

**HB**

**25**

# Alaska State Legislature

**Senator Hollis French, Chair**  
State Capitol, Room 417  
Juneau, Alaska 99801  
Phone: (907) 465-3892  
Fax: (907) 465-6595



**Committee Members:**  
Senator Charlie Huggins  
Senator Bill Wielechowski  
Senator Lesil McGuire  
Senator Gene Therriault

## Senate Judiciary Committee

April 7, 2008

### Letter of Intent

It is the intent of the legislature that the public be provided with this sample language for drafting an easement to the public.

A public recreational easement under AS 34.17.100 may be in a form substantially similar to the following:

The grantor, (here insert the name or names and place of residence), grants a public recreational use easement to the public under AS.37.14.100 in the following described real estate (here insert description), located in the State of Alaska, for the purpose of making the described real estate available to the public for recreational use. Dated this \_\_\_ day of \_\_\_, 20\_\_.

A public recreational use easement under AS 34.17.100 may include other terms relating to the easement, including terms of restriction, condition, reservation, duration, or termination of the easement.

A deed substantially in the form set above, where otherwise legally executed and recorded, is considered sufficient to create a public recreational use easement to the public at large under AS 37.14.100.

A handwritten signature in black ink, appearing to read "Hollis French".

Senator Hollis French  
Chair

# 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

April 1, 2008

**SUBJECT:** Fees for recording recreational use easement; title change for amendment in the second house (HB 25, Work Order No. 25-LS0174A)

**TO:** Senator Hollis French  
Attn: Cindy Smith

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

Enclosed is the amendment prohibiting recording fees for recording recreational use easements. The amendment requires a title change. Therefore, a concurrent resolution to waive the uniform rules against a title change in the second house will be required if the amendment is adopted. Please let me know if you would like me to draft a resolution.

If I may be of further assistance, please advise.

DCB:ljw  
08-193.ljw

Enclosure

**Cindy Smith**

**From:** Backus, Vicky A (DNR) [vicky.backus@alaska.gov]  
**Sent:** Tuesday, April 01, 2008 7:06 AM  
**To:** Lesh, Melanie G (DNR); Cindy Smith  
**Subject:** RE: HB 25 and recording the

Cindy and Melanie,

There are currently only two recording fee exemptions. One is for the recording of military discharge documents (form DD-214) which we try to discourage because of the personal information they contain; and the second is for the recording of state business documents. If a state agency, in the course of doing business, submits a document for recording and it states "State Business No Charge", the document will be recorded with no fee being charged.

Please let me know if you require any additional information on this.

**Vicky Backus**

State Recorder  
State of Alaska  
Department of Natural Resources  
907-269-8882 - phone  
907-269-8912 - fax  
vicky.backus@alaska.gov

---

**From:** Lesh, Melanie G (DNR)  
**Sent:** Monday, March 31, 2008 11:17 AM  
**To:** Smith, Cindy (LAA)  
**Cc:** Backus, Vicky A (DNR); Lesh, Melanie G (DNR)  
**Subject:** HB 25 and recording the

Hi Cindy,

The Recorder's office fees are set by Regulation, under AS 40.17 statutory authority.  
<http://www/ssd/recoff/fees.cfm>  
There's a RSS account for fees.

It would *appear* that HB 25 would need to contain an exemption from this fee....for recording the document that related to the release of landowner liability and immunity for allowing use of land without charge for a recreational activity. My last question would be whether we allow exemptions currently... such as for Veterans... Vicky Backus the State Recorder can respond tomorrow about that.

**RECORDING FEES A.S. 40.17.030(a); 11 AAC 05.010 (a)(14)**

New Fee Schedule: Effective January 14, 2004 Make checks payable to: **Department of Natural Resources**

- |  |                |
|--|----------------|
| <b>A. For recording all documents: first page* or fraction thereof</b> | <b>\$20.00</b> |
| <b>B. Each additional page or fraction thereof (same instrument)</b>   | <b>5.00</b>    |
| <b>C. For indexing each name or claim name over six</b>                | <b>2.00</b>    |
| <b>D. For recording Plats or Surveys</b>                               |                |
| • First sheet  | <b>20.00</b>   |

	5.00
ii. Each additional sheet same plat (Affidavits, tax status, etc. submitted with initial filing of Plat = No Charge)	
E. Certification fee, per document	5.00
F. For conforming a copy of any recorded instrument at time of recording**	2.00
G. For copying any document by photocopy process	
• First page or fraction thereof	1.25
	0.25
ii. Each additional page or fraction thereof (same instrument)	
H. Copy of plats from microfiche, each sheet	3.00
I. Copy of plats, full scale on paper, each sheet	3.00
J. Copy of plats, full scale on mylar, each sheet	6.00
K. Images of documents on CD-ROM. <u>Contact us</u> for availability and current fees.	
* Reference to "page" means one side of sheet; double sided sheets are two pages. ** At the time of recording, a conformed copy is \$2.00 – Any copy made after that time will be charged \$1.25 for the first page and \$0.25 for each additional page of same document. Revised 12/2001	

January 30, 2008

**Melanie G. Lesh**  
 Legislative Liaison  
 Dept. of Natural Resources  
 400 W. Willoughby  
 Juneau, Alaska 99801  
 907-465-4730

**Cindy Smith**

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<b>G. For copying any document by photocopy process</b>	
• First page or fraction thereof	1.25
	0.25
ii. Each additional page or fraction thereof (same instrument)	
<b>H. Copy of plats from microfiche, each sheet</b>	<b>3.00</b>
<b>I. Copy of plats, full scale on paper, each sheet</b>	<b>3.00</b>
<b>J. Copy of plats, full scale on mylar, each sheet</b>	<b>6.00</b>

**K. Images of documents on CD-ROM. Contact us for availability and current fees.**

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January 30, 2008

**Melanie G. Lesh**

Legislative Liaison

Dept. of Natural Resources

400 W. Willoughby

Juneau, Alaska 99801

907-465-4730

**AMENDMENT**

OFFERED IN THE SENATE

TO: HB 25

1 Page 3, line 3:

2 Delete "improved or"

3

4 Page 3, following line 3:

5 Insert new material to read:

6 "(B) improved land, exclusive of buildings, structures,  
7 machinery, or equipment on the land;"

8

9 Reletter the following subparagraphs accordingly.

10

11 Page 3, lines 7 - 8:

12 Delete all material.

**AMENDMENT**

**OFFERED IN THE SENATE**

**TO: HB 25**

- 1 Page 2, line 3:
- 2 Delete "any"
- 3 Insert "an unknown"
- 4 Delete ", known or unknown, apparent or hidden"

**AMENDMENT**

OFFERED IN THE SENATE

TO: HB 25

- 1 Page 2, line 3:
- 2 Delete "any"
- 3 Insert "an unknown"
- 4 Delete ", known or unknown, apparent or hidden"

**AMENDMENT**

OFFERED IN THE SENATE

TO: HB 25

1 Page 1, line 4, following "claims;":

2 Insert "prohibiting fees for recording public recreational use easements;"

3

4 Page 1, line 9:

5 Delete "directly or indirectly"

6

7 Page 2, following line 9:

8 Insert a new subsection to read:

9 "(b) This section applies only if a landowner allows recreational use by  
10 recording the grant of a public recreational use easement to the public at large in the  
11 recorder's office for the recording district where the land affected by the easement is  
12 located. The grant of the easement must be in a form suitable to transfer an interest in  
13 land and in a form meeting the formal requisites for recording in AS 40.17.030. The  
14 easement must identify the land affected, must set out restrictions, conditions, or  
15 reservations affecting the easement, including terms addressing duration or  
16 termination of the easement, if any, and must state that the purpose of the easement is  
17 to make the land available for public recreational activity. The easement granted under  
18 this subsection may be a conservation easement under AS 34.17 (Uniform  
19 Conservation Easement Act)."

20

21 Reletter the following subsections accordingly.

22

23 Page 3, following line 16:

1           **Insert new bill sections to read:**

2           **\*\* Sec. 2. AS 40.17.030(a) is amended to read:**

3                   (a) Except as provided in **(b), (c), and (e)** [(b) AND (c)] of this section, to be  
4           eligible for recording, a document must

5                               (1) contain original signatures;

6                               (2) be legible or capable of being converted into legible form by a  
7           machine or device used in the recording office;

8                               (3) be capable of being copied by the method used in the recording  
9           office;

10                              (4) contain a title reflecting the overall intent of the document;

11                              (5) contain the information needed to index the document under  
12           regulations of the department;

13                              (6) contain a book and page reference or serial number reference if the  
14           document amends, corrects, extends, modifies, assigns, or releases a document  
15           previously recorded in this state;

16                              (7) contain the name and address of the person to whom the document  
17           is to be returned after recording;

18                              (8) if it is a deed, contain the mailing addresses of all persons named in  
19           the document who grant or acquire an interest under the document;

20                              (9) be accompanied by or contain the name of the recording district in  
21           which it is to be recorded; and

22                              (10) be accompanied by the applicable recording fee set by regulation;  
23           if the document is to be recorded for multiple purposes, it must be accompanied by the  
24           applicable fee for each of the multiple purposes.

25           **\* Sec. 3. AS 40.17.030 is amended by adding a new subsection to read:**

26                              (e) A recording fee may not be charged to record a public recreational use  
27           easement under AS 09.65.202(b), and, notwithstanding (a)(10) of this section, the  
28           easement shall be eligible for recording."

29

30           **Renumber the following section accordingly.**

11 of 22 DOCUMENTS

**Henry G. STORRS, Appellant, v. LUTHERAN HOSPITALS AND HOMES SOCIETY OF AMERICA, INC., d/b/a Fairbanks Memorial Hospital, Appellee**

No. 6345

Supreme Court of Alaska

661 P.2d 632; 1983 Alas. LEXIS 405

April 1, 1983

**PRIOR HISTORY: [\*\*1]**

Appeal from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Gerald J. Van Hoo-missen, Judge.

**COUNSEL:**

A. Lee Petersen, Anchorage, for Appellant.

Jennings, Strouss & Salmon, Inc., Phoenix, and David H. Call, Call, DeWitt, Barrett & Burbank, Fairbanks, for Appellee.

**JUDGES:**

Burke, Chief Justice, Rabinowitz, Matthews and Compton, Justices. Connor, Justice, not participating.

**OPINION BY:**

MATTHEWS

**OPINION:**

[\*633] In our prior decision in this matter, *Storrs v. Lutheran Hospitals and Homes Society of America, Inc.*, 609 P.2d 24 (Alaska 1980), we held that the appellee had not applied the by-law standard of "proven gross negligence" [\*634] in suspending appellant's hospital privileges. We remanded for application of this standard. The Judicial Review Committee (JRC) of the appellee decided that the suspension of Dr. Storrs was justified, based on his handling of a liver biopsy. The JRC determined that Dr. Storrs' handling of that procedure constituted "proven gross negligence." This decision was made on the evidence previously submitted. Dr. Storrs appealed to the Appellate Review Committee of appellee and, upon rejection of his appeal there, to the [\*\*2] superior court, which affirmed the suspension.

