

**HB**

**25**



# REPRESENTATIVE PAUL SEATON

## SESSION ADDRESS

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Juneau, Alaska 99801-1182  
(907) 465-2689  
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## ALASKA STATE LEGISLATURE

House District 35

### HB 25

#### Sponsor Statement

House Bill 25 encourages recreational use of private lands by protecting landowners who allow free public access to their lands.

HB 25 stipulates that a private landowner does not owe to a person using his or her property for recreational purposes, (1) a duty to keep the land safe for use, (2) a duty to warn of unsafe conditions, or (3) a duty to curtail the use of their land for recreational purposes. A landowner receives no protection under the bill if they either charge for access or are guilty of intentional, reckless or grossly negligent conduct.

Current state law does not directly address recreational use of private lands. Alaska's Recreational Activities statute, AS.09.65.290, passed by the legislature in 2003, mainly addresses commercial operators. Some landowners are protected by Alaska's unimproved land statute, AS.09.65.200, but it is difficult to determine what lands qualify in more developed areas. Lands near any sort of structure, or that have been altered slightly from their natural state, such as a hayfield, may not be covered under that statute.

Parties interested in allowing public access of their lands are unable to assess their risks. The courts likewise have few means of interpreting legislative intent regarding the relationship between landowner and recreational land user. HB 25 eliminates these ambiguities by granting immunity for the recreational use of private lands in the same manner adopted by most other states.

HB 25 promotes recreation throughout Alaska by clarifying the rights and responsibilities of landowners, encouraging them to allow the public free recreational use of their lands.

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB025-DOA-RM-01-18-07  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): 1/17/2007 Dept. Affected: Administration  
 Title An act relating to landowners' immunity RDU Risk Management  
for allowing recreational activity Component Risk Management  
 Sponsor Representative Seaton, Wilson  
 Requester House Resources Component No. 71

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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 (FY2007) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Risk Management is not affected by this legislation.

"Land" and "landowner" as specifically defined within this proposed legislation is limited to private not public ownership - therefore there is no application to state lands and agency operations covered by the Risk Management self insurance program.

Prepared by: J. Brad Thompson, Director Phone 465-5723  
 Division Risk Management Date/Time 1/18/07 10:00 AM  
 Approved by: Kevin Brooks, Deputy Commissioner Date 1/22/2007  
 Agency Department of Administration

# 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

January 18, 2007

**SUBJECT:** Sectional summary (HB 25 (Work Order No. 25-LS0174A))

**TO:** Representative Paul Seaton  
Attn: Katie Shows

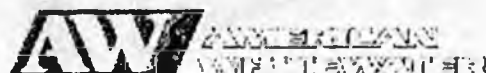
**FROM:** Dennis C. Bailey *DCB*  
Legislative Counsel

You have requested a sectional summary of the above described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents. Since you have not asked particular questions about the bill, the summary is intentionally brief.

**Section 1.** Limits the duties owed by a landowner who allows recreational activity, without charge, on the landowner's land unless the landowner acts intentionally or recklessly, or is grossly negligent. Also, provides that recreational land use may not form the basis for a claim of adverse possession or similar claim.

If I may be of further assistance, please advise.

DCB:med  
07-027.med



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## Liability And Recreational Use Statutes

posted December 11, 2000 by Jason Robertson

American Whitewater has prepared this table with substantial help from the International Mountain Biking Association (IMBA) and the American Association for Horsemanship Safety (AAHS) as a tool for understanding the differences between state recreational use statutes on a national basis. This table is a valuable tool; however it is not the final word on liability law in America. Exercise your own good judgement when using the material and verify the status of your state statutes independently with an attorney before relying on this data.

### What are Recreational Use Statutes and how do they work?

#### Clarification of terms used in this table.

#### Credits and Appreciation.

STATE	YEAR PASSED	DUTY TO DUTY		LIABILITY FOR MISCONDUCT PROTECTION		
		KEEP SAFE	TO WARN	ASSURANCE OF SAFETY	WILFUL/WANTON	LOST IF FEE CHARGED
<b>Alabama</b>						
Alabama Code §35-15-1	1965, 1981	No	No	No	Yes	No, if use of land is non-commercial
<b>Alaska</b>						
Alaska Stat. §09.65.200	1980	Not Specified	Not Specified	Not Specified	Yes	Yes
<b>Arizona</b>						
Arizona Rev. Stat. Ann. §33-1551	1983	Not Specified	Not Specified	Not Specified	Yes	Yes
<b>Arkansas</b>						
Arkansas Stat.	1965,	No	No	No	Yes	Yes, but fees

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Ann. §18-11-301	1983, 1991					from land leased to public agency allowed
<b>California</b>						
California Govt. Code §2-2-3-2-846	1963, 1988	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Colorado</b>						
Colorado Rev. Stat. §33-41-101	1963, 1970	Not Specified	Not Specified	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Connecticut</b>						
Connecticut Gen. Stat. §52-557(f)	1971, 1990	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Delaware</b>						
Delaware Code Ann. §7-VI-5901	1953	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Florida</b>						
Florida State. Ann. §XXVIII-375.251	1963	No	No	No	Yes	Yes
<b>Georgia</b>						
Georgia Code Ann. §51-3-20	1965	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Hawaii</b>						
Hawaii Rev. Stat. §3-28-520-1	1969	No	No	No	Yes	Yes, but fees from land leased to

						public agency allowed
<b>Idaho</b>						
<u>Idaho Code §36-16</u>	1976, 1988	No	No	No	Not Specified	Yes
<b>Illinois</b>						
<u>Illinois Ann. Stat. §745-65-1</u>	1965	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Indiana</b>						
<u>Indiana Code Ann. §14-22-10</u>	1969, 1995, 1998	No, for recreation trails; not specified for other locations.	Not Specified	No	Yes	Yes
<b>Iowa</b>						
<u>Iowa Code Ann. §XI-2-461(C)</u>	1967	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Kansas</b>						
<u>Kansas Stat. Ann. §58-3201</u>	1965, 1988	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Kentucky</b>						
<u>Kentucky Rev. Stat. Ann. §XXXVI-411-190</u>	1968, 2000	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Louisiana</b>						
<u>Louisiana Rev. Stat. Ann. §9-III-V-2-2791 &amp; 2795</u>	1964, 1989	No	No	No	Yes	Yes

**Maine**

Maine Rev. Stat. Ann. §14-1-7-159(A)	1979, 1995	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
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**Maryland**

Maryland Nat. Res. Code Ann. §5-1101	1957, 1998	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
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**Massachusetts**

Massachusetts Gen. Law Ann. §I-21-17(C)	1972	Not Specified	Not Specified	Not Specified	Yes	Yes, but voluntary payments are allowed
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**Michigan**

Michigan Comp. Laws Ann. §324.73301	1994	No	No	No	Yes	Yes, but may charge a fee for "U-Pick" crops & not lose immunity
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**Minnesota**

Minnesota Stat. Ann. §604(A)20	1961, 1994	No	No	No	Yes	Yes but fees from land leased to public agency allowed
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**Mississippi**

Mississippi Code Ann. §89-2-1	1978, 1986	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
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**Missouri**

Missouri §XXXVI-537.345	1983	No	No	No	Yes	Yes
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**Montana**

Montana Rev. Code Ann. §70-	1965, 1995	No	Not Specified	No	Yes	Yes
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16-301

**Nebraska**

Nebraska Rev. Stat. §37-730	1965, 1998	No	No	No	Yes	Yes, except can charge group rates & not lose immunity
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**Nevada**

Nevada Rev. Stat. §41.510	1963, 1995	No	No	No	Yes	Yes
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**New Hampshire**

New Hampshire Rev. Stat. Ann. §XVIII-212-34	1961, 1982	No	No	No	Yes	Yes, but may charge a fee for "U-Pick" crops & not lose immunity
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**New Jersey**

New Jersey Stat. Ann. §13-1 (B)B-15-133	1968, 1984	No	No	No	Yes	Yes
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**New Mexico**

New Mexico Stat. Ann. §17-4-7; §66-3-1013; §16-3-9	1973	No	Not Specified	No	Yes	Yes, but fees from land leased to public agency allowed
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**New York**

New York Gen. Oblig. Law §9-103	1963	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
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**North Carolina**

