

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8363 SENATE LABOR & COMMERCE

collisions with natural objects, man made objects, or other skiers, variations in terrain, and the failure of skiers to ski within their own abilities. A more complete list of these dangers and risk is available from the ski area operator.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Mail Stop 3101

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

MEMORANDUM

April 26, 1994

SUBJECT: Sectional analysis (HCS CSSB 44(FIN) am H)

TO: Senator Tim Kelly

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

The following is a section by section analysis of CSSB 44(^{JUD}FIN) am with a comparison to HCS CSSB 44(FIN) am H. Please note that when this comparison was prepared the HCS was under reconsideration in the house. Changes made after 4/26/94 are not included in this analysis.

Section 1 - Legislative Findings and Purpose.

HCS Section 1. Findings and purpose. There are minor changes in sec. 1(a), and in sec. 1(b) a new paragraph 5 has been added.

Section 2 -

Sec. 05.45.010 - Prohibits a person from bringing a lawsuit against a ski area operator, if the lawsuit results from an injury that constitutes an inherent danger and risk of skiing.

HCS Sec. 05.45.010. This is identical to CSSB 44(JUD).

Sec. 05.45.020 - Provides that a person or a ski area operator who violates a requirement of AS 05.45 is negligent as a matter of law, and is civilly liable to the extent the violation causes injury to a person or damage to property.

HCS Sec. 05.45.020. Has a new subsection (a) that combines the substance of subsections (a) and (b) from CSSB 44(JUD). Has a new subsection (b) that prohibits an injured skier from recovering for an injury if an inherent risk is a contributory factor in the skier's injury, or the skier violated a statutory skier or passenger duty and the violation was a contributory factor in the resulting injury, unless the ski area operator violated a requirement of AS 05.45, a provision of the ski area plan of

operation, or a regulation of the Department of Labor under AS 05.20.070. Has a new subsection (c) that provides that if a ski area has violated a provision of AS 05.45, the ski area plan, or a regulation under AS 05.20.070, that the apportionment of fault provisions of AS 09.17.080 apply to an action against a ski area operator.

Sec. 05.45.030 - Imposes specific duties on tramway passengers intended to promote safe use of a tramway.

HCS Sec. 05.45.030. This is identical to CSSB 44(JUD).

Sec. 05.45.040 - Requires ski area operators to prepare and obtain approval for a plan of operation for each ski season and requires certain ski areas to provide a qualified ski patrol. Provides that the state is not liable for reviewing and approving a ski area plan of operation.

HCS Sec. 05.45.040. Is substantively identical to CSSB 44(JUD), except for a provision in subsection (a) that allows the Commissioner of Natural Resources to impose a fee for the cost of reviewing a ski area plan of operation.

Sec. 05.45.050 - Requires ski area operators to establish and maintain a tramway sign system for protection and instruction of passengers.

HCS Sec. 05.45.050. This is identical to CSSB 44(JUD).

Sec. 05.45.060 - Requires ski area operators to establish and maintain a sign system for ski trails and slopes intended to instruct skiers on signs and symbols and to warn skiers of the difficulty of the trail or slope.

HCS Sec. 05.45.060. Subsections (a), (b) and (c) are identical to CSSB 44(JUD). Subsection (d) contains a new provision that allows certain slopes to be closed with a line of signs. In subsection (e)(4), the definition of "man-made structures" has been changed. A new paragraph (e)(6) has been added that requires certain terrain to be marked. The required warning in subsection (g) has also been changed.

Sec. 05.45.070 - Imposes additional duties on ski area operators regarding snow-grooming equipment and snowmobiles.

HCS Sec. 05.45.070. This is substantively identical to CSSB 44(JUD).

Sec. 05.45.080 - Provides that a ski area operator has no duty to a person who skis outside the ski area boundaries, if the area is properly marked.

HCS Sec. 05.45.080. This is identical to CSSB 44(JUD).

Sec. 05.45.090 - Requires a ski area operator to develop and maintain a reckless skier policy. Permits a ski area operator to revoke skiing privileges of a skier who skis in a reckless and careless manner.

HCS Sec. 05.45.090. This section is substantively identical to CSSB 44(JUD).

Sec. 05.45.100 - Imposes duties and responsibilities on skiers, including the duty to ski within the limits of the skier's ability. Provides that a skier is not precluded from suing another skier for an injury resulting from the other skier's act or omission. Makes a violation of subsection (c) or (g) an offense punishable by a fine. Allows the Department of Natural Resources to issue citations for violations of (c) or (g) of this section.

