

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7841 • HOUSE JUDICIARY •

106

for the purpose of skiing or for the purpose of sliding downhill on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, a snowboard, or any other device and who is injured, excluding those associated with an injury occurring to a passenger while riding on a passenger tramway, shall not exceed one million dollars, present value, including any derivative claim by any other claimant, which shall not exceed two hundred fifty thousand dollars, present value, and including any claim attributable to noneconomic loss or injury, as defined in sections 13-21-102.5 (2) (a) and (2) (b), C.R.S., whether past damages, future damages, or a combination of both, which shall not exceed two hundred fifty thousand dollars. If, upon good cause shown, the court determines that the present value of the amount of lost past earnings and the present value of lost future earnings, or the present value of past medical and other health care costs and the present value of the amount of future medical and other health care costs, or both, when added to the present value of other past damages and the present value of other future damages, would exceed such limitation and that the application of such limitation would be unfair, the court may award damages in excess of the limitation equal to the present value of additional future damages, but only for the loss of such excess future earnings, or such excess future medical and other health care costs, or both. For purposes of this section, "present value" has the same meaning as that set forth in section 13-64-202 (7), C.R.S., and "past damages" has the same meaning as that set forth in section 13-64-202 (6), C.R.S. The existence of the limitations and exceptions thereto provided in this section shall not be disclosed to a jury.

Source: Entire section added, L. 90, p. 1543, § 7, effective July 1.

Cross references: For the legislative declaration contained in the act enacting this section, see section 1 of chapter 256, Session Laws of Colorado 1990.

33-44-114. Inconsistent law or statute. Insofar as any provision of law or statute is inconsistent with the provisions of this article, this article controls.

Source: Entire section added, L. 90, p. 1543, § 7, effective July 1.

Cross references: For the legislative declaration contained in the act enacting this section, see section 1 of chapter 256, Session Laws of Colorado 1990.

Ski Resort Negligence Liability

Hiltschman v. City of Valdez (Alaska 1991), involved issues of the interpretation of Alaska's Limitations on Claims Arising from Skiing Act (the "Act") A.S. 09.65.135, comparative negligence, and a protective order. The case involved the discovery and use of evidence regarding the plaintiff's prior DWI conviction and prior drinking experience. Hiltschman sued the City of Valdez for injuries incurred as she went over a ski bump/jump at a ski sled hill.

The Act precludes recovery by skiers from a ski area operator for injuries resulting from an inherent risk of skiing which is defined in the statute as including, but not limited to, in part, variations or steepness in terrain, snow or ice conditions, and surface or subsurface conditions such as bare spots, forest growth and rock, and a skier's failure to ski within the limits of the skier's ability. The particular ski area in question is considered a beginner's hill, measuring 1,300 feet from top to bottom with a 208 foot vertical rise. Several bump/jumps could be found on the hill at the time of the accident. The trial court held that the plaintiff's injuries resulted from an inherent risk of skiing, but found that a genuine issue of material fact existed regarding whether the City complied with the statute's requirement of posting signs at prominent locations within the ski area listing the inherent risks of skiing and the limitation on liability of the ski area operator as provided by the Act.

While the facts surrounding the accident were disputed, since the Court was reviewing a summary judgment ruling, the Court drew the inferences in the plaintiff's favor, as she was the party opposing summary judgment. The City operator had testified that he thought the jump was dangerous. However, neither the ski lift operator nor the head of the ski patrol were aware of any other skier having ever been injured on the jump where the plaintiff's injury occurred. (The plaintiff landed on her tailbone after skiing off of the jump and was paralyzed from the waist down.) An expert in ski area design and planning thought it was inappropriate to have this jump on any jump, on a beginner's hill, unless the jump were marked as appropriate only for more advanced skiers. The plaintiff, 15 years old at the time of the accident, estimated that she had consumed between one and a half and three beers before the accident. She also asserted that she had taken four ski runs between her last consumption of beer and the time of the accident and that she did not fall on any of those runs. An emergency medical technician who attended the plaintiff stated that the plaintiff's breath smelled of alcohol, but that she was not obviously intoxicated.

Following two motions for reconsideration of the trial court's ruling on the City's motion for summary judgment, the trial court submitted the issue of adequate signage to a jury, which returned a verdict in favor of the City.

The Supreme Court concluded that the statute in question was intended to bar recovery for those risks which only a skier could control and that were beyond the ski area operator's control. The Court concluded that the Act reserved the common law duty of reasonable care of ski area operators and that evidence of negligence on the part of a ski area operator makes the case out of the inherent risk of skiing context. The Court stated that the

statute was that courts by listing those risks which are considered inherent in the sport of skiing those risks which are obvious and necessary. The Court defined necessary dangers as those which are not reasonably foreseeable by the skier-operator. The Court also observed that a risk not listed in the statute may still be an inherent risk of the sport if necessary and obvious, but this risk must be subjectively obvious to the skier, who must know of the risk's presence, understand its nature, and freely and voluntarily choose to encounter it.

Reviewing the evidence, the Court concluded that genuine issues of material fact existed as to whether the jump constituted an inherent risk of skiing. The Court noted that a jump is not specifically listed in the statute and its risk is not necessarily obvious or necessary. The plaintiff had testified that she did not think that the jump was hazardous in the way it was designed or constructed before she went off of it. The Court also noted testimony that the jump was not safe for beginner skiers and that the jump was not marked as being suitable only for expert skiers.

The Court held that the duty owed to a skier for a natural or an artificial condition is governed by the holding in *Webb v. City and Borough of Sitka*, 561 P.2d 731, 733 (Alaska 1977), which adopted the rule that a landowner must act as a reasonable person in maintaining his property in a reasonably safe condition in view of all of the circumstances, including the

likelihood of injury to others, the seriousness of the injury, and the burden on the respective parties of avoiding the risk. The Court observed that the origin of the danger (whether natural or artificial) is applicable to the rule announced in *Webb* as it affects the burden on the respective parties of avoiding the risk, and it is also relevant to the issue of the ski area operator's knowledge of the danger. However, the Court held, as a matter of law, an artificially created jump cannot be considered a variation or steepness in terrain or a surface condition, concluding that these categories relating to the inherent risk of skiing do not encompass artificially created conditions. Since the evidence was conflicting as to whether the jump was a natural variation in terrain or surface condition or an artificial structure, a jury question was presented as to whether a natural or artificial condition created the jump.

The Court also concluded that a jury question was presented with regard to the issue of whether the plaintiff was skiing beyond her ability. The Court ruled that, to bar an action, "skiing beyond one's ability" means the skier must subjectively know he or she is skiing beyond his or her ability, as an inherent risk of skiing must be necessary and subjectively obvious. However, once evidence of a ski area operator's negligence exists, the operator is free to argue that the skier voluntarily and unreasonably assumed a negligently created risk. The skier's negligence would then reduce recovery under the doctrine of comparative negligence. If an injury is caused by a combination of an inherent risk of skiing and the ski area operator's negligence, the doctrine of comparative fault will apply to determine the extent of the operator's negligence.

The Court next rejected the plaintiff's contention that the posted signs in the ski area were insufficient as a matter of law to comply with the statutory requirements. Although no "trail" signs were posted, the Court noted that the ski area consisted of one small open hill and that there were no real designated trails as such.

The Court also noted evidence indicating that a number of signs were posted at the bottom of the hill, where they were likely to be seen by skiers, and affirmed the trial court's ruling that genuine issues of material fact existed as to whether the signage at the ski area complied with the statutory requirement.

The Court also affirmed the lower court's order prohibiting the City from discovering or using evidence relating to the plaintiff's prior driving while intoxicated conviction and prior drinking experience pursuant to Evidence Rule 402 and 403. The Court concluded that the evidence of prior drinking did have marginal relevance on the issue of the plaintiff's knowledge of the effect alcohol can have on one's judgment. The Court noted that the plaintiff admitted having knowledge about the effects of alcohol and that there was other evidence available to the City regarding the plaintiff's consumption of alcohol and impairment. The Court concluded that the potential for prejudice, that the jury might punish the plaintiff for her prior conduct, might outweigh the marginal relevance of the prior drinking evidence and concluded that the trial court did not abuse its discretion in precluding discovery into and use of this evidence. On the other hand, the Court ruled that evidence concerning the plaintiff's drinking on the day of

the accident, as opposed to prior incidents of drinking, was relevant to the issue of comparative negligence.

To: Linda Nigera

Fr: Patti Rizer

I'll have more information for you later today. Thanks for your understanding.



EAGLECREST Ski Area

March 1, 1993

Representative Brian Porter
Chair, Judiciary Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Porter,

We understand that HB 44 will be coming before you in the very near future. There are a few minor points that we have noticed that could use some further work:

1. On page 4, lines 12-13 may be interpreted to exclude those persons who experience a disability. Through the Lions Club Disabled Ski Program at Eaglecrest we commonly have skiers who are blind, paraplegic, or mentally disabled participating in programs.

2. On page 6, line 5 the reference is made to "Safety Gate". The current ANSI code refers to these now as STOP GATES. Perhaps somewhere the bill could refer to the ANSI B-77 Code and all subsequent updates, so that as the technology and industry changes are reflected in the ANSI code, then they will be included in the bill b. reference.

3. On page 10, lines 12-16 are sufficiently vague that an injured skier could make a legal case that they were not instructed or educated properly regarding the inherent risks of skiing. It seems that some clearer guidelines would be in order here.

We certainly support the bill as it currently stands, but these clarifications would make it more understandable for everyone involved. If you have any questions, please feel free to call me at 586-5284.

Sincerely,

Gary Mendivil,
Business Manager

Jay M. Johnson
406 Pearl Drive
Anchorage, AK 99518

February 12, 1993

The Honorable Brian Porter
Judiciary Chairman
State Capitol
Juneau, AK 99801

Dear Representative Porter,

I am writing to express my support for HOUSE BILL NO. 41, the Alaska Ski Safety Act of 1993. As a member of the National Ski Patrol, I feel that this bill is needed to maintain a viable way for the general public and my son to afford to ski. I believe that skiers need to know their skiing limits and take the financial responsibility for when things go wrong. I also feel that this bill needs to make ski area management responsible for their actions.

I fully support HB 41

Sincerely,

A handwritten signature in black ink, appearing to read "Jay M. Johnson", written in a cursive style.

Jay M. Johnson

HINCHEY & ASSOCIATES

Real Estate Appraisers & Consultants

440 W. Benson Blvd., Anchorage, Alaska 99503 (907) 561-5138 FAX: 561-5077

February 17, 1993

Representative Brian Porter
House of Representatives
State Capitol, Room 122
Juneau, AK 99801-1182

Dear Representative Porter:

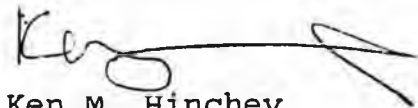
I am concerned about a recent Alaska Supreme Court ruling that came to my attention which has deprived ski area operators of the protection from the liability intended by the legislature when it adopted the existing Alaska State statute AS 09.65.135 "Limitation on Claims Arising from Skiing".

I have been skiing for 40 years and have always considered it to have some inherent dangers which no ski area operator could be expected to protect me from. The risk involved in almost all physical sports is typically one of the appeals to the participant.

I urge you to pass whatever legislation is necessary to permit ski area operators to open their slopes with the knowledge that those things beyond reasonable control will not become a source of liability.

I would like to thank you in advance for your assistance in this effort. A reply to this letter is not requested; I just wanted you to know my concerns.

Sincerely,



Ken M. Hinchey

KMH/lm

JAN 19 '93 11:32 DAYS INN

P. 1. 1



Plaza Inn Hotels, Inc. d/b/a Days Inn - Anchorage
321 East Fifth Avenue
Anchorage, Alaska 99501-2654
(907) 276-7226
Fax (907) 278-6041

January 18, 1992

*Senator Tim Kelly
Capitol Building
Juneau, AK 99801*

Dear Senator Kelly:

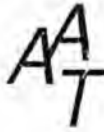
RE: SB44

Unfortunately due to prior commitments I will be unable to attend the hearing on the Skier liability law. In lieu of not attending I would like to advise you of my concerns on this law:

As an avid skier and frequent user of the ski trails not only at Alyeska, but Alpenglow and Hilltop, I recommend that Alaska's skier liability law be brought into conformance with laws in other western states. Alaska can not afford to have laws more restrictive than it's competition. The potential for a world class resort, and the further development that it could bring, must be addressed at all levels. This development could be the start of winter tourism to rival other western states and Canada. Please Let's do what we can to remove any barricades to future development.

Thank You.

