HB

25

SENATE COMMITTEE REPORT

DATE: 2/14/07

FURTHER: Judiciary

DATE TURNED IN TO OFFICE: _____

Resources Committee considered HOUSE BILL NO. 25

HB 25 RECREATIONAL LAND USE LIABILITY/ADV. POSS

"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."

and recommends:

[ ] be **replaced** with [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] adopt **previous** [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt _____ Letter of Intent

[ ] further referral to _____ Committee

SENATE BILL:
[ ] Same Title
[ ] New Title

HOUSE BILL:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
AOM	1/22/07			✓	1

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC.	AMEND
Lyle Green	Green			✓	
Neal McGuire	McGuire			✓	
[illegible]	Stewart	✗			
[illegible]	Huggins	✓			
[illegible]				✓	
[illegible]	Kiefechowski		✓		✓
CHAIR: [illegible]	Huggins	✓			
[illegible]	Wagoner			✓	

Moved out of SRLS 4/K

REPRESENTATIVE PAUL SEATON

SESSION ADDRESS
State Capitol Building
Juneau, Alaska 99801-1182
(907) 465-2689
Fax: (907) 465-3472
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

MEMORANDUM

TO: Senator Huggins, Chair
Senate Resources Committee

FROM: Representative Paul Seaton

DATE: Wednesday February 14, 2007

RE: Request for a Hearing HB 25

I respectfully request a hearing before the Senate Resources 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 analysis, letters of support, comparative chart of similar legislation in other states, and teleconference request form.

Staff contact: Katie Shows, ext. 2028

http://www.RepPaulSeaton.com
Email: Rep_Paul_Seaton@legis.state.ak.us

02/07/07	0175	(H)	FN1: ZERO(ADM)
02/12/07	0209	(H)	RULES TO CALENDAR 2/12/2007
02/12/07	0209	(H)	READ THE SECOND TIME
02/12/07	0210	(H)	ADVANCED TO THIRD READING UNAN CONSENT
02/12/07	0210	(H)	READ THE THIRD TIME HB 25
02/12/07	0210	(H)	PASSED Y36 E4
02/12/07	0210	(H)	EFFECTIVE DATE(S) SAME AS PASSAGE
02/12/07	0212	(H)	COSPONSOR(S): KELLY, GUTTENBERG, HARRIS
02/12/07	0212	(H)	TRANSMITTED TO (S)
02/12/07	0212	(H)	VERSION: HB 25
02/14/07	0240	(S)	READ THE FIRST TIME - REFERRALS
02/14/07	0240	(S)	RES, JUD
02/14/07	0240	(S)	REFERRED TO RESOURCES
03/02/07	Text	(S)	RES AT 3:30 PM BUTROVICH 205

Similar Subject Match or Exact Subject Match
EASEMENTS
LAND
LIABILITY
PARKS & RECREATION
PROPERTY
SPORTS
TORTS

Bill Root: Display Bill Root | Next Bill

To Report Problems with Basis Inquiry

Live KTOO Streams

Return to Basis Main Menu (25 Legislature)
Return to Legislature Home Page

ALASKA STATE LEGISLATURE

Sen. Charlie Huggins, Chair
Sen. Bert Stedman, Vice Chair
Sen. Lyda Green
Sen. Gary Stevens
Sen. Lesil McGuire
Sen. Bill Wielechowski
Sen. Thomas Wagoner

State Capitol, Room 119
Juneau AK 99801-1182
907-465-3878
Fax: 907-465-3265
800-862-3878

Senate Resources Committee

Monday April 2, 2007
3:30 p.m.– 5:00 p.m.

AGENDA

- **HB 25 RECREATIONAL LAND USE LIABILITY/ADV. POSS**

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.