HCS Sec. 05.45.100. Subsection (a) contains a new last sentence specifying that a risk of a skier's collision with another skier is not an inherent danger or risk of skiing in an action by one skier against another skier. Subsection (h) contains a new provision that allows a person designed by a ski area operator who is authorized by the commissioner of Natural Resources may issue certain citations. The remaining provisions are substantively identical.

Sec. 05.45.110 - Prohibits ski area operators from requiring a skier to sign a release of liability in exchange for the right to ski.

HCS Sec. 05.45.110. This section does not appear in the senate version. It requires a ski area operator to allow competitive skier to inspect the ski course and provides immunity to the ski area operator for certain risks of the ski course or area.

HCS Sec. 05.45.120. This section is similar to sec. 05.45.110 in the senate version. It differs in that the senate version contains a civil penalty of \$10,000 that is not in the HCS. Also the HCS contains a subsection (b) allowing certain release from liability and a definition in subsection (c).

Sec. 05.45.200 - Definitions.

HCS Sec. 05.45.200. This section contains the definitions for the chapter. It is identical to the senate version except for the definition of "inherent danger and risk of skiing". The definition in the HCS is substantively identical to the one used in CSSB 44(L&C).

HCS Sec. 05.45.210. This is identical to CSSB 44(JUD).

Section 3 - Repeals AS 09.65.135, an statute that limits claims arising from skiing, and AS 18.60.822, a statute that requires ski area operators to prepare a plan of operation.

Senator Tim Kelly
April 26, 1994
Page 4

HCS Section 3. This is identical to CSSB 44(JUD).

Section 4 - Effective date.

HCS Section 4. This is identical to CSSB 44(JUD).

MFF:pl
94-341.plm

SB 44: "An Act relating to civil liability for skiing accidents, operation of ski areas, and duties of ski area operators and skiers; and providing for an effective date."

SB 44 sets duties of ski operators and skiers. The bill removes the liability of ski operators for injuries resulting from an inherent danger and risk of skiing. The department has no position on SB 44.

LETTERS OF SUPPORT FOR SB 44 FROM:

**ALASKA HOTEL & MOTEL ASSOCIATION
ALASKA SKI AREAS ASSOCIATION
ALASKA VISITORS ASSOCIATION
ANCHORAGE CONVENTION & VISITORS BUREAU
ANCHORAGE ECONOMIC DEVELOPMENT CORPORATION
DAYS INN
MUNICIPALITY OF ANCHORAGE'S DEPARTMENT OF CULTURAL
& RECREATIONAL SERVICES
UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF
AMERICA LOCAL 1281
WESTMARK HOTELS**



Alaska Hotel & Motel Association

PO BOX 104900 • 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

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

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Alaska Hotel & Motel Association

P.O. BOX 104900 • ANCHORAGE, ALASKA 99510 • (907) 344-1778

January 18, 1993

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

Dear Senator Kelly:

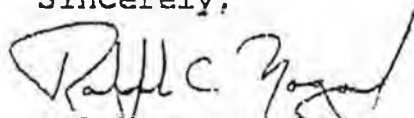
As President of the Alaska Hotel Motel Association, I would like to clarify our position as being POSITIVE in regards to Senate Bill #44 pertaining to civil liability for skiing accidents.

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. Ncgai

RCN/eh

Post-It™ brand fax transmittal memo 7671 # of pages > 1
From Ralph Ncgai



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.

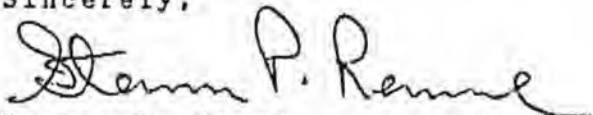
As a result of that Supreme Court decision the City of Valdez can no longer offer it's residents the recreation of downhill skiing. If this legislation does not pass perhaps other ski areas around the state will fall under the load of escalating premiums and frivolous law suits.

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



ALASKA VISITORS ASSOCIATION

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1991-92

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192-03

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

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#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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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

JAN 19 '93 11:22 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*

Municipality of Anchorage



P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650

TOM FINK
MAYOR

DEPARTMENT OF CULTURAL AND RECREATIONAL SERVICES

March 1, 1993

Senator Robin Taylor, Chair
Senate Judiciary Committee
Room 30
Juneau, Alaska 99801-1182

RE: CSSB44 & CSHB41 - Civil Liability for Skiing Accidents "Alaska
Ski Safety Act of 1993"

Dear Senator Taylor:

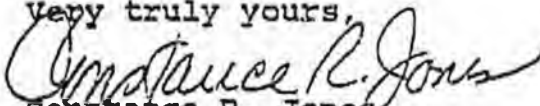
After careful review of both of the above pieces of legislation, our department supports passage of CSSB44 entitled the "Alaska Ski Safety Act of 1993".