*Dennis J. Lavey
Managing Partner*



Alaska Action Trust

P.O. Box 102323 • Anchorage, Alaska 99510
Office: 540 "L" Street, Suite 206 • Anchorage, AK 99501
(907) 258-4040 • FAX (907) 276-7185

February 10, 1993

Representative Brian Porter
Chair, House Judiciary
Alaska State Capitol
Juneau, Alaska 99801

re: HB 41, Ski Operator Immunity Bill

Dear Representative Porter,

HB 41 currently sits in House Judiciary. The Alaska Trial Lawyers strongly oppose this bill. HB 41 would grant immunity for negligent maintenance, construction and design activities that would virtually insulate the ski area from any liability for the operation of the ski area. The definition of "inherent danger and risk of skiing" is the crux of the bill, see page 12, line 13. Everything but the kitchen sink has been thrown into this definition.

I have enclosed our position paper on the issue. There are members within our organization who would be happy to talk with you further about this issue.

Sincerely,

Debra C. Gravo
Executive Director
dch/encl.



Alaska Action Trust

P.O. Box 102323 • Anchorage, Alaska 99510
Office: 540 "L" Street, Suite 206 • Anchorage, AK 99501
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TO: Representative Brian Porter
Chair, House Judiciary Committee
FROM: Dennis Mestas
DATE: February 10, 1993
RE: HB 41

On behalf of the Academy of Trial Lawyers, I have been asked to express our strong opposition to HB 41. HB 41 would grant immunity for negligent maintenance, construction and design activities that would virtually insulate the ski area from any liability for the operation of the ski area operations.

The state law Seibu wishes to repeal and revise vis a via HB 41 was largely the result of one lawsuit which was filed against Seibu. In that case, a 16 year old boy was skiing on the newly opened night skiing area at Alyeska when he skied over an unmarked, unsigned, unlighted 15 foot drop-off that was in a shadowed area in the middle of the night skiing course. The shadows that obscured the drop-off were a result of Seibu placing the largest group of lights on the course immediately behind a grove of trees. As the case developed, it appeared that Seibu failed to advise the lighting engineers of the trees' existence (according to the lighting engineer) and Seibu somehow failed to notice the trees when it was placing the lights behind them. This is somewhat difficult to do when each light must be separately aimed with a sighting mechanism on it. Further, neither Seibu nor the lighting engineer noticed the trees and the shadow after the system was built and the area was open. This young boy was paralyzed for life from the waist down when he went off the drop-off and landed on a flat "cat track" - a road.

The drop-off was created by a road cut made by a dozer as it cut through the ridge comprising the ski area between lifts 1 and 4. Seibu left a near 90 degree cut-bank in the middle of the ski area instead of shaving off its upper edge to make a "roll." An expert, who was a former National Ski Areas Association president and extremely revered figure in the national ski industry, testified that the situation was "murderous and totally unacceptable." He further indicated it was far beyond the role (pale) of normal industry standards and was an easily, cheaply remedied situation.

I take the time to briefly set forth some of these facts as you should note that a provision of the proposed bill includes

among the "inherent risks of skiing" variation or steepness in terrain "man-made structures, and their components ... including roads and catwalks or other terrain modifications". Thus, Seibu and other ski areas seek to be immunized for design and construction activities which are clearly avoidable, controllable and their responsibility and which are clearly not "unavoidable, natural consequences of the sport of skiing." According to the ski experts in the above case against Alyeska (Schlaak v. Seibu) such design and construction activities involving roads, lights, signs and trail marking are an integral part of the safety considerations that have to be kept in mind in making slopes safe for skiers during the design, construction and maintenance process.

It should be kept in mind that skiing is not much different than driving a car. The same human reactions and human frailties relating to vision, reaction time and attention are present. Thousands and thousands of people are travelling these "ski roads including many, many children." They deserve the same sort of consideration regarding a safe traffic design including elimination of hazards when reasonably possible as well as appropriate signs and warnings of hazards. Virtual cliffs constructed in the middle of a ski run because of improper road cutting certainly do not qualify for the rubric of "inherent hazards of skiing." Nor do other hidden hazards known to the ski area which the skier does not and cannot know of, such as snow making equipment.

Further, in this regard, I believe it is appropriate to refer to the recent Supreme Court decision which Seibu and others are apparently so desperate to make an end run around. The case is Hiibschman v. City of Valdez, et al. One of the thrusts of that opinion was that the present statute codified the common law that ski areas were not liable for injuries caused by the inherent risks of skiing. As the Supreme Court noted, it is only in this situation where the injuries or deaths are caused solely by such inherent risks that the lack of liability is apparent. Such risks are the natural and unavoidable risks -- the risks that cannot be controlled.

Perhaps even more importantly, the Supreme Court noted that the legislature in passing "tort reform" indicated a very strong statutory policy was present (as you will no doubt recall) to the effect that each party should only bear its own risk, i.e. the "tort reform" statutes.

Thus, we now have several and not joint liability. While at one point "tort reformers" wanted every party to be responsible for its own fault, now Seibu and others seek to avoid any responsibility which runs directly against the clear intent of legislature in passing "tort reform" and mandating complete several liability. Thus, the Supreme Court noted that it would not be consistent to allow ski areas to escape liability while promoting the concept of true several liability. Here, the ski areas, of

course, do not object to several liability, they just do not want to be among the "several."

Finally, we believe HB 41 is brought before the legislature because of not only the recent Hiibschan decision but also because of a recent death that occurred at Seibu's resort at Alyeska. On December 8, 1991, Bart Rizer, a 12 year old boy, died of hypothermia on an open slope in the bowl at Alyeska. Approximately four feet of snow had fallen in the 48 hours before his death and the bowl had not previously been open for skiing and had not been groomed. December 8, 1991, was a Sunday. On Saturday, skiing had been allowed on the ridge from the roundhouse down where a packed base was present. On Sunday, in the late afternoon, Seibu opened the bowl for skiing even though the bowl had not been adequately signed or roped off so as to warn skiers of extremely dangerous and indeed life threatening snow conditions that were present in some areas. Further, there was not even sufficient grooming done to allow the ski patrol to visually inspect and gain access to all parts of the bowl to check for downed skiers when the final sweep of the hill was made after the bowl was closed at 3:30 p.m. Many skiers had to be literally dug out of the snow as it was "bottomless powder" up to skiers' chests when off their skis.

While making a run through the bowl shortly before it closed, Mr. Rizer fell while proceeding down a short steep slope known as "Horror Hill" which is virtually in the middle of the bowl and is not obscured by trees. Unknown to Bart was the fact that extremely deep, treacherous snow was on Horror Hill. The snow was so deep that when he fell head first into it he was buried upside down up to his knees and was unable to extricate himself. When the final sweep was made a very short time later, Mr. Rizer was not found and he died of hypothermia after being abandoned on the mountain.

Apparently, he was in a very small hollow where he could not be seen from the only packed area down through the bowl. Seibu had packed one narrow track up through the bowl and therefore, this portion of Horror Hill could not be visualized from immediately below it as it could be when the whole area is packed because the snow was five or six feet deep and the ski patrol would have found it extremely difficult to walk through this deep snow across the bottom of the hill scrutinizing it for downed skiers. Similarly, because of the deep snow, a walk across the top of the hill could not be made without extreme difficulty. Apparently, one ski patrolman may have skied down a small portion of Horror Hill, but did not see Bart due to the snow condition and his location. There is no way that a proper sweep could have been made of this area given the extreme snow and the limited number of ski patrollers. Thus, for no good reason, a very bright and promising young man is dead.

You will note that a portion of the proposed bill is focused on grooming operations. Further, a portion of it is also focused

at every possible snow condition. If this bill is passed as written, it would even insulate Alyeska from foreseeable avalanches that could kill hundreds of people because "snow on the ground is constantly changing". This is truly outrageous.

Seibu is required by the U.S. Forest Service to have a snow safety plan. This plan is prepared by the U.S. Forest Service in concurrence with Seibu. One of the stated objectives of their plan is as follows:

One of the prime objectives in winter sports administration is to prevent accidents related to ski lifts, tows, avalanche and terrain hazards.

One of Seibu's stated and agreed to duties is as follows:

Taking reasonable care to identify and mitigate hazards on primary ski slopes.

Thus, the Forest Service is directly involved in monitoring and requiring safe operation of Seibu's ski area at Alyeska. Most of the ski area is on Forest Service land and is governed by Forest Service Management regulations. All aspects of ski safety are addressed in this plan. These include signs far beyond those included in the present statute including cautionary signs, daily trail and snow condition signs, area map with trail locations, avalanche signs, and trail markers. There are many other provisions of the ski plan that are focused at safety.

The question is this, if Seibu and other ski areas on public Forest Service land are already required to try to achieve maximum public safety, why are they now trying to escape responsibility for what they are required to do? Why should Seibu be insulated for negligent use of our land? The clear import of Forest Service regulation and the Forest Service mandated safety plan is to maximize public safety, not eliminate it. HB 41 will cause further erosion of safety procedures at Alyeska and other ski areas rather than enhancing the stated Forest Service goal of maximum safety for recreational users of federal land.

DARRYL L. TROUTMAN
1939 Beaver Place
Anchorage, Alaska 99504

March 2, 1993

TO: Chairman House Judiciary Committee
Members of the House Judiciary Committee
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Brian Porter:

I am against HB 41.

This legislation is self serving to the ski resort operators. The public interest is not served in any way by this bill. When an industry can limit its liability and increase its profits, it is going to be at someone's expense. It is proved time and again that profit and limited liability interfere with safety.

My main concern is giving protection to negligence. Consumers have come to rely on the products and the services they buy to be safe and reliable to use. Only through watchful government agencies, strong public opinion has this come to pass. Litigation is very effective in protecting the consumer when government enforcement agencies are absent and public opinion is not sufficiently motivated.

I am a businessman and want to see responsible development. Attracting year around tourism is an excellent idea and should be encouraged.

The ski industry does not need HB41 in order to flourish.

Sincerely,



Darryl L. Troutman

15140 Mesa Place
Anchorage, AK 99516
January 25, 1993

Rep. Bill Hudson
Alaska State Legislature
State Capitol
Juneau, Ak 99801-1182

VIA FACSIMILE 405-6790

Dear Rep. Hudson:

I wish to express my concern with HB 41 and specifically the language in the bill that would relieve ski resort operators of any liability. Even though ski operators can not change the terrain, I expect them to mitigate hazards dealing with the environment including avalanches, mechanical safety of the lifts, and daily changes in the weather that might cause unsafe skiing conditions. You might assume that ski operators all have a snow safety plan in place, but I know some do not, or they do not follow their plans; therefore there must be a way to ensure that the customer is assured of the safest conditions possible.

If you traveled to a new, unfamiliar ski area, don't you think it would be reasonable to expect the professionals of the area to be constantly evaluating the changing weather and snow conditions, including avalanche dangers? Do you think you should be responsible for those decisions? What do you think Alaskan tourists would expect from our ski operators?

Do not be misled by the ski resort operators who say that the price of lift tickets will go up if they are aren't given immunity from liability; a similarly passed law in Colorado did not result in lower tickets or insurance.

If you believe that giving ski operators immunity from liability is a good thing, would you also agree that air taxi operators should be relieved of liability from accidents resulting from all weather hazards. One reason we have FAA rules is to help mitigate changing weather conditions--passengers can't be expected to do that, and neither can all taxi operators be expected to operate in the safest possible manner unless there are rules with severe consequences for failure to comply.

And so must there also be ramifications for ski operators who might not always act responsibly. They should not be immune, and in fact, many ski operators use public lands for their operations and so are required to operate under detailed management plans. Why then are they asking to be released from such responsibilities on our public lands? And do you intend to vote to release them from immunity?

Sincerely,

Dianne Holmes

Dianne Holmes
345-1514



Alaska Hotel & Motel Association

PO BOX 114400 • ANCHORAGE, ALASKA 99510 • (907) 344-1778

January 19, 1993

Subject: SB-44, Civil Liability for Skiing Accidents

The Alaska Hotel and Motel Association supports SB-44 as written. The Alaska Hotel and Motel Association believes that many individual sports, including skiing, have inherent dangers which vary depending upon the individual participants judgement and skills. It would be impossible for a ski area operator to fully guarantee the total safety of every individual skier in every circumstance because of the natural varying inherent dangers of the sport.

The Alaska Hotel and Motel Association believes that ski area operators in the State of Alaska should be permitted to compete fairly with other ski areas throughout the USA and the world. To handicap Alaskan ski area operators through unfair or unnecessary legislation, will only serve to reduce the number of skiers who choose to ski in Alaska. This would certainly have a negative effect on the many supporting businesses of the ski industry, such as hotels and lodges, restaurants, transportation etc..

