

HB

188

Representative Mike Hawker

Alaska State Legislature



Session:

State Capitol
Juneau, AK 99801
907 465-4949 direct
800 478-4950 toll free
907 465-4979 fax

Interim:

716 W 4th Avenue
Anchorage, AK 99501
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Member:

House Finance Committee
Legislative Budget
& Audit Committee

House District 32:

Agle River
Anchorage
Rainbow
Indian
Bird
Girdwood
Portage
Whittier
Sunrise
Hope

Memorandum

To: Senator Ralph Seekins, Chair
Senate Judiciary Committee

From: Representative Mike Hawker *Mike Hawker*

Date: 4/15/2004

Re: House Bill 188-Bail Schedule for Skiing Violation

I request House Bill 188- "An Act relating to the authority of the Department of Natural Resources to issue citations for certain skiing violations; relating to establishing a bail schedule for certain skiing violations and to procedures for issuing a citation for a skiing violation." be scheduled for a hearing at the earliest possible convenience in the Senate Judiciary Committee.

The 18th Alaska Legislature passed the Alaska Ski Safety Act in 1994. The establishment of a bail schedule was intended in the original Ski Safety Act, however the court ruled they needed more specific statutory directive to do so.

House Bill 188 is necessary to direct the Supreme Court to establish a bail forfeiture schedule for violations codified in the Ski Safety Act. It is not the intent of House Bill 188 to change any part of the original Alaska Ski Safety Act.

Attached to this memo are the bill, sponsor statement, sectional analysis, relevant statutes, letters from the Alaska Court System regarding the bail schedule, fiscal notes and letters of support.

We are expecting testimony from Anchorage, Girdwood and Juneau.

If you have any questions, please contact myself or Sara Wright of my staff at 6899.

Thank you for your consideration of this request.

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House Bill 188 Sponsor Statement

The 18th Alaska Legislature passed the Alaska Ski Safety Act (ASSA) in 1994. This Act codified certain duties and responsibilities of both downhill ski-area operators and downhill skiers using those facilities. The ASSA facilitates development and management of a safe and responsible downhill skiing industry in Alaska.

HB 188 does not change any aspect of the original ASSA or the rights, responsibilities or authorities codified therein. HB 188 is supported by both the Department of Natural Resources and the ski industry in Alaska.

Section 1 of HB 188 clarifies that the ASSA is applicable to both state operated and privately operated downhill ski areas. The original language stating the ASSA was applicable within a ski area "over which the state has jurisdiction" was originally intended to distinguish state legal jurisdiction from preemptive federal legal jurisdiction. Confusion over the applicability of the ASSA is resolved by deleting this distinction.

Section 2 of HB 188 clarifies language in the original ASSA that the Alaska Court System found inadequate to compel their compliance with legislative intent.

HB 188 Sponsor Statement
Page 2 of 3

The ASSA intended for the Alaska Supreme Court to establish a bail forfeiture schedule for certain offenses. The Supreme Court declined to create such a schedule concluding they did not have the adequate statutory authorization required by Administrative Rule 43(a). HB 188 clearly directs the Supreme Court to establish a bail forfeiture schedule for violations of specified provisions the ASSA.

A "violation" is a noncriminal offense that is punishable only by a fine. A bail forfeiture schedule is a list of fines for specified offenses. Without a bail schedule, the fine for all violations specified the ASSA is \$50 for each offense. The bail schedule allows different fines for different violations in an amount up to \$150 per offense.

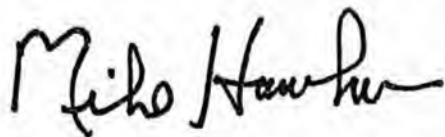
Section 3 of HB 188 adds citations issued for violations of the ASSA to the special list of citations that are exempt from the general statutory requirement that citation documents require violators to make a written promise to appear in court. This promise is not appropriate for violations that are punishable only by a fine.

Alaska Ski Safety Act

The following is provided for background information on the ASSA. It is not the intent of the sponsor of HB188 to change any aspect of the original ASSA or the rights, responsibilities or authorities codified therein.