Most of our primary concerns have been satisfactorily addressed, however, we would like to see Sec. 05.45.040 expanded to contain an exclusion for single rope tow operations with less than a 500' vertical drop as it pertains to providing ski patrols and meeting the standards of the National Ski Patrol System, Inc. and a reduced signage requirement. These requirements could be onerous for small, single rope tow operations. The same result may be achieved through alternate provisions of the ski area operators annual plan through the use of local paramedics, first-aid givers and the effective use of signage.

CSHB41 does not allow property owner input on the annual plan which we feel should be included. The House's substitute adds to Sec. 05.45.070 a new sub-section (d) describing requirements for policies covering reckless skiers, definitions, and procedures for correction. This shifts the enforcement of reckless skiing disciplines to the ski patrol. Our position is the enforcement should be with the ski area operators and their designated personnel, which may or may not be ski patrol.

We support your efforts in limiting ski area liability and recreation tort reforms.

Very truly yours,


Constance R. Jones
Director

cc: Anne Williams



UNITED BROTHERHOOD OF
Carpenters and Joiners of America

LOCAL UNION NO. 1281

407 DENALI

PHONE 276-3533

ANCHORAGE, ALASKA 99501
Fax: 276-7962



January 18, 1993

Dear Alaska Legislators:

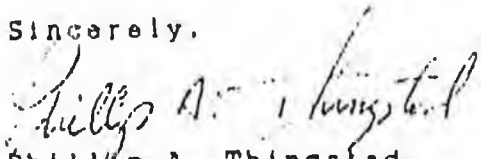
This is a statement of support for SB 44, as submitted by Sen. Kelly

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. Thingslad
Business Manager
Carpenters Local 1281

PAT/we



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

**NOTATION REFERENCES FOR DELETIONS MADE
IN THE CS FOR SB 44 (L&C)**

NOTATION 1: "the participants could not ski without them"

NOTATION 2:

"it is not reasonable to expect operators to turn wild, natural, alpine terrain into croquet lawns; there will always be rocks, trees, stumps, tree roots, bushes, branches, undergrowth, and other natural alpine features within a property operated by a ski area;"

NOTATION 3:

"(12) there will, therefore, always be natural and artificial hazards in the sport of skiing; it is impractical to expect the operator to eliminate or mitigate these hazards, and skiers must accept these hazards as part of the risks of the sport;"

NOTATION 4: "most injuries are minor, but some injuries impair lifestyle and a very few are fatal, these injuries are ordinary, though unfortunate, consequences of the skier's choice to take part in the sport."

NOTATION 5: "and for which there can be no recovery"

NOTATION 6: "exclude a comparative negligence or comparative fault analysis from the ski context where an injury is the result of an inherent risk of skiing;"

NOTATION 7: "(5) create the necessary conditions to permit ski area operators to continue to offer facilities to Alaskans and nonresidents for the sport of skiing."

NOTATION 8: "this paragraph does not apply in a heavily wooded area or other nonskiable terrain"

NOTATION 9: "this subsection does not apply to cross-country skis"

NOTATION 10: "or while under"

NOTATION 11: "and administered as a single enterprise"

**SENATOR KELLY'S TESTIMONY ON SB 44:
THE ALASKA SKI SAFETY ACT OF 1993**

Mr. Chairman, thank you for hearing SB 44 today, the Alaska Ski Safety Act of 1993.

Critics of this legislation have argued that this bill provides nothing for the consumer, absolves ski resorts from all liability, and is a special interest "ski industry" bill. I believe these individuals, while well intentioned, do not understand the changes this legislation has undergone since its introduction.

For the consumer, SB 44 provides guarantees that ski resorts will provide safe tramways and a trained ski patrol. That they will mark hazards whether man-made or natural, such as bare spots, rocks and catwalks, and maintain a sign system indicating the difficulty of the slopes. This bill will require that resorts clearly mark-off closed areas and place shock absorbent material around man-made obstructions.

If an injury results from a ski resort's failure to perform any of these or their other responsibilities defined in the bill, the ski resort is negligent and liable for their negligence. However, if a ski resort fulfills all of its safety responsibilities, and a skier is injured from what is commonly recognized as an inherent risk of the sport, the resort is not liable.

Finally, this bill is not special interest legislation. It recognizes skiing's social, health and economic values and is supported by the Municipality of Anchorage's Department of Cultural and Recreational Services, the Alaska Visitors Association, the Alaska Hotel & Motel Association, the United Brotherhood of Carpenters, and the Anchorage Economic Development Corporation among others.

In summary, SB 44 clearly defines the responsibilities of ski area operators and those of skiers, striking a balance between protecting skiers' safety, and ski resorts from frivolous law suits. The result should be safer skiing conditions for skiers, and a legal climate that encourages further ski resort development.