Max J. Lowe, CHA
Past Chairman
Alaska Hotel and Motel Association

sp



UNITED BROTHERHOOD OF
Carpenters and Joiners of America

LOCAL UNION NO. 1281

407 DENALI

PHONE 276-2633

ANCHORAGE, ALASKA 99501
FAX: 276-7962



January 18, 1993

Dear Alaska Legislator:

This is a statement of support for SB 44, as submitted by Sen. Kelly

If Alaska is to grow and prosper in the clean, ecologically sound and renewable area of Tourism this bill should be supported.

The bill would put Alaska on even footing with the rest of the western United States. That, coupled with our natural beauty and long winters, should give Alaska a leg up for future economic development.

The only people that I can imagine not supporting SB 44 would be those people not willing to take responsibility for their own actions or lawyers looking for a little action.

Sincerely,

Phillip A. Thingsled
Business Manager
Carpenters Local 1281

PAT/we

SENT BY: ANCHORAGE HILTON HOTEL: 1-19-93 12:08PM :

9072657175-

1



Alaska Hotel & Motel Association

PO BOX 104900 • ANCHORAGE, ALASKA 99510 • (907) 344-3778

January 18, 1993

Senator Tim Kelly
State Capitol
Room 101
Juneau, AK 99801-1182

Dear Senator Kelly:

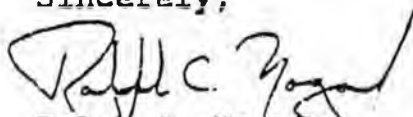
As President of the Alaska Hotel Motel Association, I would like to clarify our position as being POSITIVE in regards to Senate Bill #44 pertaining to civil liability for skiing accidents.

This bill will definitely increase economic development in tourism in our State because it will put our skier liability laws on equal footing with the laws in other Western ski areas in the United States. We will then be able to compete with these States and Canada. Even our own hotel, the Anchorage Hilton, of which I am the General Manager, will benefit because guests will come to ski Alyeska and possibly stay at our property, or any one of the other properties in the downtown area, on their way to or from Alyeska.

On behalf of all our membership, we firmly believe this bill should definitely be passed as quickly as possible to assist Alyeska.

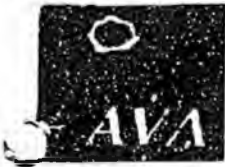
Thank you for your assistance.

Sincerely,


Ralph C. Nogai

RCN/eh

Post-It™ brand fax transmittal memo 7871 # of pages 1
From Dana Wood



ALASKA VISITORS ASSOCIATION

501 West Northern Lights, Suite 201 • Anchorage, Alaska 99503

Tel: (907) 276-6663 • Fax: (907) 258-4036

**1991-92
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- Bob Engelbrecht**
TBASCO Helicopters
- Lola Hanson-Payton**
Kodiak Island CVB
- Len Laurance**
Madras Inc.
- Lynn Leary**
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- John Litten**
Shim Tours
- Linda McLoughlin**
Duke Air Lines
- Ralph Nestor**
Travel Industry
Management, UAF
- David Palmer**
Alaska Airlines
- Ray Pedersen**
Piscata Tours
- Brad Phillips**
Phillips Cruises & Tours
- Terry Underwood**
HAL-Wisconsin Inc.
- Richard West**
Alaska Sledgehogging/
CableWest
- Tim Worthen**
Regency Cruises
- Karen Cowart**
Executive Director

#92-03

RESOLUTION IN SUPPORT OF INHERENT RISKS OF SKIING LEGISLATION

WHEREAS, the sport of skiing is practiced by a large number of Alaskans and attracts visitors to the state who provide significant contributions to the state economy through the construction and operation of skiing facilities, and

WHEREAS, skiing is a critical element of efforts to increase fall/winter/spring visitation, and

WHEREAS, skiing is an exhilarating sport, the enjoyment of which includes several components: exercise, enjoyment of the outdoors, physical and mental challenges, and the excitement of taking risk, and

WHEREAS, skiing is conducted in an environment that includes natural variations of terrain, weather, and snow conditions and necessary man-made amenities created and maintained by ski area operators, and

WHEREAS, the sport of skiing is accompanied by inherent risks of accident and injury, and

WHEREAS, the Alaska Legislature in 1980 recognized these inherent risks and the individual skiers responsibility to assume them by enacting AS 09.65.135, "Limitations on Claims Arising From Skiing," and

WHEREAS, the Alaska Supreme Court, in Hübbschman vs. City of Valdez et al, rendered an opinion that undermines the intent and effectiveness of the act, and

WHEREAS, the cost of insurance and defense from suits involving the inherent risks of skiing are certain to rise dramatically as a result of the ruling, causing increases in ticket prices and threatening the continued operation of some areas, and

WHEREAS, legislation has been introduced to clarify provisions of the act and restore its effectiveness,

NOW THEREFORE BE IT RESOLVED, that the Alaska Visitors Association Board of Directors, on behalf of the membership and tourism industry party represents, endorses adoption of revision of AS 09.65.135, "Limitations on Claims Arising From Skiing," and will join public and private organizations seeking passage of Senate Bill 403 and House Bill 491.

*Adopted by the Alaska Visitors Association
Board of Directors
February 21, 1992
Juneau, Alaska*

Post-it™

To
C

11/3

#93-01

**Resolution in Support of Ski Safety and
Inherent Risks of Skiing Legislation**

Whereas, skiing in Alaska has inherent risks caused by terrain, weather, equipment and individual skiers, and

Whereas, financially sound ski areas are a significant part of Alaska's winter tourism industry and resident recreation, and

Whereas, the steady growth of winter tourism provides jobs for residents and revenue to the state, and

Whereas, the rising cost of insurance and increasing threat of lawsuits as a result of not recognizing the sport's inherent risk could force the price of skiing to grow so much that the majority of Alaskans and visitors could not afford the sport, threatening the continued operation of many ski areas, and

Whereas, this issue has been recognized by other states, primarily in the western United States, where skiing is an important part of their winter tourism industry, through the enactment of appropriate liability laws, and

Whereas, if the inherent risk of skiing is not recognized and controlled in the state of Alaska, the state will remain non competitive in its efforts to attract winter visitors who would utilize established ski resorts and winter recreational areas,

Now Therefore **Be It Resolved**, that the Anchorage Convention and Visitors Bureau Board of Directors, on behalf of its more than 900 members, unanimously supports the passage of Senate Bill 44 and House Bill 41.

Adopted by the Anchorage Convention & Visitors Bureau
Board of Directors March 26, 1992

Larry G. Anderson
Chairman
Anchorage Convention & Visitors Bureau

**Anchorage!
Convention & Visitors
Bureau**

*Our Community's Way
of Attracting and
Serving Visitors*

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GINA MARIE LINDSEY
*Anchorage International
Airport*
MAX LOWE
Reed Alaska Hotel

BILL MACKAY
Alaska Airlines
SUZANNE SLOAN-RUST
Rust's Flying Service, Inc.





Alaska Ski Areas Association

7015 ABBOTT ROAD
ANCHORAGE, ALASKA 99516
(907) 346-1446

Alaska State Senate
Senate Labor & Commerce
Juneau, Alaska
Attention: Tim Kelly, Chair

1-20-93

Dear Mr Kelly:

I was at Tuesdays public hearing but did not get a chance to testify so I am writing in support of SB 44. I am the Chairman of the Alaska Ski Areas Association and also the General Manager of Hilltop Ski Area here in Anchorage.

There are 13 downhill ski areas in Alaska: Cleary Summit, Ski Land, Ravenwood and Birch Hill all near Fairbanks. Black Rapids near Delta Junction. Hilltop, Hillberg, Arctic Valley and Alpenglow in Anchorage. Alyeska Resort in Girdwood. The Coast Guard Hill in Kodiak. Mt. Eyak in Cordova, and Eaglecrest near Juneau. In addition there are numerous organizations that prepare and operate Nordic trails: Chena Hot Springs Resort, Hatchers Pass Lodge and Anchorage Nordic Ski Club just to name a few.

There are many inherent risks in any sport. Skiing is no exception. Ski area operators sell access to a winter alpine or nordic environment not to a perfectly groomed danger free slope. This environment includes all manner of risks: weather, slopes, forest growth, snow conditions as well as some man made obstacles. All skiers should recognize that ski area operators and track setters can not modify even a small portion of this environment. There is no way to make skiing absolutely "safe". Individual skiers must bear some of the responsibility for their participation in the sport.

Since 1980 Alaska has had a statute relieving ski area operators of liability for injuries or property damage which arise from the inherent risks of skiing. The purpose of this statute was to recognize that a ski area operator could not eliminate these risks, and to ensure that a ski areas could obtain insurance and continue to provide skiers the opportunity to enjoy their favorite winter outdoor recreation. An effective law will continue to be important in providing the legal climate necessary to further development of winter tourism facilities in Alaska.

In December of 1991 the Alaska Supreme Court interpreted the statute as not preventing suits by injured skiers. Claiming an operator had failed to make the slopes "safe" for patrons. This ruling defeats the purpose of the statute and leaves operators and skiers in substantial danger that Alaska ski areas will not be able to obtain insurance at reasonable rates. Assuming that a ski area can still operate, ticket prices will have to increase substantially in order to cover the increased insurance premiums.

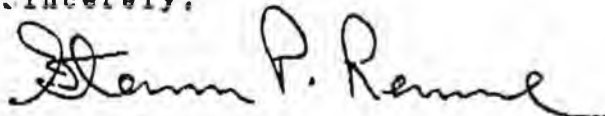
As a result of that Supreme Court decision the City of Valdez can no longer offer it's residents the recreation of downhill skiing. If this legislation does not pass perhaps other ski areas around the state will fall under the load of escalating premiums and frivolous law suits.

There is a segment of the community that believes that this legislation is proceeding only to protect a multinational corporation (Seibu) from liability. Most of the ski areas within the state are very small and most are products of the communities that they are located in. This legislation will affect all of them not just one of them and in most cases if insurance premiums rise as a result of poor legislative protection it will become cost prohibitive to operate. The ski areas are not trying to hide from their responsibilities to provide safety for the skiing public because we recognize that if we fail to do that soon we will be out of business.

Alaska has a lot to be proud of. Last year an Alaskan skier by the name of Hilary Lindh came home from the Olympics with a Silver Medal. If we fail to support this legislation where will the Hilary Lindh's of the future get a chance to practice and excel in this sport?

I urge you to please support this legislation!!

Sincerely,



Steven P. Remme
ASAA Chairman



ANCHORAGE
ECONOMIC
DEVELOPMENT
CORPORATION

Honorable Tim Kelly
111 Capitol
PO Box V
Juneau, AK 99811

Dear Senator Kelly:

The Anchorage Economic Development Corp. (AEDC) supports SB44, Civil Liability for Skiing Accidents.

As you know, the AEDC's mission is to stimulate economic development. One industry we focus on because of its tremendous potential is tourism. We have fully supported Seibu Alaska's Alyeska Resort expansion and support development of the Glacier/Winner Creek areas as well.

Alaska's ski resort success will depend on how effectively we compete with other developable areas in the northwest United States and Canada. Passing SB44 is critical to Alaska's winter tourism because it will put Alaska on equal footing with its competitors on the issue of skier liability.

Because this bill will so greatly benefit an industry still in its infancy in Alaska, and will only harm a small sector of the economy (trial lawyers) in Alaska, the AEDC fully supports passing SB44.

Sincerely,

Scott E. Hawkins
President



January 19, 1993

Senator Tim Kelly
Alaska State Legislature
Juneau, AK 99801

Dear Senator Kelly:

Please accept this letter as Westmark Hotels support of Bill SB 44 pertaining to civil liability for skiing accidents.

This bill will increase the economic development of tourism in our state during the Winter months and bring our state skiers liability laws on equal footing with those laws in other Western States.

Sincerely,

A handwritten signature in cursive script, appearing to read "William J. Dugdale".

William J. Dugdale
General Manager
WESTMARK ANCHORAGE HOTEL

2/09/93

FEB 17 1993

Sail,

Just a quick note to let you know that the McLane family fully supports SB 44/HB 41. We have skied at Alyeska since the early sixties and never had a problem. Without liability legislation (limiting) skiing will be priced beyond family means.

Thanks

JAM

P.S.

Glad to see you in a leadership role. Keep up the good work.

Dear Representative Porter:

I am against HB 41. It is special-interest legislation and does not protect skiers. It is extremely broad.

The only responsibilities a ski area would have are to haul the people up the lifts safely. Once a skier gets off the lift, he is on his own.

This bill assumes all skiers are experts or are able to assess even hidden dangers. What about children? What about beginners?

The bill states that ski area operators have "a very limited ability to alter terrain features." Part of the ski area operator's job as a land owner or lessee is to identify and mitigate hazards.

