a person nominated, elected, appointed, employed, or designated to act in a capacity defined in (A) - (C) of this paragraph, but who does not occupy the position;

(51) a "renunciation" is not "voluntary and complete" if it is substantially motivated, in whole or in part, by

(A) a belief that circumstances exist which increase the probability of detection or apprehension of the defendant or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose; or

(B) a decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective;

(52) "serious physical injury" means

(A) physical injury caused by an act performed under circumstances that create a substantial risk of death; or

(B) physical injury that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy;

(53) "services" includes labor, professional services, transportation, telephone or other communications service, entertainment, including cable, subscription, or pay television or other telecommunications service, the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, the use of a computer, computer time, a computer system, a computer program, a computer network, or any part of a computer system or network, and the supplying of equipment for use;

(54) "sexual contact" means

(A) the defendant's

(i) knowingly touching, directly or through clothing, the victim's genitals, anus, or female breast; or

(ii) knowingly causing the victim to touch, directly or through clothing, the defendant's or victim's genitals, anus, or female breast;

(B) but "sexual contact" does not include acts

(i) that may reasonably be construed to be normal caretaker responsibilities for a child, interactions with a child, or affection for a child; or

(ii) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical or mental health of the person being treated;

(55) "sexual penetration" means

(A) genital intercourse, cunnilingus, fellatio, anal intercourse, or an intrusion, however slight, of an object or any part of a person's body into the genital or anal opening of another person's body;

(B) but "sexual penetration" does not include acts performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical health of the person being treated;

(C) each party to any of the acts defined as "sexual penetration" is considered to be engaged in sexual penetration:

(56) "solicits" includes "commands";

(57) "threat" means a menace, however communicated, to engage in conduct described in AS 11.41.520(a)(1) - (7) but under AS 11.41.520(a)(1) includes all threats to inflict physical injury on anyone;

(58) "violation" is a noncriminal offense punishable only by a fine, but not by imprisonment or other penalty; conviction of a violation does not give rise to any disability or legal disadvantage based on conviction of a crime; a person charged with a violation is not entitled

(A) to a trial by jury; or

(B) to have a public defender or other counsel appointed at public expense to represent the person;

(59) "voluntary act" means a bodily movement performed consciously as a result of effort and determination, and includes the possession of property if the defendant was aware of the physical possession or control for a sufficient period to have been able to terminate it.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 134

Revision Date: _____ Dept Affected: Natural Resources
 Title: Authority of the Department of Natural BRU: Land Development
Resources to issue citations for certain skiing violations... Component: Land Development
 Sponsor: REP. HUDSON
 Requestor: (H)JUD Component Serial No. 431

Expenditures/Revenues (Inflation not included unless otherwise noted below) (Thousands of Dollars)

	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
OPERATING EXPENDITURES						
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	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
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 (FY99) cost: \$ none

POSITIONS

	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated fiscal impact to DNR associated with implementation of this legislation.

Prepared by: Jane Angvik, Director Phone: 907-269-8503
 Division: Land Date: 26-Mar-99
 Approved by Commissioner: John Shively Date: 3-26-99
 Agency: Natural Resources

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Background Information on HB 134 Ski Violations Bail Schedule

- In 1994, the 18th Alaska State Legislature enacted the Alaska Ski Safety Act which itemized the responsibilities of both the ski areas and the skiers and more clearly defined the rights and responsibilities of both parties.
- The amendments that are being proposed in HB 134 are to clarify the statutes and they are considered to be consistent with the original provisions of the Alaska Ski Safety Act.

Section 1:

- ❖ AS 05.45.100 (h) is amended by deleting "over which the state has jurisdiction"
- This amendment is needed because existing law limits the department's authority to those ski areas over which the state has jurisdiction. There has been discussion as to what constitutes "state jurisdiction". One interpretation of this language is those areas that are on state lands and the other being those areas that are required to submit an operations plan to DNR as is stipulated in AS 05.45.040 of the Alaska Ski Safety Act.
- The deletion of ambiguous language as proposed in Section 1 of HB 134 will bring clarification to the Statute. Additionally, it will create a level playing field, allowing all ski areas to be included in the provisions under AS 05.45.100 (h) of the Alaska Ski Safety Act.

Section 2:

- ❖ AS 05.45.100 is amended by adding a new subsection (i)

This language is a technical amendment that will give the Courts the necessary authority to establish a bail schedule so that the existing provisions can be enforced.

- A provision within the current Alaska Ski Safety Act gives the Commissioner of DNR the authority to fine skiers who disregard specific provisions of the Act. It is for the purpose of establishing the bail schedule and providing for the full implementation of the Act that this legislation has been introduced.
- The Alaska Supreme Court ruled that the language in the original legislation was not specific enough to give them the authority to establish a bail schedule.
 - In December of 1994 DNR requested the Courts to adopt a bail forfeiture schedule for specific violations of the Alaska Ski Safety Act as included in AS 05.45.100 (c) & (g).
 - The Alaska Supreme Court responded to this request by declining to create such a schedule because: "there is no clear authorization in the statute for such a schedule" based on the fact that Administrative Rule 43(a) states: "The Supreme Court will consider adopting a bail forfeiture schedule only when so authorized by statute . . . ". The Court decided the language in AS 05.45.100 (h) is not an adequate authorization.
 - It should be noted that AS 05.45.100 (h) does contain a reference to AS 41.21.960 which is the Statute that pertains to "Form and Issuance of Citation". At the time the Alaska Ski Safety Act was written, it was thought that this would be adequate authority for the Courts to establish the bail schedule. Nonetheless, the Courts didn't feel that this gave them sufficient authority.

Section 3:

- ❖ amend AS 12.25.190 (c) to include citations for skiing violations

This language is added in order to be consistent with provisions regarding other similar types of citations.