Mr. Chairman, you have a number of amendments before you, some put in at the Rizer's request. My staff, Josh Fink, would be happy to explain them.

Thank You.

Alaska State Legislature

Senator Tim Kelly, Chair
Senator Steve Rieger, Vice Chair
Senator Drue Pearce
Senator Judy Salo
Senator Georgianna Lincoln



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February 22, 1993

SENATE LABOR AND COMMERCE COMMITTEE

3111 C STREET, SUITE 550
ANCHORAGE, ALASKA 99503
(907) 561-7612

David G. Faulk

Pacific Alaska Leasing Co.
7900 King Street
Anchorage, AK 99518

Dear Mr. Faulk,

Thank you for your letter regarding Senate Bill 44 (SB 44), and providing a copy of Alyeska Ski Resort's season pass agreement. I appreciate your taking the time to share your concerns with me.

I agree with you, such release forms are wholly inappropriate. I am also informed that in all likelihood such forms would not hold up in court. However, your point about these forms demonstrating intent to "completely refuse to assume any liability when injury is a direct result of negligence, even when reckless" is well taken.

Let me assure you, SB 44 does not remove ski resorts from such liability. On the contrary, under this legislation ski resorts would be liable for failing to provide adequate marking of trails, hazards and closed areas, sufficient ski patrol, or emergency rescue and evacuation. SB 44 would clearly define the responsibilities of the skiers and the inherent risks and dangers they assume, as well as the responsibilities and duties of ski resort operators.

Nevertheless, I feel it is important that ski resorts be prohibited from requiring such release forms from their season pass holders. I will ask the Senate Judiciary Committee, the committee currently in possession of this legislation, to add a provision prohibiting such release forms from containing language removing ski resorts from liability beyond that which is actually provided for in the law.

Thanks again for your letter. I hope I have addressed some of your concerns.

Sincerely,

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

TIM KELLY
State Senator

MEMBER

TENTH ALASKA LEGISLATURE
ELEVENTH ALASKA LEGISLATURE
TWELFTH ALASKA LEGISLATURE
THIRTEENTH ALASKA LEGISLATURE
FOURTEENTH ALASKA LEGISLATURE
FIFTEENTH ALASKA LEGISLATURE
SIXTEENTH ALASKA LEGISLATURE
EIGHTEENTH ALASKA LEGISLATURE

ALASKA STATE SENATE



STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3822

P.O. BOX 210001
ANCHORAGE, ALASKA 99521
(907) 561-7612

SENATOR TIM KELLY

MEMORANDUM

Date: February 9, 1994
To: All Senators
From: Senator Tim Kelly
RE: CS SB 44 (JUD) - Alaska Ski Safety Act

SB 44 attempts to strike a balance between protecting skiers and ski resort operators by clearly defining the inherent dangers and risks of skiing assumed by the skier, as well as the duties and responsibilities the ski resort operator has to the skiing consumer.

While SB 44 would remove ski resort operators from liability for injuries caused solely by the inherent risks and dangers of skiing, it does not absolve ski operators from negligence or civil liability for violations of provisions outlined in this legislation.

SB 44 would require ski area operators to:

- Prepare and obtain approval from the Commissioner of Natural Resources or managing U.S. agency (land manager) for a plan of operation for each ski season, which must include hazard marking, missing persons procedures, avalanche control and rescue, tramway evacuation, and grooming procedures;
- Provide a qualified ski patrol with qualifications meeting or exceeding the standards of the National Ski Patrol System;
- Establish and maintain a tramway sign system for the protection and instruction of passengers; and
- Establish and maintain a sign system for ski trails and slopes intended to instruct skiers on the difficulty of the trail or slope.

Memorandum - CS SB 44 (JUD)

February 9, 1994

Page 2

SB 44 should result in safer skiing conditions for skiers and provide a legal climate that encourages ski resort operators currently in Alaska to expand and those who are not now in Alaska to consider Alaska equally with the western United States and Canada when determining where next to expand.

This legislation is supported by the Department of Natural Resources, the Alaska Ski Areas Association, the Alaska Visitors Association, the Alaska Hotel & Motel Association, the Municipality of Anchorage, the Anchorage Convention & Visitors Bureau, the Anchorage Economic Development Corporation, and the United Brotherhood of Carpenters and Joiners of America Local Union No. 1281 among others.

SB 44 has zero fiscal notes from the Court System and the Departments of Commerce & Economic Development, Labor, and Administration.

For your reference, I've attached a sectional analysis.