Furthermore, the bill lists under inherent risks of skiing any possible situation that a skier could possibly encounter. It does not address responsible management on the area operator's part. Who says these people will act responsibly?

Please vote no on this bill.

<u>Bari Cabana</u>	<u>Box 201 Girdwood, AK 99587</u>	
Signature	Address	
<u>Bari Cabana</u>	<u>9</u>	<u>E</u>
Print Name	House District	Senate District

NOTE: 33 copies of this letter were received by Representative Porter's office as of 3/3/93.

January 25, 1993

To: Reps. Hudson, Green, Mulder, Porter, Williams, Sitton, Mackle
FR: Patti Rizer, 5530 Rabbit Creek Road, Anchorage, 345-1743
RE: HB 41

We already have an inherent risk of skiing statute in Alaska. Twenty-four other states have very similar legislation. HB 41 greatly expands the inherent risk of skiing definition and places all the responsibility on the skier. HB 41 is special-interest legislation designed to give carte blanche immunity to a specific industry.

Why should Alaskans grant this special-interest legislation on behalf of the ski industry? Would we exempt the airline industry for their negligence? For example, if Alaska Airlines said, "As long as we have fuel in the tanks, we are immune from any other negligence" and a plane crashes, would we want to grant them this type of immunity? This is just what this bill says...as long as ski area operators put up certain warnings, they cannot be held liable. All risks rest with the skier.

This bill says that if the skiing industry places signs and does a few other minimal tasks, they are responsible for nothing. P. 2 No. 8 and 9 say ski area operators are financially and physically incapable of controlling conditions. Seibu Corporation is required by the U.S. Forest Service to have a Snow Safety Plan. This plan is prepared by the U. S. Forest Service in concurrence with Seibu. One of the stated objectives of their plan is as follows:

One of the prime objectives in winter sports is to prevent accidents related to ski lifts, tows, avalanche and terrain hazards.

One of Seibu's stated to and agreed to duties is as follows:

Taking reasonable care to identify and mitigate hazards on primary ski slopes.

This legislation will allow ski area operators to evade these agreed-to objectives and duties and will in no way promote safety.

Skiers don't expect "croquet lawns" as stated on P. 2 No. 9. Skiers expect a reasonably safe environment for skiing and accountability on the ski area operator's part.

P. 3 No. 12 says "it is impractical to expect the operator to eliminate or mitigate these hazards"—mitigating hazards is part of the ski area operator's responsibilities.

P. 3 No. 4 wants to exclude a comparative negligence or comparative fault analysis—no industry enjoys this immunity. Will this law set a precedence for other industries to ask for an exclusion of comparative negligence? Whom are we protecting?

Paying \$30 a day for a lift ticket helps cover insurance. The ski industry says prices will go up without this legislation. Colorado passed a similar bill two years ago. The immunity now enjoyed by ski operators did not result in lower insurance rates (they were already going down) nor did the immunity (which supposedly translated into savings) result in lower lift tickets.

Colorado's bill places the greatest responsibility on the skier of any other state's ski bill. How can we reward Alaska ski area operators with such a bill when Alaska ski resorts don't compare at all to Colorado's runs, employees (especially pro patrol staff), high-tech equipment, and other amenities? Who will oversee the Alaska ski industry and make sure they are providing a reasonably safe environment? In addition, if there is an accident, consumers should always be able to ask who is at fault. When we asked the U.S. Forestry Service in Alaska if they investigated our son's death at Mt. Alyeska, they told us, "No one asked us to."

I feel there may be too much of a risk if we take this bill paragraph by paragraph. It is much better to kill the whole bill. Even a comparative negligence clause won't be of any help to consumers because this bill is so broad and encompassing of what the inherent risks of skiing are; i.e. "risks of skiing rests only with the skier."

Ski areas are capable of insuring through ticket sales. If the skier is at fault, the industry doesn't have to pay. That is the way the statute is now. This law goes way beyond inherent risks.

January 29, 1993

TO: Members of the House Labor and Commerce
 Bill Hudson, Chair
 Joe Green, Vice-President
 Rcps. Eldon Mulder, Brian Porter, Bill Williams, Joe Sitton, Jerry Mackie

FR: Patti Rizer, 5530 Rabbit Creek Road, Anchorage, AK 99516
 Telephone: 345-1743; Fax: 345-5212

RE: HB 41, Ski Safety Bill

My son, Bart, died while skiing at Seibu Corporation's Alyeska Resort December 8, 1991. I have learned a great deal in the past year about the ski industry and safety requirements. I have read **ALL** of the 26 states' statutes for ski safety. No other state has a statute that places so much responsibility on the skier and so little to the industry (except for Colorado).

The proponents for the bill say insurance costs have caused lift ticket inflation. However, an article in a Colorado paper shows the costs at their ski resorts, and **ALL** prices have gone up after this 1990 legislation passed. (attached)

Furthermore, ski area insurance costs are declining, contrary to what members of the industry claim. **Insurance premiums for ski resorts decreased 10 percent in the 1989-90 season and 6.5 percent the year before according to "The 1989-90 Economic Analysis of North America Ski Areas" by the University of Colorado at Boulder Business Research Division. If these insurance rates have been decreasing before the new legislation, why do we need to change the statute?**

Insurance rates drop when an industry improves its safety standards. Why doesn't the industry approach lowering insurance rates by improving safety instead of limiting their liability? Money spent lobbying for this bill could be used to increase skiing safety through educational programs and to improve their risk assessment program and mountain markings.

Proponents of this bill cite increased tourism because of this bill. However, not one person has been able to give me specific, substantial reasons how this bill can increase tourism.

One proponent of this bill says its resort needs this legislation to continue building its hotel. This proponent decided to build its hotel years ago and began building it before this legislation. So why do they say they need it now?

Seibu Corporation is misrepresenting the Supreme Court's finding on the Hiibschman case. (See attached.) The present state statute still stands, and the case has not been heard by a lower court. **Please read the findings of the court. The finding is logical and fair.**

When you work on this bill, I hope you will consider making this bill read similarly to most of the statutes in the United States. Comparing our state and its ski industry with Colorado's is inappropriate and unfair. Last year Colorado had 10.4 million skier visits. The Alaska Department of Tourism estimates that more than 43,000 tourists visited Alyeska Resort from October 1991 to May 1992.

Alaska's ski industry does not come close to Colorado's in many areas including size, number of skier visits, expertise of management, and state and federal oversight of the industry. The ski industry has money and power and is calling on other industries (for example, tourism and hotel) to help support this bill. But once again:

What's in it for Alaskans?

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Aspen, Deer Valley at top of price mountain

Lift tickets for 1992-93 will cost as much as \$46 during peak holiday time.

By John Meyer

Rocky Mountain News Staff Writer

Aspen and Utah's Deer Valley appear to be the price leaders in the ski industry again this winter.

But if you're wondering which has the most expensive ticket, it depends on how you look at it.

Aspen Skiing Co.'s regular-season ticket window price will be \$43, an increase of \$2 over last year. Deer Valley will charge \$42, as will Vail.

But Deer Valley will charge \$46 during the busy December holiday period. During Aspen's holiday period, Dec. 19 to Jan. 2, the rate will be \$45.

Aspen will sell discounted tickets at Front Range King Soopers stores again this winter. There, tickets for Aspen Mountain and Snowmass will cost \$38. A Buttermilk-only ticket will be available for \$26.

Ticket window prices attract a lot of attention when they are announced, but Front Range skiers seldom pay the full ticket window price.

"You can count on one hand the number of people from Denver who are going to buy a \$43 or a \$45 lift ticket in Aspen," said John Lay, president of Colorado Ski Country USA.

AREA	1991-92	1992-93	1993-94
Arrowhead Basin	\$23	\$23	\$29
Arrowhead	\$23	\$23	\$29
Aspen Mountain	\$38	\$38	\$38
Aspen Snowmass	\$38	\$38	\$38
Butterfly Creek	\$26	\$26	\$26
Breckenridge	\$36	\$36	\$38
Butterfly	\$26	\$26	\$26
Copper Mountain	\$35	\$35	\$38
Crested Butte	\$38	\$38	\$38
Front Range	\$25	\$25	\$25
Keystone	\$27	\$27	\$30
Loveland	\$28	\$28	\$28
Monarch	\$25	\$25	\$25
Powderhorn	\$25	\$25	N/A
Phogatory	\$24	\$24	\$24
Silver Creek	\$22	\$22	\$22
Ski Cooper	\$25	\$25	\$25
Ski Summit	\$25	\$25	\$25
Snowmass	\$26	\$26	\$26
Steamboat	\$37	\$37	N/A
Telluride	\$35	\$35	N/A
Vail	\$42	\$42	\$42
Winter Park	\$31	\$31	\$31
Yukon-Charley	\$20	\$20	\$20
Yukon-Charley	\$20	\$20	\$20

The largest increase in the state this year is Arrowhead at \$5. Ski Cooper increased its price \$4, while Telluride and Crested Butte each went up \$3.

known for more than a month, but Aspen announced its prices only this week. Breckenridge, which was considering \$38 or \$39 for its full-fare price, has settled on \$38. The off-site discount ticket for

Breckenridge has not been decided, but it should be \$28 or \$29. Breckenridge's Summit County neighbors, Keystone and Copper Mountain, will charge \$30 at Front Range outlets, as will Winter Park.

Colorado ski areas set a record last year with 10.4 million skier visits. But J. William Berry, publisher of the *Ski Industry Newsletter*, says it's too early to predict what kind of season is in store for Colorado areas.

"I think you've got a hell of a problem — air fares," Berry said. "Nobody knows what's going to happen there. With air fares being rather high, things could get a little tight."

But Lay said key indicators are up. More people are booking vacations and buying skis or ski-related goods.

"Our numbers as of right now are ahead of last year at this time," Lay said. "The sale of soft goods and hard goods is dramatically more robust than it was a year ago."

Harry Baxter of the Jackson Hole area in Wyoming said people appear to be waiting to see how much snow that area gets before booking. Uncertainty over air fares is inhibiting advance sales, he said.

But Lay says Colorado Ski Country is "very bullish" on the coming season.

"The national economy is bottoming out," Lay said. "We're encouraged by what appears to be a stronger economy on both coasts vs. last year."

10-71-92

COLORADO SPRINGS GAZETTE
TELEGRAPH
Colorado Springs, CO
(El Paso County)
AM, 104,648; 3v, 116,325
MAY - 7 1991



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1336 Glenarm Place
Denver CO 80204

Skiing

From B1

who headed the CU study. "When the liability is unlimited, the only thing insurance companies can do to protect themselves is raise the rates," Goeldner said. "If the Legislature hadn't taken that action, we wouldn't see the declines we have."

But Epstein said it will take two years before the impact of the new law is felt because pending lawsuits fall under the old, unlimited liability law.

"If these insurance reductions are taking place under the old law," he asked, "what's the need to change it?"

Indeed, insurance rates were reduced partly because of safety promotions and physical improvements such as redesigning trails that merge to make the slopes safer for skiers, said Dick Williams, vice president of Pettit-Morrey Co. in Denver, an insurance brokerage representing 120 ski areas nationwide, including most Colorado ski resorts.

"But there is no question that the enactment of the skier liability law has helped sort out the picture," Williams said. "The lines of liability are drawn."

Since ski areas have blamed higher lift ticket prices on insurance, "there should be a flip side to that," said Jim Lee, a lobbyist for the Colorado Trial Lawyers Association.

"If insurance premiums went down, I hope we can look forward to a reduction in lift ticket prices," Lee said.

But Goeldner said labor costs and resort improvements — not insurance rates — have caused lift ticket inflation.

"In Colorado, there has been \$500 million of new facilities in the last decade," Goeldner said. "Consumers just love the quad chairlifts, the improved trails, snowmaking and snow grooming. When you make an investment like that, you expect a return on it, and you raise prices."

Ski area insurance dropping despite industry's claims

Lawyers opposing liability cap say the Legislature was snowed

By Dave Corby/Gazette Telegraph

Ski area insurance costs are declining, contrary to what members of the industry claimed in pushing through a state law that limits their liability in ski accidents.

And even though ski operators historically have cited soaring insurance costs as a cause for lift ticket inflation, don't expect prices to tumble, industry observers say.

Insurance premiums for ski resorts decreased 10 percent in the 1989-90 season and 6.5 percent the year before, according to "The 1989-90 Economic Analysis of North American Ski Areas" by the University of Colorado at Boulder Business Research Division.

Ski industry lobbyists had cited skyrocketing insurance in getting a law passed last year that caps resort liability for a skier's injuries at \$1 million. The law, which took effect this past season,

doesn't limit a skier's ability to sue for injuries involving ski lifts.