Dr. Storrs' first contention is that the JRC used an incorrect **definition of gross negligence**. The **definition** the JRC adopted is as follows:

In performing professional services for a patient a physician or surgeon has the duty to have that degree of learning and skill ordinarily possessed by reasonable physicians and surgeons practicing in the same or a similar locality and under similar circumstances.

It is his further duty to use the care and skill ordinarily exercised in like cases by reasonable members of his profession practicing in the same or a similar locality under similar circumstances, and to use reasonable diligence and his best judgment in the exercise of his skill and the application of his learning, in an effort to accomplish the purpose for which he is employed.

A failure to perform any such duty is negligence.

Gross negligence requires a choice of a course of action either with knowledge of serious danger to patients involved in it or with knowledge of facts which would disclose this danger to any reasonable physician. Gross negligence involves a risk substantially greater in amount than that which is necessary [\*\*3] to make conduct negligent.

"Proven gross negligence" is gross negligence proven by a preponderance of the evidence. By a preponderance of the evidence is meant such evidence as when weighed by that opposed to it has more

convincing force and the greater probability of truth.

In our view this definition was satisfactory. It clearly conveyed the idea that a major departure from the standard of care was required. See W. Prosser, *Torts* 182-84 (4th ed. 1971). In fact, since the definition requires a choice of a course of action either with knowledge of serious danger or with knowledge of facts which would disclose this danger the definition meets the stricter standard of recklessness. See *Restatement (Second) of Torts* § 500 (1966), especially comment g. n1

n1 The reason for this may be that in *Leavitt v. Gillaspie*, 443 P.2d 61 (Alaska 1968), we equated, without discussion, gross negligence with "willful, wanton or reckless misconduct." This is not standard usage. "Most courts consider that 'gross negligence' falls short of a reckless disregard of consequences, and differs from ordinary negligence only in degree, and not in kind. There is, in short, no generally accepted meaning; but the probability is, when the phrase is used, that it signifies more than ordinary inadvertence or inattention, but less than conscious indifference to consequences; and that it is, in other words, merely an extreme departure from the ordinary standard of care." W. Prosser, *Torts*, 183-84 (4th ed. 1971). In *Leavitt* the issue was whether an instruction that contributory negligence was not a defense to aggravated conduct on the part of the defendant should have been given. When contributory negligence was the rule, a defendant's gross negligence, as that term is commonly understood, did not negate the defense of contributory negligence, while willful, wanton or reckless conduct did. Prosser, *supra*, at 426. Thus, in context the court in *Leavitt* did not err in defining gross negligence in recklessness terms. However, that does not mean that the two concepts are identical for, in theory at least, they are not.

[\*\*4]

Dr. Storrs' second point is that the record does not contain substantial evidence of gross negligence. The Judicial Review Committee found that gross negligence existed with respect to the liver biopsy "as manifested by

failure to recognize promptly a life threatening condition (hemorrhagic shock), failure to institute basic, appropriate, and timely treatment and failure to assume responsibility to expedite treatment of shock." These conclusions were amply and explicitly supported by testimony.

[\*635] Dr. Storrs next argues that it is unreasonable, arbitrary and capricious to revoke hospital privileges on the basis of merely one case. We disagree. A hospital's duty to the public it serves may well justify it in terminating the privileges of a physician who has been grossly negligent on one occasion. This may be especially appropriate where, as here, the physician's gross negligence was committed in connection with the treatment of a common condition. In *Suckle v. Madison General Hospital*, 362 F. Supp. 1196, 1214 (W.D. Wis. 1973), *aff'd*, 499 F.2d 1364 (7th Cir. 1974), the court noted that a "single case in which a physician performs badly may be a constitutionally [\*\*5] adequate basis for non-renewal of staff membership." If a hospital does not revoke staff privileges, or take some similar action, after a case of proven gross negligence it risks exposing itself to liability for similar future episodes. *Purcell v. Zimbelman*, 18 Ariz. App. 75, 500 P.2d 335 (Ariz. App. 1972); *Ferguson v. Gonyaw*, 64 Mich. App. 685, 236 N.W.2d 543, 550 (Mich. App. 1975); *Bost v. Riley*, 44 N.C. App. 638, 262 S.E.2d 391 (N.C. App. 1980), petition denied, 300 N.C. 194, 269 S.E.2d 621 (N.C. 1980); *Johnson v. Misericordia Community Hospital*, 99 Wis. 2d 708, 301 N.W.2d 156 (Wis. 1981).

Dr. Storrs' last contention is that the refusal of the JRC to reopen the record for new evidence violated his right to procedural due process. In our prior order of remand we held that the JRC "may base its decision on the evidence previously submitted or, in its discretion may reopen the proceedings for new evidence." The JRC did not abuse its discretion in refusing to reopen the proceedings. Dr. Storrs himself requested that the evidentiary hearing be held on an expedited basis. There is no suggestion in the record that Dr. Storrs believed that the evidentiary hearing would [\*6] be a preliminary one and that additional evidence could be presented later. Further, Dr. Storrs was not precluded from presenting evidence favorable to his case at that hearing.

AFFIRMED.

Connor, Justice, not participating.

11 of 22 DOCUMENTS

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AFFIRMED.

Connor, Justice, not participating.

11 of 22 DOCUMENTS

**Henry G. STORRS, Appellant, v. LUTHERAN HOSPITALS AND HOMES SOCIETY OF AMERICA, INC., d/b/a Fairbanks Memorial Hospital, Appellee**

No. 6345

Supreme Court of Alaska

661 P.2d 632; 1983 Alas. LEXIS 405

April 1, 1983

**PRIOR HISTORY: [\*\*1]**

Appeal from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Gerald J. Van Hoo-missen, Judge.

**COUNSEL:**

A. Lee Petersen, Anchorage, for Appellant.

Jennings, Strouss & Salmon, Inc., Phoenix, and David H. Call, Call, DeWitt, Barrett & Burbank, Fairbanks, for Appellee.

**JUDGES:**

Burke, Chief Justice, Rabinowitz, Matthews and Compton, Justices. Connor, Justice, not participating.

**OPINION BY:**

MATTHEWS

**OPINION:**

[\*633] In our prior decision in this matter, *Storrs v. Lutheran Hospitals and Homes Society of America, Inc.*, 609 P.2d 24 (Alaska 1980), we held that the appellee had not applied the by-law standard of "proven gross negligence" [\*634] in suspending appellant's hospital privileges. We remanded for application of this standard. The Judicial Review Committee (JRC) of the appellee decided that the suspension of Dr. Storrs was justified, based on his handling of a liver biopsy. The JRC determined that Dr. Storrs' handling of that procedure constituted "proven gross negligence." This decision was made on the evidence previously submitted. Dr. Storrs appealed to the Appellate Review Committee of appellee and, upon rejection of his appeal there, to the [\*\*2] superior court, which affirmed the suspension.

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A failure to perform any such duty is negligence.

Gross negligence requires a choice of a course of action either with knowledge of serious danger to patients involved in it or with knowledge of facts which would disclose this danger to any reasonable physician. Gross negligence involves a risk substantially greater in amount than that which is necessary [\*\*3] to make conduct negligent.

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661 P.2d 632; 1983 Alas. LEXIS 405

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Connor, Justice, not participating.

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661 P.2d 632; 1983 Alas. LEXIS 405

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661 P.2d 632; 1983 Alas. LEXIS 405

April 1, 1983

**PRIOR HISTORY: [\*\*1]**

Appeal from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Gerald J. Van Hoo-missen, Judge.

**COUNSEL:**

A. Lee Petersen, Anchorage, for Appellant.

Jennings, Strouss & Salmon, Inc., Phoenix, and David H. Call, Call, DeWitt, Barrett & Burbank, Fairbanks, for Appellee.

**JUDGES:**

Burke, Chief Justice, Rabinowitz, Matthews and Compton, Justices. Conroy, Justice, not participating.

**OPINION BY:**

MATTHEWS

**OPINION:**

[\*633] In our prior decision in this matter, *Storrs v. Lutheran Hospital and Homes Society of America, Inc.*, 609 P.2d 24 (Alaska 1980), we held that the appellee had not applied the by-law standard of "proven gross negligence" [\*634] in suspending appellant's hospital privileges. We remanded for application of this standard. The Judicial Review Committee (JRC) of the appellee decided that the suspension of Dr. Storrs was justified, based on his handling of a liver biopsy. The JRC determined that Dr. Storrs' handling of that procedure constituted "proven gross negligence." This decision was made on the evidence previously submitted. Dr. Storrs appealed to the Appellate Review Committee of appellee and, upon rejection of his appeal there, to the [\*\*2] superior court, which affirmed the suspension.

Dr. Storrs' first contention is that the JRC used an incorrect definition of gross negligence. The definition the JRC adopted is as follows:

In performing professional services for a patient a physician or surgeon has the duty to have that degree of learning and skill ordinarily possessed by reasonable physicians and surgeons practicing in the same or a similar locality and under similar circumstances.

It is his further duty to use the care and skill ordinarily exercised in like cases by reasonable members of his profession practicing in the same or a similar locality under similar circumstances, and to use reasonable diligence and his best judgment in the exercise of his skill and the application of his learning, in an effort to accomplish the purpose for which he is employed.

A failure to perform any such duty is negligence.

Gross negligence requires a choice of a course of action either with knowledge of serious danger to patients involved in it or with knowledge of facts which would disclose this danger to any reasonable physician. Gross negligence involves a risk substantially greater in amount than that which is necessary [\*\*3] to make conduct negligent.

"Proven gross negligence" is gross negligence proven by a preponderance of the evidence. By a preponderance of the evidence is meant such evidence as when weighed by that opposed to it has more

convincing force and the greater probability of truth.

In our view this definition was satisfactory. It clearly conveyed the idea that a major departure from the standard of care was required. See W. Prosser, *Torts* 182-84 (4th ed. 1971). In fact, since the definition requires a choice of a course of action either with knowledge of serious danger or with knowledge of facts which would disclose this danger the definition meets the stricter standard of recklessness. See *Restatement (Second) of Torts* § 500 (1966), especially comment g. n1

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Dr. Storrs' second point is that the record does not contain substantial evidence of gross negligence. The Judicial Review Committee found that gross negligence existed with respect to the liver biopsy "as manifested by

failure to recognize promptly a life threatening condition (hemorrhagic shock), failure to institute basic, appropriate, and timely treatment and failure to assume responsibility to expedite treatment of shock." These conclusions were amply and explicitly supported by testimony.

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AFFIRMED.

Connor, Justice, not participating.

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failure to recognize promptly a life threatening condition (hemorrhagic shock), failure to institute basic, appropriate, and timely treatment and failure to assume responsibility to expedite treatment of shock." These conclusions were amply and explicitly supported by testimony.