MEMBER

TENTH ALASKA LEGISLATURE
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SENATOR TIM KELLY

MEMORANDUM

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To: All Senators
From: Senator Tim Kelly
RE: CS SB 44 (JUD) - Alaska Ski Safety Act

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Memorandum - CS SB 44 (JUD)

February 9, 1994

Page 2

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SB 44 has zero fiscal notes from the Court System and the Departments of Commerce & Economic Development, Labor, and Administration.

For your reference, I've attached the above mentioned letters of support and a sectional analysis.

DELANEY, WILES, HAYES, REITMAN & BRUBAKER, INC.

RAYMOND E. PLUMMER
DANIEL A. GERRY
ROBERT L. EASTAUGH
STEPHEN A. ELLIS
CLAY A. YOUNG
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JAMES J. DELANEY
GEORGE N. HAYES
STANLEY N. REITMAN
EUGENE F. WILES
1888-1980
JOHN K. BRUBAKER
1927-1988

March 14, 1994

Rep. Sean R. Parnell
Alaska State Legislature
Room 513, State Capitol
Juneau AK 99801-1182

VIA FACSIMILE

Re: Senate Bill 44: Alaska Ski Safety Act of 1994

Dear Rep. Parnell:

As requested, we have prepared a side-by-side comparison of Senate Bill 44 as it was adopted by the Senate (CSSB 44(JUD) AM) and the draft legislation which we believe would best serve the ski industry and the skiing public (HCS CSSB 44(FIN)). A couple of changes were made to the draft in light of the recent hearing and further review of legislation in other states.

The major differences between the draft and the bill as passed by the Senate are: (1) specific language establishing how comparative negligence should be applied in AS 05.45.020; (2) Excluding inherent risks and dangers from the hazards which must be marked under AS 05.45.060(b)(4); (3) Deleting the requirement that variations in steepness or terrain be marked in AS 05.45.060(e)(4); (4) Delete the requirement that natural objects be marked on open slopes or trails in AS 05.45.060(e)(5); (5) Requiring that skiers involved in a collision give their names and addresses to each other, rather than the area operator, in AS 05.45.100(g); (6) Deleting the provision prohibiting the use of release agreements between ski areas and their patrons in AS 05.45.110; (7) Adding a section dealing with liability arising from ski competitions as new AS 05.45.110; and (8) Substantially revising the definition of "inherent danger and risk of skiing" to track the Colorado definition in AS 05.45. 200(3).

Should you have any questions, please do not hesitate to contact us.

Very truly yours,

DELANEY, WILES, HAYES,
REITMAN & BRUBAKER, INC.

Marc D. Bond
Marc D. Bond

Enc.

P. 3/23

"An Act relating to civil liability for skiing accidents, operation of ski areas, and duties of ski area operators and skiers; and providing for an effective date."

"An Act relating to civil liability for skiing accidents, operation of ski areas, and duties of ski area operators and skiers; and providing for an effective date."

[same]

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

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* Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds that

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[same]

(1) the sport of skiing is practiced by a large number of citizens of the state and also attracts a large number of nonresidents, providing significant contributions to the economy of the state through construction and operation of skiing facilities, and through the money spent by citizens of the state and nonresidents;

(1) the sport of skiing is practiced by a large number of citizens of the state and also attracts a large number of nonresidents, providing significant contributions to the economy of the state through construction and operation of skiing facilities, and through the money spent by citizens of the state and nonresidents;

[same]

(2) the sport of skiing serves important public social and policy goals in the state given the dominance of the winter season; skiing contributes to the health and well-being of Alaskans, including the physically and mentally challenged; it is highly desirable and necessary that Alaskans have convenient and inexpensive access to the sport of skiing;

(2) the sport of skiing serves important public social and policy goals in the state given the dominance of the winter season; skiing contributes to the health and well-being of Alaskans, including the physically and mentally challenged; it is highly desirable and necessary that Alaskans have convenient and inexpensive access to the sport of skiing;

[same]

(3) skiing is an active sport conducted in the outdoor alpine environment; this environment consists of several elements, including terrain, weather, snow conditions, and amenities created and maintained by the ski area operator;

(3) skiing is an active sport conducted in the outdoor alpine environment; this environment consists of several elements, including terrain, weather, snow conditions, and amenities created and maintained by the ski area operator;

[same]

(4) the terrain necessary for downhill skiing is characterized by large amounts of land, that vary tremendously in steepness and feature bumps, hillocks, drops, cliffs, gullies, ridges, and knobs of infinite variety; the surface and subsurface include trees, bushes, undergrowth,

(4) the terrain necessary for downhill skiing is characterized by large areas of land that vary tremendously in steepness and feature bumps, hillocks, drops, cliffs, streambeds, gullies, ridges, and knobs of infinite variety; the surface and subsurface include trees, bushes, undergrowth,

substitute "areas" for "amounts"