"The Legislature was misled," said Joe Epstein, president of the Colorado Trial Lawyers Association, which opposed the law. "They were stampeded by the insurance operators. This tells me it was a phone call deal."

Industry lobbyists say insurance premiums declined from 1984 to 1988, while some deductibles went from \$100,000 to \$1 million, according to Colorado Ski Country USA, a trade group and a supporter of the new law.

The increases sent the ski industry and others such as day-care centers and dude ranches to the Legislature for relief, said Ski Country spokeswoman Kathleen Shaw.

But Epstein said the increases weren't justified by the insurance industry.

"If we had a tougher review by the (state) insurance commission, it would expose this," he said. "The insurance industry created an unrealistic pressure on the ski areas. This limited liability law is the result, and the consumer gets screwed."

Once the law was passed, insurance rates dropped quickly, said Charles Goeldner, a marketing professor

See SKIING/B8

LAKE HERALD
 Montez, CO
 (Frio Blanco County)
 Thu, 2/27/91
 FEB 28 1991

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 Denver, CO

287 New "Inherent Risk" Law for Colorado Skiers

by James H. Chalut, P.O.

Amendments to Colorado's Ski Safety Act may soon face constitutional challenge as the new statute places the risk of injury from most downhill accidents upon the skier. The amendments were written and supported by the politically influential Colorado Ski USA. In the recent gubernatorial election, the challenger accused the incumbent governor of accepting a \$5,000.00 campaign contribution from Colorado Ski USA on the same day the governor signed the amendments into law. The Colorado Trial Lawyers Association, lawyers who typically represent victims in injury cases, opposed the amendments.

However, two changes were made to the Bill before it became law which increased protection to skiers in two specific instances.

As originally proposed, the law would have quietly revamped Colorado law relating to ski lift accidents. As written the Bill would have limited the duty of ski areas to merely abide by the regulations imposed upon ski area operators by the Colorado Passenger Tramway Safety Board.

Colorado has long imposed upon ski area operators a common law duty to exercise the highest degree of care commensurate with the practical operation of the lift. The rule has been applied along with the requirement under the Ski Act that lifts be operated within tramway and ANSI guidelines. As originally proposed, the amendments would have limited the ski area operator's duty to simply comply with the tramway board regulations. These regulations are routinely reviewed and amended by a tramway board dominated by the ski industry. However, the House committee added: "Nothing in this section shall be construed to limit the liability of the ski area operator for injury caused by the use or operation of ski lifts." C.R.S. § 33-44-103(10) as amended S.B. 90-80. Thus ski area operators still have a duty to operate their lifts in conformity with the highest standard of care.

Reckless skiers have often argued that the action of a skier/skier collision should be found to have assumed the risk of a collision. The amendments specifically noted that area operators would be immune from liability for injuries

resulting from the so-called "inherent risk" of skiing. One skier's inherent danger was the risk of skiers colliding. Thus, one could easily see reckless skiers looking to the ski act for solace in their argument that a risk assumed when skiing includes collisions between skiers.

In an action which reflects the growing trend toward emphasis on safe skiing, the House committee revised the Bill to include the following language: "Notwithstanding any provision of law or statute to the contrary, the risk of a skier/skier collision is neither an inherent risk nor a risk assumed by a skier in action by one skier against another." C.R.S. § 33-44-109(1) as amended S.B. 90-80. This section prohibits the assumption of risk defense by the reckless skier and reaffirms each skier's responsibility to ski within control and in such a manner as to not endanger anyone or cause injury.

SENTENCE METED OUT IN SKI COLLISION

Terrence Coghlan entered into a plea agreement in which he pled guilty to one misdemeanor and to one petty offense on May 21, 1990. The plea ends a case which began on February 24, 1989 when Coghlan collided into Russell Whittman while skiing at Steamboat. Whittman's leg was severely fractured. The accident drew national publicity to the issue of ski safety.

Coghlan pled guilty to Reckless Endangerment, a misdemeanor, and to Leaving the Scene of a Ski Collision in violation of Colorado's Ski Act, C.R.S. § 33-44-109(10). Judgment and Sentence were deferred as to the Ski Act offense. On the misdemeanor, the court imposed a sixty day jail sentence concurrent to a sentence Coghlan is serving on an unrelated case.

As part of the bargain, Coghlan is required to make a \$2,000.00 contribution to the handicap skier program, a \$2,000.00 payment to the District Attorney for travel and investigative expenses, and nominal payments for Court costs and to the Victim's Assistance Fund.

Heavy fines and potential jail sentences meted out in other recent reckless skiing cases underscore the trend towards enhanced liability, both civil and criminal, imposed upon skiers who recklessly collide or cause injury to others on the slopes.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB41 (L&C)

Revision Date: _____

Department Affected: Commerce and Economic Development

Title: Civil liability for skiing accidents

BFU: Insurance

Sponsor: Reps. Hillips, Hudson, Porter, Toohey

Component: Operations

Requestor: _____

COMPONENT SERIAL NO. 354

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY 93) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact.

Prepared by: Joan Brown, Administrative Officer
Division: Insurance

Phone: 465-2597
Date: 2/25/93

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development

Date: _____

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FISCAL NOTE

**STATE OF ALASKA
1993 LEGISLATIVE SESSION**

Bill No. HB 41

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to civil liability for BRU: Trial Courts
skiing accidents... Components: _____
 Sponsor: Phillips
 Requestor: Labor & Commerce COMPONENT SERIAL NO. 000 | 000 | 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CSC* Phone: 264-8228
 Division: Alaska Court System Date: 01/22/93

Approved by: Arthur H. Snowden, II, Administrative Director *AS* *CSC* Date: 01/22/93
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

**STATE OF ALASKA
1993 LEGISLATIVE SESSION**

BILL NO. CSHB41 (L&C)

Revision Date: 9-Feb-93

Department Affected: Natural Resources

Title: SkI Liability, Safety and Responsibility

BRU: Resource Development

Components: Land Development

Sponsor: Representative Phillips

Requestor: House Labor and Commerce Committee

Component Serial No. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
----------------	------------	------------	------------	------------	------------	------------

REVENUE fund source:	N/A	N/A	N/A	N/A	N/A	N/A
-----------------------------	------------	------------	------------	------------	------------	------------

FUNDING: (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	NONE	NONE	NONE	NONE	NONE	NONE
PART-TIME	NONE	NONE	NONE	NONE	NONE	NONE
TEMPORARY	NONE	NONE	NONE	NONE	NONE	NONE

Estimate of current year (FY93) Impact: \$ No fiscal impact anticipated

ANALYSIS:

The only additional DNR responsibilities proposed under the bill (and this was proposed by DNR) is that DNR employees can enforce the six specific listed violations. No additional fiscal impacts are anticipated if the bill is approved.

Prepared by: Ron Swanson, Director

Phone: 762-2692

Division: Land Development

Date: 9-Feb-93

Approved by Commissioner: Glenn A. Olds

Date: 9-Feb-93

Agency: Department of Natural Resources

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO : HB 41

Revision Date: _____
 Title: "An Act relating to civil liability
 for skiing accidents..."
 Sponsor: Representatives Phillips, Hudson, Porter
 Requestor: Representative Phillips

Department Affected: Labor
 BRU: Labor Standards & Safety
 Component: Mechanical Inspection
 COMPONENT SERIAL NO. 346

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

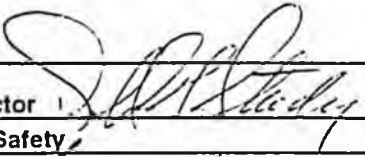
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

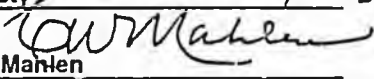
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Donald G. Study, Director  Phone: 465-6003
 Division: Labor Standards and Safety Date: 1/22/93

Approved by Commissioner: Charles W. Mahlen 
 Agency: Department of Labor Date: 1/25/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 41

Revision Date: January 22, 1993

Department Affected: Department of Law

Title: "... relating to liability for skiing accidents, operations of ski areas..."

BRU: Legal Services

Component: Operations

Sponsor: Representative Phillips

Requestor: House Labor & Commerce

COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE :						
FUND SOURCE:						

FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Richard I. Peques

Prepared by: Richard I. Peques, Director

Phone: 465-3672

Division: Administrative Services Division

Date: January 22, 1993

Richard I. Peques /DR/

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law

Date: January 22, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 41

ANALYSIS (Continued):

This bill adds a new chapter to AS 05 that defines the responsibilities of ski area operators and defines the responsibilities of skiers using ski areas. The bill further defines the liabilities of both ski operators and skiers, and the bill excludes comparative negligence or comparative fault analysis where an injury is the result of an inherent risk of skiing. The bill has the effect of reversing Hiibschman v. City of Valdez. The bill should not have a direct fiscal impact on the Department of Law, because the state is not a ski area operator in the sense of commercially or municipally operated ski areas.

It should be noted, however, that dedicated trails on state lands, or in state parks, may fall within the definition of ski area when the trails are used for cross country skiing. The bill does require ski area operators to extensively mark skiing routes with signs. It is doubtful that the Department of Natural Resources will have adequate funds for staff to comply with this requirement. Failure to do so could result in liability for the state in the event of an accident. Consequently, the Department of Law could be called upon to defend such liability claims at some time in the future. The department's defense costs are passed on to the Division of Risk Management in cases involving personal injury claims. We cannot predict these possible costs at this time, because information is not available which would indicate the number or severity of future claims.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 41

Revision Date: _____
 Title: An Act relating to civil liability for skiing accidents
 Sponsor: Reps. Phillips, Hudson, Porter
 Requestor: Labor and Commerce, Judiciary, Finance

Department Affected: Commerce and Economic Development
 BRU: Insurance
 Component: Insurance Operations
 COMPONENT SERIAL NO. 354

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: 0.0

ANALYSIS: (Attach a separate page if necessary.)
 No fiscal impact.

Prepared by: Dave Walsh
 Division: Insurance

Phone: 465-2515
 Date: January 21, 1993

Approved by Commissioner: Paul Fuhs
 Agency: Commerce and Economic Development

Date: 1-22-93

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Grant C. Baker
P.O. Box 82448
Fairbanks, Alaska 99708

March 4, 1993

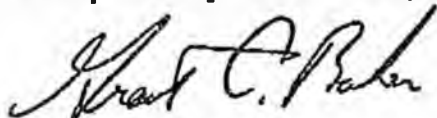
Brian Porter
House Judiciary Committee
FAX: via Robin Taylor 465-3922

This letter addresses HB 41/SB 44 which discuss "the duties of ski area operators".

There seems to be excessive ambiguity with the term "Inherent risks of skiing". The description of this term in the Bills is so broad that it effectively makes the description unreasonable and unusable. The problem may lie in the descriptive format of the term. The format is one of "describing what ski operators are not liable for". Perhaps, a better and more effective format, at least in part, would be to describe "what ski operators are responsible for". This type of format seems to be very compatible with the purpose of the Act which is reflected in its title "duties of the ski area operators". This implies that the Act should describe what the liabilities are for ski operators.

Legislation should not be so restrictive that it prevents reasonable economic development. However, ineffective and unreasonable legislation, such as the description of ski operator responsibilities in these Bills, should not be allowed because it is inappropriate, irresponsible, and will eventually hamper responsible economic development.

Respectfully submitted,



Grant C. Baker

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill No. CSHB 41 (L&C)

Revision Date: 03/04/93 Department Affected: Alaska Court System
 Title: An Act relating to civil liability for BRU: Trial Courts
skiing accidents... Components: _____
 Sponsor: Phillips
 Requestor: _____ COMPONENT SERIAL NO.

000 000	000 768
-----------	-----------

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CSC* Phone: 264-8228
 Division: Alaska Court System Date: 03/04/93

Approved by: Arthur H. Snowden, II, Administrative Director *AS* *CSC* Date: 03/04/93
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

1993
Jay M. Johnson
406 Pearl Drive
Anchorage, AK 99518

February 12, 1993

The Honorable Gail Phillips
Alaska State Representative
State Capitol
Juneau, AK 99801

Dear Representative Phillips,

I am writing to express my support for HOUSE BILL NO. 41, the Alaska Ski Safety Act of 1993. As a member of the National Ski Patrol, I feel that this bill is needed to maintain a viable way for the general public and my son to afford to ski. I believe that skiers need to know their skiing limits and take the financial responsibility for when things go wrong. I also feel that this bill needs to make ski area management responsible for their actions.

I fully support HB 41

Sincerely,



Jay M. Johnson

January 22, 1994

Honorable Brian Porter
Room 122
State Capitol
Juneau, AK 99801-1182

Dear Representative Porter,

I would like to ask you to support HB 41 and SB 44 as I believe this legislation protects both the interest of the ski area operators and the interest of the skiers.