[\*635] Dr. Storrs next argues that it is unreasonable, arbitrary and capricious to revoke hospital privileges on the basis of merely one case. We disagree. A hospital's duty to the public it serves may well justify it in terminating the privileges of a physician who has been grossly negligent on one occasion. This may be especially appropriate where, as here, the physician's gross negligence was committed in connection with the treatment of a common condition. In *Suckle v. Madison General Hospital*, 362 F. Supp. 1196, 1214 (W.D. Wis. 1973), *aff'd*, 499 F.2d 1364 (7th Cir. 1974), the court noted that a "single case in which a physician performs badly may be a constitutionally [\*\*5] adequate basis for non-renewal of staff membership." If a hospital does not revoke staff privileges, or take some similar action, after a case of proven gross negligence it risks exposing itself to liability for similar future episodes. *Purcell v. Zimbelman*, 18 Ariz. App. 75, 500 P.2d 335 (Ariz. App. 1972); *Ferguson v. Gonyaw*, 64 Mich. App. 685, 236 N.W.2d 543, 550 (Mich. App. 1975); *Bost v. Riley*, 44 N.C. App. 638, 262 S.E.2d 391 (N.C. App. 1980), petition denied, 300 N.C. 194, 269 S.E.2d 621 (N.C. 1980); *Johnson v. Misericordia Community Hospital*, 99 Wis. 2d 708, 301 N.W.2d 156 (Wis. 1981).

Dr. Storrs' last contention is that the refusal of the JRC to reopen the record for new evidence violated his right to procedural due process. In our prior order of remand we held that the JRC "may base its decision on the evidence previously submitted or, in its discretion may reopen the proceedings for new evidence." The JRC did not abuse its discretion in refusing to reopen the proceedings. Dr. Storrs himself requested that the evidentiary hearing be held on an expedited basis. There is no suggestion in the record that Dr. Storrs believed that the evidentiary hearing would [\*\*6] be a preliminary one and that additional evidence could be presented later. Further, Dr. Storrs was not precluded from presenting evidence favorable to his case at that hearing.

AFFIRMED.

Connor, Justice, not participating.

11 of 22 DOCUMENTS

**Henry G. STORRS, Appellant, v. LUTHERAN HOSPITALS AND HOMES SOCIETY OF AMERICA, INC., d/b/a Fairbanks Memorial Hospital, Appellee**

No. 6345

Supreme Court of Alaska

661 P.2d 632; 1983 Alas. LEXIS 405

April 1, 1983

**PRIOR HISTORY: [\*\*1]**

Appeal from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Gerald J. Van Hoo-missen, Judge.

**COUNSEL:**

A. Lee Petersen, Anchorage, for Appellant.

Jennings, Strouss & Salmon, Inc., Phoenix, and David H. Call, Call, DeWitt, Barrett & Burbank, Fairbanks, for Appellee.

**JUDGES:**

Burke, Chief Justice, Rabinowitz, Matthews and Compton, Justices. Connor, Justice, not participating.

**OPINION BY:**

MATTHEWS

**OPINION:**

[\*633] In our prior decision in this matter, *Storrs v. Lutheran Hospitals and Homes Society of America, Inc.*, 609 P.2d 24 (Alaska 1980), we held that the appellee had not applied the by-law standard of "proven gross negligence" [\*634] in suspending appellant's hospital privileges. We remanded for application of this standard. The Judicial Review Committee (JRC) of the appellee decided that the suspension of Dr. Storrs was justified, based on his handling of a liver biopsy. The JRC determined that Dr. Storrs' handling of that procedure constituted "proven gross negligence." This decision was made on the evidence previously submitted. Dr. Storrs appealed to the Appellate Review Committee of appellee and, upon rejection of his appeal there, to the [\*62] superior court, which affirmed the suspension.

Dr. Storrs' first contention is that the JRC used an incorrect definition of gross negligence. The definition the JRC adopted is as follows:

In performing professional services for a patient a physician or surgeon has the duty to have that degree of learning and skill ordinarily possessed by reasonable physicians and surgeons practicing in the same or a similar locality and under similar circumstances.

It is his further duty to use the care and skill ordinarily exercised in like cases by reasonable members of his profession practicing in the same or a similar locality under similar circumstances, and to use reasonable diligence and his best judgment in the exercise of his skill and the application of his learning, in an effort to accomplish the purpose for which he is employed.

A failure to perform any such duty is negligence.

Gross negligence requires a choice of a course of action either with knowledge of serious danger to patients involved in it or with knowledge of facts which would disclose this danger to any reasonable physician. Gross negligence involves a risk substantially greater in amount than that which is necessary [\*63] to make conduct negligent.

"Proven gross negligence" is gross negligence proven by a preponderance of the evidence. By a preponderance of the evidence is meant such evidence as when weighed by that opposed to it has more

convincing force and the greater probability of truth.

In our view this definition was satisfactory. It clearly conveyed the idea that a major departure from the standard of care was required. See W. Prosser, *Torts* 182-84 (4th ed. 1971). In fact, since the definition requires a choice of a course of action either with knowledge of serious danger or with knowledge of facts which would disclose this danger the definition meets the stricter standard of recklessness. See *Restatement (Second) of Torts* § 500 (1966), especially comment g. n1

n1 The reason for this may be that in *Leavitt v. Gillaspie*, 443 P.2d 61 (Alaska 1968), we equated, without discussion, gross negligence with "willful, wanton or reckless misconduct." This is not standard usage. "Most courts consider that 'gross negligence' falls short of a reckless disregard of consequences, and differs from ordinary negligence only in degree, and not in kind. There is, in short, no generally accepted meaning; but the probability is, when the phrase is used, that it signifies more than ordinary inadvertence or inattention, but less than conscious indifference to consequences; and that it is, in other words, merely an extreme departure from the ordinary standard of care." W. Prosser, *Torts*, 183-84 (4th ed. 1971). In *Leavitt* the issue was whether an instruction that contributory negligence was not a defense to aggravated conduct on the part of the defendant should have been given. When contributory negligence was the rule, a defendant's gross negligence, as that term is commonly understood, did not negate the defense of contributory negligence, while willful, wanton or reckless conduct did. Prosser, *supra*, at 426. Thus, in context the court in *Leavitt* did not err in defining gross negligence in recklessness terms. However, that does not mean that the two concepts are identical for, in theory at least, they are not.

[\*\*4]

Dr. Storrs' second point is that the record does not contain substantial evidence of gross negligence. The Judicial Review Committee found that gross negligence existed with respect to the liver biopsy "as manifested by

failure to recognize promptly a life threatening condition (hemorrhagic shock), failure to institute basic, appropriate, and timely treatment and failure to assume responsibility to expedite treatment of shock." These conclusions were amply and explicitly supported by testimony.

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AFFIRMED.

Connor, Justice, not participating.

# REPRESENTATIVE PAUL SEATON

## SESSION ADDRESS

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## ALASKA STATE LEGISLATURE

House District 35

Dear Sen. French,

Thank you for taking the time to carefully analyze HB 25 and help brainstorm potential compromises we both can agree upon.

1. In your email you note that you are uncomfortable with the bill referring to buildings, etc. I agree. Current statute exempts unimproved land from simple negligence. The purpose of HB25 is to clarify the liability standard for improved land for free recreational use by the public. In order to not include buildings, structures, and machinery in the bill, I would suggest the attached amendment.
2. In your email you request that the portion of the land the land owner wishes to declare as 'open' to the public for free recreational use be specified in a license filed to the public. According to Dennis Bailey, although filing a license would be similar to filing an easement, an easement would be more appropriate for this circumstance. However, I remain concerned about requiring such a filing. How would the public know what land is available for recreational use? Would they be expected to look up the parcels that have a license filed at the recorders office? How would easements designate which land was open for recreational use? Would the easement need to include specific descriptions, geographical land marks and GPS coordinates or would including an individual's entire parcel be sufficient?
3. In your email you state that you believe landowners should have a duty to warn of hidden dangers (though not necessarily obvious ones). It is very difficult to distinguish in statute which hazards a land owner is responsible for making aware to the public and those that are obvious. Furthermore, it would put the landowner in a catch 22. If a hidden danger is unknown to the landowner, how can he warn the public about it? Would the landowner be required to post signs similar to no trespass signage requirements? How would notification be accomplished?

I appreciate you for engaging in the process of refining the specifics of HB 25. In summary, I can support the attached amendment to help satisfy your concerns. The intention of HB 25 is to encourage landowners to allow recreational use on their property by providing them with clear guidelines on their liability. HB 25 has the potential to open up miles of trails for recreation across the state. I hope that we are able to work together towards a compromise on this legislation and open up more trails across the state.

Thank you for your thoughtful consideration.

Sincerely,

A handwritten signature in cursive script that reads "Paul Seaton".

Rep. Paul Seaton

**AMENDMENT**

OFFERED IN THE SENATE

TO: HB 25

1 Page 3, line 3:

2 Delete "improved or"

3

4 Page 3, following line 3:

5 Insert new material to read:

6 "(B) improved land, exclusive of buildings, structures,  
7 machinery, or equipment on the land;"

8

9 Reletter the following subparagraphs accordingly.

10

11 Page 3, lines 7 - 8:

12 Delete all material.

LAW OFFICES

*Michael J. Schneider, P.C.*

TELEPHONE (907) 277-9306

880 "N" STREET, SUITE 203

FAX (907) 274-8201

ANCHORAGE, ALASKA 99501

**VIA FACSIMILE: (907) 465-3175**

March 16, 2007

The Honorable Paul Seaton  
Alaska State Legislature  
State Capitol, Room 403  
Juneau, AK 99801-1182

**RE: HB 25 – RECREATIONAL LAND USE LIABILITY/ADVERSE POSSESSION**

Dear Representative Seaton:

Thank you very much for visiting with me recently, and thanks to you and your staff for copying me with your memorandum of March 5, 2007, to Senate Resources.

You suggested to me that you were very anxious to see this bill become law. We can both agree that increased access for the public to private improved land is often desirable. The intent of your bill as stated, is to relieve private land owners who unreasonably maintain their improved real estate of the responsibility that normally attends such failings. The justification for this gift to the careless is the "*quid pro quo*" of public access. I respectfully suggest that without language in the bill enforcing the *quid pro quo*, the bill does little or nothing for the public while immunizing those whose acts and omissions will foreseeably injure and kill members of the public.

**The "directly or indirectly" problem.**

During our visit, I explained that I have consulted with an experienced local real estate attorney and been advised that any private property owner could grant a "temporary revocable appurtenant easement" to the public. This recorded document would specify the land, or portion of the land, available for free public access and would leave no doubt in anyone's mind about what property, owned by others, they could or could not access for recreational purposes. It will eliminate the real and foreseeable problem that a negligent property owner would claim the benefit of this bill after the fact of injury, while never really giving the public free recreational access before the injury.

You responded that there were a number of legal impediments to this approach. Frankly, I am unable to debate you because this is beyond my depth. I can only say that upon repeating as much of our discussion as I could remember and understand to those more capable than I, it remains their opinion that a temporary revocable appurtenant easement would do the job. You advised me that such an easement would require "acceptance" by the state or municipality. My legal consultants tell me that such is simply not the case unless the state or municipality is the grantee of the easement in question.

Despite the above, and without regard to where the technical truth lies, there are other easy ways to make sure that negligent property owners do not get a free ride on the back of your injured constituents, a clearly foreseeable but unintended consequence of this bill. The recorder's office will accept virtually anything for filing. Section 1 (Sec. 09.65.202) could be amended to read as follows:

- (a) A land owner that ~~directly or indirectly~~ allows a recreational activity on the land owner's land by filing a "notice of availability for recreational activity", in form specified herein, with the appropriate recorder's office, does not, by allowing that activity,

While I can assure you I have no pride of authorship nor depth of skill in this area, such a "notice" might look like the following:

**Notice of Availability for Recreational Activity**

Notice is hereby given, pursuant to AS 09.65.202, that the following described real property is available for recreational activity by the public, without charge, or at a charge no greater than specifically authorized by this statute:

[Legal Description of Property, or portion thereof, or Metes and Bounds description of property and/or portion thereof intended to be open for recreational access.]