North Carolina Gen. Stat. §113 (A)-6-95	1987 Trails Act, 1993	Not Specified	Not Specified	Not Specified	Not Specified	Only applies to trails & not other uses of land
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**North Dakota**

North Dakota Cent. Code §53-	1965, 1993	No	No	No	Yes	Yes, but fees from land
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08-1						leased to public agency allowed
<b>Ohio</b>						
Ohio Rev. Code Ann. §XV-33-18	1963, 1995	No	Not Specified	No	Not Specified	Yes
<b>Oklahoma</b>						
Oklahoma Stat. Ann. Title §76-10	1965, 1994	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Oregon</b>						
Oregon Rev. Stat. §105.672	1971, 1995	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Pennsylvania</b>						
Pennsylvania Stat. Ann. §68-11-477	1965	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>Rhode Island</b>						
Rhode Island Gen. Law §32-6-1	1978	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>South Carolina</b>						
South Carolina Code Ann. §27-3-10	1962	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
<b>South Dakota</b>						
South Dakota Comp. Laws Ann. §20-9-11	1966, 1990	No	No	No	Yes	Yes, but nonmonetary gifts up to \$100 allowed

**Tennessee**

Tennessee Code Ann. §11-10-101	1988	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
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**Texas**

Texas Stat. & Codes §4-75.001	1965, 1999	No	Not specified	No	Yes	No. Revenue from charges may not exceed 2x prop. taxes
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**Utah**

Utah Code Ann. §57-14-1	1971, 1997	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
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**Vermont**

Vermont Stat. Ann. §10-020-441 & §12-5791	1967, 1993	No	Not Specified	No	Yes	Yes
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**Virginia**

Virginia Code §29.1-509	1950	No	No	No	Yes	Yes, but may charge fees to maintain the land & not lose immunity
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**Washington**

Washington Rev. Code Ann. §4-24.200	1967, 1997	Not Specified	Not Specified	Not Specified	Yes	Yes, but may charge for cutting firewood & not lose immunity
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**West Virginia**

West Virginia Code §19-25-1 Also see West Virginia's Whitewater Responsibility	1965	No	No	No	Yes	Yes
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Act §20-3b-1 to 5						
<b>Wisconsin</b>						
Wisconsin Stat. Ann. §895.52	1963, 1995	No	No	No	Not Specified	No, so long as total revenues don't exceed \$2000 annually
<b>Wyoming</b>						
Wyoming Stat. Ann. §34-19-101	1965	No	No	No	Yes	Yes, but fees from land leased to public agency allowed

**CLARIFICATION OF TERMS:**

**YEAR PASSED:** When was the recreational use statute passed or modified?

**DUTY TO KEEP SAFE:** Does the owner owe a duty of care to keep their premises safe for entry and use by others for recreational purposes?

**DUTY TO WARN:** Does the owner owe any duty to warn visitors of hazardous conditions, structures, or activities on their property to persons entering for recreational purposes?

**ASSURANCE OF SAFETY:** Does the owner who gives permission to another for recreational activities on their property thereby extend any assurance that the premises are safe?

**LIABILITY FOR MISCONDUCT WILFUL/WANTON:** Does the statute limit the landowner's liability for wilful or malicious failure to guard or warn against known dangerous conditions, uses, structures, or activities?

**PROTECTION LOST IF FEE CHARGED:** Does the statute limit the landowner's liability for injuries suffered in any case where access permission is granted for commercial enterprise or profit? In other words, does the landowner lose their protection under the statute if they charge an access fee?

**CREDITS:**

American Whitewater collected the majority of this data via private research, correspondence, and assistance from the following sources:

## Letters of Support –HB 25

### Organizations

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Alaska Trails  
State Farm Insurance council, Lessmeier & Winters  
Kachemak Heritage Land Trust  
Alaska Outdoor Council (write-up in Outdoor Alaska publication)  
Pratt Museum

#### Letters/Resolutions addressing HB 415\*

Alaska State Chamber  
National Rifle Association of America  
Kenai Peninsula Borough (Resolution)  
City of Homer (Resolution)  
Coalition for Homer Open Space and Trails  
Homer Soil and Water Conservation District

### Individuals                      **HB 25**

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Kathy S. Corp	Homer
Valarie Connor	Homer
Bill Smith	Homer
Elaine Martin	Wasillia
Mossy Kilcher	Homer
<u>Letters addressing HB 415*</u>	
James & Dianne Mahaffey	Anchorage
Kelley Griffin (Matsu Sled Dog Council)	Wasilla
Wayne Clark	Gustavus
Kathryn Kennedy	Ninilchik
Carol Grace (Snowmands Snowmachine Club)	Homer
Dave & Molly Brann (Kachemak Ski Club)	Homer

#### Additional letters from the following are available upon request from the sponsor:

Milli Martin	Homer
Lois Bettini	Homer
Kevin & Jeanne Walker	Homer
Roberta Highland	Homer
Al Poindexter	Homer
David Scheer	Homer
Lindsay Winkler	Homer
Wayne Watson	Homer
Heather Beggs	Homer
Bruce Hess	Homer
Tamara Schmidt	Homer
Barb Seaman	Homer
Kenneth Jones	Homer
Jeanne Parker	Homer

\*Note: Identical legislation was introduced last session under bill number HB 415. These letters of support speak to HB 415 but address the same topic/bill as HB 25.

January 24, 2007

Representative Paul Seaton  
Capitol Building, Room 102  
Juneau, AK 99801

Dear Representative Seaton:

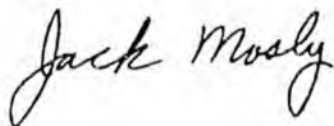
I would like you to know we continue to support your efforts to encourage recreational use of private lands by protecting landowners who allow free public access to their lands as we did last year with HB 415. We applaud your efforts in 2007 with House Bill 25, "An Act relating to landowners' immunity for allowing use of land for recreational activity..." We support your efforts to protect private property owners from lawsuits that could result from the informal recreational use of trails and property when no fees are collected by the landowner.

Liability from recreational activities has been a long-term concern by the private landowners within Alaska. Since Alaska Trails was formed in 2003, we have addressed trail issues statewide. We recognize the liability concern as the number one reason why private landowners are hesitant to grant public access across their lands. HB 25 addresses that concern and we support its passage. In addition, we believe that amending AS 34.17.055 so that easements granted "to the public" also receive liability immunity is an important step in preserving and protecting public trail access.

Thank you for your efforts to reduce this landowner concern and to increase recreational opportunities, especially trail access, across Alaska.

Please do not hesitate to contact us if we can provide additional support for HB25.

Sincerely,



Jack Mosby  
Past President

**LESSMEIER & WINTERS**

LAWYERS - LLC

VINTAGE BUSINESS PARK  
3000 VINTAGE BOULEVARD  
SUITE 100  
JUNEAU, ALASKA 99801

MICHAEL L. LESSMEIER  
GREGORY W. LESSMEIER  
SHELDON E. WINTERS

TELEPHONE: (907) 796-4999  
FACSIMILE: (907) 796-4998  
E-MAIL: l-w@gci.net

VIA HAND DELIVERY  
Representative Paul Seaton  
Alaska State Legislature  
State Capitol, Room 102  
Juneau, Alaska 99801-1182


January 22, 2007

Re: HB 25

Dear Representative Seaton:

I am pleased to voice State Farm's support for House Bill 25 relating to landowners' immunity for recreational activity. If there is any information we can provide, please let me know.

Sincerely,



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Sheldon E. Winters  
Lobbyist for State Farm



## Kachemak Heritage Land Trust

315 Klondike Avenue • Juneau, AK 99603 • ph: 907-235-5263 • fax: 907-234-1503 • [www.kachemaklandtrust.org](http://www.kachemaklandtrust.org)

January 23, 2007

Representative Paul Seaton  
Capitol Building, Room 102  
Juneau, Alaska 99801

Dear Representative Seaton,

Thank you for taking the lead to sponsor and push House Bill 25 through the legislative process during this session. I write today to express strong support for the passage of this bill on behalf of the board of directors, staff and over 400 supporters of Kachemak Heritage Land Trust.

As you know, Kachemak Heritage Land Trust has worked on trails issues, and access for the public in general, for many years. Without a doubt, the potential for liability to private landowners allowing access to the public presents one of the few problems to creating viable trail networks for our community. Most landowners support trail development and use and would almost certainly allow the public to cross their lands if the liability in doing so were lessened.