Presentation by

Representative Paul Seaton

Public Testimony: Time Limit May Be Set

- **BPH/S**

ALASKA STATE LEGISLATURE

Sen. Charlie Huggins, Chair
Sen. Bert Stedman, Vice Chair
Sen. Lyda Green
Sen. Gary Stevens
Sen. Lesil McGuire
Sen Bill Wielechowski
Sen. Thomas Wagoner

State Capitol, Room 119
Juneau AK 99801-1182
907-465-3878
Fax: 907-465-3265
800-862-3878

Senate Resources Committee

Friday March 2, 2007
3:30 p.m.– 5:00 p.m.

AGENDA

* **Governor's Appointments, Confirmation hearings**

Big Game Commercial Services Board
Richard A. Roher – Kodiak
Leif Wilson – Tok

Department Commissioners:
Denby Lloyd, Dept. of Fish and Game
Tom Irwinn Dept. of Natural Resources
Larry Hartig, Dept. of Environmental Conservation

Board of Game
Robert Bell – Anchorage
Ben Grussendorf – Sitka

Alaska Oil and Gas Conservation Commission
Cathy P. Foerster – Anchorage

* **HB 25** **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.**

April 2, 2007
Senate Resources Bill Packet

HB 25– Recreational Land Use Liability

Enclosures:

Inside front cover: Fiscal Notes

1. HB 25 (LS0174\A) .....1 page

2. Sponsor Statement ..... 1 page

3. Sectional Analysis ..... 1 page

4. Letters of support..... 14 pages

5. Emails of support (arr. By date)..... 12 pages

6. Liability & Recreational Use Statutes..... 7 pages

7. March 5, Seaton Memo & Packet in response to Questions asked @ SRES 3/2/07 meeting:

   Memo..... 2 pages
   Sec.09.45.052. Adverse possession..... 1 page
   Legal Svcs memo 3/27/06 Adverse possession..... 3 pages
   Sec. 09.65.093. Civil liability relating to aircraft Runways, airfields, and landing areas..... 1 page
   Seaton memo to HJUD 2/2/07..... 5 pages

8 . April 2, Seaton Letter referencing ..... **1 page**

   March 21, Legal Services "gross negligence" Memo..... 1 page

continued on April 2, 2007

March 2, 2007
Senate Resources Bill Packet

HB 25– Recreational Land Use Liability

Enclosures:

Inside front cover: Fiscal Notes

1. HB 25 (LS0174\A) ..... 1 page
2. Sponsor Statement ..... 1 page
3. Sectional Analysis ..... 1 page
4. Letters of support..... 14 pages
5. Emails of support (arr. By date)..... 12 pages
6. Liability & Recreational Use Statutes.....7 pages
7. Submitted testimony 3-2-07

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 25
(H) Publish Date: 1/25/07

Revision Date/Time (Note if correction): 1/17/2007

Title: An act relating to landowners' immunity for allowing recreational activity
Sponsor: Representative Seaton, Wilson
Requester: House Resources

Dept. Affected: Administration
RDU: Risk Management
Component: Risk Management
Component No. 71

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

Risk Management is not affected by this legislation.

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

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

(Revised 9/18/2006 OMB)

HOUSE BILL NO. 25

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES SEATON AND WILSON, Hawker, Ramras, Kelly, Guttenberg, Harris

Introduced: 1/16/07
Referred: Resources, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to landowners' immunity for allowing use of land without charge for a**
2 **recreational activity; relating to landowners' liability where landowner conduct involves**
3 **gross negligence or reckless or intentional misconduct; relating to claims of adverse**
4 **possession and prescriptive easements, or similar claims; and providing for an effective**
5 **date."**

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

7 *** Section 1.** AS 09.65 is amended by adding a new section to read:
8 **Sec. 09.65.202. Tort immunity for landowners' allowing recreational**
9 **activity; adverse possession.** (a) A landowner that directly or indirectly allows a
10 recreational activity on the landowner's land without charge does not, by allowing that
11 activity,
12 (1) owe a duty of care to maintain the land safe for entry or use for a
13 recreational activity or to eliminate, alter, or control the inherent risks of a recreational

activity;

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

(3) owe a duty to curtail or prevent use of the land for recreational activities;

(4) implicitly ensure that the land is safe for any purpose;

(5) confer a legal status, such as invitee or licensee, to which a special duty of care is owed; or

(6) assume responsibility for any injury to persons or property.