Section 05.45.100 of the ASSA specifies the following violations:

1. Skiing on a ski slope or trail that has been posted as "closed"
2. Not using a safety strap or device capable of stopping the ski should the ski become unattached from the skier
3. Crossing the uphill track of a ... tow except at locations designated by the operator, or placing an object in an uphill track
4. Moving uphill on a tramway or using a ski slope or trail while the skier's ability is impaired by the influence of alcohol or a controlled substance
5. Knowingly entering 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. Except for the purpose of securing aid for a person injured in a 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 ... after obtaining aid.



Representative Mike Hawker

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 188
 (H) Publish Date: 2/26/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Bail Schedule for Skiing Violations BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Hawker
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB188.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 2/20/04 8:10 AM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/20/2004
 Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB188
 (H) Publish Date: 3/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
 Title Bail schedule for skiing violations RDU Resource Development
 Component Claims, Permits & Leases
 Sponsor Rep. Hawker
 Requester (H) RES Component No. 2460

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Bob Loeffler, Director Phone 269-8600
 Division Mining, Land and Water Date/Time 2/24/04
 Approved by: Thomas Irwin, Commissioner Date 2/24/04
 Agency Natural Resources

**Alaska
Ski Safety Act**

AS 05.45

THE
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ARE
POOR
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COPIES

Sec. 05.35.100. Alaska Winter Olympics account. [Repealed, § 2 ch 6 SLA 1986.]

Sec. 05.35.150. Alaska amateur sports fund. [Repealed, § 12 ch 42 SLA 1997.]

Chapter 40. Alaska Amateur Sports Authority.

[Repealed, § 9 ch 115 SLA 1989.]

Chapter 45. Ski Liability, Safety, and Responsibility.

Section

- 10. Limitation on actions arising from skiing
- 20. Effect of violations
- 30. Duties of passengers
- 40. Required plan and patrol by ski area operators
- 50. Required signs for tramways; duties of operators
- 60. Required signs for trails and slopes; duties of operators
- 70. Other duties of ski area operators

Section

- 80. Skiers outside marked boundaries
- 90. Reckless skiers; revocation of skiing privileges
- 100. Duties and responsibilities of skiers
- 110. Competition; immunity for ski area operator
- 120. Use of liability releases
- 200. Definitions
- 210. Short title

Cross references. — For safety, inspection and regulation of recreational devices, see AS 05.20; for limitations on claims arising from skiing, see AS 09.65.135; for legislative findings and purpose in connection with the enactment of this chapter, see

§ 1, ch. 63, SLA 1994 in the Temporary and Special Acts.

Effective date of chapter. — Section 4, ch. 63, SLA 1994 makes this chapter effective May 26, 1994, in accordance with AS 01.10.070(c).

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. (§ 2 ch 63 SLA 1994)

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 and Workforce Development 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 and Workforce Development 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 and Workforce Development 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 and Workforce Development 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. (§ 2 ch 63 SLA 1994)

Revisor's notes. — In 1999, "Department of Labor and Workforce Development" in each subsection in accordance with § 90, ch. 58, SLA 1999.

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. (§ 2 ch 63 SLA 1994)

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. (§ 2 ch 63 SLA 1994)

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. (§ 2 ch 63 SLA 1994)

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";

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(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:

**WARNING: This lift services (most difficult) or
(most difficult and more difficult) or (more
difficult) slopes only.**

(d) If a particular trail or slope or portion of a trail or slope is closed to the public by a ski area operator, the operator shall place a sign notifying the public of that fact at each identified entrance of each portion of the trail or slope involved. 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.

(§ 2 ch 63 SLA 1994)

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. (§ 2 ch 63 SLA 1994)

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). (§ 2 ch 63 SLA 1994)

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.

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(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. (§ 2 ch 63 SLA 1994)

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. (§ 2 ch 63 SLA 1994)

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. (§ 2 ch 63 SLA 1994)

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. (§ 2 ch 63 SLA 1994)

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. (§ 2 ch 63 SLA 1994)

Sec. 05.45.210. Short title. This chapter may be cited as the Alaska Ski Safety Act of 1994. (§ 2 ch 63 SLA 1994)

Chapter 90. Miscellaneous Provisions.

Section

01. Racing events

Sec. 05.90.001. Racing events. (a) To the extent that it is consistent with federal law and regulations, a special racing event of limited duration that is conducted according to (b) of this section may be held on a state highway.