The passage of House Bill 25 will make a significant difference in the development of a comprehensive network of public trails, enhancing recreational opportunities for both residents and visitors. This action will result in improved public health, increased economic vitality and a land-use planning tool that can be counted on as the Kenai Peninsula – and other rapidly-developing areas of Alaska -- develop more residential areas.

Thanks very much for your time and attention. We will make our membership aware of this upcoming bill and will ask that they contact you and Senator Stevens to express their support.

Sincerely,

Barbara Seaman  
Executive Director

highway. With support from the AOC Representative Bill Stoltze and Senator Charlie Huggins sponsored legislation to create the **Knik River Public Use Area** after some people proposed banning ATVs and airboats from the area. The Department of Natural Resources will now initiate a public process to determine just how the area is regulated. Watch for more details here, or in AOC Email Alerts.

Rep. Stoltze introduced legislation that would **allow the Mat-Su Borough to take state land** from the Hatcher Pass Public Use Area. AOC opposed this legislation because the Mat-Su Borough has failed to allow reasonable access to public lands. AOC opposes giving the Borough more land until they allow public access to the public land they have now. After it became clear that the Borough had failed to gain support of Mat-Su residents in their quest to take lands out of the public use area, Rep. Stoltze withdrew his legislation, effectively killing the land transfer for another year.

Long-time AOC supporter Senator Ralph Seekins introduced SB 170 last year in an effort to combine an **increase in hunting and trapping fees with several changes to Fish and Game statutes (Title 16)**. AOC testified on the bill last summer when the Senate Resources Committee held hearings around the state. Senator Seekins brought the bill up again this year, with support from AOC, but ran out of time. AOC's proposed changes to the fish and game statutes were addressed in the Spring 2006 newsletter. AOC will continue to work with legislators during the next session to secure needed funding from license holders for active game management.

For some time now Senator Seekins has been trying to open up state land in the **Dalton Highway corridor** from the Yukon River north. Current law bans off-road vehicles from operation for 5-miles on either side of the road. Seekins sponsored SB 85, which would repeal the ban and start a planning process within DNR to implement rules for ORV use in the corridor. BLM has also begun preliminary plans for developing a comprehensive off-highway vehicle plan in partnership with the state. The bill passed the Senate but fell short in the House. AOC supported SB 85 just as we support most legislation to allow access to state land as long as regulations are in place to maintain the high quality of the wildlife habitat. We hope Senator Seekins will re-introduce this legislation to allow more Alaskans to enjoy the outdoors.

Over the past couple of years legislators have introduced various versions of a bill that would create a **wildlife viewing fee**. Again this year there were bills in both the House and Senate. Senator Con Bunde sponsored SB 166, which would require that anyone between 16 and 60 pay a \$5 fee to view Alaska's wildlife. The fee would be waived for anyone who already holds a hunting, trapping or fishing license. SB 166 died in the Senate Resources Committee. Look for some version of this idea to surface again next year.

Rep. Paul Seaton, of Homer, introduced HB 415, which would have held **landowners immune from liability** if they allowed access to their lands free of charge. There are cases where public recreational lands are separated by sections of private land. The private land holders don't oppose people crossing their land, but fear the potential for liability. Seaton tried to waive that liability if the land owners warn of any dangerous conditions. The bill passed the House, but never got a vote in the Senate. Chances are that a bill similar to HB 415 will be re-introduced next year.

Two management bills that didn't make it were HB 464 and HB 472. HB 464 was introduced by AOC member and outdoorsman Rep. Eric Croft and would have prohibited a hunter from taking the horns or antlers unless they **salvaged at least 50% of the meat** from the kill. The House Resources Committee held a couple of good hearings on this bill late in the session. Rather than supporting a reduction in the amount of meat currently required by law for salvage, which is essentially *all* the edible meat, AOC used the hearings to again advocate for stronger enforcement of game laws. HB 464 died in the House Judiciary Committee. HB 472 was introduced by our good friend Rep. Bill Stoltze and would have put the **Susitna Drainage Salmon Management Plan**, currently in policy, into statute. ADF&G opposed this legislation stating that they oppose putting regulations into statute because policy language is too specific to be appropriate for statutory language. AOC supported this bill because we believe that the present commercial fisheries interest domination of the Alaska Board of Fisheries has been detrimental to the sustainability of some salmon runs in the past. Unfortunately, the bill was referred to the House Special Committee on Fisheries where it met a quick death at the hands of legislators from commercial fishing districts.

AOC actively supported new members to the **Boards of Fisheries (BOF) and Game (BOG)**. Governor Murkowski appointed **Jeremiah Campbell** to the BOF, first to fill the remainder of an unexpired term, and then for a new 3-year term. Mr. Campbell has experience in both commercial and sport fishing, and we were impressed with his knowledge of, and concern for, in-river fisheries. Mr. Campbell's votes on the board regarding salmon returns to the Copper River and upper Susitna drainage showed his concern for sustainable salmon runs. AOC worked with Kenai River Sportfishing Association in supporting Mr. Campbell's confirmation. We are especially appreciative of the efforts of Cook Inlet Sportfishing Caucus member, Bob Penney, during this exercise.

AOC also supported the confirmation of long-time AOC supporter **Bonnie Williams** of Fairbanks to the BOF. Bonnie has served with distinction on the Fairbanks North Star Borough Assembly. Bonnie has been an avid personal use fisher for 55 years in Alaska and has a strong personal dedication to maintaining the integrity of Alaska's wildlife regulatory development process, which considers the opinions and experience of all individuals who use and enjoy fish and game. In her testimony during confirmation hearings before the Legislature, Bonnie affirmed her commitment to ensuring healthy, strong fisheries that sustain and meet the needs of subsistence, sport/personal use, and commercial fishing in Alaska.

AOC appreciated Governor Murkowski's reappointment of **Cliff Judkins** of Wasilla to a second term on the Board of Game. The Governor also added two new BOG members, **Dick Burley** of Fairbanks and **Paul Johnson** of Unalakleet. They were confirmed by the legislature with AOC's full support. Mr. Burley previously served on the Board of Game a few years back and did a very admirable job as chairman, maintaining a balanced and objective approach. His service was very beneficial to AOC's membership and we now look forward to another term for Mr. Burley on the BOG.

Members of the Boards of Fisheries Game have one of the toughest jobs in the state. AOC recognizes the personal commitment every one of these Alaskans makes when they accept an appointment. We thank them all. ■

# Pratt Museum

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January 22, 2007

Representative Paul Seaton  
State Capitol, Room 102  
Juneau, AK 99802

345 W. Sterling Highway  
Suite 102B  
Homer, AK 99603

Dear Representative Seaton,

The Pratt Museum enthusiastically supports House Bill 25, encouraging recreational use of private lands by protecting landowners who allow free public access to their lands. As a land owner of urban green space in Homer, the Pratt maintains a forest ecology trail with public access. We are also currently working with our neighbors, both public entities and private land owners, to develop trail connectivity in Homer. Legislation such as HB 25 will be particularly important in realizing greater community plans for trails in and around Homer.

The Pratt Museum is dedicated to the process of education by exploring the natural environment and human experience relative to the Kachemak Bay region of Alaska and its place in the world. The Museum seeks to inspire self-reflection and dialogue in its community and visitors through exhibitions, programs, and collections in the arts, sciences and humanities.

HB25 will help us assess our risks in allowing public access to our land as well as our risks in participating in a greater trail system for Homer bordering and impacting our property. As one of the few nonprofit organizations owning a sizeable amount of land in the city center, we are committed to preserving urban green space and providing public access and educational interpretation of that green space. Passage of HB25 would encourage us to continue this effort which allows public free recreational use of our land.

Thank you for all your hard work on HB25. Please let me know if the Pratt can be of further assistance in the process.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Beggs". The signature is fluid and cursive, written over a white background.

Heather Beggs  
Museum Director



## Katie Shows

---

**From:** Kathy Corp [kcorp@alaska.net]  
**Sent:** Wednesday, January 24, 2007 9:19 AM  
**To:** Katie Shows  
**Subject:** HB 25, with address included

Good morning!

HB 25, limiting the liability of property owners for injuries sustained by recreational vehicle users, is a good thing.

I own close to half the lots in a subdivision which was originally my father's homestead. The land is easily accessible, and pretty good snowmachine riding. It is not at all uncommon to have uninvited snowmachine riders on the property.