(b) This section does not apply to a civil action

(1) if the landowner collects a charge for entry on the land for a recreational activity; or

(2) that is based on intentional, reckless, or grossly negligent conduct of the landowner.

(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 landowner.

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

(e) In this section,

(1) "charge" means a fee or admission price imposed for access to or use of land, a recreational activity, a service, an entertainment, or another activity, except that the following is not considered a "charge":

(A) consideration received by the landowner from the state or political subdivision for land leased or dedicated to the state or political subdivision;

(B) property tax relief in exchange for a landowner's agreement to open land for a recreational activity; or

(C) a contribution in kind, service, or cash from a user if all of the contribution is used to improve access or trails, to remedy or reduce

1 damage, to provide warning of a hazard, or to remove a hazard from the land;
2 (2) "land" includes private
3 (A) improved or unimproved land;
4 (B) ways or land subject to an easement or right-of-way;
5 (C) roads and trails;
6 (D) water and watercourses on or running through the land;
7 (E) buildings, structures, other improvements, machinery, and
8 equipment on the land;
9 (3) "landowner" means
10 (A) a private owner or holder of the possessory or controlling
11 interest in land, including a fee simple interest or life estate;
12 (B) a private lessee;
13 (C) the private holder of an easement; or
14 (D) another private person in control of the land;
15 (4) "recreational activity" has the meaning given "sports or recreational
16 activity" in AS 09.65.290.
17 * **Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).

REPRESENTATIVE PAUL SEATON

SESSION ADDRESS
State Capitol Building
Juneau, Alaska 99801-1182
(907) 465-2689
Fax: (907) 465-3472
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

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.

http://www.RepPaulSeaton.com
Email: Rep_Paul_Seaton@legis.state.ak.us

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
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

Prepared by the
Office of Rep. Seaton
2/14/07

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)

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
The Conservation Fund

Individuals HB 25

Kathy S. Corp	Homer
Valarie Connor	Homer
Bill Smith	Homer
Elaine Martin	Wasillia
Mossy Kilcher	Homer
Letters addressing HB 415*	
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
Roberta Highland	Homer
Al Poindexter	Homer
David Scheer	Homer
Lindsay Winkler	Homer
Wayne Watson	Homer
Heather Beggs	Homer
Bruce Hess	Homer
Tamara Schmidt	Homer
Barb Seaman	Homer
Kenneth Jones	Homer
Jeanne Parker	Homer

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

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

Jack Mosby
Past President

LESSMEIER & WINTERS
LAWYERS - LLC

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

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

TELEPHONE: (907) 796-4999
FACSIMILE: (907) 796-4995
E-MAIL: l-w@gci.net

VIA HAND DELIVERY

January 22, 2007

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

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 Winters

Sheldon E. Winters
Lobbyist for State Farm

RepSeaton01SEW.wpd

Kachemak Heritage Land Trust

315 Klondike Avenue • Homer, AK 99603 • ph: 907-235-5263 • fax: 907-235-1503 • www.kachemaklandtrust.org

January 23, 2007

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

Dear Representative Seaton,

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

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

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

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

Sincerely,

Barbara Seaman
Executive Director

AOC publication V. 14, Issue 5 Summer 2006

Overview *continued from page 1*

hway. With support from the AOC Representative Bill Stoltze and tor 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 licenses holders for active game agement.

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 s 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 opinion 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

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,

Heather Beggs
Museum Director

3779 Bartlett Street, Homer, Alaska 99603-7579 *(907) 235-8635*
Email: info@prattmuseum.org *Web: www.prattmuseum.org* *Fax: 235-2764*

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) 586-2323
FAX 463-5515

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

www.alaskachamber.com

Anchor Point 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

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.