(b) The Department of Public Safety, with the concurrence of the Department of Transportation and Public Facilities, may grant, and for cause cancel, permission to conduct a special racing event as provided in this section upon terms and conditions and at times and places the department may determine. If an applicant's permission is refused or cancelled, the applicant may request the Department of Public Safety for a hearing. The hearing shall be conducted under the provisions of the Administrative Procedure Act (AS 44.62). (§ 2 ch 192 SLA 1970; am §§ 1, 2 ch 32 SLA 1983)

Revisor's notes. — Formerly AS 05.35.010 and 05.35.020. Renumbered and reorganized in 1981.

Cross references. — For state's immunity from liability for injuries arising out of permitted events, see AS 44.80.070.

Collateral references. — 4 Am. Jur. 2d, Amusements and Exhibitions, §§ 28, 29-34, 46, 78. 61A C.J.S., Motor Vehicles, §§ 571-587.

Zoning regulation forbidding "racing" or a "race track." 83 ALR2d 877.

Liability of participant in unauthorized highway race for injury to third person directly caused by other racer. 13 ALR3d 431.

Liability of public authority for injury arising out of automobile race conducted on street or highway. 80 ALR3d 1192.

Automobile or horse race: liability for injury or death of participant in automobile or horse race at public track. 13 ALR4th 623.

**Excerpt from
AS 11.81.900**

**Defining
“Violation”**

(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;

(55) "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;

(56) "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;

(57) "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;

(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; or

(iii) that are a necessary part of a search of a person committed to the custody of the Department of Corrections or the Department of Health and Social Services;

(58) "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

(i) 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; or

(ii) that are a necessary part of a search of a person committed to the custody of the Department of Corrections or the Department of Health and Social Services;

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

(59) "solicits" includes "commands";

(60) "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;

(61) "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;

**Form and
issuance of
citation**

AS 41.21.960

Article 10. General Provisions.

Section
950. Penalty
955. Enforcement authority

Section
960. Form and issuance of citation
990. Definitions

Sec. 41.21.950. Penalty. A person who violates a provision of this chapter or a regulation adopted under this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than six months, or by both. (§ 1 ch 161 SLA 1970)

Revisor's notes. — Enacted as AS 41.20.200. Renumbered as AS 41.20.043 in 1970. Renumbered again in 1983.

NOTES TO DECISIONS

Stated in *State v. Lawrence*, 858 P.2d 635 (Alaska Ct. App. 1993).

Sec. 41.21.955. Enforcement authority. (a) For offenses committed within parks and recreational facilities subject to the department's supervision, the following persons are peace officers of the state and they shall enforce the provisions of this chapter and the regulations adopted under this chapter:

- (1) an employee of the department authorized by the commissioner;
- (2) a police officer in the state;
- (3) any other person authorized by the commissioner.

(b) Each person designated in (a) of this section may, when enforcing the provisions of this chapter or a regulation adopted under this chapter,

- (1) execute a warrant or other process issued by an officer or court of competent jurisdiction;
- (2) administer or take an oath, affirmation or affidavit; and
- (3) arrest or issue a citation to a person who violates a provision of this chapter or a regulation adopted under this chapter. (§ 1 ch 161 SLA 1970; am § 2 ch 102 SLA 1984)

Revisor's notes. — Enacted as AS 41.20.210. Renumbered as AS 41.20.045 in 1970. Renumbered again in 1983.

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

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(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. (§ 3 ch 102 SLA 1984; am § 4 ch 25 SLA 1995; am § 46 ch 30 SLA 1996)

Cross references. — For parks bail forfeiture schedule, see Alaska Court Rule of Administration 43.3.

Effect of amendments. — The 1995 amendment, effective August 9, 1995, added "if requested" at the end of subsection (d).

The 1996 amendment, effective May 16, 1996, substituted "Forfeiture under this section of bail and items seized" for "Bail forfeited under this section and the forfeiture of items seized" at the beginning of the second sentence of subsection (d).

Sec. 41.21.990. Definitions. In this chapter

(1) "scenic park" means relatively spacious areas of outstanding natural significance, where major values are in their natural geological, faunal or floral characteristics, the purpose of which is directed primarily toward the preservation of its outstanding natural features and where development is minimal and only for the purpose of making the areas available for public enjoyment in a manner consistent with the preservation of the natural values such as camping, picnicking, sightseeing, nature study, hiking, riding and related activities which involve no major modification of the land, forests or waters, and without extensive introduction of artificial features or forms of recreational development that are primarily of urban character;

(2) "wilderness park" means an area whose predominant character is the result of the interplay of natural processes, large enough and so situated as to be unaffected, except in minor ways, by what takes place in the nonwilderness around it, a physical condition which activates the innermost emotions of the observer and where development of man-made objects will be strictly limited and depend entirely on good taste and judgment so that the wilderness values are not lost. (§ 1 ch 161 SLA 1970; am § 1 ch 82 SLA 1972; am § 43 ch 85 SLA 1988)

Revisor's notes. — Enacted as AS 41.20.220. Renumbered as AS 41.20.047 in 1970. Renumbered again in 1983.