Being an avid skier, I know that skiing is a dangerous sport, and that I may get hurt and need to accept the risk associated with this activity. Also, a ski area operator should be required to provide mountain safety according to new safety standards.

The legislation works for both the skiers and ski area operators. Please support these bills.

Sincerely,

Tracy Castelli

Tracy Castelli
Box 208
Girdwood, AK 99587

for the file

Received

JAN 27 1994

U.S. SENATOR

January 19, 1994

Honorable Brian Porter
Room 122
State Capitol
Juneau, AK 99801-1182

Dear Representative Porter,

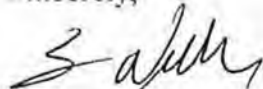
HB 41 and SB 44 effect skiers and ski areas throughout Alaska. This legislation will increase mountain safety for Alaskan skiers, while protecting ski areas from frivolous claims for injuries for which they are not responsible.

Skiing is an inherently dangerous activity. This legislation attempts to make skiing safer while making skiers responsible for the risks of skiing over which are not controllable by ski area operators.

I support this legislation and strongly encourage you to also support this legislation.

Thank you for your support.

Sincerely,



Steve Weller
PO Box 220204
Anchorage, AK 99522-0204

Received

JAN 25 1994

STATE OF ALASKA

January 19, 1994

Honorable Brian Porter
Room 122
State Capitol
Juneau, AK 99801-1182

Dear Representative Porter:

I am familiar with HB 41 and SB 44. I believe this legislation protects both the interests of the skiers and ski area operators.

Skiing is a dangerous activity. A ski area can make skiing safer, but it cannot take the danger completely out of skiing. When someone straps on a set of skis, they should know they may get hurt; and they should be willing to take the risks associated with skiing. At the same time, ski area operators should be required to do everything possible to protect skiers while they are skiing.

I believe this legislation balances both the responsibilities of skiers and ski area operators. I urge you to support this legislation.

Yours truly,



Margaret Strachan
801 Harbor Circle
Anchorage, AK 99515

January 20, 1994

Honorable Brian Porter
Room 122
State Capitol
Juneau, AK 99801-1182

Dear Representative Porter,

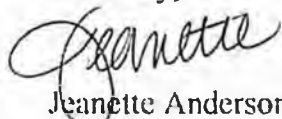
I am writing to urge you to support HB 41 and SB 44, legislation designed to protect ski operators from frivolous lawsuits. We need to promote the winter tourism industry in Alaska and help developers expand without fear of constant litigation.

Although I am not a downhill skier myself, like most Alaskans, I engage in numerous outdoor activities that carry risks. I believe that I carry responsibility for the dangers involved in hiking, biking, fishing, etc., in the Alaskan wilderness. Similarly, I believe skiers are also responsible for knowing the risks of their sport and should not be allowed to seek recourse against ski operators when the operators have not been negligent.

I know you join me in supporting the winter ski and tourism industry in Alaska. Let's show our support by passing HB 41 and SB 44.

Thank you.

Sincerely,



Jeanette Anderson
2921 Concord Lane
Anchorage, AK 99502

Received

JAN 25 1994

January 20, 1994

Honorable Brian Porter
Room 122
State Capitol
Juneau, AK 99801-1182

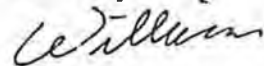
Dear Representative Porter,

I would like to ask you to support HB 41 and SB 44 as I believe this legislation protects both the interest of the ski area operators and the interest of the skiers.

Being an avid skier, I know that skiing is a dangerous sport, and that I may get hurt and need to accept the risk associated with this activity. Also, a ski area operator should be required to provide mountain safety according to new safety standards.

The legislation works for both the skiers and ski area operators. Please support these bills.

Sincerely,



William Moores
2921 Concord Lane
Anchorage, AK 99502

January 19, 1994

Honorable Brian Porter
Room 122
State Capitol
Juneau, AK 99801-1182

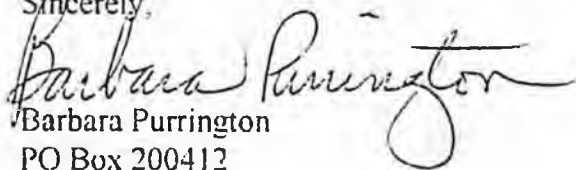
Dear Representative Porter.

I am asking for your support for HB 41 and SB 44, two bills designed to protect ski areas in Alaska from potential nuisance suits, which ultimately affect the skier by way of higher lift ticket prices or even ski area closures.

Winters are long in Alaska, and it is important to encourage development of recreational areas that take advantage of our long winters. Downhill skiing is a healthy form of winter exercise that is perfect for singles, groups and families to enjoy. Like all sports that entail an amount of risk, it is important that skiers understand their responsibilities while on the slopes. Likewise, it is important that ski area operators adhere to their responsibilities, making the sport as safe as possible for participants.

HB 41 and SB 44 outlines responsibilities for both skiers and ski area operators. I urge you to support these bills.

Sincerely,



Barbara Purrington

PO Box 200412

Anchorage, Ak 99520-0412

Received

January 19, 1994

Honorable Brian Porter
Room 122
State Capitol
Juneau, AK 99801-1182

Dear Representative Porter:

Western Canada and the western United States are experiencing a boom in winter tourism fueled by the expansion and development of their ski industries. Alaska is also poised to experience an expansion of its winter tourism with the expansion of the Alyeska ski resort and the development of skiing in the Matanuska Valley.

HB 41 and SB 44 will assist the growth of our winter tourism and ski industry by balancing the responsibilities of skiers and ski area operators. This legislation will bring our ski safety and ski liability laws in compliance with those of Canada and the western United States. It will make our mountains safer for skiers while allowing us to compete with other parts of the world for ski area development.

Summer tourism has been a boon to our state; increased winter tourism will only increase this source of positive economic growth for our state.

This is fair legislation, which I encourage you to support. Thank you.

Sincerely,

Brenda Roper

Brenda Roper
PO Box 220204
Anchorage, AK 99522-0204

Received

JAN 25 1994

STATE OF ALASKA

January 21, 1994

Dear Representative Porter:

I am writing regarding SB 241 and HB 366, "An Act relating to the management of Cook Inlet stocks of salmon."

It seems to me that this bill is not so much about the allocation of Cook Inlet salmon as it is about political control of fish allocation decisions in Alaska.

As I understand it, the first Alaska legislature established the Joint Board of Fisheries and Game in order to remove the legislature from the burdensome, specialized and often controversial regulatory decision making process relating to fish and game.

When Alaska's Legislature created separate boards of fisheries and game in 1975, it was done partly in response to the ever increasing burden of proposed regulations and partly to promote more specific knowledge of issues among the members of each board.

I feel these were wise decisions. The boards of fish and game, while often criticized and at times in error, have on the whole done a good job at the extremely difficult task of conserving and developing the fish and game resources of the state as defined in Alaska statutes.

If supporters of this bill are unhappy with the make-up and/or work of the current board, then I suggest they communicate with the Governor prior to his appointment of new members, and then if necessary, exercise the power to deny confirmation of appointees.

I fear that if this bill were to pass, the result would be a regulation that may not have been subject to the same criteria that is used by the Board of Fish, with due consideration given to economic, historic, biologic and sociologic factors. Instead, the votes to pass may have been decided by a legislator's interest in re-election or a political payback rather than the above criteria being thoughtfully applied to the issue at hand by a non-partisan board. Additionally, passage of this bill would seem to open the door for a deluge of fish and game allocation bills from all areas of the state.

Again, I feel the boards of Fish and Game are a far better forum for these issues and frankly, the legislature has plenty of other important issues to take up their limited time.

I hope that you will decide against supporting this bill.

Regards,



Bill Lindow

Received

JAN 25 1994

CLERK OF COURSE

HB

43

(7)

Date Referred: February 8, 1993

FURTHER REFERRALS:

Finance

Date of Committee Action: 2-17-93

The JUDICIARY Committee considered:

HB 43

HOUSE BILL NO. 43

CRIME OF CONSPIRACY

"An Act relating to the crime of conspiracy."

RECOMMENDATIONS:

be replaced with _____ the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: HOUSE JUDICIARY letter of Intent

ATTACHES NEW FISCAL NOTE(S):

fiscal impact AK COURT SYSTEM 12/4/92 (Dept)
CORRECTIONS 1/28/93

zero fiscal note PUBLIC SAFETY 2/8/93
LAW 2/1/93

APPROVES PREVIOUS:

fiscal note(s) ADMIN - PUB. DEF. 2/8/93 (Dept/Date)
ADMIN - OPA 2/8/93

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Brian G. Porter</i>	<input checked="" type="checkbox"/>	<i>Joseph [Signature]</i>		<input checked="" type="checkbox"/>	
<i>Gail Phillips</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>Pete [Signature]</i>	<input checked="" type="checkbox"/>				

Brian G. Porter
CHAIRMAN'S SIGNATURE

Alaska State Legislature



House of Representatives House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

February 18, 1993

LETTER OF INTENT

HB 43, Crime of Conspiracy

The House Judiciary Committee discussed several questions regarding the present fiscal notes to HB 43, An Act relating to the Crime of Conspiracy. In the committee's view, there may be some minimal impact upon the criminal justice system, but not nearly to the extent estimated by some of the criminal justice agencies. The Judiciary Committee respectfully suggests that the Finance Committee closely examine the assumptions upon which the fiscal notes for HB 43 are presently based.

Testimony presented to the committee indicated that, on the federal level, criminal defendants who are charged with both conspiracy and for the completed criminal offense are sometimes motivated to enter a plea admitting guilt to one or the other crime, disposing of the case in a timely and relatively efficient manner. This would tend to somewhat lessen the pressures on the criminal justice system, not increase them.

Several witnesses, including members of the defense bar, testified that Alaska's present criminal laws regarding accomplice liability and attempts are relatively broad; thus the range of criminal conduct that would be chargeable under a new conspiracy law is a narrow one. In the view of the committee, this position is consistent with the "zero" fiscal notes submitted by the Departments of Law and Public Safety.

A handwritten signature in cursive script that reads "Brian D. Porter".

Representative Brian Porter
Chairman, House Judiciary Committee

✓

TEST 1

TEST 2

TEST 3

TEST 4

TEST 5

NR 422
NR 422

BARROW

Sgt.
Sgt.

GRZG [REDACTED] VANDER [REDACTED]
JAMES [REDACTED] MAMOREAL [REDACTED]

43
43

CONFIDENTIAL
TESTIFY

↓

These two
would also
like to speak on
HB 100

RE

RENSAI

CHIEF THOMAS WALKER

TESTED



7035

ESTIMATE TELECONFERENCE APPROX 2:50 PM
 FROM [REDACTED] TO [REDACTED]
 SUBJECT: [REDACTED]

DATE: [REDACTED]
 TIME: [REDACTED]

[REDACTED]
 [REDACTED]

[REDACTED]

CHIEF RON [REDACTED] [REDACTED]
 CHIEF RON [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]



House Judiciary Committee

MR. CHAIRMAN,

You also have

Vicki Siegal

ON LINE IN

Seward.

Tomi Walker

James



KENAI POLICE DEPT.

107 SOUTH WILLOW ST., KENAI, ALASKA 99611

TELEPHONE 283-7879

Representative Brian Porter
House of Representatives
State Capitol
Juneau, Alaska 99811

February 17, 1993

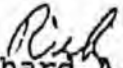
Dear Representative ^{Porter} Porter,

I support passage of House Bill 43. Alaska is not breaking new ground with enactment of a conspiracy statute. This is a tool that the Federal Justice System and most other States have. The statute proposed is even narrower and more limited in scope in that it would only apply to crimes against persons and drug enterprize at the major felony level.

This is not a tool that would be frequently used. In my experience on the Kenai Peninsula there have only been a few occasions that come to mind in which it would have been applicable. It does give law enforcement and the prosecution a pre-emptive and proactive capability for preventing major criminal offenses. It also allows the prosecution to present the jury with evidence that demonstrates the broader picture of the crime or criminal enterprize involved.

The ability to try multiple defendants together, if authorized by the bill, would expedite court hearings and trials. This would result in time and monetary savings to all components of the justice system. Fiscal notes attached to this bill should be examined with a great deal of care and some degree of suspicion.

Respectfully,


Richard A. Ross
Chief of Police

RAR/lw

FBI National Academy Associates

Alaska Chapter



February 16, 1993

Representative Brian Porter
Alaska State Legislature
Box V
Juneau, AK 99811

Dear Representative Porter:

The Alaska Chapter of the FBI National Academy Associates is supporting House Bill 43 (An Act relating to the Crime of Conspiracy).