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 pf and 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 statues 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

Homer
Soil & Water
Conservation District

4014 Lake Street, suite 201
Homer, Alaska 99603
907-235-8177 ext. 5
hswcd@xyz.net

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

Dear Representative Seaton:

During our February 9th 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,

Shirley Schollenberg
District Manager

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

From: Sen. Charlie Huggins
Sent: Tuesday, February 27, 2007 12:46 PM
To: Sharon Long
Subject: FW: Support for HB25

From: BradMeiklejohn@aol.com [mailto: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) 694-9060/9070FAX
Bradmeiklejohn@aol.com
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

Ian Laing

From: Dave and Molly Brann [brann@alaska.net]
Sant: 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

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

Katie Shows

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 benifit form this important protection for continued and improved trail access.

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

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

Bill Smith
PO Box 150
Homer AK 99603
235-8932

Katie Shows

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

Hello there Ms. Shows,

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

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

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

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

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
Homer, AK. 99603
(907) 235-2335 (days)
(907) 235-0605 (home)

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,

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

Katie Shows

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: Afish-n-See/Kennedy's [afishnsee@alaska.com]
Sent: Tuesday, March 07, 2008 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: 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

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. Clar live at P.O. Box 164; Gustavus, Alask 9826 (Spring,summer,fall), and the winters in Douglas, Alaska 99824. Due to the fact I will be on a boat in transit to Gustavus on Weds. March 22, I will not be able to phone in my support for the HB 415 hearing.

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

Therefore, I ask your support for HB 415.

Sincerely,

wayne g. clark

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

Ian Laing

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

To Whom it May Concern,

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

Please pass HB0415A!!

Sincerely,

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

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

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

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

14

Maine						
Maine Rev. Stat. Ann. §14-1-7-159(A)	1979, 1995	No		No	Yes	Yes, but fees from land leased to public agency allowed
Maryland						
Maryland Nat. Res. Code Ann. §5-1101	1957, 1998	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Massachusetts						
Massachusetts Gen. Law Ann. §I-21-17(C)	1972	Not Specified	Not Specified	Not Specified	Yes	Yes, but voluntary payments are allowed
Michigan						
Michigan Comp. Laws Ann. §324.73301	1994	No	No	No	Yes	Yes, but may charge a fee for "U-Pick" crops & not lose immunity
Minnesota						
Minnesota Stat. Ann. §604(A)20	1961, 1994	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Mississippi						
Mississippi Code Ann. §89-2-1	1978, 1986	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Missouri						
Missouri §XXXVI-537.345	1983	No	No	No	Yes	Yes
Montana						
Montana Rev. Code Ann. §70-	1965, 1995	No	Not Specified	No	Yes	Yes

16-301						
Nebraska						
Nebraska Rev. Stat. §37-730	1965, 1998	No	No	No	Yes	Yes, except can charge group rates & not lose immunity
Nevada						
Nevada Rev. Stat. §41.510	1963, 1995	No	No	No	Yes	Yes
New Hampshire						
New Hampshire Rev. Stat. Ann. §XVIII-212-34	1961, 1982	No	No	No	Yes	Yes, but may charge a fee for "U-Pick" crops & not lose immunity
New Jersey						
New Jersey Stat. Ann. §13-1 (B)B-15-133	1968, 1984	No	No	No	Yes	Yes
New Mexico						
New Mexico Stat. Ann. §17-4-7; §66-3-1013; §16-3-9	1973	No	Not Specified	No	Yes	Yes, but fees from land leased to public agency allowed
New York						
New York Gen. Oblig. Law §9-103	1963	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
North Carolina						
North Carolina Gen. Stat. §113 (A)-6-95	1987 Trails Act, 1993	Not Specified	Not Specified	Not Specified	Not Specified	Only applies to trails & not other uses of land
North Dakota						
North Dakota Cent. Code §53-	1965, 1993	No	No	No	Yes	Yes, but fees from land