As far as I'm concerned, these folks are welcome. They seem to be mostly teenagers, with occasional family groups. It is pleasant to see and hear them out there having good clean fun.

But I have to admit that the liability issue has always been a niggling worry. Thus far, I've always bit my lip a little, and assumed that the type of people engaging in active, outdoor recreation are not the type of people given to suing innocent property owners.

I would very much like to see HB 25 become law.

Thanks ...

Kathy S. Corp  
40935 Ruth Way  
Copper River, AK. 99603  
(907) 235-2335 (days)  
(907) 235-0605 (home)

**Katie Shows**

---

**From:** Valerie Connor [redherring007@hotmail.com]  
**Sent:** Monday, January 22, 2007 9:39 AM  
**To:** Katie Shows  
**Subject:** HB25

Dear Katie,

I wanted to thank you for the work you have put into HB 25. Your support on this issue is much appreciated.

I would like to go on record as being in favor of this bill. It has the potential to benefit many communities around Alaska. With increasing sprawl, diminishing open spaces and health problems associated with inactivity, this bill is greatly needed. I can't imagine who would be against this bill. It benefits everyone. I believe many landowners would welcome a trail through their lands if they were relieved of the burden of a possible lawsuit. Please add my name to the list of supporters for HB 25.

Many thanks,

Valerie Connor

963 Cape Douglas Way Homer, AK 99603

235-6371

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FREE online classifieds from Windows Live Expo  buy and sell with people you know

## Katie Shows

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**From:** bill.smith@acsalaska.net  
**Sent:** Monday, January 22, 2007 11:36 PM  
**To:** Katie Shows  
**Subject:** HB 25

Hi Katie,

To Representative Paul Seaton,

This letter is to express my strong support for HB 25.

Trail users all over Alaska will benefit from this important protection for continued and improved trail access.

Please inform your fellow lawmakers that this bill will help a broad spectrum of Alaskans.

It would be especially respectful to traditional Alaskan ways if there could be added the ability of immunized landowners to grant the use of trailways to non-motorized transportation purposes as well as recreational users.

Bill Smith  
PO Box 150  
Homer AK 99603  
235-8932

**Katie Shows**

---

**From:** Elaine Martin [lovemushing@yahoo.com]  
**Sent:** Tuesday, January 23, 2007 9:52 PM  
**To:** Katie Shows  
**Subject:** protection of property owners trails

Hello there Ms. Shows,

My friend Kelly Griffen forwarded your email regarding the issue of keeping trails open to recreational uses. I wanted to also weigh in on this issue and have you forward my email to any relevant parties regarding my whole hearted support for this house bill that would protect the owners of private property who allow recreational use of trails that cross it.

As a musher who depends on the trails to train my team of dogs I urge lawmakers to pass this bill so that future use will be ensured. Every year new developments encroach apoun this traditional haven of dog sled drivers in the Knick and surrounding areas. If steps are not taken to protect our access to trails a historic and treasured sport for which Wasilla is well known will become obsolete, and Alaska will loose a valued part of it's heritage.

I cannot be there to testify tomorrow, but would appreciate it if you would make my email available to whoever can best help this bill pass. Thank you.

Sincerely, Elaine Martin  
HC 35 Box 5355-M  
Wasilla, AK 99654

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Looking for earth-friendly autos?  
Browse Top Cars by "Green Rating" at Yahoo! Autos' Green Center.

## Katie Shows

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From: Rep. Paul Seaton  
Sent: Thursday, January 25, 2007 9:39 AM  
To: Katie Shows  
Subject: FW: HB25

-----Original Message-----

From: seaside [mailto:seaside@alaska.net]  
Sent: Wednesday, January 24, 2007 3:05 PM  
To: Rep. Paul Seaton  
Subject: HB25

Dear Mr. Seaton

I am sorry I was unable to attend the hearing for HB 25 here in Homer today. However, please note that I am 100% in favor of this bill and would like to see everything done to have it pass both the House and the Senate. I am owner of Seaside Farm and as Trustee of the 600 acre Kilcher homestead, and feel it would be in the best interest of any one who has property to not have to be liable for people recreationally crossing or using private land.

Thanks

Mossy Kilcher,

**Headquarters:**  
217 2nd Street, Suite 201  
Juneau, Alaska 99801  
(907) 536-2323 FAX 463-5515  
www.alaskachamber.com



**Regional Office:**  
601 W. 5th Ave., Suite 700  
Anchorage, Alaska 99501  
(907) 278-2722 FAX 278-6643

March 20, 2006

Representative Paul Seaton  
Alaska House of Representatives  
State Capitol  
Juneau, Alaska 99801

Representative Seaton,

The Alaska State Chamber of Commerce supports House Bill 415. Private landowners often play a pivotal role in accessing Alaska's outdoors through leasing or granting permission to use their own private property. This role helps small businesses blossom while providing recreational access for Alaska's burgeoning tourist and adventure activities. Without legal protections, new tourist and adventure activities may be limited or threatened altogether. We believe HB 415 will increase business in Alaska by protecting private property owners from the potentiality of far-reaching lawsuits.

Jobs and economic opportunity are limited in many parts of Alaska, HB 415 may have additional benefits by creating opportunities in Alaska's remotest locations. The State Chamber encourages your constructive work with regards to HB 415 and we are hopeful that the bill will move through the legislative process.

Best Regards,

A handwritten signature in black ink, appearing to read 'Wayne A. Stevens'. The signature is written in a cursive style and is positioned above the printed name and title.

Wayne A. Stevens  
President/CEO  
Alaska State Chamber of Commerce



**NATIONAL RIFLE ASSOCIATION OF AMERICA**

INCORPORATED 1871

**11250 WAPLES MILL ROAD  
FAIRFAX, VA 22030**

5 May 2006

Brad Kruger  
AK NRA Field Representative  
PO Box 1098  
Homer, AK 99603

Dear Rep Seaton,

I am writing you today in support of HB 415.

House Bill 415 encourages recreational use of private lands by protecting landowners who allow free public access to their lands.

HB 415 stipulates that a private landowner does not owe to a person using his or her property for recreational purposes (1) a duty to keep the land safe for use, (2) a duty to warn of unsafe conditions or (3) a duty to curtail the use of their land for recreational purposes. A landowner receives no protection under the bill if they either charge for access or are guilty of intentional, reckless or grossly negligent conduct.

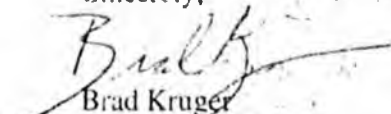
Unfortunately current state law does not directly address recreational use of private lands. Alaska's Recreational Activities statute, AS.09.65.290, passed by the legislature in 2003, mainly addresses commercial operators. Some landowners are protected by Alaska's unimproved land statute, AS.09.65.200, but it is difficult to determine what lands qualify in more developed areas. Lands near any sort of structure, or that have been altered slightly from their natural state, such as a hayfield, may not be covered under that statute.

Parties interested in allowing public access of their lands are unable to assess their risks. The courts likewise have few means of interpreting legislative intent regarding the relationship between landowner and recreational land user. HB 415 eliminates these ambiguities by granting immunity for the recreational use of private lands in the same manner adopted by most other states.

HB 415 promotes recreation throughout Alaska by clarifying the rights and responsibilities of landowners, encouraging them to allow the public free recreational use of their lands.

Thank you for listening.

Sincerely,



Brad Kruger  
AK NRA Field Rep

Introduced by:

<http://www.borough.kenai.ak.us/assemblyclerk/Assembly/Resolution>

Introduced by:

Martin

Date:

03/14/06

Action:

Adopted

Vote:

7 Yes, 0 No, 2 Absent

## **KENAI PENINSULA BOROUGH**

### **RESOLUTION 2006-027**

#### **A RESOLUTION SUPPORTING HB 415 RELATING TO LANDOWNERS' IMMUNITY FOR ALLOWING USE OF PRIVATE LAND FOR RECREATIONAL ACTIVITIES**

**WHEREAS**, although Alaska Statute 09.65.200 provides immunity to land owners for certain uses of their unimproved land, Alaska currently does not have a statute that protects landowners from liability for the use of their improved land for private recreational use such as skiing, hiking, snowmachining, and horseback riding; and

**WHEREAS**, House Bill 415 would enact a statute to delineate the responsibilities of landowners who allow free public access to their lands for recreational uses; and

**WHEREAS**, the bill states that a private property owner does not owe a person using the land for recreational purposes a duty to keep the land safe for use, a duty to warn of unsafe conditions, a duty to prevent recreational use of the land, and does not assume responsibility for any injury to persons or property; and

**WHEREAS**, HB 415 also provides that recreational land use allowed by a landowner without charge may not be used to obtain a prescriptive easement or to adversely possess the property; and

**WHEREAS**, approximately 45 other states have similar statutes; and

**WHEREAS**, HB 415 will encourage private property owners to allow recreational uses on their lands, possibly leading to the development of more trails and expanding recreational opportunities for all Alaskans;

**NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** That the Kenai Peninsula Borough Assembly supports and endorses the passage of House Bill 415m as currently written.