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rocks, stumps, branches, roots, and other debris;

(5) weather that produces the snow necessary for skiing also produces factors that complicate the sport; weather varies from sunny and warm to bitterly cold and windy, with various forms of precipitation, including sleet, hail, varieties of snow, fog, mist, drizzle, rain and showers; weather complicates the snow surface by constantly altering the snow consistency and snow level, covering, uncovering, and sculpting the terrain features described above;

(6) snow is a generic term covering a wide variety of solid precipitation and the frozen state of water as it exists and evolves on the ground; there are many different kinds of snow precipitation; in addition, snow on the ground is constantly changing until it either melts or sublimates; this metamorphism depends on many variable factors and produces snow of substantially different texture and consistency, often in short periods of time; on any given day, the snow conditions vary substantially from location to location and from time to time during the day;

(7) in order to facilitate the sport, ski area operators construct facilities, including ski runs, trails, roads, aerial tramways, snowmaking equipment, buildings, and signs; while these facilities may alter the natural conditions, the facilities are obvious and necessary to the sport;

(8) because of the size, power, and variation of the winter alpine environment, ski area operators are financially and physically incapable of controlling all the conditions under which skiing takes place;

rocks, boulders, springs, streams, stumps, branches, roots, and other debris;

(5) weather that produces the snow necessary for skiing also produces factors that complicate the sport; weather varies from sunny and warm to bitterly cold and windy, with various forms of precipitation, including sleet, hail, rime, varieties of snow, fog, mist, drizzle, rain and showers; weather complicates the snow surface by constantly altering the snow consistency and snow level, covering, uncovering, altering, and sculpting the terrain features described above;

(6) snow is a generic term covering a wide variety of solid precipitation and the frozen state of water as it exists and evolves on the ground; there are many different kinds of snow precipitation; in addition, snow on the ground is constantly changing until it either melts or sublimates; this metamorphism depends on many variable factors and produces snow of substantially different texture and consistency, often in short periods of time; on any given day, the snow conditions vary substantially from location to location and from time to time during the day;

(7) in order to facilitate the sport, ski area operators develop facilities, including ski runs, trails, roads, aerial tramways, snowmaking equipment, buildings, lighting, and signs; while these facilities may alter the natural conditions, the facilities are obvious and necessary to the sport;

(8) because of the size, power, and variation of the winter alpine environment, ski area operators are financially and physically incapable of controlling most of the conditions under which skiing takes place;

add "boulders, springs, streams"

add "rime"

add "altering"

[same]

change "construct" to "develop"

add "lighting"

change "all" to "most of"

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(9) ski area operators have a limited ability to alter terrain features; some terrain features may offer a hazard to the skier but at the same time offer additional challenge or enjoyment for skiers; there will always be natural and artificial hazards in the sport of skiing and the skier must accept these hazards as a part of the risk of skiing;

(9) ski area operators have a limited ability to alter terrain features; some terrain features may offer a hazard to the skier but at the same time offer additional challenge or enjoyment for skiers; there will always be natural and artificial hazards in the sport of skiing and the skier must accept these hazards as a part of the risk of skiing; only the skier can determine the skier's skill and ability to ski any particular run, slope, or other terrain, together with the inherent dangers and risks presented by that terrain;

add last phrase starting with "only the skier can . . ."

(10) ski area operators do not have control over natural weather conditions;

(10) ski area operators do not have control over natural weather conditions;

[same]

(11) under the proper weather conditions, ski area operators can and do make a form of snow and can spread the snow on the surface of the terrain; however, it is not possible nor is it desirable to groom all snow to a particular finish;

(11) under the proper weather conditions, ski area operators can and do generate a form of artificial snow and can spread the snow on the surface of the terrain; however, it is not possible nor is it desirable to groom all snow to a particular finish;

change "make" to "generate"
add "artificial"

(12) skiing is an exhilarating sport, the enjoyment of which includes several components: exercise, enjoyment of the outdoor environment, physical and mental challenge of a sporting activity, companionship of family and friends, and the excitement of taking physical risks;

(12) skiing is an exhilarating sport, the enjoyment of which includes several components: exercise, enjoyment of the outdoor environment, physical and mental challenge of a sporting activity, companionship of family and friends, and the excitement of taking physical risks;

[same]

(13) falling is an ordinary, obvious, and necessary component of the sport; all skiers, even expert skiers, fall on all kinds of terrain; a particular fall is no indication of the risks of a particular slope or set of conditions; the same factors that offer the excitement of skiing contribute to its inherent risks; skiers may slide

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[same]

when they fall, and they may encounter obstacles or other skiers; skiers can be injured while skiing due to the intrinsic risks of the sport, whether natural or man-made.