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

Tennessee						
Tennessee Code Ann. §11-10-101	1988	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Texas						
Texas Stat. & Codes §4-75.001	1965, 1999	No	Not specified	No	Yes	No. Revenue from charges may not exceed 2x prop. taxes
Utah						
Utah Code Ann. §57-14-1	1971, 1997	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Vermont						
Vermont Stat. Ann. §10-020-441 & §12-5791	1967, 1993	No	Not Specified	No	Yes	Yes
Virginia						
Virginia Code §29.1-509	1950	No	No	No	Yes	Yes, but may charge fees to maintain the land & not lose immunity
Washington						
Washington Rev. Code Ann. §4-24.200	1967, 1997	Not Specified	Not Specified	Not Specified	Yes	Yes, but may charge for cutting firewood & not lose immunity
West Virginia						
West Virginia Code §19-25-1 Also see West Virginia's Whitewater Responsibility	1965	No	No	No	Yes	Yes

Act §20-3b-1 to 5						
Wisconsin						
Wisconsin Stat. Ann. §895.52	1963, 1995	No	No	No	Not Specified	No, so long as total revenues don't exceed $2000 annually
Wyoming						
Wyoming Stat. Ann. §34-19-101	1965	No	No	No	Yes	Yes, but fees from land leased to public agency allowed

CLARIFICATION OF TERMS:

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

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

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

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

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

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

CREDITS:

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

REPRESENTATIVE PAUL SEATON

SESSION ADDRESS
State Capitol Building
Juneau, Alaska 99801-1182
(907) 465-2689
Fax: (907) 465-3472
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

MEMORANDUM

TO: Senate Resources Chair Huggins

FROM: Representative Paul Seaton Paul

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 2nd.

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).

http://www.RepPaulSeaton.com
Email: Rep_Paul_Seaton@legis.state.ak.us

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

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 27, 2006

SUBJECT: Effect of AS 09.65.202(d) on adverse possession or prescriptive easement issues (HB 415 (Work Order No. 24-LS1446\I))

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, <u>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</u>, 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.[1]

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 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

---

[1] 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)

(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

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

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

Representative_Paul_Seaton@legis.state.ak.us

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 Statues 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

REPRESENTATIVE PAUL SEATON

SESSION ADDRESS
State Capitol Building
Juneau, Alaska 99801-1182
(907) 465-2689
Fax: (907) 465-3472
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

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 trail 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,

Paul Seaton

Rep. Paul Seaton

cc: Members of the Senate Resources Committee

http://www.RepPaulSeaton.com
Email: Rep_Paul_Seaton@legis.state.ak.us

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. LS0174\A)

TO: Representative Paul Seaton
Attn: Katie Shows

FROM: Dennis C. Bailey DCB
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

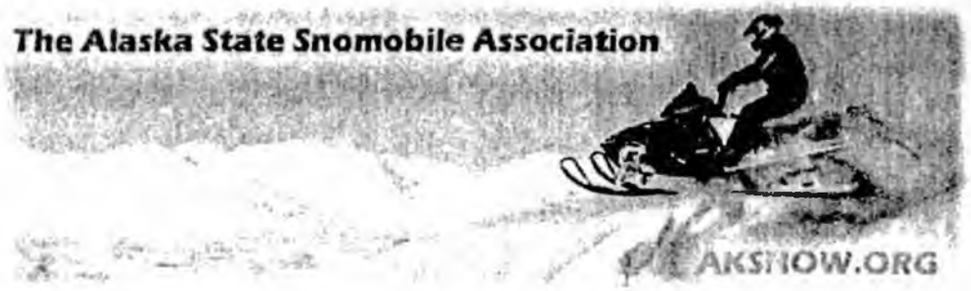
precautions that are ordinarily taken it that situation. In contrast, gross negligence is an act or omission that creates an unreasonable risk of harm and includes a high degree of probability that the harm will occur. *Leavitt v. Gillaspie*, 443 P.2d 61 (Alaska 1968).

