

**SB**

**175**

# ALASKA STATE SENATE



Session:  
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Senator\_Ralph\_Seekins@legis.state.ak.us

**Senator Ralph Seekins**  
District D

## SB 175 Sponsor Statement

### Civil Liabilities for Commercial Recreational Activities

Alaska offers outdoor enthusiasts myriad recreational opportunities. Many visitors from Outside, as well as in-state recreationalists, enjoy commercial activities such as river rafting, guided hiking, snowboarding and sport fishing to name a few. However, the high cost of liability insurance presents a substantial barrier to these enterprises, the vast majority of which are small Alaska-based companies.

Senate Bill 175 delineates the burden of responsibility for the commercial recreation business as well as the person who elects to participate in that recreational activity. It addresses specific guidelines operators and participants must follow to minimize the possibility of accidents. Nevertheless, commercial businesses are still responsible for meeting safety standards and providing trained and competent personnel as required by the Bill.

Without exception, participation in outdoor recreational activities carries with it a degree of inherent risk. However, SB 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. Likewise, a non-paying guest who is transported by a non-commercial aircraft or watercraft is considered to have assumed the same inherent risks as the commercial recreation user.

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.

23-LS0908\Q  
Ford  
4/30/03

**CS FOR SENATE BILL NO. 175(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-THIRD LEGISLATURE - FIRST SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**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 **and providing for an effective date."**

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

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

6 **FINDINGS AND INTENT.** (a) The legislature finds that

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

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

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

14 (4) providers of sports or recreational activities should not be required to alter

1 the challenge and excitement of the activities by controlling risks inherent in the activities;  
2 and

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

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

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

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

13 \* Sec. 2. AS 05.25.040 is amended to read:

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

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

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

1 activity.

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

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

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

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

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

13 (e) In this section,

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

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

19 (3) "sports or recreational activity"

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

28 (B) does not include

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

31 (ii) activities involving the use of devices that are

1 subject to the requirements of AS 05.20; or

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

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

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

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

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

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

22 \* Sec. 6. Section 4 of this Act takes effect on the date sec. 9, ch. 28, SLA 2000, takes  
23 effect.

24 \* Sec. 7. Except as provided in sec. 6 of this Act, this Act takes effect July 1, 2003.

Sectional Analysis

CS for HB 319

(Same as SB 175)

**Section 1:** Establishes the purpose of the bill, which is to decrease the legal uncertainties regarding liability for injuries that result from participation in commercial recreational activities.

As well, the purpose of this legislation is to encourage the continued availability of businesses that offer recreational activities to the public.

**Section 2:** Amends Title 5 – Amusements & Sports, by adding a new chapter entitled, “Civil Liability for Commercial Recreational Activities.”

1. This chapter establishes an acceptance of inherent risk on the part of the participants and responsibilities of the operators. Specifically,
  - a. **Acceptance of inherent risks.** Participation in a commercial recreational activity constitutes acceptance of the inherent risks.
  - b. **Contributory negligence.** A person who accepts the inherent risks of a commercial recreational activity is contributorily negligent to the extent that the inherent risk caused the injury or loss. An action to recover damages shall be reduced for contributory negligence as provided under \*AS 09.50.030.
  - c. **Responsibilities of participants.** The participant is responsible to learn about and to expressly accept the risks of the activity and they must heed all relative warnings. They must act within the constraints of their health. The participant must heed all warnings regarding their The participant must maintain control of themselves, any minors under their control and any equipment or animals that the participant is using. The participant must not act in a fashion that could contribute to the injury of another participant.
  - d. **Responsibilities of operators of commercial recreational activities.** An operator must explain to the participants the fundamental inherent risks of the commercial recreational activity and must explain the skills and equipment that are not apparent to a novice. The operator must ensure that employees that assist participants are trained in basic first aid and in CPR. The operator must maintain all equipment, provide trained and competent employees and act in a reasonably safe and competent manner.
  - e. **Interaction with other laws.** This chapter doesn't affect the immunity of the ski area operator immunity or owner of unimproved land.

- f. **Effect of violations.** A commercial operator who breaches their responsibilities laid out in this chapter is negligent and liable to the extent that the breach caused injury or loss to a participant.

**Section 3:** Amends Title 9 by adding a new section entitled, "Civil liability for aircraft and watercraft guest passengers."

1. This chapter establishes that an owner or operator is not liable for civil damages of their guest except for damages resulting from:
  - a. gross negligence or reckless or intentional misconduct
  - b. an act or omission of a common carrier owner or operator
  - c. an act or omission that occurs while demonstrating an aircraft or watercraft to a prospective buyer
1. This new section also provides that if the owner or operator has insurance is not liable for damages that exceed their insurance coverage.
2. The owner or operator is not shielded by this chapter if they fail to provide notice to the guest that they are uninsured.

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 175 (L&C)  
 () Publish Date: \_\_\_\_\_

Revision Date/Time: \_\_\_\_\_ Dept. Affected: Law  
 Title "An Act relating to civil liability for commercial BRU Civil Division  
recreational activities and for guest passengers..." Componen' Special Litigation  
 Sponsor Senator Seekins  
 Requester Senate Labor and Commerce Componen' 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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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  
Homer Ocean Charters/Otter Cove Resort  
PO Box 2543  
Homer, AK 99603  
(800) 426-6212 ofc. (907) 399-1269 cell  
e-mail: [roark@xyz.net](mailto:roark@xyz.net)  
Homer's leading provider of recreational activities  
[www.homerocean.com](http://www.homerocean.com)  
[www.ottercoveresort.com](http://www.ottercoveresort.com)

# ALASKA STATE SENATE



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Senator\_Ralpr\_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.

# LEGAL SERVICES

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

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

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

May 7, 2003

**SUBJECT:** Civil liability for sports or recreational activities  
(CSSB 175(JUD), Draft Version "Q")

**TO:** Senator Ralph Seekins  
Attn: Brian

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

You have asked if the amendment to AS 05.25.040 in secs. 2 and 4 of CSSB 175(JUD) conflicts with the amendment to AS 05.25.040 made in secs. 1 and 3 of CSSB 98(TRA). The answer is no. Both bills amend AS 05.25.040, but the amendments are for different provisions of law. Assuming both CSSB 175(JUD) and CSSB 98(TRA) become law, the revisor of statutes would reconcile both of the amendments and add the new law as a part of AS 05.25.040.

Please contact me if you have further questions.

MFF:med  
03-500.med

23-LS0908S

Ford

5/7/03

**CS FOR SENATE BILL NO. 175(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-THIRD LEGISLATURE - FIRST SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered:**

**Referred:**

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