

SB

175

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
Rep. Jim Holm
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: May 18, 2003
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS0908\U.A, CSSB 175 (JUD) (efd fld), incorporating the attached two amendments. The bill was passed out of committee today and will be on the House floor this afternoon. I have also written the changes into the attached copy of the bill for clarification of the amendments.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

A#1: P.4, L.2
"insert
"installation"

FAILS

Amendment # 2 - passes

P.3, L. 2-3

delete "injury, death, or damage
was not the result of an inherent
risk of the sports or recreational
activity that was provided"

After "if the"

insert: "negligence was the proximate
cause of the injury, death, or damage"

Amendment # 3 - passes

P.3, L.12

After "sport"

* delete "of" and insert "or"

CS FOR SENATE BILL NO. 175(JUD)(efd fld)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Amended: 5/14/03
Offered: 5/9/03

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for inherent risks in sports or recreational activities."

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

3 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 FINDINGS AND INTENT. (a) The legislature finds that

6 (1) all sports or recreational activities involve inherent risks that provide the
7 challenge and excitement that entice people to participate in those activities;

8 (2) people should accept the risks inherent in sports or recreational activities
9 and be responsible for injuries and damages resulting from those inherent risks;

10 (3) the state has a legitimate interest in maintaining the economic viability of
11 the sports or recreational activities industry by discouraging claims based on injuries and
12 damages resulting from risks inherent in sports or recreational activities;

13 (4) providers of sports or recreational activities should not be required to alter
14 the challenge and excitement of the activities by controlling risks inherent in the activities;
15 and

1 (5) the liability of providers of sports or recreational activities should be
2 limited to negligence that is not associated with the inherent risks of sports or recreational
3 activities.

4 (b) It is the intent of this Act to

5 (1) limit or eliminate the liability of a provider of a sports or recreational
6 activity to a participant in the activity when an injury or damage caused by or to the
7 participant is the result of risks inherent in the activity; and

8 (2) encourage the broad construction of the Act to shield providers of sports or
9 recreational activities from liability for injuries and damages caused by the inherent risks of
10 sports or recreational activities.

11 * Sec. 2. AS 05.25.040 is amended to read:

12 **Sec. 05.25.040. Owner's civil liability.** Except as provided under
13 AS 09.65.290, the [THE] owner of a boat is liable for injury or damage caused by the
14 negligent operation of the owner's boat whether the negligence consists of a violation
15 of a state statute or the failure to exercise ordinary care in the operation of the boat as
16 the rules of the common law require. The owner is not liable, however, unless the
17 boat is used with the owner's express or implied consent. It is presumed that the boat
18 is being operated with the knowledge and consent of the owner if, at the time of the
19 injury or damage, it is under the control of the owner's spouse, father, mother, brother,
20 sister, son, daughter, or other member of the owner's immediate family. This chapter
21 does not relieve any other person from a liability that the person would otherwise
22 incur and does not authorize or permit recovery in excess of injury or damage actually
23 incurred.

24 * Sec. 3. AS 09.65 is amended by adding a new section to read:

25 **Sec. 09.65.290. Civil liability for sports or recreational activities.** (a) A
26 person who participates in a sports or recreational activity assumes the inherent risks
27 in that sports or recreational activity and is legally responsible for all injuries or death
28 to the person or other persons and for all damage to property that results from the
29 inherent risks in that sports or recreational activity.

30 (b) This section does not require a provider to eliminate, alter, or control the
31 inherent risks within the particular sports or recreational activity that is provided.

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(c) This section does not apply to a civil action based on the

(1) negligence of a provider if the ~~injury, death, or damage was not the result of an inherent risk of the sports or recreational activity that was provided;~~

negligence was the proximate cause of the injury, death or damage

(2) design or manufacture of sports or recreational equipment or products or safety equipment used incidental to or required by a sports or recreational activity.

(d) Nothing in this section shall be construed to conflict with or render as ineffectual a liability release agreement between a person who participates in a sports or recreational activity and a provider.

(e) In this section,

(1) "inherent risks" means those dangers or conditions that are characteristic of, intrinsic to, or an integral part of a sport ^{or} recreational activity;

(2) "provider" means a person or a federal, state, or municipal agency that promotes, offers, or conducts a sports or recreational activity, whether for pay or otherwise;

(3) "sports or recreational activity"

(A) means a commonly understood sporting activity, whether undertaken with or without permission, including baseball, softball, football, soccer, basketball, hockey, bungee jumping, parasailing, bicycling, hiking, swimming, skateboarding, horseback riding and other equine activity, dude ranching, mountain climbing, river floating, whitewater rafting, canoeing, kayaking, hunting, fishing, backcountry trips, mushing, backcountry or helicopter-assisted skiing, alpine skiing, nordic skiing, snowboarding, telemarking, snow sliding, snowmobiling, off-road and all-terrain vehicle use;

(B) does not include

(i) boxing contests, sparring or wrestling matches or exhibitions that are subject to the requirements of AS 05.10;

(ii) activities involving the use of devices that are subject to the requirements of AS 05.20; or

(iii) skiing or sliding activities at a ski area that are subject to the requirements of AS 05.45.