**SECTION 2.** That copies of this resolution shall be forwarded to all members of the Alaska State Legislature and the Honorable Governor Frank Murkowski.

**SECTION 3.** That this resolution shall become effective immediately upon adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 14TH DAY OF MARCH, 2006.**

**CITY OF HOMER  
HOMER, ALASKA**

Mayor/  
Parks & Recreation  
Commission

**RESOLUTION 06-30**

A RESOLUTION OF THE CITY COUNCIL OF HOMER ALASKA IN SUPPORT OF HOUSE BILL 415 ENTITLED "AN ACT RELATING TO LANDOWNERS' IMMUNITY FOR ALLOWING USE OF LAND FOR A RECREATIONAL ACTIVITY; AND PROVIDING FOR AN EFFECTIVE DATE".

WHEREAS, Current Alaska law does not address recreational land use directly; and

WHEREAS, Protection is granted only on lands qualifying as "unimproved", however it is difficult to legally define an improvement, which is a great concern to landowners when considering recreational land use; and

WHEREAS, This distinction should not be the benchmark used for protecting landowners when considering recreational land use; and

WHEREAS, HB 415 encourages the recreational use of private lands by protecting land owners that allow free public access to their lands; and

WHEREAS, HB 415 clearly stipulates that a private land owner does not owe a person using their property for recreational purposes,

- A duty to keep the land safe for use
- A duty to warn for unsafe conditions
- A duty to curtail the use of their land for recreational purposes; and

WHEREAS, A landowner receives no protection under HB 415 if they charge for access or are guilty of intentional, reckless or grossly negligent conduct.

NOW, THEREFORE, BE IT RESOLVED That the City Council of Homer Alaska finds that the passage of HB 415 is in the best interest of landowners allowing use of their land for a recreational activity; and

BE IT FURTHER RESOLVED That the Council hereby expresses its strong support for HB 415 and urges that the Legislature and Governor pass it into law.

Coalition for Homer Open Space and Trails  
(907) 235-2926

January 18, 2006

Representative Paul Seaton  
Capitol Building, Rm. 102  
Juneau, AK 99801

Dear Representative Seaton:

This past November the Coalition for Homer Open Space and Trails met with you and your staff to discuss potential changes to the Alaska liability statutes, especially as they affect landowner liability and recreational activities.

We thank you for your time on this effort and would like to express our strong support for continuing the pursuit of alternative language that will help landowners to feel more comfortable with their liability concerns and be more apt to allow access for recreational opportunities across their land.

As it stands, the existing statutes are confusing for landowners to understand their rights and responsibilities and, as such, landowners have become more concerned about their liability. We hope the new legislation will clarify the rights or property owners to allow public use of their land without fear of petty liability actions.

Please contact me at the above listed number if you have any questions or suggestions regarding COHOST and the ideas expressed in this letter. Your support and involvement could make a very positive difference.

Sincerely,

Bruce Heiss  
Founding Member



4014 Lake Street, suite 201  
Homer, Alaska 99603  
907-235-8177 ext. 5  
[hswcd@xyz.net](mailto:hswcd@xyz.net)

Rep. Paul Seaton  
Capitol Building, Room 102  
Juneau, AK 99801

Dear Representative Seaton:

During our February 9<sup>th</sup> Board of Supervisors meeting, our board members reviewed House Bill 415, "An Act relating to landowners' immunity for allowing use of land for recreational activity," and expressed strong support for this bill. Our Board unanimously supported your efforts to protect private property owners from frivolous lawsuits that could result from the informal use of trails and property for recreational uses.

Since 2001, the Homer Soil and Water Conservation District has worked with recreational issues on the Kenai Peninsula and have recognized a strong need for greater liability protection for landowners. This bill addresses this need and we are thrilled to see it in the legislature this session.

We would like to highlight that we support this bill in its current state; should any changes be made to the bill's language, we would like to consider any new implications of those changes.

Thanks for your hard work in Juneau, Paul. We appreciate you having your representation and thank you for your work on House Bill 415.

Please let us know if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Shirley Schollenberg", written in a cursive style.

Shirley Schollenberg  
District Manager

*"To provide education and leadership in the conservation and sustainable use of soil- and water- related resources through cooperative programs that protect, restore and improve our environment."*

Ian Laing

---

**From:** Dianne Mahaffey [dmahaff@alaska.net]  
**Sent:** Friday, March 10, 2006 9:01 AM  
**To:** Rep. Paul Seaton  
**Subject:** HB415

We want to commend you on your work to introduce and move forward HB415.

As long-time trail users in Alaska, we feel this is a very important piece of legislation.

Thank you for your efforts.

James R. & Dianne D. Mahaffey  
9601 Midden Way  
Anchorage, AK 99507

**Ian Laing**

---

**From:** Kelley G [kelleyg@gci.net]  
**Sent:** Wednesday, March 22, 2006 5:26 PM  
**To:** Rep. Paul Seaton; Rep. Harry Crawford; Rep. Mary Kapsner  
**Subject:** HB 415A

To Whom it May Concern,

I am a member of the MatSu Sled Dog Council, Inc. a non-profit dedicated to education and preservation of dog mushing in Alaska, as well as a Yukon Quest and Iditarod musher. Trails are a critical part of the equation in the sport of dog mushing, which is the official state sport. Due to the massive amount of development, especially in the MatSu, we are losing trails everyday. Even trails along public right of ways are in danger because of road development. And in light of today's litigious society, many landowners are reluctant to allow historic or new passage across their properties, which further restricts and in many cases, cuts trails into unusable pieces. Please give trail developers a powerful tool to maintain access and create new trails! Landowners should not be held liable for mishaps on a trail on their property! I am a property owner with a self-made trail that makes me nervous about allowing anybody else to use, and as firmly as I believe in trails, I have to consider whether the allowing access is worth the possibility of losing everything I own.

Please pass HB0415A!!

Sincerely,

Kelley Griffin  
HC 35 Box 5355 Z  
Wasilla, AK 99654  
907-373-1126  
Voter ID# 07408940  
Voter Precinct - Knik/ Goose Bay

---

**From:** WEClark [W3CLARK@gci.net]  
**Sent:** Tuesday, March 21, 2006 9:44 AM  
**To:** Emily Stancliff  
**Subject:** Voice support for HB 415

My name is Wayne G. Clark. I live at P.O. Box 164; Gustavus, Alaska 99826 (Spring,summer,fall), and the winters in Douglas, Alaska 99824. Due to the fact I will be on a boat in transit to Gustavus on Weds. March 22, I will not be able to phone in my support for the HB 415 hearing.

As a retired teacher who taught outdoor classes, a wilderness guide, hunter, and hiker, I feel the bill addresses the needed description of liability to landowners enabling them to allow free access to their lands. This I feel, will help to encourage future growth of the state's recreational trails. Many trails around the state are used by scores individuals to see the beauty of our State, and to appreciate its resources. Any steps to enhance their use should be strongly supported. It is the free access to our waters, and great trail systems that bring many back to enjoy our wonderful outdoors here, and seems to be the things many remember when they return from their visits.

Therefore, I ask your support for HB 415.

Sincerely,

wayne g. clark

(907)-364-3226/ (907) 697-2335/ (907) 209-1441(c)

**Ian Laing**

---

**From:** Afish-n-See/Kennedy's [afishnsee@alaska.com]  
**Sent:** Tuesday, March 07, 2006 8:49 AM  
**To:** Rep. Paul Seaton  
**Cc:** cohosts@gmail.com; Molly Brann  
**Subject:** in favor of HB 415

Representative Seaton

I am a cross country skier and land owner who would benefit from the passing of HB 415. The protection to private land owners that this bill would provide would definitely encourage me to participate. I currently go to great measure to prevent trespassing on my land. Also as a skier who travels to Homer occasionally to ski I am aware that is a big issue there. Many fine trails could be expanded without huge cost if this bill passes.