Date: \_\_\_\_\_

Signature by Land Owner: \_\_\_\_\_

The statutory language and the related notice can be further refined or modified to limit the nature or type of recreation involved. Some land owners may be very inclined to allow cross-country skiing or fishing or small game hunting on their property but disinclined to allow snowmachining, fireworks, or paintball wars.

I respectfully suggest that without some formal commitment by the owner to open their property for recreational access, and without some way for the recreational public to understand in advance where they can go and where they can't go, and what they can do when they get there, this bill gets the public little or nothing while immunizing from personal responsibility of those who unreasonably maintain their property.

**The "charge" loophole needs to be closed.**

Section (b) of the bill makes it clear that the bill is not intended to benefit land owners who collect "a charge for entry" onto the land for recreational activities. Nevertheless, sub-section (e)(1)(C) of the bill swallows up this protection by the wording employed.

(C) a contribution in kind, service, or cash from a user if all of the contribution is used to improve access to trails, to remedy or reduce damage, to provide warning of a hazard, or to remove a hazard from the land [is not a charge].

As this is worded, and contrary to your intent as you explained it to me, I could be charged a \$1,000.00 trespass fee to hunt brown bear on someone's land, fall into some barely visible mine shaft, suffer catastrophic injuries, and have my claim subject to a complete bar if, after the fact, the land owner in question used my \$1,000.00 to cover up the shaft I fell in to. To solve this problem, I would suggest language something like the following:

(C) a contribution in-kind, service, or cash from a user if there is in existence before the injury giving rise to the claim, a documented program in place to use 100% of such contributions to improve access or trails, to remedy or reduce damage, to provide warning of hazard, or to remove a hazard from the land;

**The "land" loophole needs to be closed and expressly harmonized with Alaska's nuisance statute (AS 09.45.230).**

it would be poor public policy for this bill to get in the way of abatement of private nuisances. Abatement is authorized by AS 09.45.230. I would suggest an amendment to Section (c) as follows:

(c) This section may not be construed to conflict with, nor does it have any effect on, a liability release agreement between a participant in a recreational activity and a land owner, or where an action based on private nuisance is authorized by AS 09.45.230.

I am quite concerned about the definition contained at Section (e)(2)(E) that includes within the definition of the "land" immunized by the bill "buildings, structures, other improvements, machinery, and equipment on the land;" I hope that all of the sponsors, and all the members of the legislature, appreciate that they are immunizing a list of horrors by this broad language. By this language, those that support this bill immunize people that "don't get around to fixing" the thin cable strung across a trail by making it visible or eliminating it with a safer barricade. If some bright light leaves a large piece of equipment unsecured, unattended, and with the keys in it next to the junior high school, that person or entity's insurance company gets a free ride on the back of some injured or killed kid when the inevitable happens. And, of course, if the child is injured seriously or if his health insurance is inadequate, the public then pays for this private stupidity, anointed and blessed by this legislation in its current form. I would strongly encourage limitations and tightening of the language in this section. However, much of the difficulty with this section might be solved

by reigning in Section (a) 2. See below.

**The "known hidden" hazard loophole.**

Section (a)(2) tells the negligent land owners among us that they do not:

(2) owe a duty to warn persons using the land for a recreational activity of any dangerous condition, known or unknown, apparent or hidden;

You cannot be liable, even if you act in a grossly negligent or intentional manner, under circumstances where you owe no duty. As the Alaska Supreme Court has observed on many occasions, a *prima facie* tort consists of the elements of duty, breach thereof, causation, and damages. No duty means no tort. In this section of the bill, the legislature is immunizing property owners who know of a hidden hazard from all liability. Because no duty exists, a finding of grossly negligent breach is not going to do much for the scout troop that falls into the carefully camouflaged mine shaft, as the property owner and his insurance company chuckle all the way to the bank.

More appropriate language for this section is suggested below.


(2) owe a duty to warn persons using the land for recreational activity of any dangerous condition of which the user knew, or should have known. A land owner has a duty to warn of hidden dangers.

**Conclusion.**

Thank you for allowing me to comment on this bill, and I am anxious to work with you toward a version that better protects your constituents from the foreseeable consequences of unreasonable acts and omissions by property owners.

Your very truly,

LAW OFFICES  
MICHAEL J. SCHNEIDER, P.C.

  
Michael J. Schneider

MJS/clm

cc: Senate Resources Committee

# REPRESENTATIVE PAUL SEATON

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ALASKA STATE LEGISLATURE  
House District 35

## MEMORANDUM

**TO:** Senator French, Chair  
Senate Judiciary Committee

**FROM:** Representative Paul Seaton

**DATE:** Tuesday April 17, 2007

**RE:** Request for a Hearing HB 25

A handwritten signature in cursive script that reads "Paul".

I respectfully request a hearing before the Senate Judiciary Committee on HB 25, "An Act relating to landowners' immunity for allowing use of land without charge for a recreational activity; relating to landowners' liability where landowner conduct involves gross negligence or reckless or intentional misconduct; relating to claims of adverse possession and prescriptive easements, or similar claims; and providing for an effective date."

In summary, HB 25 delineates the duties of landowners who allow free recreational use of their lands.

Attached please find: HB 25, fiscal note, sponsor statement, sectional summary, letters of support, comparative chart of similar legislation in other states, March 5, 2007 letter to SRES, April 2, 2007 memo to SRES, and teleconference request form.

Staff contact: Katie Shows, ext. 2028

# REPRESENTATIVE PAUL SEATON

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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.

# 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-LS0174\A))

**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

## Letters of Support –HB 25

### Organizations

---

Alaska Trails  
State Farm Insurance council, Lessmeier & Winters  
Kachemak Heritage Land Trust  
Alaska Outdoor Council (write-up in Outdoor Alaska publication)  
Pratt Museum  
Alaska State Chamber  
Anchor Point Chamber of Commerce  
Kenai Peninsula Borough (Resolution)  
The Conservation Fund  
Alaska Snowmobile Association  
Letters/Resolutions addressing HB 415\*  
National Rifle Association of America  
City of Homer (Resolution)  
Coalition for Homer Open Space and Trails  
Homer Soil and Water Conservation District

### Individuals                      **HB 25**

---

Kathy S. Corp	Homer
Valarie Connor	Homer
Bill Smith	Homer
Elaine Martin	Wasillia
Roberta Highland	Homer
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
LoisBettini	Homer
Kevin & Jeanne Walker	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.

**ALASKA  
TRAILS**

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: lw@gcl.net**

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

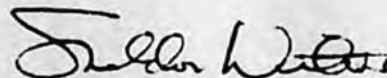
**January 22, 2007**

**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,**



---

**Sheldon E. Winters  
Lobbyist for State Farm**



## Kachemak Heritage Land Trust

315 Klondike Avenue • Homer, AK 99603 • ph: 907-235-5263 • fax: 907-235-1303 • [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,

A handwritten signature in black ink, appearing to read 'Barbara Seaman'. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Barbara Seaman  
Executive Director

highway. With support from the AOC Representative Bill Stoltze and for 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 land 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, with the first name being more prominent.

Heather Beggs  
Museum Director



February 09, 2007

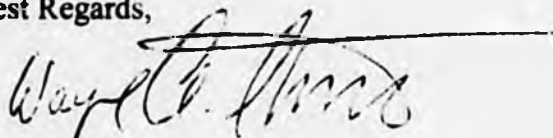
Representative Paul Seaton  
State Capitol Room 102  
Juneau, Alaska 99801

Representative Seaton,

The Alaska State Chamber of Commerce supports House Bill 25. 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 25 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 25 may have additional benefits by creating opportunities in Alaska's remotest locations. The State Chamber encourages your constructive work with regards to HB 25 and we are hopeful that the bill will move through the legislative process.

Best Regards,



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



ALASKA STATE  
CHAMBER  
OF COMMERCE

**Headquarters**

217 2nd Street  
Suite 201  
Juneau  
Alaska 99801  
(907) 586-1221  
FAX 463-3335

**Regional Office**

601 W 5th Ave  
Suite 700  
Anchorage  
Alaska 99501  
(907) 233-2222  
FAX 238-6643



## Chamber of Commerce

\* P.O. Box 610, Anchor Point, Alaska 99556 \* Mile 156 Sterling Hwy \* (907) 235-2600 \*

January 31, 2007

The Honorable Representative Paul Seaton  
House of Representatives  
Alaska State Capitol  
Juneau, Alaska 99801-1182

RE: HB 25

Dear Representative Seaton:

The Anchor Point Chamber of Commerce Board of Directors supports HB 25. This bill provides reasonable liability protection for private property owners who allow recreational use of their property.

Anchor Point is an unincorporated area within the Kenai Peninsula Borough. The Kenai Peninsula Borough does not accept trail easements, which means the only other way a land owner may avoid liability is to grant a trail easement to the State. This is an unreasonable burden for the land owner as well as a financial burden for the State. For land owners within the unincorporated areas of the Kenai Peninsula Borough, the liability protection granted by HB 25 is needed to protect private property owners and to preserve outdoor recreational opportunities.

Without the passage of HB 25, land owners will remain vulnerable to frivolous law suits for allowing simple activities such as neighbors skiing across their land. Protections for land owners are needed to support the recreational activities of hiking, skiing, snow machining, hunting and more. These activities are important to our quality of life and the character of our community.

Through HB 25, the State of Alaska has the opportunity to protect recreational and private property interests at the same time. The Anchor Point Chamber of Commerce supports and encourages the passage of this bill.

Sincerely,

Paul Voeller  
President

Introduced by:

Martin

Date:

02/06/07

Action:

Adopted as Amended

Vote:

9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2007-010**

**A RESOLUTION SUPPORTING HOUSE BILL 25 AS CURRENTLY WRITTEN  
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 25 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 25 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 25 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; and

**WHEREAS,** in March 2006, the assembly adopted Resolution 2006-027 which supported HB 415, the prior legislature's version of the current HB 25, and the two are substantially the same;

**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 25 as currently written.

**Katie Shows**

---

**From:** BradMeiklejohn@aol.com  
**Sent:** Tuesday, February 27, 2007 12:13 PM  
**To:** Sen. Charlie Huggins  
**Subject:** Support for HB25

**THE CONSERVATION FUND**

BRAD A. MEIKLEJOHN  
ALASKA REPRESENTATIVE  
2727 HILAND ROAD  
EAGLE RIVER, ALASKA 99577  
(907) 694-9060/9070 FAX  
[Bradmeiklejohn@aol.com](mailto:Bradmeiklejohn@aol.com)  
[www.conservationfund.org](http://www.conservationfund.org)

February 27, 2007

Senator Charlie Huggins, Chair  
Senate Resources Committee  
Alaska State Legislature  
Juneau, Alaska

RE: Support for House Bill 25

Dear Senator Huggins,

I am writing in support of House Bill 25, a bill expanding legal immunity for landowners who allow public use of their lands.