Cross references. — For additional definitions, see AS 41.99.900.

Chapter 22. Outdoor Recreational, Open Space, and Historic Properties Development.

[Renumbered as AS 41.98.170 — 41.98.180.]

Chapter 23. Multiple Use Management of Public Resources.

Article

1. Public Use Areas (§§ 41.23.010 — 41.23.170)
2. Recreation Rivers (§§ 41.23.400 — 41.23.510)
3. Recreational Mining Areas (§§ 41.23.600 — 41.23.630)

**Exemption from
requirement for written
promise to appear in
court in citations issued
for violations for which
various bail schedules
have been established**

AS 12.25.180

AS 12.25.190

NOTES TO DECISIONS

Arrest for speedy trial purposes. — "Arrest," as used in Crim. R. 45(c)(1), which provides for a 120-day speedy trial period, must be defined in conformity with the statutory definition of an arrest. *G.D. v. State*, 681 P.2d 366 (Alaska Ct. App. 1984).

Defendant was not arrested on the date of the child-in-need-of-aid hearing, and the 120-day speedy trial period did not begin to run until he was served with a copy of the information charging him with sexual assault in the first degree and contributing to the delinquency of a minor. *G.D. v. State*, 681 P.2d 366 (Alaska Ct. App. 1984).

Where a defendant was suspected of driving while intoxicated leading to an injury accident, was informed that he could submit to a blood test at the hospital or be arrested and transported to the state police where he would be required by law to submit to a breath test to determine his blood-alcohol level, was released after the blood sample was taken, and was never handcuffed or moved from the hospital, the trial court could find that although the defendant was in police custody, the custody never amounted to an arrest as defined in this section. *Greenawalt v. Municipality of Anchorage*, 692 P.2d 983 (Alaska Ct. App. 1985).

Reading Cr. R. 45 and AS 12.25.160 together, as interpreted by this court and the Alaska supreme court, the time for trial begins to run from the date the defendant is arrested and held to answer for the commission of a specific crime as well as any subsequent charges arising out of the same conduct or same

criminal episode. *Knowlton v. State*, 795 P.2d 1287 (Alaska Ct. App. 1990).

The arrest of a parolee for a parole violation, which is an independent crime, did not trigger the beginning of the 120-day period for prosecution of the underlying offense under Cr. R. 45. *Knowlton v. State*, 795 P.2d 1287 (Alaska Ct. App. 1990).

The differing purposes governing parole revocation proceedings and criminal trials warranted a conclusion that defendant was not "held to answer" for the commission of the crime of forgery, AS 12.25.160, by virtue of his arrest for violating the conditions of his parole even though the condition violated was that defendant refrain from committing further crimes. *Knowlton v. State*, 795 P.2d 1287 (Alaska Ct. App. 1990).

Drawn guns and handcuffing do not necessarily turn stop into arrest. *Howard v. State*, 664 P.2d 603 (Alaska Ct. App. 1983).

Lawful stops and custodial arrest distinguished. — See *Howard v. State*, 664 P.2d 603 (Alaska Ct. App. 1983).

Applied in *Goss v. State*, 390 P.2d 220 (Alaska 1964); *Aldridge v. State*, 602 P.2d 798 (Alaska 1979); *Maynard v. State*, 652 P.2d 489 (Alaska Ct. App. 1982).

Quoted in *Jacobson v. State*, 786 P.2d 388 (Alaska Ct. App. 1990); *Dementieff v. State*, 814 P.2d 745 (Alaska Ct. App. 1991).

Cited in *Cannizzaro v. State*, 765 P.2d 110 (Alaska Ct. App. 1988).

Article 2. Citations.