(b) The purpose of this Act is to repeal and revise state law relating to skiing enacted by ch. 80, SLA 1980, as interpreted by the Alaska Supreme Court in *Hiibschman v. City of Valdez*, 821 P.2d 1354, (Alaska 1991). It is also the purpose of this Act to

(1) define the responsibilities of ski area operators and their agents and employees;

(2) define the responsibilities of skiers using ski areas;

(3) define those areas of responsibility and affirmative acts for which ski area operators may be liable for loss, damage, injury, or death, and to define those risks that the skier expressly assumes as an inherent danger and risk of skiing; and

(4) provide that where an injury is the result only of an inherent risk of skiing, a comparative negligence or comparative fault analysis does not apply.

* Sec. 2. AS 05 is amended by adding a new chapter to read:

CHAPTER 45. SKI LIABILITY, SAFETY, AND RESPONSIBILITY.

Sec. 05.45.010. LIMITATION ON ACTIONS ARISING FROM SKIING; APPORTIONMENT OF FAULT. Notwithstanding any other provision of law, a person may not bring an action against a ski area

when they fall, and they may encounter obstacles or other skiers; skiers can be injured while skiing due to the intrinsic risks of the sport, whether natural or man-made.

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(1) define the responsibilities of ski area operators and their agents and employees;

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* Sec. 2. AS 05 is amended by adding a new chapter to read:

CHAPTER 45. SKI LIABILITY, SAFETY, AND RESPONSIBILITY.

Sec. 05.45.010. LIMITATION ON ACTIONS ARISING FROM SKIING. Notwithstanding any other provision of law, a person may not bring an action against a ski area operator for an injury resulting from an inherent

delete ", " after 1354

[same]

[same]

[same]

delete "only"

[same]

[same]

delete "; APPORTIONMENT OF FAULT"

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operator for an injury resulting from an inherent danger and risk of skiing.

Sec. 05.45.020. VIOLATIONS THAT CONSTITUTE NEGLIGENCE. (a) A person who violates a requirement of this chapter is negligent and civilly liable to the extent the violation causes injury to a person or damage to property.

(b) A ski area operator who violates a requirement of this chapter, a provision of a ski area plan of operation, or a regulation adopted by the Department of Labor under AS 05.20.070 is negligent and civilly liable to the extent the violation causes injury to a person or damage to property.

danger and risk of skiing.

Sec. 05.45.020. VIOLATIONS THAT CONSTITUTE NEGLIGENCE. (a) A ski area operator or other person who violates a requirement of this chapter or a regulation adopted by the Department of Labor under AS 05.20.070 is negligent and civilly liable to the extent the violation causes injury to a person or damage to property.

(b)(1) Notwithstanding the provisions of AS 09.17.080, the limitation of liability set forth in AS 05.45.010 shall be a complete defense to a claim against a ski area operator for injuries where an inherent danger or risk of skiing is found to be a contributory factor in the resulting injury, unless the ski area operator has violated a requirement of this chapter or a regulation adopted by the Department of Labor under AS 05.20.070.

(2) Notwithstanding the provisions of AS 09.17.080, a violation of the passenger or skier duties set forth in this chapter shall be a complete defense to a claim against a ski area operator where such violation is found to be a contributory factor in the resulting injury, unless the ski area operator has violated a requirement of this chapter or a regulation adopted by the Department of Labor under AS 05.20.070.

(3) If the ski area operator has violated a requirement of this chapter or a regulation adopted by the Department of Labor under AS 05.20.070, the provisions of AS 09.17.080 shall apply to a claim against a ski area operator based on such violation.

Rewritten to incorporate New Jersey provisions regarding apportionment of fault (see NJSA § 5:13-6):

A ski area operator is negligent if he violates the duties listed under this statute and the lift statutes and regulations.

A skier may not make a claim for an injury arising from an inherent danger and risk of skiing, unless the operator has violated duties listed under this statute and the lift statutes and regulations.

A skier may not make a claim for an injury arising from the skier's violation of the skier duties listed in this statute, unless the operator has violated duties listed under this statute and the lift statutes and regulations.

If the operator violates the duties listed under this statute and the lift statutes and regulations, the comparative negligence statute applies.

Sec. 05.45.030. DUTIES OF PASSENGERS. (a) A passenger may not board a tramway if the passenger does not have

(1) sufficient physical dexterity or ability; and

(2) knowledge to negotiate or use the facility safely.