While Alaska has an abundance of public lands, access to these lands is often blocked by landowners who are apprehensive of the potential liabilities of allowing public use of their lands. Many states have adopted legislation that shields private landowners from liability, and such laws have expanded opportunities for public access and recreation.

I ask for your support of House Bill 25.

Sincerely,

/s/

Brad Meiklejohn  
Alaska Representative

## **The Alaska State Snowmobile Association**



I appreciate the opportunity to comment on the Alaska State Snowmobile Association's position of support for HB 25. As the umbrella organization that coordinates over 1600 members of local snowmobile clubs, we appreciate Rep Seaton's addressing of an issue that has presented itself as an impediment to access of developing parcels of land throughout Alaska. While these occasions have been infrequent up to now, the problem is certain to increase both in frequency as well as impact as the State of Alaska maintains the rate of growth in both settlement of land as well as recreational use of public property.

Lands being currently developed in our less populated areas many times include sections of recreational trails that are enjoyed by several types of enthusiasts, including but not limited to snowmobilers. Many times these sections of trails are leading from a parking location to a destination accessible only by the trail system. Whenever there are unresolved questions of liability for landowners allowing free recreational access, the most common reaction by the landowner is to protect his interest in the most effective way available. Unfortunately for access, this generally means prohibiting the very use that he or she utilized for development of this property.

Routes that have traditionally allowed thru passage to areas beyond the private landowners holdings become more difficult or impossible. Giving private landowners protection from frivolous or nuisance claims that could possibly lead to adverse possession of the holdings. This protection goes a long ways toward development of healthy and mutually beneficial relationships between private landowners and recreationists.

In conclusion, the Alaska State Snowmobile Association supports this legislation and offers our appreciation to Representative Seaton for sponsoring it.

Kevin Hite  
President  
Alaska State Snowmobile Association  
[www.aksnow.org](http://www.aksnow.org)  
907-522-6373 Home  
907-529-0106 Mobile



**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.

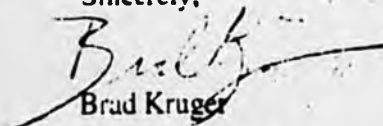
Unfortunately current state law does not directly address recreational use of private lands. Alaska's Recreational Activities statute, AS.09.65.290, passed by the legislature in 2003, mainly addresses commercial operators. Some landowners are protected by Alaska's unimproved land statute, AS.09.65.200, 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 owners, encouraging them to allow the public free recreational use of their lands.

Thank you for listening.

Sincerely,

  
Brad Kruger  
AK NRA Field Rep

**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 Hess  
Founding Member**



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

## 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  
omer, 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

---

**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 upon 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 lose a valued part of its 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

---

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,

## Katie Shows

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**From:** Mary Jane Shows  
**Sent:** Monday, February 12, 2007 9:31 AM  
**To:** katie.shows@legis.state.ak.us  
**Subject:** FW: New Pom:HB 25 Recreational Land Use Liability/adv. Poss

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

**From:** POMS@legis.state.ak.us [mailto:POMS@legis.state.ak.us]  
**Sent:** Monday, February 12, 2007 9:28 AM  
**To:** Mary Jane Shows  
**Subject:** New Pom:HB 25 Recreational Land Use Liability/adv. Poss

Robert Archibald  
Po Box 2460

Homer 99603-2460,

As owners of thirty five acres with many trails used by the public I strongly support HB 25. It's time to help private property owners maintain access to trails without the worry of litigation. Your support is greatly appreciated.

**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 Kapaner  
**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)-384-3226/ (907) 697-2335/ (907) 209-1441(c)

**Ian Laing**

---

**From:** Afish-n-Sea/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  
907-567-3310  
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 snowmachine 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**

---

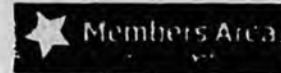
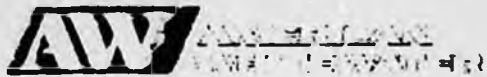
**From:** Dave and Molly Brann [brann@alaska.net]  
**Sent:** Thursday, January 19, 2006 10:08 AM  
**To:** Rep. Paul Seaton  
**Cc:** Ian Laing  
**Subject:** Re: RE:

**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**



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

Des. Pul land fee

Y Y

Y Y

<u>Ann. §18-11-301</u>	1983, 1991						from land leased to public agency allowed
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**California**

<u>California Govt. Code §2-2-3-2-846</u>	1963, 1988	No	No	No	Yes		Yes, but fees from land leased to public agency allowed
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**Colorado**

<u>Colorado Rev. Stat. §33-41-101</u>	1963, 1970	Not Specified	Not Specified	No	Yes		Yes, but fees from land leased to public agency allowed
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**Connecticut**

<u>Connecticut Gen. Stat. §52-557(f)</u>	1971, 1990	No	No	No	Yes		Yes, but fees from land leased to public agency allowed
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**Delaware**

<u>Delaware Code Ann. §7-VI-5901</u>	1953	No	No	No	Yes		Yes, but fees from land leased to public agency allowed
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**Florida**

<u>Florida State Ann. §XXVIII-375.251</u>	1963	No	No	No	Yes		Yes
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**Georgia**

<u>Georgia Code Ann. §51-3-20</u>	1965	No	No	No	Yes		Yes, but fees from land leased to public agency allowed
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**Hawaii**

<u>Hawaii Rev. Stat. §3-28-520-1</u>	1969	No	No	No	Yes		Yes, but fees from land leased to
--------------------------------------	------	----	----	----	-----	--	-----------------------------------

						public agency allowed
<b>Idaho</b>						
<u>Idaho Code 636-16</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**

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

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

<u>Massachusetts Gen. Law Ann. §1-21-17(C)</u>	1972	Not Specified	Not Specified	Not Specified	Yes	Yes, but voluntary payments are allowed
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**Michigan**

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

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

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

<u>Missouri §XXXVI-537.345</u>	1983	No	No	No	Yes	Yes
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**Montana**

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

**Nebraska**

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

<u>Nevada Rev. Stat. §41.510</u>	1963, 1995	No	No	No	Yes	Yes
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**New Hampshire**

<u>New Hampshire Rev. Stat. Ann. §XVIII-212-34</u>	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**

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

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

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

<u>North Carolina Gen. Stat. §113 (A)-6-95</u>	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**

<u>North Dakota Cent. Code §53-</u>	1965, 1993	No	No	No	Yes	Yes, but fees from land
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08-1 leased to public agency allowed

**Ohio**

<u>Ohio Rev. Code Ann. §XV-33-18</u>	1963, 1995	No	Not Specified	No	Not Specified	Yes
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**Oklahoma**

<u>Oklahoma Stat. Ann. Title §76-10</u>	1965, 1994	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
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**Oregon**

<u>Oregon Rev. Stat. §105.672</u>	1971, 1995	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
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**Pennsylvania**

<u>Pennsylvania Stat. Ann. §68-11-477</u>	1965	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
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**Rhode Island**

<u>Rhode Island Gen. Law §32-6-1</u>	1978	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
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**South Carolina**

<u>South Carolina Code Ann. §27-3-10</u>	1962	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
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**South Dakota**

<u>South Dakota Comp. Laws Ann. §20-9-11</u>	1966, 1990	No	No	No	Yes	Yes, but nonmonetary gifts up to \$100 allowed
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**Tennessee**

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

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

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

<u>Vermont Stat. Ann. §10-020-441 &amp; §12-5791</u>	1967, 1993	No	Not Specified	No	Yes	Yes
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**Virginia**

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

<u>Washington Rev. Code Ann. §4-24.200</u>	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**

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

# REPRESENTATIVE PAUL SEATON

## SESSION ADDRESS

State Capitol Building  
1, Alaska 99801-1182  
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1-800-665-2689



## INTERIM ADDRESS

345 W. Sterling Highway  
Homer, Alaska 99603  
(907) 235-2921  
Fax: (907) 235-4008  
1-800-665-2689

## ALASKA STATE LEGISLATURE House District 35

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### MEMORANDUM

**TO:** Senate Resources  
**FROM:** Representative Paul Seaton  
**DATE:** March 5, 2007  
**RE:** HB 25

I am submitting this memo to respond in detail to the questions that came up during the discussion of HB 25 in Senate Resources on Friday March 2<sup>nd</sup>.

#### Adverse Possession

HB 25 protects a landowner by not allowing an adverse possession or a proscriptive easement claim against the landowner on the basis of allowing free recreational use of his or her land. Senator Wagoner brought up the point that adverse possession was already covered to include recreational use in existing statute. While the passage of AS 09.10.030 in 2003 notably limited the basis for adverse possession claims, the effect it would have on permissive recreational use is unclear. AS.09.25.052 states "the uninterrupted adverse notorious use...of private land for...public access purposes, including...trails, by the public...for a period of 10 years or more, vests an appropriate interest in that land" (see attached statute). The courts have not yet interpreted how adverse possession applies since the passage of AS 09.10.030. The court could decide to apply an adverse possession or proscriptive easement claim under either AS 09.25.052 or AS 09.10.030 with different outcomes. For example, without the adverse possession language in HB 25 a user could claim adverse possession after 10 years of use. However the previous land owner could come back at any time in the future and re-claim the land granted to the user. HB 25 provides clarity to both parties and assures landowners that they will not have to give up or lose control of a portion of their land in the future if they allow recreational use. I have included a legal memo addressing adverse possession from last session (please note it references HB 415, identical legislation to HB 25 introduced last session).

**ALASKA STATE LEGISLATURE**  
**REPRESENTATIVE PAUL SEATON**  
House District 35

Airstrip liability

Chairman Huggins brought up the question of the liability level for a private airstrip near a home or structure. Existing statute AS 09.65.093 covers aircraft runways, airfields, and landing areas. Under AS 09.65.093 a private owner or operator of an airstrip is not civilly liable unless gross negligence or recklessness or intentional misconduct can be proven, which is the same standard HB 25 proposes for free recreational use of other private land (see attached statute). However, if the airstrip is abandoned – not being maintained as an airstrip - the outcome is less clear. AS 09.65.200 "Tort immunity for personal injuries or death occurring on unimproved land" specifically includes (c) (2) an abandoned aircraft landing area. Therefore, the standard for the private landowner is "gross negligence or reckless or intentional misconduct." However, if the old strip is mowed as a lawn or field or is close to a building this could place the landowners property into the improved land classification for which the liability standard would be simple negligence, unless protected by HB 25.

Indirectly Allow

Attorney Michael Schneider raised the concern that the term "indirectly allow" used in the bill granted broad and inappropriate immunity. The House Judiciary Committee debated at length about the term "indirectly" and came up with no appropriate substitute. The intent of the legislation is to cover landowners who have no objection to their land being used for recreation but may not have knowledge of every instance or have given expressed consent (written or verbal) to each user. Removal of the term "indirect" would create a burden to give that written or verbal permission to each user. After extensive conversations with legislative legal and discussion among the three lawyers on House Judiciary, it was determined that the term "indirectly allow" was appropriate in order to maintain the integrity of the bill. Furthermore, the terms "directly or indirectly" are used very frequently in Alaska Statute (192 times in 35 out of 47 titles). Please see the attached memo that was provided to House Judiciary for examples.