Thank you for your help to pass HB 415,

Kathryn Kennedy  
P.O. Box 39011  
Ninilchik, Alaska 99639  
907-567-331  
afishnsee@alaska.com

Ian Laing

---

**From:** Carol at Northern Enterprises [kshores@ptialaska.net]

**Sent:** Thursday, January 26, 2006 8:01 AM

**To:** Ian Laing

**Subject:** Land usage-liability

Good Afternoon Mr. Seaton,

I have actively been a member of the Snomad Snowmachine Club here in Homer for 4 years. This organization has been very helpful and offered many benefits to the entire community.

I enjoy both atv and snowma line activity and understandably accept full responsibility for that.

Over the last couple of years I have noted more and more that the issue of liability of public access across private property is a major concern. As a land owner, I do not feel that I should have to bear the responsibility for someone wishing to use my property in order to have fun, I feel that this should be a state issue. I feel that with the states assistance in this matter our trails would be able to stay open to be enjoyed by all.

Thank you,

Carol Grace

**Ian Laing**

---

**From:** Dave and Molly Brann [brann@alaska.net]  
**Sent:** Thursday, January 19, 2006 10:08 AM  
**To:** Rep. Paul Seaton  
**Cc:** Ian Laing  
**Subject:** Re: RE:

Rep. Paul Seaton,

Hi Paul, Just a short note to assure you the Kachemak Nordic Ski Club, 200+ members, are in full support of creating a clear recreational use statute. The existing statute(s) while somewhat beneficial are confusing to the private landowner and don't cover all the situations we would like to see included. A new statute would make it much easier for the private landowner and trails groups to work together to provide recreational opportunities for residents and visitors alike. For over twenty years the biggest problem related to developing and maintaining ski trails in the Homer area has been the landowners fear of being sued. A new statute would be of benefit to the whole state.

I also am sure our local Raven Ridge Homeowners Assoc. would also be very supportive of a new comprehensive statute.

Sincerely,  
Dave Brann

Alaska State Legislature

State Capitol, Room 103  
Juneau, AK 99802  
Phone: 465-2689  
Fax: 465-3472  
Toll Free (800) 665-2689



345 W. Sterling Highway  
Suite 102B  
Homer, AK 99603  
Phone: 235-2921  
Fax: 235-4008

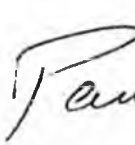
[Representative Paul Seaton@legis.state.ak.us](mailto:Representative_Paul_Seaton@legis.state.ak.us)

**REPRESENTATIVE Paul Seaton**

District 35

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MEMORANDUM

**TO:** House Judiciary Committee  
**FROM:** Representative Paul Seaton   
**DATE:** February 1, 2007  
**RE:** Landowner rights and trespassing: HB25

As a preliminary matter, I would like to emphasize that this is not intended to be an official legal opinion or interpretation of how statute would be applied. This memo is an attempt to summarize existing statute and knowledge pertaining to land owner rights when a user trespasses on their land.

The question of trespassing relating to HB 25 was raised in House Judiciary on 1/31/07.

HB 25 does not cover trespassing as it is outside the scope of the bill "Tort immunity for landowners' allowing recreational activity; adverse possession."

There is no statute that directly covers the recreational use of land when the land owner explicitly disallows use. Under Sec. 11.46.350 the requirements for prohibiting trespass on land are quite onerous.

(b) For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so unless

- (1) notice against trespass is personally communicated to that person by the owner of the land or some other authorized person; or
- (2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances.
- (c) A notice against trespass is given if the notice
  - (1) is printed legibly in English;
  - (2) is at least 144 square inches in size;
  - (3) contains the name and address of the person under whose authority the property is posted and the name and address of the person who is authorized to grant permission to enter the property;
  - (4) is placed at each roadway and at each way of access onto the property that is known to the landowner;
  - (5) in the case of an island, is placed along the perimeter at each cardinal point of the island; and
  - (6) states any specific prohibition that the posting is directed against, such as "no trespassing," "no hunting," "no fishing," "no digging," or similar prohibitions.

If the trespassed land is unimproved, the rights of the landowner are covered existing statute **09.65.200**

**Sec. 09.65.200.** Tort immunity for personal injuries or death occurring on unimproved land.

- (a) An owner of unimproved land is not liable in tort, except for an act or omission that constitutes gross negligence or reckless or intentional misconduct, for damages for the injury to or death of a person who enters onto or remains on the unimproved portion of land if
  - (1) the injury or death resulted from a natural condition of the unimproved portion of the land or the person entered onto the land for recreation; and
  - (2) the person had no responsibility to compensate the owner for the person's use or occupancy of the land.
- (b) This section does not enhance or diminish rights granted under former 43 U.S.C. 932 (R.S. 2477).
- (c) In this section, "unimproved land" includes land that contains
  - (1) a trail;
  - (2) an abandoned aircraft landing area; or
  - (3) a road built to provide access for natural resource extraction, but which is no longer maintained or used.

*Further definition of the legislatures meaning of unimproved (Legislative History – (Sec. 1 ch 138 SLA 1980; am Sec. 2, 3 ch 168 SLA 1988)*

“Unimproved land.” – The legislature meant the term “unimproved land” to include the type of “improvements” which would normally be found in the bush and where either unknown to the landowner or were not in active use (i.e., abandoned roads, gravel pits, etc.), and for the immunity provided in this section

to apply to all unimproved land in the state, except primarily improved property which has a portion on unimproved property.”

Although the statute refers to “land”, the legislature intended the term to be read broadly to include natural bodies of water (i.e. lakes and rivers). *University of Alaska v. Shanti*, 835 P.2d 1225 (Alaska 1992).

To determine whether a particular tract of land is entitled to immunity under this section, on a motion for summary judgment, the judge should consider: (1) the proximity of improvements to the accident site; (2) the extent of property maintenance undertaken by the landowner; and (3) whether the character of the property as a whole justifies the conclusion that the landowner is responsible for reasonable risk management of the area.

When the land is improved, the rights of the landowner in existing statute is much less clear. This was the impotence for HB 25, to clarify the rights for both improved and unimproved land for a land owner who allows free recreational use on their property.

The rights of the landowner remain unclear in a trespass situation. Their rights would be interpreted through three different sources, case law, statute, and common law (historical precedence). We did not find specific reference to trespass for recreational use and landowner liability. However, in a memo to Rep. Seaton dated January 3, 2006 discussing the initial drafting request for the legislation, legislative attorney Dennis Baily states, “I did not do extensive research in this area, but in my view, trespassers have few, if any, rights against an owner.”

After discussing the issue with legislative legal, we have come to the conclusion that including trespassing provisions in HB 25 would be very difficult to do and significantly complicate the bill. Furthermore, it would be outside the scope of the bill. I have requested a memo explaining in detail the reasons why including trespassing in HB 25 would be complicated that I will distribute to members as soon as it becomes available.

Alaska State Legislature

State Capitol, Room 103  
Juneau, AK 99802  
Phone: 465-2689  
Fax: 465-3472  
Toll Free (800) 665-2689



345 W. Sterling Highway  
Suite 102B  
Homer, AK 99603  
Phone: 235-2921  
Fax: 235-4008


[Representative Paul Seaton@legis.state.ak.us](mailto:Representative_Paul_Seaton@legis.state.ak.us)

**REPRESENTATIVE Paul Seaton**

District 35

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MEMORANDUM

**TO:** House Judiciary Committee  
**FROM:** Representative Paul Seaton   
**DATE:** February 1, 2007  
**RE:** Landowner rights and trespassing: HB25

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The question of trespassing relating to HB 25 was raised in House Judiciary on 1/31/07.

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There is no statute that directly covers the recreational use of land when the land owner explicitly disallows use. Under Sec. 11.46.350 the requirements for prohibiting trespass on land are quite onerous.