GARA

Amendment * withdrawn

Delete p. 3 line 2-3

Insert "inherent risk of the sports or recreational activity that was provided, except insofar as the provider was negligent."

GARA

Amendment * 2 - withdrawn

Insert at p. 3 line 1

~~Delete p. 3 line 2-3~~

(d) Immunity under this section shall apply if the injury is the result of the ~~inherent~~ inherent risk of the sports or recreational activity that was provided, except insofar as the provider was negligent, and the negligence caused the injury. "

& renumber subsections accordingly

Amendment ~~***~~

withdrawn
by 6/1/2019

e. This section does not apply if the cause of action is based upon the failure of a professionally designed sports arena to have or utilize normal safety equipment designed to protect patrons who purchase tickets to watch sporting events.

ALASKA STATE SENATE



Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2327
(907) 465-5241 Fax

Interim:
119 N. Cushman, Suite 201
Fairbanks, Alaska 99701
(907) 456-8161
Senator_Ralph_Seekins@legis.state.ak.us

Senator Ralph Seekins
District D

SB 175 Sponsor Statement

Civil Liabilities for Commercial Recreational Activities

Alaska has many recreational opportunities to offer outdoor enthusiasts. Visitors from all over the world, along with in-state recreationalists, enjoy commercial activities such as river rafting, guided hiking, snowboarding and sport fishing to name a few. Yet, the high cost of liability insurance presents a significant barrier to these enterprises, the vast majority of which are small Alaska-based companies.

Without exception, participation in outdoor recreational activities carries with it a degree of inherent risk. Senate Bill 175 adds the presumption that a participant accepts the inherent risks of a commercial recreation activity and as such has played a role in any damages resulting from that inherent risk.

This legislation will decrease uncertainties regarding the legal responsibilities for injuries and encourage the continued viability of responsible businesses that offer commercial recreational activities to the public. Existing legal uncertainties have resulted in high liability insurance costs, which are prohibitive, especially for smaller businesses.

This Bill will help avoid unfair and unreasonable claims that make it difficult to provide recreational and outdoor activities that are closely identified with the Alaska lifestyle and have come to be expected by visitors looking for exceptional experiences.

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9 and be responsible for injuries and damages resulting from those inherent risks;

10 (3) the state has a legitimate interest in maintaining the economic viability of
11 the sports or recreational activities industry by discouraging claims based on injuries and
12 damages resulting from risks inherent in sports or recreational activities;

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6 activity to a participant in the activity when an injury or damage caused by or to the
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10 sports or recreational activities.

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13 AS 09.65.290, the [THE] owner of a boat is liable for injury or damage caused by the
14 negligent operation of the owner's boat whether the negligence consists of a violation
15 of a state statute or the failure to exercise ordinary care in the operation of the boat as
16 the rules of the common law require. The owner is not liable, however, unless the
17 boat is used with the owner's express or implied consent. It is presumed that the boat
18 is being operated with the knowledge and consent of the owner if, at the time of the
19 injury or damage, it is under the control of the owner's spouse, father, mother, brother,
20 sister, son, daughter, or other member of the owner's immediate family. This chapter
21 does not relieve any other person from a liability that the person would otherwise
22 incur and does not authorize or permit recovery in excess of injury or damage actually
23 incurred.

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27 in that sports or recreational activity and is legally responsible for all injuries or death
28 to the person or other persons and for all damage to property that results from the
29 inherent risks in that sports or recreational activity.

30 (b) This section does not require a provider to eliminate, alter, or control the
31 inherent risks within the particular sports or recreational activity that is provided.

1 (c) This section does not apply to a civil action based on the

2 (1) negligence of a provider if the injury, death, or damage was not the
3 result of an inherent risk of the sports or recreational activity that was provided; or

4 (2) design or manufacture of sports or recreational equipment or
5 products or safety equipment used incidental to or required by a sports or recreational
6 activity.

7 (d) Nothing in this section shall be construed to conflict with or render as
8 ineffectual a liability release agreement between a person who participates in a sports
9 or recreational activity and a provider.