You will also notice that p.2 lines 15-17 explicitly removes any potential conflict with liability release agreements to ensure that this broader immunity does not limit the liability provisions in written waivers.

Please feel free to contact my office if you have any additional concerns about HB 25 or wish to discuss the items in this memo further.

**Sec. 09.45.052. Adverse possession.**

(a) The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more, or the uninterrupted adverse notorious possession of real property for 10 years or more because of a good faith but mistaken belief that the real property lies within the boundaries of adjacent real property owned by the adverse claimant, is conclusively presumed to give title to the property except as against the state or the United States. For the purpose of this section, land that is in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, is land owned by the state.

(b) Except for an easement created by Public Land Order 1613, adverse possession will lie against property that is held by a person who holds equitable title from the United States under paragraphs 7 and 8 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958).

(c) Notwithstanding AS 09.10.030, the uninterrupted adverse notorious use of real property by a public utility for utility purposes for a period of 10 years or more vests in that utility an easement in that property for that purpose.

(d) Notwithstanding AS 09.10.030, the uninterrupted adverse notorious use, including construction, management, operation, or maintenance, of private land for public transportation or public access purposes, including highways, streets, roads, or trails, by the public, the state, or a political subdivision of the state, for a period of 10 years or more, vests an appropriate interest in that land in the state or a political subdivision of the state. This subsection does not limit or expand the rights of a state or political subdivision under adverse possession or prescription as the law existed on July 17, 2003.

# LEGAL SERVICES

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Juneau, Alaska 99801-1182  
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## MEMORANDUM

March 27, 2006

**SUBJECT:** Effect of AS 09.65.202(d) on adverse possession or prescriptive easement issues (HB 415 (Work Order No. 24-LS1446I))

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

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

You have asked me to summarize the effect of AS 09.65.202(d), part of HB 415, on adverse possession or prescriptive easements. That section provides:

(d) Except as provided for under AS 09.45.052(d), land use allowed by a land owner for recreational activity without charge may not form the basis of a claim for adverse possession, prescriptive easement or a similar claim.

Following our discussions yesterday, I drafted an amendment clarifying that the limitation applies only to activity occurring after the effective date of the act, not to recreational activity which may have happened in the past.

Adverse possession is addressed in AS 09.45.052.

**AS 09.45.052. Adverse possession.** (a) The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more, or the uninterrupted adverse notorious possession of real property for 10 years or more because of a good faith but mistaken belief that the real property lies within the boundaries of adjacent real property owned by the adverse claimant. is conclusively presumed to give title to the property except as against the state or the United States. For the purpose of this section, land that is in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, is land owned by the state.

(b) Except for an easement created by Public Land Order 1613, adverse possession will lie against property that is held by a person who holds equitable title from the United States under paragraphs 7 and 8 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958).

(c) Notwithstanding AS 09.10.030, the uninterrupted adverse

notorious use of real property by a public utility for utility purposes for a period of 10 years or more vests in that utility an easement in that property for that purpose.

(d) Notwithstanding AS 09.10.030, the uninterrupted adverse notorious use, including construction, management, operation, or maintenance, of private land for public transportation or public access purposes, including highways, streets, roads, or trails, by the public, the state, or a political subdivision of the state, for a period of 10 years or more, vests an appropriate interest in that land in the state or a political subdivision of the state. This subsection does not limit or expand the rights of a state or political subdivision under adverse possession or prescription as the law existed on July 17, 2003.

The underlined language in subsection (a) was added in 2003, and placed restrictions on the availability of adverse possession.

A prescriptive easement claim is similar to a claim for adverse possession. A prescriptive easement is a claim for a right to use property, while adverse possession is a claim for an ownership right.<sup>1</sup>

AS 09.45.052(d) is referenced in the draft bill as an exclusion. Paraphrased, it states, that adverse possession is available to the state or a political subdivision for listed projects and that the adverse possession or prescriptive rights of the state or a political subdivision are not limited or expanded by the enactment of the 2003 revisions.

AS 09.10.030 is the companion statute to AS 09.45.052. It addresses adverse possession by limiting the time available for bringing an action for recovery of real property or possession of it to 10 years. AS 09.10.030 was also modified in 2003 by adding new subsection (b). AS 09.10.030 states:

(b) An action may be brought at any time by a person who was seized or possessed of the real property in question at some time before the commencement of the action or whose grantor or predecessor was seized or possessed of the real property in question at some time before commencement of the action, and whose ownership interest in the real property is recorded under AS 40.17, in order to

(1) quiet title to that real property; or

---

<sup>1</sup> Obtaining rights in another's property by prescription is similar to obtaining rights by adverse possession. "Both doctrines permit acquisition of property rights through the passage of time, if certain conditions are met, but prescription is applied to servitudes while adverse possession is applied to possessory estates." Thus, the focus in a prescriptive easement claim is on "use," whereas the focus in an adverse possession case is on "possession." *Interior Trails Pres. Coalition v. Swope*, 115 P.3d 527, 529 (Alaska 2005)

**Representative Paul Seaton**

**March 27, 2006**

**Page 3**

**(2) eject a person from that real property.**

**This subsection arguably consumes the general rule by allowing a person to bring an action to recover possession at any time if the person previously had possession of a recorded interest in the land. My research shows that the effect of AS 09.10.030(b) has not been interpreted at the appellate level of the Alaska courts, but it has notably limited the doctrine of adverse possession in Alaska.**

**If HB 415 passes, and assuming that it included the amended language limiting its effect to after the effective date of the bill, recreational activity under the provisions of the bill could not be used as the basis of a claim. Thus, as we discussed, if a person had an adverse possession claim based on recreational use that required additional time to mature after the effective date of the act, in my judgment, that right would be barred by the effect AS 09.65.202(d), if enacted by HB 415.**

**If I may be of further assistance, please advise.**

**DCB:ljw  
06-158.ljw**

**Sec. 09.65.093. Civil liability relating to aircraft runways, airfields, and landing areas.**

**(a) Except as provided in (c) of this section, a person who without compensation constructs, maintains, or repairs an aircraft runway, airfield, or landing area may not be held civilly liable, except for an act or omission that constitutes gross negligence or recklessness or intentional misconduct, for the injury to or death of a person or for damage to an aircraft, resulting from the use of the runway, airfield, or landing area to take off, land, park, or operate an aircraft.**

**(b) A person who is the owner or operator of an aircraft runway, airfield, or landing area is not civilly liable, except for an act or omission that constitutes gross negligence or recklessness or intentional misconduct, for the injury to or the death of a person or for damage to an aircraft, resulting from the use or attempted use of the runway, airfield, or landing area to take off, land, park, or operate an aircraft while the runway, airfield, or landing area is**

**(1) marked as closed by placement of a large "X" on the runway, in accordance with Federal Aviation Administration guidelines; and**

**(2) listed or charted, and designated as closed in the appropriate aeronautical charts and publications published by the Federal Aviation Administration.**

**(c) The immunity from civil liability under (a) of this section does not limit the liability of an owner or operator of an aircraft runway, airfield, or landing area to a provider of flight services or its passengers under contract with the owner or operator.**

Alaska State Legislature

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Homer, AK 99603  
Phone: 235-2921  
Fax: 235-4008

Representative Paul Seaton@legis.state.ak.us

**REPRESENTATIVE Paul Seaton**

District 35

---

**MEMORANDUM**

**TO:** House Judiciary Committee  
**FROM:** Representative Paul Seaton  
**DATE:** February 2, 2007  
**RE:** The use of "directly" and "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 titles, only 12 do not include the term "directly or indirectly" 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]

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

TITLE 2. AEROUNAUTICS

TITLE 5. AMUSMENTS 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

# Alaska State Legislature

State Capitol, Room 103  
Juneau, AK 99802  
Phone: 465-2689  
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Representative\_Paul\_Seaton@legis.state.ak.us



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## REPRESENTATIVE Paul Seaton

District 35

---

Senator Huggins, Chair  
Senate Resources Committee

April, 2 2007

Dear Sen. Huggins,

I have received correspondence dealing with technical legal questions and standards from a couple of trial lawyers. Several of these issues were addressed in House Judiciary such as the terminology and judicial application of "direct and indirect" and applicability of the legislation only with specific written permission for a user to recreate on private land. Requiring written agreement defeats the general purpose of the HB 25. I provided to the committee an analysis of the terminology discussion and legislative legal opinion on March 5, 2007.

There was also a question raised by the trial lawyers about the meaning of "gross negligence" within the context of Alaska civil law. I have pointed out that the "gross negligence" standard is the standard currently incorporated into Alaska Statutes covering landowners' liability on unimproved land, abandoned airstrips, and operating private airstrips. I have included with this memo a legal opinion with the definition of gross negligence and its application.

The trial lawyers also disagreed with the "duties of a landowner" section (Section 09.65.202(1-3)). Please reference the state by state comparison chart showing that 45 other states address this liability in a similar manner I provided in the bill packet.

Thank you for your consideration of these matters.

Sincerely,

Rep. Paul Seaton

cc: Members of the Senate Resources Committee

# 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

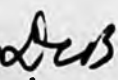
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 21, 2007

**SUBJECT:** Defining "gross negligence" (HB 25, Work Order No. LS0174A)

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

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

You have asked for a definition of or case law interpreting "gross negligence."

The common law definition of "gross negligence," as expressed, in pertinent part, in *Black's Law Dictionary*, Seventh Edition is:

1. A lack of slight negligence or care.
2. A conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party, who may typically recover exemplary damage.--Also termed reckless negligence; wanton negligence; hazardous negligence.

The Alaska pattern jury instruction defining gross negligence reads:

### 3.14 GROSS NEGLIGENCE DEFINED

I will now define gross negligence for you. A person was grossly negligent if: (1) that person's act or failure to act created an unreasonable risk of harm to another; and (2) if either that person had knowledge of facts that would disclose to a reasonable person that the act or failure to act involved a high degree of probability that the harm would occur, or the person knew that the act or failure to act involved a high degree of probability that the harm would occur.

To qualify as gross negligence or recklessness, the conduct must involve a risk of injury or death substantially greater in amount than that which is necessary for negligence. See *Restatement (Second) of Torts* sec. 500 comment g at 590 (1965) (regarding recklessness); *Storrs v. Lutheran Hospital and Homes Society of America*, 661 P.2d 632, 634 (Alaska 1983) (regarding gross negligence); *Bunting v. U.S.*, 884 F.2d 1143, 1147 (9th Cir. 1989) (regarding gross negligence).

Ordinary or simple negligence is a failure to act as a reasonable person would in the same circumstances. Simple negligence often results from incompetence or failure to take

**Representative Paul Seaton**

**March 21, 2007**

**Page 2**

precautions that are ordinarily taken in that situation. In contrast, gross negligence is an act or omission that creates an unreasonable risk of harm and includes a high degree of probability that the harm will occur. *Leavitt v. Gillaspie*, 443 P.2d 61 (Alaska 1968).

I am sending you a copy of the *Storrs* case and the *Leavitt* case (see text marked on pgs. 2 - 3).

If I may be of further assistance, please advise.