(b) For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so unless

- (1) notice against trespass is personally communicated to that person by the owner of the land or some other authorized person; or
- (2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances.
- (c) A notice against trespass is given if the notice
  - (1) is printed legibly in English;
  - (2) is at least 144 square inches in size;
  - (3) contains the name and address of the person under whose authority the property is posted and the name and address of the person who is authorized to grant permission to enter the property;
  - (4) is placed at each roadway and at each way of access onto the property that is known to the landowner;
  - (5) in the case of an island, is placed along the perimeter at each cardinal point of the island; and
  - (6) states any specific prohibition that the posting is directed against, such as "no trespassing," "no hunting," "no fishing," "no digging," or similar prohibitions.

If the trespassed land is unimproved, the rights of the landowner are covered existing statute **09.65.200**

**Sec. 09.65.200.** Tort immunity for personal injuries or death occurring on unimproved land.

(a) An owner of unimproved land is not liable in tort, except for an act or omission that constitutes gross negligence or reckless or intentional misconduct, for damages for the injury to or death of a person who enters onto or remains on the unimproved portion of land if

(1) the injury or death resulted from a natural condition of the unimproved portion of the land or the person entered onto the land for recreation; and

(2) the person had no responsibility to compensate the owner for the person's use or occupancy of the land.

(b) This section does not enhance or diminish rights granted under former 43 U.S.C. 932 (R.S. 2477).

(c) In this section, "unimproved land" includes land that contains

(1) a trail;

(2) an abandoned aircraft landing area; or

(3) a road built to provide access for natural resource extraction, but which is no longer maintained or used.

*Further definition of the legislatures meaning of unimproved (Legislative History – (Sec. 1 ch 138 SLA 1980; am Sec. 2, 3 ch 168 SLA 1988)*

“Unimproved land.” – The legislature meant the term “unimproved land” to include the type of “improvements” which would normally be found in the bush and where either unknown to the landowner or were not in active use (i.e., abandoned roads, gravel pits, etc.), and for the immunity provided in this section

to apply to all unimproved land in the state, except primarily improved property which has a portion on unimproved property.”

Although the statute refers to “land”, the legislature intended the term to be read broadly to include natural bodies of water (i.e. lakes and rivers). *University of Alaska v. Shanti*, 835 P.2d 1225 (Alaska 1992).

To determine whether a particular tract of land is entitled to immunity under this section, on a motion for summary judgment, the judge should consider: (1) the proximity of improvements to the accident site; (2) the extent of property maintenance undertaken by the landowner; and (3) whether the character of the property as a whole justifies the conclusion that the landowner is responsible for reasonable risk management of the area.

When the land is improved, the rights of the landowner in existing statute is much less clear. This was the impotence for HB 25, to clarify the rights for both improved and unimproved land for a land owner who allows free recreational use on their property.

The rights of the landowner remain unclear in a trespass situation. Their rights would be interpreted through three different sources, case law, statute, and common law (historical precedence). We did not find specific reference to trespass for recreational use and landowner liability. However, in a memo to Rep. Seaton dated January 3, 2006 discussing the initial drafting request for the legislation, legislative attorney Dennis Baily states, “I did not do extensive research in this area, but in my view, trespassers have few, if any, rights against an owner.”

After discussing the issue with legislative legal, we have come to the conclusion that including trespassing provisions in HB 25 would be very difficult to do and significantly complicate the bill. Furthermore, it would be outside the scope of the bill. I have requested a memo explaining in detail the reasons why including trespassing in HB 25 would be complicated that I will distribute to members as soon as it becomes available.

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**REPRESENTATIVE Paul Seaton**

District 35

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**MEMORANDUM**

**TO:** House Judiciary Committee  
**FROM:** Representative Paul Seaton  
**DATE:** February 2, 2007  
**RE:** The use of "directly or indirectly" in Alaska Statute

In House Judiciary on February 1, 2007 the concern was raised that the terms "directly or indirectly" are not commonly found in Alaska Statute. In a Folio word search of "Alaska Statutes – Text Only", I came up with 192 hits for the term "directly or indirectly." The following titles are all the places where the statement "directly or indirectly" is found in Alaska Statute. Please note that out of 47 statutes, only 12 do not include the term "directly or indirectly." The alternate terms "explicitly or implicitly" occur only once throughout the statutes.

I have also included a number of samples of Alaska Statute where "directly or indirectly" can be found for your reference. To make locating the terms easier, directly is in all caps [DIRECTLY or inDIRECTLY]

**Alaska Statutes where "directly or indirectly" is found:**

TITLE 2. AERONAUTICS

TITLE 5. AMUSEMENTS AND SPORTS

TITLE 6. BANKS AND FINANCIAL INSTITUTIONS

TITLE 8. BUSINESS AND PROFESSIONS

- TITLE 9. CODE OF CIVIL PROCEDURE
- TITLE 10. CORPORATIONS AND ASSOCIATIONS
- TITLE 11. CRIMINAL LAW
- TITLE 12. CODE OF CRIMINAL PROCEDURE
- TITLE 13. DECENDENTS', ESTATES, GAURDIANSHIPS, TRANSFERS AND TRUSTS
- TITLE 14. EDUCATION, LIBRARIES AND MUSEUMS
- TITLE 15. ELECTIONS
- TITLE 16. FISH AND GAME
- TITLE 17. FOOD AND DRUGS
- TITLE 18. HEALTH, SAFTEY AND HOUSING
- TITLE 19. HIGHWAYS AND FERRIES
- TITLE 21. INSURANCE
- TITLE 23. LABOR AND WORKERS' COMPENSATION
- TITLE 24. LEGISLATURE
- TITLE 25. MARITAL AND DOMESTIC RELATIONS
- TITLE 27. MINING
- TITLE 28. NAVAGATIONL, HARBORS AND SHIPPING
- TITLE 31. OIL AND GAS
- TITLE 32. PARTNERSHIP
- TITLE 34. PROPERTY
- TITLE 35. PUBLIC BUILDING, WORKS AND IMPROVMENTS
- TITLE 37. PUBLIC FINANCE
- TITLE 38. PUBLIC LAND

TITLE 39. PUBLIC OFFICERS AND EMPLOYEES

TITLE 42. PUBLIC UTILITIES AND CARRIERS

TITLE 43. REVENUE AND TAXATION

TITLE 44. STATE GOVERNMENT

TITLE 45. TRADE AND COMERCE

TITLE 46. WATER, AIR, ENERGY AND ENVIRONMENTAL CONSERVATION

TITLE 47. WELFARE, SOCIAL SERVICES AND INSTITUTIONS

**Examples of the use of "directly or indirectly" in Alaska Statute:**

Sec. 02.15.260. Definitions.

(16) "utility" includes a corporation, company, individual, or association of individuals, or a lessee, trustee, or court-appointed receiver, that owns, operates, manages, or controls a line, plant, pipeline, or system for furnishing, producing, generating, transmitting, or distributing power, electricity, communications, telecommunications, water, gas, oil, petroleum products, coal or other mineral slurry, steam, heat, light, chemicals, air, sewage, drainage not connected with airport drainage, irrigation, or similar products including publicly owned fire and police signal systems and street lighting systems that DIRECTLY or inDIRECTLY serve the public or a segment of the public; "utility" also includes a corporation, company, individual, or association of individuals, or a lessee, trustee, or court-appointed receiver that owns, operates, manages, or controls a system for furnishing transportation of goods or persons by means of a railway, tramway, cableway, conveyor, flume, canal, tunnel, pipeline, or a similar means;

.....

Sec. 05.10.130. Participation in purse or conducting sham contest.

A person or a member of any group of persons or corporation promoting wrestling or boxing exhibitions or contests who participates DIRECTLY or inDIRECTLY in the purse or fee of a manager of a boxer or wrestler or a boxer or a wrestler, and a licensee who conducts or participates in any sham or fake boxing contest or sparring match or exhibition, forfeits the license granted under this chapter and the commission shall declare the license cancelled and void and the licensee may not thereafter receive another license.

.....

Sec. 08.98.250. Definitions.