Section

180. When peace officer may issue citation or take person before the court
 190. When person to be given five-day notice to appear in court
 195. Disposition of scheduled offenses

Section

200. Form for citations
 210. Disposition and records of citations
 220. When copy of citation considered a lawful complaint
 230. Failure to obey citation

Sec. 12.25.180. When peace officer may issue citation or take person before the court. (a) When a person is stopped or contacted by a peace officer for the commission of a misdemeanor or the violation of a municipal ordinance, the person may, in the discretion of the contacting peace officer, be issued a citation instead of being taken before a judge or magistrate under AS 12.25.150, unless

- (1) the person does not furnish satisfactory evidence of identity;
- (2) the contacting officer has reasonable and probable cause to believe the person is a danger to self or others;
- (3) the crime for which the person is contacted is one involving violence or harm to another person or to property;
- (4) the person asks to be taken before a judge or magistrate under AS 12.25.150; or
- (5) the peace officer has probable cause to believe the person committed a crime involving domestic violence; in this paragraph, "crime involving domestic violence" has the meaning given in AS 18.66.990.

(b) When a person is stopped or contacted by a peace officer for the commission of an infraction or a violation, the person shall be issued a citation instead of being taken before a judge or magistrate under AS 12.25.150, unless

- (1) the person does not furnish satisfactory evidence of identity; or
- (2) the person refuses to accept the citation or to give a written promise to appear as provided for under AS 12.25.190(c). (§ 1 ch 31 SLA 1973; am § 19 ch 127 SLA 1974; am § 3 ch 144 SLA 1977; am § 34 ch 102 SLA 1980; am § 9 ch 64 SLA 1996)

Effect of amendments. — The 1996 amendment, effective July 1, 1996, in subsection (a), added paragraph (5) and made related stylistic changes.

Legislative history reports. — For report on ch. 31, SLA 1973 (SB 25), see 1973 Senate Journal Supplement No. 7, p. 2.

NOTES TO DECISIONS

Credibility of witnesses. — Since the trial court has the primary responsibility for evaluating witness credibility, where the court concluded that a police officer's version of events was credible, probable cause existed to stop the defendant and issue a citation, and there was no error in denying the defendant's suppression motion. *Vigue v. State*, 987 P.2d 204 (Alaska Ct. App. 1999).

Subsection (a) does not require a citation to be

issued. — Subsection (a) authorizes a police officer to issue a citation to a misdemeanor offender in lieu of making an arrest, unless one of the four enumerated exceptions applies. But the statute does not require a police officer to follow this course. *Jurco v. State*, 825 P.2d 909 (Alaska Ct. App. 1992).

Applied in *Ahmaogak v. State*, 595 P.2d 985 (Alaska 1979).

Sec. 12.25.190. When person to be given five-day notice to appear in court.

(a) When a person is contacted by a peace officer and the peace officer exercises the option provided for in AS 12.25.180, the officer shall prepare a written citation and issue it to the person.

(b) The time specified in the notice to appear shall be at least five days after the alleged violation or the issuance of the citation, whichever is later, unless the person cited requests an earlier hearing.

(c) The person cited for the crime shall give a written promise to appear in court by signing at least one copy of the written citation prepared by the peace officer, and the officer shall deliver a copy of the citation to the person. The written promise requirement of this subsection does not apply to boating citations for which a bail schedule has been established under AS 05.25.090(b), motor vehicle and traffic citations for which a bail or fine schedule has been established under AS 28.05.151, fish and game citations for which a bail schedule has been established under AS 16.05.165, citations issued under AS 04.21.065, citations issued under AS 18.35.341, citations issued in state park and recreational facilities under AS 41.21.960, or littering citations issued under AS 46.06.080. (§ 1 ch 31 SLA 1973; am § 20 ch 127 SLA 1974; am § 4 ch 144 SLA 1977; am § 20 ch 178 SLA 1978; am § 12 ch 34 SLA 1984; am § 1 ch 102 SLA 1984; am § 1 ch 132 SLA 1984; am § 1 ch 37 SLA 1987; am § 1 ch 76 SLA 1987; am § 3 ch 81 SLA 1989; am § 25 ch 28 SLA 2000)