DCB:med  
07-193.med

**Enclosure**

**Teleconference Order Form      FAX TO 465-2864**

Sponsor and or Committee Name			Date
Representative Paul Seaton SENATE JUDICIARY			4/16/07

Start/End Time	Chairing site	Juneau Room	Testimony Yes __ No __ Invitational __

Contact Person and	Phone Number	Other sites may add?	Testimony Limit
Katie Shows	465-2028	yes	

Subject of meeting and or Bills on agenda
HB 25 - delineating duties of landowners who allow free recreational use of their lands

Sites - LIOs		Sites - Offnets	Phone #
Anchorage	x		
Barrow			
Bethel			
Cordova			
Delta Junction			
Dillingham			
Fairbanks	x		
Glennallen			
Homer	x		
Juneau			
Kenai			
Ketchikan			
Kodiak			
Kotzebue			
Matsu			
Nome			
Petersburg			
Seward	x		
Sitka			
Tok			
Valdez			
Wrangell			

Notes

LAW OFFICES

*Michael J. Schneider, P.C.*

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880 "N" STREET, SUITE 202

FAX (907) 274-8201

ANCHORAGE, ALASKA 99501

**VIA FACSIMILE: (907) 465-3175**

March 16, 2007

The Honorable Paul Seaton  
Alaska State Legislature  
State Capitol, Room 403  
Juneau, AK 99801-1182

**RE: HB 25 – RECREATIONAL LAND USE LIABILITY/ADVERSE POSSESSION**

Dear Representative Seaton:

Thank you very much for visiting with me recently, and thanks to you and your staff for copying me with your memorandum of March 5, 2007, to Senate Resources.

You suggested to me that you were very anxious to see this bill become law. We can both agree that increased access for the public to private improved land is often desirable. The intent of your bill as stated, is to relieve private land owners who unreasonably maintain their improved real estate of the responsibility that normally attends such failings. The justification for this gift to the careless is the "*quid pro quo*" of public access. I respectfully suggest that without language in the bill enforcing the *quid pro quo*, the bill does little or nothing for the public while immunizing those whose acts and omissions will foreseeably injure and kill members of the public.

**The "directly or indirectly" problem.**

During our visit, I explained that I have consulted with an experienced local real estate attorney and been advised that any private property owner could grant a "temporary revocable appurtenant easement" to the public. This recorded document would specify the land, or portion of the land, available for free public access and would leave no doubt in anyone's mind about what property, owned by others, they could or could not access for recreational purposes. It will eliminate the real and foreseeable problem that a negligent property owner would claim the benefit of this bill after the fact of injury, while never really giving the public free recreational access before the injury.

You responded that there were a number of legal impediments to this approach. Frankly, I am unable to debate you because this is beyond my depth. I can only say that upon repeating as much of our discussion as I could remember and understand to those more capable than I, it remains their opinion that a temporary revocable appurtenant easement would do the job. You advised me that such an easement would require "acceptance" by the state or municipality. My legal consultants tell me that such is simply not the case unless the state or municipality is the grantee of the easement in question.

Despite the above, and without regard to where the technical truth lies, there are other easy ways to make sure that negligent property owners do not get a free ride on the back of your injured constituents, a clearly foreseeable but unintended consequence of this bill. The recorder's office will accept virtually anything for filing. Section 1 (Sec. 09.65.202) could be amended to read as follows:

- (a) A land owner that ~~directly or indirectly~~ allows a recreational activity on the land owner's land by filing a "notice of availability for recreational activity" in form specified herein, with the appropriate recorder's office, does not, by allowing that activity,

While I can assure you I have no pride of authorship nor depth of skill in this area, such a "notice" might look like the following:

**Notice of Availability for Recreational Activity**

Notice is hereby given, pursuant to AS 09.65.202, that the following described real property is available for recreational activity by the public, without charge, or at a charge no greater than specifically authorized by this statute:

[Legal Description of Property, or portion thereof, or Metes and Bounds description of property and/or portion thereof intended to be open for recreational access.]

Date: \_\_\_\_\_

Signature by Land Owner: \_\_\_\_\_

The statutory language and the related notice can be further refined or modified to limit the nature or type of recreation involved. Some land owners may be very inclined to allow cross-country skiing or fishing or small game hunting on their property but disinclined to allow snowmachining, fireworks, or paintball wars.

I respectfully suggest that without some formal commitment by the owner to open their property for recreational access, and without some way for the recreational public to understand in advance where they can go and where they can't go, and what they can do when they get there, this bill gets the public little or nothing while immunizing from personal responsibility of those who unreasonably maintain their property.

**The "charge" loophole needs to be closed.**

Section (b) of the bill makes it clear that the bill is not intended to benefit land owners who collect "a charge for entry" onto the land for recreational activities. Nevertheless, subsection (e)(1)(C) of the bill swallows up this protection by the wording employed.

(C) a contribution in kind, service, or cash from a user if all of the contribution is used to improve access to trails, to remedy or reduce damage, to provide warning of a hazard, or to remove a hazard from the land [is not a charge].

As this is worded, and contrary to your intent as you explained it to me, I could be charged a \$1,000.00 trespass fee to hunt brown bear on someone's land, fall into some barely visible mine shaft, suffer catastrophic injuries, and have my claim subject to a complete bar if, after the fact, the land owner in question used my \$1,000.00 to cover up the shaft I fell in to. To solve this problem, I would suggest language something like the following:

(C) a contribution in-kind, service, or cash from a user if there is in existence before the injury giving rise to the claim, a documented program in place to use 100% of such contributions to improve access or trails, to remedy or reduce damage, to provide warning of hazard, or to remove a hazard from the land;

**The "land" loophole needs to be closed and expressly harmonized with Alaska's nuisance statute (AS 09.45.230).**

It would be poor public policy for this bill to get in the way of abatement of private nuisances. Abatement is authorized by AS 09.45.230. I would suggest an amendment to Section (c) as follows:

(c) This section may not be construed to conflict with, nor does it have any effect on, a liability release agreement between a participant in a recreational activity and a land owner, or where an action based on private nuisance is authorized by AS 09.45.230.

I am quite concerned about the definition contained at Section (e)(2)(E) that includes within the definition of the "land" immunized by the bill "buildings, structures, other improvements, machinery, and equipment on the land;" I hope that all of the sponsors, and all the members of the legislature, appreciate that they are immunizing a list of horrors by this broad language. By this language, those that support this bill immunize people that "don't get around to fixing" the thin cable strung across a trail by making it visible or eliminating it with a safer barricade. If some bright light leaves a large piece of equipment unsecured, unattended, and with the keys in it next to the junior high school, that person or entity's insurance company gets a free ride on the back of some injured or killed kid when the inevitable happens. And, of course, if the child is injured seriously or if his health insurance is inadequate, the public then pays for this private stupidity, anointed and blessed by this legislation in its current form. I would strongly encourage limitations and tightening of the language in this section. However, much of the difficulty with this section might be solved

by reigning in Section (a) 2. See below.

**The "known hidden" hazard loophole.**

Section (a)(2) tells the negligent land owners among us that they do not:

(2) owe a duty to warn persons using the land for a recreational activity of any dangerous condition, known or unknown, apparent or hidden;

You cannot be liable, even if you act in a grossly negligent or intentional manner, under circumstances where you owe no duty. As the Alaska Supreme Court has observed on many occasions, a *prima facie* tort consists of the elements of duty, breach thereof, causation, and damages. No duty means no tort. In this section of the bill, the legislature is immunizing property owners who know of a hidden hazard from all liability. Because no duty exists, a finding of grossly negligent breach is not going to do much for the scout troop that falls into the carefully camouflaged mine shaft, as the property owner and his insurance company chuckle all the way to the bank.

More appropriate language for this section is suggested below:

(2) owe a duty to warn persons using the land for recreational activity of any dangerous condition, of which the user knew, or should have known. A land owner has a duty to warn of hidden dangers.

**Conclusion.**

Thank you for allowing me to comment on this bill, and I am anxious to work with you toward a version that better protects your constituents from the foreseeable consequences of unreasonable acts and omissions by property owners.

Your very truly,

LAW OFFICES  
MICHAEL J. SCHNEIDER, P.C.

  
Michael J. Schneider

MJS/clm

cc: Senate Resources Committee

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
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FAX (907) 465-2029  
Mail Stop 3101

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

## MEMORANDUM

April 24, 2007

**SUBJECT:** Potential liability, under HB 25, in a hypothetical situation where a landowner places an unmarked cable on a landowner's property that causes the decapitation of a four wheel all-terrain vehicle driver using the property for recreational use (HB 25, Work Order No. 25-LS0174A)

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

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

You have asked for an opinion addressing how HB 25 would apply to the hypothetical circumstance where a landowner places an unmarked cable up on their property that results in the decapitation of the driver of a four-wheel all-terrain vehicle using the property for recreational purposes. This analysis is based on the discussion of the concepts of ordinary negligence and gross negligence provided in my March 27, 2007 memo.

Ordinary or simple negligence is a failure to act as a reasonable person would in the same circumstances. Simple negligence often results from incompetence or failure to take precautions that are ordinarily taken in that situation. In contrast, gross negligence is an act or omission that creates an unreasonable risk of harm and includes a high degree of probability that the harm will occur.<sup>1</sup> To qualify as gross negligence or recklessness, the conduct must involve a risk of injury or death substantially greater in amount than that which is necessary for negligence.<sup>2</sup> Whether a defendant acted negligently is a question of fact properly determined by the jury.<sup>3</sup>

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<sup>1</sup> *Leavitt v. Gillaspie*, 443 P.2d 61 (Alaska 1968).

<sup>2</sup> See *Restatement (Second) of Torts* sec. 500 comment g at 590 (1965) (regarding recklessness); *Storrs v. Lutheran Hospital and Homes Society of America*, 661 P.2d 632, 634 (Alaska 1983)

<sup>3</sup> *Dobos v. Ingersoll*, 9 P.3d 1020, 1026 (Alaska 2000); see also, *Gordon v. Alaska Pac. Bancorporation*, 753 P.2d 721, 725 (Alaska 1988) (whether particular conduct is negligent or reasonable is a question of fact for the jury), *Schumacher v. City & Borough of Yakutat*, 946 P.2d 1255, 1256 (Alaska 1997).

Representative Paul Seaton  
April 24, 2007  
Page 2

Depending on the facts of a particular case, a jury could decide that placing on one's property an unmarked cable that decapitated a rider was negligent, meaning the landowner failed to act as a reasonable person under the circumstances. Under HB 25, assuming the use by the four-wheeler was recreational, the plaintiff would not be able to recover damages for ordinary or simple negligence. A defendant landowner would face liability only if a jury decided that the landowner's conduct created a risk of injury substantially higher than the standard for ordinary negligence.

The jury's decision is based on the facts of each case. Adding additional facts to your hypothetical might sway a jury to decide that the landowner's conduct is either ordinary or gross negligence. As an extreme example, a jury would be more likely to decide that the conduct is grossly negligent (or possibly intentional) if the cable was nearly invisible, placed head-high or across a well traveled path where four-wheelers often traveled, or placed where four-wheelers traveled at high rates of speed. A jury might consider whether the accident happened during the day or at night. On the other hand, a jury may preclude liability by deciding that the conduct was ordinary or simple negligence, if, for example, the cable was large enough to be seen without marking (assuming that the driver was traveling at a reasonable speed); or was part of a group of cables; or was placed at the head of a driveway or where one may reasonably expect a cable to act like a gate, or where four-wheelers would have difficulty going at a high speed; or if the cable was connected to a utility pole where one might expect cables.