Alaska's criminal justice system will be enhanced with passage of this bill. Law enforcement in Alaska requires legislation which offers the ability through the judicial system to prosecute those individuals or groups involved with the crime of conspiracy.

I have spoken with Chief O'Leary from the Anchorage Police Department and he "absolutely" supports and concurs with this legislation.

We strongly support your efforts toward passage of HB 43.

Sincerely,

Timothy W. Foster
President

TWF/ljc

Post-It™ brand fax transmittal memo 7871		# of pages ▶ 1
To <i>1001/ll</i>	From <i>Tim</i>	
Co.	Co.	
Dept.	Phone #	
Fax #	Fax #	

FBI/DOA
Officers &
Executive Board

President
Tim Foster, 150th
Anchorage Int'l Airport
Safety, P.O. Box 190629
Anchorage, Alaska 99519-0629
266-2405

Secretary
Shirley Warner, 156th
Anchorage Police
Department,
4501 S. Bragaw St.
Anchorage, Alaska
99507-1589
786-8558

John Murphy, 130th, Past President
Phil Gilson, 139th, VP, South Central
Mike Corkill, 169th, VP, Northern
Skip Coile, 163rd, VP, Southern



Alaska Action Trust

P.O. Box 102323 • Anchorage, Alaska 99510
Office: 540 "L" Street, Suite 206 • Anchorage, AK 99501
(907) 258-4040 • FAX (907) 276-7185

FAX TRANSMITTAL

TO: Representative Porter, Chair of House Judiciary
Representative James, Vice-Chair of House Judiciary
Representative Kott
Representative Phillips
Representative Green
Representative Davidson
Representative Nordlund

DATE: February 15, 1993

RE: SB 19: "An Act Relating to the Crime of Conspiracy"
HB 43: "An Act Relating to the Crime of Conspiracy"

This Position Paper is prepared on behalf of the Alaska Action Trust. It is prepared by the Criminal Section of the Trust. The Alaska Action Trust vigorously opposes both bills.

These bills create a new crime of conspiracy and unfairly increase the potential pool of defendants to include individuals who have taken no steps whatsoever to commit any felony, but have merely voiced an agreement to commit a felony, so long as any other person within the broad group does an "overt act" in furtherance of the felony. There is no requirement that the conspiracy actually go beyond one overt act by anyone. The bill does not even tell what is meant by an overt act.

An inevitable result of this act will be to broaden the pool of potential defendants so that noncriminal citizens will be

forced, under threat of criminal prosecution, to come forward to give evidence to the government. The federal use of conspiracy law is to force individuals into early plea bargains so that their testimony can be used to convict others. Given that the government of this state has been on record for many years as prohibiting plea bargaining and government involvement in deal making, this bill is totally inappropriate.

The accomplice liability and attempt provisions already the law in this state are quite adequate to prosecute those who should be prosecuted for criminal activity. Those provisions are quite adequate to punish and deter individuals whose conduct deserves punishment.

This bill will be extremely costly to the citizens of Alaska to implement. First, a great number of individuals will be prosecuted simply for speech, so there will be many more citizens brought into the criminal system. Each citizen will be entitled to his or her own criminal defense attorney, most of whom will be court appointed at public expense. Because federal and state constitutions require each charged defendant to have his or her own attorney who is not part of the office of the criminal defense attorneys for other lawyers, many of these people will not be defended by the Public Defender or the Office of Public Advocacy. Of course, each of those agencies will have their own case loads greatly increased because the Public Defender will represent the first defendant charged in the conspiracy, the Office of Public Advocacy will represent the second individual charged in the

conspiracy, and all others will receive attorneys hired at public expense through the Office of Public Advocacy. In addition to the costs of defending this very large new pool of defendants, there will be greatly increased costs of imprisoning in Alaska's already overcrowded prison system those whose only "crime" was speech.



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Representative Brian Porter

SPONSOR STATEMENT

State Capitol
Juneau, AK 99801-1182

RE: HB 43, An Act Relating to the Crime of Conspiracy

I have introduced HB 43, which creates a new crime of "conspiracy" in state law. An offender commits this crime if:


1. with intent to commit a "serious felony offense,"
2. the offender agrees with one or more others to commit the offense, and
3. the offender or one of the others performs an overt act in furtherance of the conspiracy.

The offenses for which a conspiracy prosecution could be brought are listed in section 1, proposed AS 11.31.120(g), page 2, lines 1-4, and include unclassified or class A felonies against a person and unclassified, class A, or class B felonies involving controlled substances.

I believe that adoption of this bill will provide Alaska law enforcement officers and prosecutors with a valuable tool which is available to law enforcement authorities in the federal system and in most other states. If sufficient evidence of a conspiracy is obtained, charges may be filed and arrests made before the conspirators actually commit the underlying planned serious felony offense.

In addition to allowing the apprehension of offenders at an earlier stage of the planned crime, the adoption of a conspiracy law would permit the introduction of additional evidence in a trial. Thus the jury would be permitted to hear, for example, more evidence about the overall drug operation, rather than being limited to evidence about specific drug sales on specific dates. The jury therefore would not view the sales in isolation, but would see the "big picture." In cases where the underlying offense was actually committed, defendants charged both with conspiracy and another crime may be more likely to cooperate with the prosecution in an effort to obtain a reduced charge; this may reduce the number of trials. Another potential cost-savings is that multiple defendants charged with conspiracy will be able to be tried jointly, rather than in separate trials as is generally required now.

Alaska may be the only state in the nation that does not have a general conspiracy law. It's time that we give law enforcement officials in Alaska the same crime-fighting tools available in other states.



Representative Brian Porter

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 22, 1993

SUBJECT: Sectional Summary of HB 43 (Work Order No. 8-LS0352\A)

TO: Representative Brian Porter
Attn: Gail

FROM: Jerry Luckhaupt *JEL*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill creates AS 11.31.120, the crime of conspiracy. That section would make it a crime for a person

- (1) with the intent to promote or facilitate a serious felony offense;
- (2) to agree with one or more other persons to engage in or cause that serious felony offense; and
- (3) an overt act in furtherance of the conspiracy is performed by one of the persons involved in the conspiracy.

This section clarifies criminal liability for certain situations, provides affirmative defenses that may be raised by the defendant, and defines "serious felony offense." Conspiracy is punishable as an unclassified, class A, class B or class C felony depending on the classification of the crime that was the object of the conspiracy.

Section 2 of the bill amends AS 11.31.140(a) to provide that it is not a defense to prosecution for conspiracy that the crime the defendant conspired to commit was actually committed.

Section 3 of the bill amends AS 11.31.140(b) to provide only one conviction for conspiracy, attempt, or solicitation is permitted for conduct that was designed to commit the same crime.

Section 4 of the bill amends AS 11.31.140(d) permits a prosecutor to charge both conspiracy to commit an offense and commission of the underlying offense.

Representative Brian Porter
January 22, 1993
Page 2

Section 5 of the bill amends AS 12.25.125(b) to provide that a person convicted of conspiracy to commit murder in the first degree shall be sentenced to a definite term of imprisonment of not less than five years and not more than 99 years.

GPL:gc
93-041.glc

BILL NO: HB 43

DATE: January 29, 1993

TITLE: "An Act Relating to the
Crime of Conspiracy

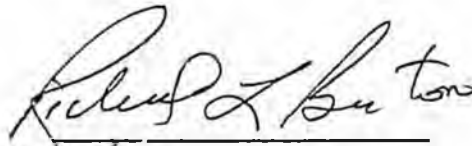
CONTACT: C.E. Swackhammer
Deputy Commissioner
465-4322

This bill would amend AS 11.31 Attempt and Solicitation, by adding a section concerning CONSPIRACY. A person commits the crime of "conspiracy" if,

1. with the intent to commit a felony crime,
2. the offender agrees with one or more persons to commit the crime,
and
3. the offender or one of the others performs an overt act in furtherance
of the conspiracy

The crimes for which a conspiracy prosecution could be brought are listed in section 11.31.120(g), page 2, line 31, and page 3, lines 1-4. The classification level of the crime (A felony, B felony, etc.) depends upon the seriousness of the underlying offense--see page 2, lines 3-30.

Adoption of this bill will provide Alaska law enforcement officers and prosecutors with a valuable tool which is available to law enforcement in the federal system and in most other states. If sufficient evidence of the conspiracy is obtained, charges may be filed and arrests made before the conspirators actually commit the underlying planned serious felony offense.



Richard L. Burton
Commissioner

Alaska Association Chiefs of Police



January 25, 1993

Received

JAN 28 1993

REP BRIAN PORTER

Representative Brian Porter
House of Representatives
State Capitol
Juneau, Alaska 99811

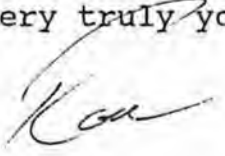
Dear Representative Porter:

On behalf of the Alaska Association of Chiefs of Police I would like to express our support for House Bill 43. For several years Alaskan law enforcement has been united in its request to the legislature for a Statute dealing with the Crime of Conspiracy.

There have been many serious felony crimes committed over the years that may well not have occurred if law enforcement had been able to pursue the offenders utilizing a Conspiracy Statute. Limiting conspiracy to serious felony offenses only is a sensible approach that should alleviate some past concerns.

If we can be of any assistance in the passage of your bill please let me know.

Very truly yours,


Ronald L. Otte
President

RLO/lp

FISCAL NOTE SUMMARY--HB 43, CRIME OF CONSPIRACY

Agency	Amount
Alaska Court System	121.1
Dept. of Corrections	365.0
Dept. of Law	-0-
Dept. of Public Safety	-0-
Office of Public Advocacy	513.0
Public Defender Agency	402.6

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill No. HB 43

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to the crime of BRU: Trial Courts
conspiracy Components: _____
 Sponsor: Porter
 Requestor: House State Affairs COMPONENT SERIAL NO.

000 000	000 768
-----------	-----------

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	121.1	121.1	121.1	121.1	121.1	121.1
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	121.1	121.1	121.1	121.1	121.1	121.1

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	121.1	121.1	121.1	121.1	121.1	121.1
FEDERAL FUNDS						
OTHER						
TOTAL	121.1	121.1	121.1	121.1	121.1	121.1

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME	3.0	3.0	3.0	3.0	3.0	3.0
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Division: Alaska Court System Date: 12/04/92

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 12/04/92
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Alaska Court System

Fiscal Analysis

HB 43

This bill creates a new crime of conspiracy to promote or facilitate a heinous offense. Its purpose is to create a crime under which persons not presently prosecutable can be prosecuted.

The Department of Law has not estimated the number of prosecutions which will result from this legislation. When similar legislation was considered in 1987, the department projected a need for two additional attorneys, a paralegal, and a secretary, indicating a potentially large caseload. OPA has estimated that it will defend 25 co-defendants charged as a result of this legislation, in addition to those co-defendants represented by the Public Defender. Most of these co-defendants will be entitled to separate trials. Experience in other states and at the federal level demonstrates that conspiracy cases generally require extensive pre-trial motion work, and are more likely to go to trial than other felony cases.

Alaska Court System

Fiscal Analysis

HB 43

Personal Services

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Superior Court Judge Anchorage, 12 months	\$24,150	\$16,841	\$40,991
Pro Tem Superior Court Judge Fairbanks, 6 months	12,251	8,439	20,690
Pro Tem Superior Court Judge Juneau, 6 months	12,075	8,420	20,495
In-Court Clerk, Anchorage	27,108	11,816	<u>38,924</u>
			<u><u>\$121,100</u></u>

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. H.B. 43

Revision Date: _____ Dept. Affected: Corrections
 Title: "An Act relating to crime of conspiracy." BRU: Statewide Programs
 Component: _____
 Sponsor: Representative Porter
 Requestor: _____ COMPONENT SERIAL NO. 700

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	365.0	365.0	365.0	365.0	365.0	365.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	365.0	365.0	365.0	365.0	365.0	365.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	365.0	365.0	365.0	365.0	365.0	365.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	365.0	365.0	365.0	365.0	365.0	365.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary)

See attached Analysis.

Prepared by: Dana LaTour, Special Assistant
 Division: Office of the Commissioner
 Approved by Commissioner: Lloyd G. Rupp, Commissioner
 Agency: Department of Corrections

Phone: 465-3376
 Date: 01/28/93
 Date: 01/28/93

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FISCAL NOTE

House Bill 43 "An Act relating to the crime of conspiracy."

Page 2

ANALYSIS (cont.)

The bill would make it illegal to conspire to commit certain heinous crimes. Heinous crimes are defined as unclassified and class A felonies against the person under AS 11.41, or crimes involving controlled substances under AS 11.71 which are punishable as unclassified, class A, or class B felonies. Conspiracy would be the same class of offense as the most serious offense that was an object of the conspiracy.