10 (e) In this section,

11 (1) "inherent risks" means those dangers or conditions that are
12 characteristic of, intrinsic to, or an integral part of a sport or recreational activity;

13 (2) "provider" means a person or a federal, state, or municipal agency
14 that promotes, offers, or conducts a sports or recreational activity, whether for pay or
15 otherwise;

16 (3) "sports or recreational activity"

17 (A) means a commonly understood sporting activity, whether
18 undertaken with or without permission, including baseball, softball, football,
19 soccer, basketball, hockey, bungee jumping, parasailing, bicycling, hiking,
20 swimming, skateboarding, horseback riding and other equine activity, dude
21 ranching, mountain climbing, river floating, whitewater rafting, canoeing,
22 kayaking, hunting, fishing, backcountry trips, mushing, backcountry or
23 helicopter-assisted skiing, alpine skiing, nordic skiing, snowboarding,
24 telemarking, snow sliding, snowmobiling, off-road and all-terrain vehicle use;

25 (B) does not include

26 (i) boxing contests, sparring or wrestling matches or
27 exhibitions that are subject to the requirements of AS 05.10;

28 (ii) activities involving the use of devices that are
29 subject to the requirements of AS 05.20; or

30 (iii) skiing or sliding activities at a ski area that are
31 subject to the requirements of AS 05.45.

1 * Sec. 4. Section 9, ch. 28, SLA 2000 is amended to read:

2 Sec. 9. AS 05.25.040 is repealed and reenacted to read:

3 Sec. 05.25.040. **Owner's civil liability.** Except as provided under
4 AS 09.65.290, the [THE] owner of a watercraft is liable for injury or damage caused
5 by the negligent operation of the owner's watercraft whether the negligence consists of
6 a violation of a state statute or neglecting to observe ordinary care in the operation of
7 the watercraft as the rules of the common law require. The owner is not liable,
8 however, unless the watercraft is used with the owner's express or implied consent. It
9 is presumed that the watercraft is being operated with the knowledge and consent of
10 the owner if, at the time of the injury or damage, it is under the control of the owner's
11 spouse, father, mother, brother, sister, son, daughter, or other member of the owner's
12 immediate family. This chapter does not relieve any other person from a liability that
13 the person would otherwise incur and does not authorize or permit recovery in excess
14 of injury or damage actually incurred.

15 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 APPLICABILITY. This Act applies to acts or omissions that occur on or after the
18 effective date of sec. 3 of this Act.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 175
(S) Publish Date: 4/30/03

Revision Date/Time: _____ Dept. Affected: Law
Title: "An Act relating to civil liability for commercial BRU Civil Division
recreational activities and for guest passengers..." Component: Special Litigation
Sponsor: Senator Seekins
Requester: Senate Labor and Commerce Component No.: 2213

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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)

FUND SOURCE	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

SB 175 establishes the responsibilities of persons who operate commercial recreational activities and persons who participate in those recreational activities and to decrease uncertainty regarding the legal responsibility for injuries that result from participation in commercial recreational activities. Under this bill, owners or operators of an aircraft or watercraft would not be liable for civil damages of a guest passenger if the owner or operator is not being compensated for the transportation, except under certain specified circumstances.

The Department of Law does not anticipate a fiscal impact as a result of this bill.

Prepared by: Kathryn Daughhete Phone (907) 465-3673
Division: Attorney General's Office Date/Time 4/29/03 12:09 PM
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 4/29/2003
Agency: Department of Law

to fax 465-5241



ALASKA WILDLAND

ADVENTURES

Printed On Recycled Paper

April 28, 2003

Senator Seekins, Chair
Senate Judiciary Committee
Alaska Senate
Juneau, Alaska

Dear Senator Seekins,

This letter is in support of SB 175, Recreation Liability Legislation, as it appears in the committee substitute.

Alaska Wildland Adventures operates rafting and fishing trips on the Kenai River, and we also operate statewide, small-group nature tours that range from the Kenai Peninsula to Denali National Park to Fairbanks. We have twelve year around employees and over 60 seasonal employees. Risks are inherent in any outdoor activity, including our programs, and these risks cannot be eliminated without destroying the unique nature of the activities.

As I understand it, the clarification of legal responsibilities provided by SB 175 will be very helpful in avoiding legal claims that are without merit.

Respectfully,

Kirk Hoessle
President

Subject: SB175

Date: Mon, 28 Apr 2003 21:34:34 -0800

From: "Roark and Deborah" <roark@xyz.net>

To: <brian_hove@legis.state.ak.us>

CC: <lindaa@gci.net>

Senator Seekins and Brian Hove,

I would like to express my support for SB175 and the committee substitute as submitted by ATIA. This is a very important piece of legislation for Alaska businesses that needs to be passed this session. Thanks for your help with this bill, your hard work is much appreciated.

Roark Brown
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Homer's leading provider of recreational activities
www.homerocean.com
www.ottercoveresort.com