The hypothetical circumstance you have posed appears on the surface to present a case in which the jury would find gross negligence.<sup>4</sup> However, additional facts might result in a result in a finding of ordinary negligence.

If I may be of further assistance, please advise.

DCB:ljw  
07-226.ljw

---

<sup>4</sup> This memo focuses on the how a jury might decide whether the conduct is considered ordinary versus gross negligence. I have not addressed other elements in a negligence analysis such as comparative negligence, causation, or damages.

# LEGAL SERVICES

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## MEMORANDUM

April 24, 2007

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<sup>1</sup> *Leavitt v. Gillaspie*, 443 P.2d 61 (Alaska 1968).

<sup>2</sup> See *Restatement (Second) of Torts* sec. 500 comment g at 590 (1965) (regarding recklessness); *Storrs v. Lutheran Hospital and Homes Society of America*, 661 P.2d 632, 634 (Alaska 1983)

<sup>3</sup> *Dobos v. Ingersoll*, 9 P.3d 1020, 1026 (Alaska 2000); see also, *Gordon v. Alaska Pac. Bancorporation*, 753 P.2d 721, 725 (Alaska 1988) (whether particular conduct is negligent or reasonable is a question of fact for the jury), *Schumacher v. City & Borough of Yakutat*, 946 P.2d 1255, 1256 (Alaska 1997).

Depending on the facts of a particular case, a jury could decide that placing on one's property an unmarked cable that decapitated a rider was negligent, meaning the landowner failed to act as a reasonable person under the circumstances. Under HB 25, assuming the use by the four-wheeler was recreational, the plaintiff would not be able to recover damages for ordinary or simple negligence. A defendant landowner would face liability only if a jury decided that the landowner's conduct created a risk of injury substantially higher than the standard for ordinary negligence.

The jury's decision is based on the facts of each case. Adding additional facts to your hypothetical might sway a jury to decide that the landowner's conduct is either ordinary or gross negligence. As an extreme example, a jury would be more likely to decide that the conduct is grossly negligent (or possibly intentional) if the cable was nearly invisible, placed head-high or across a well traveled path where four-wheelers often traveled, or placed where four-wheelers traveled at high rates of speed. A jury might consider whether the accident happened during the day or at night. On the other hand, a jury may preclude liability by deciding that the conduct was ordinary or simple negligence, if, for example, the cable was large enough to be seen without marking (assuming that the driver was traveling at a reasonable speed); or was part of a group of cables; or was placed at the head of a driveway or where one may reasonably expect a cable to act like a gate, or where four-wheelers would have difficulty going at a high speed; or if the cable was connected to a utility pole where one might expect cables.

The hypothetical circumstance you have posed appears on the surface to present a case in which the jury would find gross negligence.<sup>4</sup> However, additional facts might result in a result in a finding of ordinary negligence.

If I may be of further assistance, please advise.

DCB:ljw  
07-226.ljw

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<sup>4</sup> This memo focuses on the how a jury might decide whether the conduct is considered ordinary versus gross negligence. I have not addressed other elements in a negligence analysis such as comparative negligence, causation, or damages.

# LEGAL SERVICES

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

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### MEMORANDUM

April 24, 2007

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

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

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Ordinary or simple negligence is a failure to act as a reasonable person would in the same circumstances. Simple negligence often results from incompetence or failure to take precautions that are ordinarily taken in that situation. In contrast, gross negligence is an act or omission that creates an unreasonable risk of harm and includes a high degree of probability that the harm will occur.<sup>1</sup> To qualify as gross negligence or recklessness, the conduct must involve a risk of injury or death substantially greater in amount than that which is necessary for negligence.<sup>2</sup> Whether a defendant acted negligently is a question of fact properly determined by the jury.<sup>3</sup>

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Representative Paul Seaton

April 24, 2007

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

1001 1st Ave S  
Montgomery, AL 36103  
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If I may be of further assistance, please advise.

DCB:ljw  
07-226.ljw

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# LEGAL SERVICES

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FAX (907) 465-2029  
Mail Stop 3101

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

### MEMORANDUM

April 24, 2007

**SUBJECT:** Potential liability, under HB 25, in a hypothetical situation where a landowner places an unmarked cable on a landowner's property that causes the decapitation of a four wheel all-terrain vehicle driver using the property for recreational use (HB 25, Work Order No. 25-LS0174\A)

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

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

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<sup>1</sup> *Leavitt v. Gillaspie*, 443 P.2d 61 (Alaska 1968).

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Depending on the facts of a particular case, a jury could decide that placing on one's property an unmarked cable that decapitated a rider was negligent, meaning the landowner failed to act as a reasonable person under the circumstances. Under HB 25, assuming the use by the four-wheeler was recreational, the plaintiff would not be able to recover damages for ordinary or simple negligence. A defendant landowner would face liability only if a jury decided that the landowner's conduct created a risk of injury substantially higher than the standard for ordinary negligence.

The jury's decision is based on the facts of each case. Adding additional facts to your hypothetical might sway a jury to decide that the landowner's conduct is either ordinary or gross negligence. As an extreme example, a jury would be more likely to decide that the conduct is grossly negligent (or possibly intentional) if the cable was nearly invisible, placed head-high or across a well traveled path where four-wheelers often traveled, or placed where four-wheelers traveled at high rates of speed. A jury might consider whether the accident happened during the day or at night. On the other hand, a jury may preclude liability by deciding that the conduct was ordinary or simple negligence, if, for example, the cable was large enough to be seen without marking (assuming that the driver was traveling at a reasonable speed); or was part of a group of cables; or was placed at the head of a driveway or where one may reasonably expect a cable to act like a gate, or where four-wheelers would have difficulty going at a high speed; or if the cable was connected to a utility pole where one might expect cables.

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If I may be of further assistance, please advise.

DCB:ljw  
07-226.ljw

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<sup>4</sup> This memo focuses on the how a jury might decide whether the conduct is considered ordinary versus gross negligence. I have not addressed other elements in a negligence analysis such as comparative negligence, causation, or damages.

# LEGAL SERVICES

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

(907) 465-3887 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

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

## MEMORANDUM

April 24, 2007

**SUBJECT:** Potential liability, under HB 25, in a hypothetical situation where a landowner places an unmarked cable on a landowner's property that causes the decapitation of a four wheel all-terrain vehicle driver using the property for recreational use (HB 25, Work Order No. 25-LS0174\A)

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

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

You have asked for an opinion addressing how HB 25 would apply to the hypothetical circumstance where a landowner places an unmarked cable up on their property that results in the decapitation of the driver of a four-wheel all-terrain vehicle using the property for recreational purposes. This analysis is based on the discussion of the concepts of ordinary negligence and gross negligence provided in my March 27, 2007 memo.

Ordinary or simple negligence is a failure to act as a reasonable person would in the same circumstances. Simple negligence often results from incompetence or failure to take precautions that are ordinarily taken in that situation. In contrast, gross negligence is an act or omission that creates an unreasonable risk of harm and includes a high degree of probability that the harm will occur.<sup>1</sup> To qualify as gross negligence or recklessness, the conduct must involve a risk of injury or death substantially greater in amount than that which is necessary for negligence.<sup>2</sup> Whether a defendant acted negligently is a question of fact properly determined by the jury.<sup>3</sup>

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**Representative Paul Seaton**

**April 24, 2007**

**Page 2**

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Representative Paul Seaton  
April 24, 2007  
Page 2

LEGAL SERVICES

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

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DATE RECORDED  
FILE NUMBER

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Peninsula Veterinary Services  
Jerry Nybakken, DVM  
P.O. Box 1763  
Soldotna, Alaska 99669-1763  
(907) 260-5850

February 20, 2008

Dear Alaska State Legislature

I encourage passage of H.B. 25  
"Recreational Land Use Liability/Adverse  
Possession".

As the population of Alaska increases,  
new homes are, and will continue to be, built  
over our ancestral trail system closing  
many of these trails. A bill such as H.B. 25  
passed into law will encourage landowners  
to keep access to those trails open while  
protecting their efforts and investment.

I commend Rep. Seaton and Rep. Wilson  
for sponsoring this bill.

Thank you  
Jerry Nybakken DVM  
JERRY NYBAKKEN, DVM

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By: Luke Hopkins  
Introduced: 04/12/07  
Amended: 04/12/07  
Adopted: 04/12/07

**FAIRBANKS NORTH STAR BOROUGH**

**RESOLUTION NO. 2007 - 12**

**A RESOLUTION SUPPORTING HB 25 "AN ACT RELATING TO LANDOWNERS' IMMUNITY FOR ALLOWING USE OF LAND WITHOUT CHARGE FOR A RECREATIONAL ACTIVITY; RELATING TO LANDOWNERS' LIABILITY WHERE LANDOWNER CONDUCT INVOLVES GROSS NEGLIGENCE OR RECKLESS OR INTENTIONAL MISCONDUCT; RELATING TO CLAIMS OF ADVERSE POSSESSION AND PRESCRIPTIVE EASEMENTS, OR SIMILAR CLAIMS; AND PROVIDING FOR AN EFFECTIVE 05 DATE."**

WHEREAS, HB 25 encourages recreational use of private lands by providing certain legal protections to landowners who allow free public access to their lands for recreational activity; and

WHEREAS, the extent to which these landowners receive legal protection under the current law is confusing and ambiguous, particularly when land has been altered slightly from its natural state; and

WHEREAS, HB 25 expands the immunity protection to private landowners allowing free recreational activity regardless of whether the property has been "improved"; and

WHEREAS, HB 25 stipulates that a private landowner does not owe to a person using his or her property for recreational purposes a duty to keep the land safe for use, a duty to warn of unsafe conditions, or 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; and

WHEREAS, given ambiguities in current law, those interested in allowing public access of their lands are currently unable to properly assess their risks. HB 25 would eliminate these ambiguities by granting immunity for the recreational use of private lands in the same manner adopted by most other states.

NOW, THEREFORE, BE IT RESOLVED that the Assembly of the Fairbanks North Star Borough supports passage of HB25.

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Alaska Interior Delegation.

PASSED AND APPROVED THIS 12<sup>th</sup> DAY OF APRIL 2007.

*Valerie M. Therrien*

**Valerie M. Therrien, Deputy  
Presiding Officer**

**ATTEST:**

*Mona Lisa Drexler, MMC*

**Mona Lisa Drexler, MMC  
Municipal Borough Clerk**

**Ayes: Bartos, Beck, Frank, Foote, Musick, Therrien, Rex, Hopkins**

**Noes: None**

**Excused: Winters**

February 15, 2008

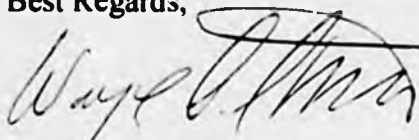
Senator Hollis French  
State Capitol  
Juneau, Alaska 99801

Senator French,

The Alaska State Chamber of Commerce supports House Bill 25. 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 25 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 25 may have additional benefits by creating opportunities in Alaska's remotest locations. The State Chamber encourages your constructive work with regards to HB 25 and we are hopeful that the bill will move through the legislative process.

Best Regards,



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