Delayed amendment of subsection (c). — Under sec. 30, ch. 28, SLA 2000, effective on the earlier of July 1, 2005, or the occurrence of the contingency described in sec. 30(2), ch. 28, SLA 2000, (c) of this section will be repealed and reenacted. The contingency described in sec. 30(2), ch. 28, SLA 2000, gives effect to the change "90 days after the date the chair of the Alaska Legislative Council notifies the revisor of statutes that in the previous state fiscal year the state did not receive and does not anticipate receiving federal funding for a statewide boating and safety education program; the director of the division of legislative finance shall notify the chair of the Alaska Legislative Council when the state, in the previous fiscal year, did not receive federal funding for a statewide boating and safety program; the chair of the Alaska Legislative Council may not give the notice described in this paragraph unless the notice is approved by a vote of a majority of the members of the Alaska Legislative Council." Thereafter, subsection (c)

will be reenacted to read as follows: "(c) The person cited for the crime shall give a written promise to appear in court by signing at least one copy of the written citation prepared by the peace officer, and the officer shall deliver a copy of the citation to the person. The written promise requirement of this subsection does not apply to motor vehicle and traffic citations for which a bail or fine schedule has been established under AS 28.05.151, fish and game citations for which a bail schedule has been established under AS 16.05.165, citations issued under AS 04.21.065, citations issued under AS 18.35.341, citations issued in state park and recreational facilities under AS 41.21.960, or littering citations issued under AS 46.06.080."

Under sec. 1(b), ch. 28, SLA 2000, any intervening amendments to subsection (c) are not to be retained when that subsection is amended under sec. 30, ch. 28, SLA 2000.

NOTES TO DECISIONS

Applied in *Ahmaogak v. State*, 595 P.2d 985 (Alaska 1979).

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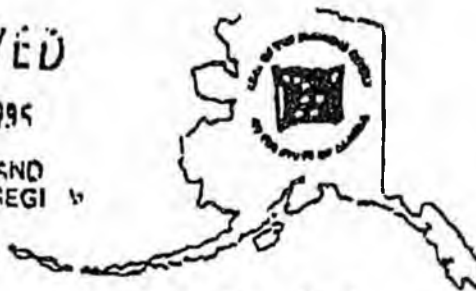
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Letters from Alaska Court System

**identifying need for
specific legislative
authorization to create a
ball forfeiture schedule**

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Susan Miller
Office of Special Projects

Alaska Court System
State of Alaska
OFFICE OF THE ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, Alaska 99501-2099

Phone: (907) 264-3329
Fax: (907) 258-6968

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(b) 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:fb

Enclosure

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.

Memorandum

Alaska Court System

101 E. Street, Anchorage, AK 99501-2099
Phone: 354-8229 Fax: 238-4959

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

**Additional
Information
and
Letters of support**

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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February 24, 2004

The Honorable Mike Hawker
Alaska State Legislature
State Capitol, Room 434
Juneau, AK 99801

Dear Representative Hawker:

My staff and I have reviewed House Bill 188, proposed changes to the Alaska Ski Safety Act. The revisions allow the Department of Natural Resources (DNR) employees to issue citations for certain skiing violations by establishing a bail schedule for these violations. The bill also extends this DNR authority to all Alaskan ski area operators. Currently DNR's authority is limited to those areas operating under state jurisdiction. Alaskan ski area operators have proposed similar revisions in the past, including HB 134 in 1999. The operators' primary concern is that DNR was never granted the authority to establish bail schedules for ski safety act violations and that all ski areas — those on state land and those on other lands — be treated equally in regards to enforcement of these violations.

When the Alaska Ski Safety Act was passed in 1994, DNR anticipated having the responsibility of issuing a citation for the infractions listed in AS 5.45.100 (c) and (g) for ski areas operating on state lands. However, when attempting to enact a bail schedule for these violations through state court officials it was determined the 1994 legislation lacked the specific direction the courts needed to establish a bail schedule. My staff and ski area managers are particularly concerned that skiers who violate closed areas and boundaries be subject to a fine sufficient to discourage this dangerous behavior. I believe this revision is an important safety concern for both the skiers who violate closed areas and the resort employees who must search for or rescue their customers.

DNR anticipates that this bill will cause a minor increase in workload and will have minimal impact on other DNR operations. DNR supports passage of HB 188.

Sincerely,



Thomas E. Irwin
Commissioner

cc: Bob Loeffler, Director, ML&W



Alaska Division
National Ski Patrol
PO Box 92207
Anchorage, Alaska 99509

February 21, 2004

House Resources Committee
Alaska State Capitol, Room 124
Juneau, Alaska 99801

Dear Co-Chair Dahlstrom and Co-Chair Masek,

The members of the Alaska Division of the National Ski Patrol urge you to adopt HB 188, providing an amendment to the Alaska Ski Safety Act. This correction is necessary to correct a major deficiency of the existing law.