Data on the number of cases and average sentences for conspiracy convictions is not available to the Department of Corrections since this has not been a crime in Alaska in the past. However, based on information obtained last session from the Department of Law, Criminal Division, it appears likely that the conspiracy statute would enable more effective prosecution of drug crimes in particular. Since conspiracies to commit murder, kidnapping, or other serious violent crimes rarely occur, the impact on the Department is unpredictable.

The Department of Law predicts that the conspiracy law will facilitate more effective prosecution of cases involving multiple defendants and may encourage defendants to cooperate with the state to get reduced charges. The result will be more offenders sentenced for drug charges, rather than increasing sentence length.

According to 1992 booking statistics, there were 203 offenders incarcerated whose most serious charge was an unclassified (10), class A (10), or class B (183) Misconduct Involving a Controlled Substance (MICS) offense.

If this bill results in a ten percent increase in convictions for drug offenses, about 20 additional cases will be added each year. Since 90% of the relevant MICS offenses are class B felonies, the mean sentence length for a MICS B felony is used to calculate additional bed-days. Mean sentence length is 20.1 months. Subtracting one-third of the sentence for statutory good time results in time served of slightly over one year. Twenty additional offenders serving one additional year would result in 7300 additional bed days per year.

Because populations within correctional facilities are already exceeding emergency caps, it is assumed that these offenders will either be placed in Community Residential Center (CRC) beds, or that other offenders in the correctional centers will be displaced and moved to CRC beds. The daily cost of CRC placement is \$50.

The calculation used in computing the cost is:

$$7300 \text{ bed days per year} \times \$50 \text{ per CRC bed} = \$365,000$$

FISCAL NOTE

House Bill 43 "An Act relating to the crime of conspiracy."

Page 3

ANALYSIS (cont.)

The estimated costs are based on CRC beds since it is not possible to predict when the increases in incarceration would actually require adding new prison beds to the system. Cost of placement in a correctional center is approximately \$100 a day.

The current prison beds are full. The Department's master plan indicates a need to build between 500 - 700 additional beds by 1996 if other measures to reduce inmate population are not addressed.

If this bill results in any substantial increase in convictions and prison sentences for offenses other than the 10% increase in drug offenses described above, or if sufficient prisoners cannot be diverted to community residential centers contract beds, then the effect of this bill may be to add additional pressure on the already overcrowded correctional facilities.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 43

Revision Date: February 1, 1993
Title: "An Act relating to the crime of Conspiracy."
Sponsor: Representative Porter
Requestor: Representative Porter

Department Affected: Department of Law
BRU: Prosecution
Component: All
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director
Division: Administrative Services Division

Phone: 465-3672
Date: February 1, 1993

Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law

Date: February 1, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 43

ANALYSIS (Continued):

This bill creates a crime of conspiracy when two or more people agree to commit a criminal offense and one of them does some act in furtherance of the agreement. The bill extends the application of the conspiracy law to offenses against a person under AS 11.41, punishable as unclassified or class A felonies, and to offenses involving controlled substance, under AS 11.71, punishable as unclassified, class A, or class B felonies.

The Department of Law believes there will not be a significant increase in the number of cases due to the conspiracy law. Current law permits prosecution of those who directly commit crimes, as well as those who are accomplices (AS 11.16). Because our present accomplice law allows us to prosecute people who aid and abet a criminal, it is unlikely that the conspiracy law (which requires proof of an agreement to commit the crime) will result in significantly more cases being prosecuted. Instead, the crime of conspiracy will be added as another count in a case that would have been prosecuted anyway.

In those cases that cannot be charged under current law, the crime of conspiracy will permit some additional cases to be prosecuted and some fiscal impact could result, although there may be offsetting cost savings.

The major effect of the conspiracy law is to permit the introduction of additional evidence in a trial. Thus the jury is permitted to hear, for example, more evidence about the overall drug operation, rather than being limited to evidence about specific drug sales on specific dates. The jury does not therefore view those sales in isolation, but is allowed to see the "big picture", and the state's case is made stronger. We believe that defendants charged under the conspiracy law will cooperate with the state to try to get a reduced charge, and therefore fewer trials will occur. Another potential cost-savings is that multiple defendants charged with conspiracy will be able to be tried in a joint trial, rather than separate trials as is usually the practice now. Naturally the effects of any new law cannot be predicted with precise certainty. However, conspiracy laws and stiff drug penalties are nothing new in the rest of the country.

FISCAL NOTE

Revision Date: _____ Dept. Affected: Public Safety
An Act relating to the crime of BRU: Alaska State Troopers
conspiracy Component: Criminal Investigation Bureau
 Sponsor: Representative Porter
 Requestor: Representative Porter COMPONENT SERIAL NO. 830

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

2 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY 93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.)
 No fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: PlSgt. Howard Burger Phone: 269-5976
 Division: Alaska State Troopers Date: 1/25/93
 Approved by Commissioner: *Richard L. Burton* Date: 1/25/93
 Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB43

Revision Date: _____
 Title: "An Act relating to the crime of conspiracy."
 Sponsor: Representatives Porter and Phillips
 Requestor: House Judiciary

Department Affected: Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	118.9	122.5	126.2	130.0	133.9	137.9
TRAVEL						
CONTRACTUAL	381.1	392.5	404.3	416.4	428.9	441.8
SUPPLIES	2.0	2.1	2.2	2.3	2.4	2.5
EQUIPMENT	11.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	513.0	517.1	532.7	548.7	565.2	582.2

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
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FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF	513.0	517.1	532.7	548.7	565.2	582.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	513.0	517.1	532.7	548.7	565.2	582.2

POSITIONS:

FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: None.

ANALYSIS: (Attach a separate page if necessary.)
 See attached.

Prepared by: Brant McGee, Public Advocate
 Division: Office of Public Advocacy

Phone: 274-1684
 Date: January 21, 1993

Approved by Commissioner: Nancy Bear Usura
 Agency: Administration

Date: 1/29/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB43

ANALYSIS: (continued)

The bill creates the new offense of conspiracy whose prosecution will have a dramatic fiscal impact on the Office of Public Advocacy (OPA). The following analysis will deal solely with the fiscal ramifications of the adoption of the individual sections of the proposed bill.

The creation of a new crime of "conspiracy" will make two or more people involved in a homicide, kidnapping, or felony drug offense prosecutable for this separate crime. The purpose of the bill is to create another crime under which persons supposedly not currently prosecutable can be prosecuted. Further, and most importantly from the fiscal perspective of this agency, these new defendants will be tried together in a single trial. Such charges will inevitably give rise to conflicts of interest among defendants which mandate the legal representation of each defendant by a separate attorney or agency.

The Office of Public Advocacy is responsible for providing representation for those with whom the Alaska Public Defender Agency has a conflict of interest. The great majority of defendants prosecuted under conspiracy laws will be found by the court to be indigent and qualified for Public Defender and OPA services. By definition, because the statute is designed to prosecute two or more people, the Office of Public Advocacy will be responsible for providing representation to one or more alleged co-conspirators in the great majority of the cases prosecuted under this new section. For example, if the Alaska Public Defender Agency is appointed to represent defendant number one in a conspiracy case, OPA will be appointed to provide representation, probably by a staff attorney, to defendant number two, and through contract counsel, to all other co-defendants in a particular case.

Cases filed under conspiracy statutes on the federal level and in other states routinely involve substantial attorney time, particularly for the preparation of pretrial motions. Due to the fact that the Department of Law investigation activity will probably focus on urban areas, the Office of Public Advocacy is requesting one experienced attorney and a legal secretary in Anchorage to handle representation of clients charged under the bill. Because the staff attorney can represent but one co-defendant in a given case, the Office of Public Advocacy must contract with private counsel for the representation of all other co-defendants determined to be indigent by the court.

It is anticipated that the complexity of this litigation will dictate high contract costs, which are estimated at \$15,000 per defendant. The Department of Law has not estimated the number of prosecutions it will initiate during FY 94 or subsequent years under the new conspiracy statute. The projected \$375,000 in contract costs is thus based on the assumption that the Office of Public Advocacy will only be responsible for 25 co-defendants charged under these statutes for which it cannot provide staff representation during the coming fiscal year.

It should be noted that conspiracy prosecutions are far more expensive to defend than to prosecute. The nature of the allegation means that two, and usually more, defendants--each represented by separate counsel--will be prosecuted by one or two Assistant District Attorneys. For example, in a typical conspiracy prosecution, the Department of Law and the Public Defender Agency will each be paying for one attorney, while the Office of Public Advocacy will be responsible for providing counsel to all of the remaining co-defendants.

Position Title Attorney IV		No. of Positions 1	Range / Step 24A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Anchorage/EBA		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary		61.0		
Benefits		21.5		
Premium Pay				
Other				
Total Personal Services		82.5		
Travel				
Contractual		3.4		
Commodities		1.0		
Equipment		3.6		
Other				
Total Cost		90.5		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	90.5		
I-A Receipts	1007			
CIP Receipts	1061			
Other				
Justification The Anchorage Office of Public Advocacy presently has three attorney positions devoted to criminal defense. These attorneys are also handling several major cases outside of the Anchorage area as staff coverage and travel is more cost-effective than contracting major cases to private attorneys in rural areas. Current caseloads indicate that these three attorneys cannot absorb the additional cases which would result from this legislation. It is necessary that an additional attorney be added to the Anchorage staff to cover the resultant increased caseload.				

5/fy94/13/02214.a

Request For New Position

AGENCY ADMINISTRATION
 BRU OFFICE OF PUBLIC ADVOCACY
 COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 94

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 Revised Date: _____

Position Title Legal Secretary I		No. of Positions 1	Range / Step 10A	Barg. Unit GG
Time Status PFT	Staff Months 12.0	Location Anchorage/EBA		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary		24.8		
Benefits		11.6		
Premium Pay				
Other				
Total Personal Services		36.4		
Travel				
Contractual		2.7		
Commodities		1.0		
Equipment		7.4		
Other				
Total Cost		47.5		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	47.5		
I-A Receipts	1007			
CIP Receipts	1061			
Other				
Justification The Anchorage Office of Public Advocacy has three legal secretary positions providing clerical support to 14 professional positions and the Volunteer Guardian Ad Litem Program. The addition of an attorney with a full caseload necessitates the addition of another secretary. The clerical workload generated by an additional attorney cannot be absorbed by the current clerical staff.				

6/ty94/13/02214.b

Request For New Position

AGENCY ADMINISTRATION
 BRU OFFICE OF PUBLIC ADVOCACY
 COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 94

Page 1 of 1
 Revised Date: _____

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 43

Revision Date: _____

Title: 'An Act relating to the crime of conspiracy.'

Sponsor: Representative Porter

Requestor: House Judiciary

Department Affected: Administration

BRU: Public Defender Agency

Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	347.6	358.0	368.7	379.8	391.2	402.9
TRAVEL	15.0	15.5	16.0	16.5	17.0	17.5
CONTRACTUAL	30.0	31.0	32.0	33.0	34.0	35.0
SUPPLIES	4.0	4.1	4.2	4.3	4.4	4.5
EQUIPMENT	6.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	402.6	408.6	420.9	433.6	446.6	459.9

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF	402.6	408.6	420.9	433.6	446.6	459.9
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	402.6	408.6	420.9	433.6	446.6	459.9

POSITIONS:

FULL-TIME	6.0	6.0	6.0	6.0	6.0	6.0
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John Salemi, Public Defender

Phone: 279-7541

Division: Public Defender Agency

Date: _____

Approved by Commissioner: Nancy Bear Usura

Date: 1/29/93

Agency: Administration

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Position Title Attorney IV		No. of Positions 2	Range / Step 24/A	Barg. Unit PX
Time Status PFT	Staff Months 24.0	Location EBA - Fairbanks		Election District 20-7
TYPE OF EXPENDITURE		AMOUNT		
Salary	131,092.0	Justification These senior felony attorneys will be stationed, one in Anchorage and one in Fairbanks. The Anchorage attorney will represent clients in the First and Third Judicial Districts while the Fairbanks attorney will cover the Second and Fourth Judicial Districts.		
Benefits	43,985.0			
Premium Pay				
Other				
Total Personal Services	175,077.0			
Travel	10,000.0			
Contractual	19,000.0			
Commodities	2,000.0			
Equipment	3,000.0			
Other	209,077.0			
Total Cost	0.0			
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	209,077.0		
I-A Receipts	1007			
CIP Receipts	1061			
Other				

8/LEG93/17/028.kp/2

Request For New Position

AGENCY ADMINISTRATION
 BRU PUBLIC DEFENDER AGENCY
 COMPONENT PUBLIC DEFENDER AGENCY

FY 94

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 Revised Date: _____