In this chapter,

(1) "accredited veterinary school" means a veterinary college or division of a university or college that offers the degree of Doctor of Veterinary Medicine, or its equivalent as determined by the board, and conforms to the standards required for accreditation by the American Veterinary Medical Association;

(2) "animal" means any animal other than a human being including mammals, birds, fish, and reptiles, wild or domestic, living or dead;

(3) "board" means the Board of Veterinary Examiners;

(4) "department" means the Department of Commerce, Community, and Economic Development;

(5) "practice of veterinary medicine"

(A) means for compensation to

(i) diagnose, treat, correct, change, relieve, or prevent animal disease, deformity, defect, injury, or other physical or mental condition, including the prescription or administration of a drug, biologic apparatus, anesthetic, or other therapeutic or diagnostic substance;

(ii) use a manual or mechanical procedure for testing for pregnancy or correcting sterility or infertility; or

(iii) render advice or recommendation with regard to any matter listed in (i) or (ii) of this subparagraph;

(B) means to represent, DIRECTLY or INDIRECTLY, publicly or privately, an ability or willingness to do any act in (A) of this paragraph for compensation;

(C) means to use a description, title, abbreviation, or letters in a manner or under circumstances tending to induce the belief that the person using it or them is qualified or licensed to do any act in (A) of this paragraph whether or not for compensation;

(D) does not include, whether or not for compensation,

(i) practices related to artificial insemination and the use of a title, abbreviation, or letters in a manner which induces the belief that the person using them is qualified to perform artificial insemination;

(ii) the practices of a farrier done in the performance of the farrier's profession;

(iii) standard practices commonly performed on farm or domestic animals in the course of routine farming or animal husbandry, when performed by an owner or the owner's employee unless ownership of the animal is transferred for the purpose of avoiding application of this chapter or the primary purpose of hiring the employee is to avoid application of this chapter;

(6) "veterinary technician" means a person who performs functions delegated by a veterinarian licensed under this chapter.

.....  
**CORPORATIONS AND ASSOCIATIONS**

**Sec. 10.06.990. Definitions.**

In this chapter, unless the context otherwise requires,

(1) "acknowledged" means that a document is accompanied by a certificate of its acknowledgment as provided in AS 09.63.010 - 09.63.130;

(2) "affiliate" means a person that DIRECTLY or inDIRECTLY through one or more intermediaries controls, or is controlled by, or is under common control with, a corporation subject to this chapter;

.13.990. Definitions.

In this chapter,

Sec. 11.56.590. Jury tampering.

(a) A person commits the crime of jury tampering if the person DIRECTLY or inDIRECTLY communicates with a juror other than as permitted by the rules governing the official proceeding with intent to

(1) influence the juror's vote, opinion, decision, or other action as a juror; or

(2) otherwise affect the outcome of the official proceeding.

(b) Jury tampering is a class C felony.

.....  
(c) An individual, or one acting DIRECTLY or inDIRECTLY on behalf of that individual, may not solicit or accept a contribution

(1) before the date for which contributions may be made as determined under AS 15.13.074(c); or

(2) later than the day after which contributions may not be made as determined under AS 15.13.074(c).

Please contact me if you have any questions.

Staff contact, Katie Shows x2028

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**MEMORANDUM**

March 31, 2006

**SUBJECT:** Effect of measure on doctrine of attractive nuisance and lack of effect on rights of user (HB 415) (Work Order No. 24-LS1446U)

**TO:** Representative Paul Seaton  
Attn: Ian Liang

**FROM:** Dennis C. Bailey  
Legislative Counsel

This memo transmits the amendment you requested, addresses the effect of HB 415 on the attractive nuisance doctrine, and expresses an opinion concerning the lack of effect on the rights of users. Please review the amendments closely, particularly the definition of "allow" which was particularly troublesome. You may wish to add language more particular to the bill.

This memo also responds to the request to Legislative Research asking for cases that could be affected by HB 415 and a comparison of current case law with the provisions of the bill. The request was forwarded to me for response. I discussed the same question with Ian Liang from your office yesterday. As we discussed the question of trying to define how HB 415 might affect existing case law is extremely broad. We attempted to refine the questions yesterday, during a conversation that precipitated this memo. Hopefully the discussion in the cases cited in this memo will address the concerns related to the bill.

The Alaska Supreme Court Case, *Schumacher v. City of Yakutat*, 946 P.2d 1255 (Alaska 1997) is helpful both to summarize landowner liability generally and to summarize the law of attractive nuisance.<sup>1</sup>

Under current law, landowners have a duty to use due care to guard against unreasonable risks created by dangerous conditions existing on their property. *Schumacher* at 1258, citing *State v. Abbott*, 498 P.2d 712, 723 (Alaska 1972) (holding that ice which state

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<sup>1</sup> The holding in *Schumacher* was distinguished in *Guerrero v. Alaska Housing Fin. Corp.*, 6 P.2d 250, 254-255 (Alaska 2000) noting a possibly different result outcome on the difference between behavior that is permitted, i.e., crossing a street, and behavior that is improper, i.e., sledding on city streets as in *Schumacher*.

Representative Paul Seaton  
March 31, 2006  
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failed to remove from highway was a dangerous condition), *also citing Webb v. City and Borough of Sitka, 561 P.2d 731, 733* (a landowner must act as a reasonable person in maintaining his property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to others, the seriousness of the injury and the burden on the respective parties of avoiding the risk). This is a statement of the duty that forms the basis for liability for ordinary negligence. Landowner liability is limited by AS 09.65.200. I have discussed the overlap in my January 3, 2006 memo. Broadly speaking, HB 415 changes the duties of a landowner who allows recreational land use by eliminating certain duties and by raising the standard from ordinary negligence to that of intentional, reckless or gross negligence.

The legal doctrine of attractive nuisance permits a child to recover for injuries caused by a land condition if the child, because of the child's youth, does not discover the condition or realize the risk involved. *Schumacher, at 1258, n.8, citing Taylor v. Alaska Rivers Navigation Co., 391 P.2d 15, 17 (Alaska 1964)*. The *Taylor* decision established the elements for that must be proven to apply the doctrine of attractive nuisance.

A possessor of land or a chattel is subject to liability for physical harm to children trespassing thereon, caused by a condition of the land or chattel, if

(a) the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass, and

(b) the condition is one of which the possessor knows or has reason to know, and which he realizes or should realize will involve an unreasonable risk of death or serious bodily harm to such children, and

(c) the children because of their youth do not discover the conditions or realize the risk involved in intermeddling in it or in coming within the area made dangerous by it, and

(d) the utility of maintaining the condition and the burden of eliminating the danger are slight as compared with the risk to children involved, and

(e) the possessor fails to exercise reasonable care to eliminate the danger or otherwise to protect the children.

*Taylor v. Alaska Rivers Navigation Co., 391 P.2d 15, 17 (Alaska 1964)*. The *Taylor* court rejected the element that the dangerous conditions entice or allure a child trespasser. Further, if the risk that a condition presents is obvious even to children the doctrine does not apply. *Schumacher, at 1258, n.8*.

It is not clear how the doctrine of attractive nuisance would be affected by HB 415. The doctrine is somewhat unique because it protects a trespasser, based upon the concept of protecting children who are unable to protect themselves. A court could possibly impose the doctrine of attractive nuisance to protect children using the elements outlined in the *Taylor* case regardless of a landowner's duty and the change in standard for landowners

Representative Paul Seaton

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in HB 415. On the other hand, it is also plausible that a court would recognize the legislative intent apparent in HB 415 to protect landowners and disregard the doctrine entirely. I expect that the course chosen by a court would be fact specific depending on the age of the child, the child's ability to perceive the risk, and the nature of the risk.

I was also asked to briefly address whether the measure increases the rights of a user. In other words, does a recreational user gain additional rights by the terms of HB 415. In my view, the answer is no. The bill does the opposite. It reduces the rights of the user. As discussed above, it is plausible that the bill may reduce or eliminate liability under the doctrine of attractive nuisance. The bill grants substantial protections to landowners who allow recreational use on their land. It disclaims granting a right of adverse possession or prescriptive easement by stating that recreational use cannot be used as a basis of a claim. Nor does the bill increase or decrease the liability of a user for the user's own conduct. The bill grants immunity protecting landowners; it reduces, not increases the rights of a user.

If I may be of further assistance, please advise.

DCB:ljw  
06-171.ljw

Enclosures

AMENDMENT # 1 W/D

BY GRUENBERG

HB 25

Page 1, line 9

Delete "indirectly" and insert "implicitly."

**Explanation:** This change would clarify how a landowner allows recreational activity on a landowner's land. The current language - "indirectly allows" could be interpreted to indicate some positive action though not directly to the person using the land; while "implicitly allows" would not necessitate any positive action on the part of the landowner.