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. This is a good piece of legislation which well serves both the skiing public and the ski area operators.

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.

HB 188 provides specific language for a bail schedule to be created to enforce the safety provisions of the act. These changes are necessary to protect the safety and well-being of Alaskan skiers, protect others such as patrollers and resort personnel, and maintain consistency with the provisions of the Alaska Ski Safety Act. Skiers who act recklessly and do not observe closure areas can create extremely unsafe conditions for those who may be forced to rescue them.

The Alaska Division represents nearly 400 paid and volunteer ski patrollers across the State of Alaska.

Thank you for your careful consideration of this matter.

Sincerely yours,

Chris Ross
Division Director



A Facility of Youth Exploring Adventure, Inc. A Non-Profit Organization
Dedicated to Developing Recreational Facilities for Our Alaskan Youth

Representative Mike Hawker
State Capital Building Rm 434
Juneau, Alaska 99801-1182

February 25, 2004

Dear Representative Mike Hawker

I have had time to review the proposed House Bill No.188 package that you sent me and would like to offer our support in making this important legislation happen. Without this legislation there are no consequences for persons that willfully and knowingly violate provisions already included in the Alaska Ski Safety Act. It is unfortunate that this detail was overlooked when the Alaska Ski Safety Act was initially passed. It is extremely important that this legislation pass for the safety of all those Alaskans that enjoy this wonderful outdoor recreation and abide by the rules. Without consequences for the people who do not abide by the guidelines, as set forth in the Alaska Ski Safety Act, many innocent people are at risk.

I am hopeful that House Bill No. 188 will be introduced, gain support and be passed in this legislative session. It is vital that our Legislators recognize the importance of having this tool available to those persons that are out there on the front lines enforcing safety.

Please let me know if there is anything more that I can do to help you in this effort.

Sincerely,

A handwritten signature in black ink that reads "Steven P. Remme". The signature is written in a cursive style.

Steven P. Remme
CEO Hilltop Ski Area

February 19, 2004

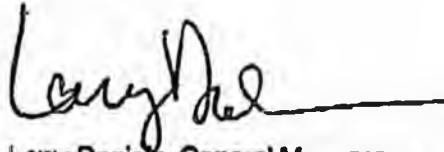
Representative Mike Hawker
State of Alaska

Fx. 907 465-4979

Alyeska Resort strongly supports the enactment of House Bill 188, which would allow for citations to be issued in ski areas throughout the State and provides the Court with the necessary authority to adopt the bail forfeiture schedule for the violations included in the Statute. These measures will allow for full implementation and improved enforcement of the original Alaska Ski Safety Act.

House Bill 188 amends sections of the Alaska Ski Safety Act that have proven to unenforceable. The proposed amendments are technical in nature; they clarify the statutes and are consistent with the original provisions of the Alaska Ski Safety Act.

Thank you,



Larry Daniels, General Manager -

Skilling and Golf

Eaglecrest Ski Area

February 20, 2004

The Honorable Mike Hawker
House of Representatives
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Hawker:

Thank you for your support of the ski industry in Alaska. Your sponsorship of HB 188 is certainly appreciated. We feel this legislation will give Alaska ski areas an effective tool for dealing with violators of the Ski Safety Act.

The Alaska Ski Safety Act of 1994 allows the Commissioner of the Department of Natural Resources to designate authorized individuals who may issue citations. 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 the legislative amendment you introduced. 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 places 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 mobility is impaired by the influence of alcohol or a controlled substance as defined in AS 11.71.900 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 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.

In December of 1994 the Department of Natural Resources, Division of Lands recommended the following bail schedule.

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/out a stopping device	\$50.00
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 the influence of alcohol or drugs	\$100.00
AS 05.45.100(c)5	Skiing in closed area	\$150.00
AS 05.45.100(g)	Skier involved in collision leaves the scene of an accident	\$150.00

It should be noted that this legislation carries out the original intent of the Ski Safety Act, which is very specific on what violations would be subject to citations. The proposed legislation does not address skiers or snowboarders who venture outside the ski area boundary, although the Ski Safety Act notes that skiers/snowboarders do so at their own risk.

Sincerely,



Gary Mendivil,
Business Manager