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



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
907-522-6373 Home
907-529-0106 Mobile

City of Homer

City Manager
491 East Pioneer Avenue
Homer, Alaska 99603
907-235-8121, X-2222

Fax:(907) 235-3148 E-mail: wwrede@ci.homer.ak.us Web Site: www.ci.homer.ak.us

March 2, 2007

Dear Senate Resources Committee Members:

I am writing on behalf of the City of Homer to urge your support for HB 25, sponsored by Representative Paul Seaton. This bill, which passed easily in the House last month, encourages recreational use of private lands by protecting landowners who allow free public access for recreational purposes. The Homer City Council passed a resolution supporting this legislation and hopes to see a bill passed and signed into law this session.

In Homer, outdoor recreation is at the heart of our identity as a community and contributes millions of dollars to the local economy. Hiking and skiing trails are popular here but expansion of the area trail system is hampered by concerns of private landowners about legal liability, as there is currently no protection offered in state law for landowners who allow recreational use on properties where any kind of development has taken place. (Most other states do offer liability protection such as that offered in HB 25.)

HB 25 will provide clarity to state statute and protection for well-meaning landowners without giving cover to those who are reckless or grossly negligent. From our perspective, it provides a common sense solution for everyone involved and helps promote activity that is healthy, wholesome, and at the heart of what makes Alaska "the Great Land." We will be most grateful if you pass the bill out of Senate Resources Committee this afternoon.

Sincerely,

CITY OF HOMER

Walt Wrede
City Manager

Alaska State Legislature

Please enter into the record my testimony to the Senate Resources
committee name

Committee on HB 25 Rec. Land Use Liability, dated 3-2-07
bill # / subject — public hearing date

I support HB 25.

Signed: Pamela E. Breakfield
Testifier

Representing (optional)

35335 Hager Blvd Soldotna, Ak 99669
Address

907 262-1329
Phone number

Alaska State Legislature

Please enter into the record my testimony to the Senate Resources
committee name

Committee on HB 25 Rec. Land Use Liability, dated 3-2-07
bill # / subject public hearing date

Please pass HB 25 to help save some of our trails. Our club used to groom over 200 miles of trails and now grooms only 67 miles. HB 25 will help to get back some of these trails for our use legally rather than trespassing.

Signed: Howard T. Davis
Testifier

Caribout Hills Cabin Hoppers
Representing (optional)

PO Box 395 Clam Gulch, AK 99568
Address

262-5124
Phone number

Alaska State Legislature

Please enter into the record my testimony to the Senate Resources
committee name

Committee on HB 25 Rec. Land Use Liability, dated 3-2-07
bill # / subject public hearing date

Dear Legislators,

I support HB25 Recreational Land Use Liability. I feel that it is necessary to keep access available for future generations to enjoy. Please support this bill, for your kids and mine.

Thank you, Jeff Breakfield

Signed: Jeff Breakfield
Testifier

Representing (optional)

35335 Hager Blvd., Soldotna, Ak 99669
Address

907-262-1329
Phone number

Alaska State Legislature

Please enter into the record my testimony to the Senate Resources
committee name

Committee on HB 25 Rec. Land Use Liability, dated 3-2-07
bill # / subject public hearing date

I want to express my support for HB25. I think this bill is necessary for our future generations to have access to the recreational areas. I enjoy taking my grandchildren to the Caribou Hills for recreation when they visit. This is not only for winter time but also in the summer time. I know that the Caribou Hills Cabin Hoppers club does an excellent job of maintaining the trails. I have helped in the summer reseeding of areas along trails. I also volunteer during the winter for the Tustamena 200 sled dog race. I am a volunteer ham radio operator to provide communications from check points along the trail.

Thank you for giving me the opportunity to express my thoughts. I feel this bill is very important for future generations to be able to enjoy this wonderful area.

Signed: Dale L Hershberger
Testifier

Citizen (Caribou Hills Cabin Hoppers club member)
Representing (optional)

PO Box 616 Sterling, Alaska 99672
Address

907 262 7988
Phone number