(b) A passenger may not

(1) embark upon or disembark from a tramway except at a designated area unless reasonably necessary to prevent injury to the passenger or others; this paragraph does not apply if the tramway stops and the operator assists the passengers to disembark from the tramway;

(2) intentionally throw or expel an object from a tramway while riding on the tramway, except as permitted by the operator;

(3) act while riding on a tramway in a manner that may interfere with proper or safe operation of the tramway;

(4) engage in conduct that may contribute to or cause injury to a person;

(5) intentionally place in an uphill track of a J-bar, T-bar, platter pull, rope tow, or another surface lift an object that could cause another skier to fall;

(6) embark upon a tramway marked as closed;

Sec. 05.45.030. DUTIES OF PASSENGERS. (a) A passenger may not board a tramway if the passenger does not have

(1) sufficient physical dexterity or ability and knowledge to negotiate or use the facility safely; or

(2) the assistance of a person authorized by the ski area operator to assist a skier.

(b) A passenger may not

(1) embark upon or disembark from a tramway except at a designated area unless reasonably necessary to prevent injury to the passenger or others; this paragraph does not apply if the tramway stops and the operator assists the passengers to disembark from the tramway;

(2) intentionally throw or expel an object from a tramway while riding on the tramway, except as permitted by the operator;

(3) act while riding on a tramway in a manner that may interfere with proper or safe operation of the tramway;

(4) engage in conduct that may contribute to or cause injury to a person;

(5) intentionally place in an uphill track of a J-bar, T-bar, platter pull, rope tow, or other surface lift an object that could cause another skier to fall;

(6) embark upon a tramway marked as closed;

[same]

add "knowledge to negotiate or use the facility safely" from former subsection (a)(2)

add "(2) the assistance of a person authorized by the ski area operator to assist a skier" to allow physically challenged skiers to ride lifts with assistance, if necessary.

[same]

[same]

[same]

[same]

[same]

[same]

[same]

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(7) disobey instructions posted in accordance with this chapter or oral instructions by the ski area operator regarding the proper or safe use of a tramway unless the oral instructions are contrary to this chapter or contrary to posted instructions.

Sec. 05.45.040. REQUIRED PLAN AND PATROL BY SKI AREA OPERATORS. (a) A ski area operator shall prepare a plan of operation for each ski season and shall implement the plan throughout the ski season. A plan of operation must include provisions for ski patrol, avalanche control, avalanche rescue, grooming procedures, tramway evacuation, hazard marking, missing person procedures, and first aid. Before the operation of the ski area for that season, the plan shall be reviewed and approved by the

- (1) commissioner of natural resources; or
- (2) agency of the United States that manages land on which the ski area operates.

(b) A ski area operator shall provide a ski patrol with qualifications meeting or exceeding the standards of the National Ski Patrol System, Inc. This subsection does not apply to a ski area if the operator transports skiers using only a single tramway consisting of a rope tow, the rope tow does not transport skiers more than 500 vertical feet, and the ski area is operated by a nonprofit corporation or a municipality. In this subsection, "nonprofit corporation" means a corporation that qualifies for exemption from taxation under 26 U.S.C. 501(c)(3) or (4) (Internal Revenue Code).

(c) Notwithstanding any other provision of law, the state is not liable for civil damages

(7) disobey instructions posted in accordance with this chapter or oral instructions by the ski area operator regarding the proper or safe use of a tramway unless the oral instructions are contrary to this chapter or contrary to posted instructions.

Sec. 05.45.040. REQUIRED PLAN AND PATROL BY SKI AREA OPERATORS. (a) A ski area operator shall prepare a plan of operation for each ski season and shall implement the plan throughout the ski season. A plan of operation must include provisions for ski patrol, avalanche control, avalanche rescue, grooming procedures, tramway evacuation, hazard marking, missing person procedures, and first aid. Before the operation of the ski area for that season, the plan shall be reviewed and approved by the commissioner of natural resources except that if an agency of the United States manages the land on which the ski area operates, the plan shall be reviewed and approved by that agency. The commissioner of natural resources may adopt regulations to implement this subsection.

(b) A ski area operator shall provide a ski patrol whose members meet or exceed the training standards of the National Ski Patrol System, Inc. This subsection does not apply to a ski area if the operator transports skiers using only a single tramway consisting of a rope tow, the rope tow does not transport skiers more than 500 vertical feet, and the ski area is operated by a nonprofit corporation or a municipality. In this subsection, "nonprofit corporation" means a corporation that qualifies for exemption from taxation under 26 U.S.C. 501(c)(3) or (4) (Internal Revenue Code).

(c) Notwithstanding any other law, the state and the commissioner of natural resources are

[same]

Substantive requirements of the plan are unchanged.

The plan must be submitted to DNR, unless the ski area is located on federal lands. In that case, the plan is submitted to the appropriate federal agency.

Add: DNR authority to adopt regulations.

Change to require the "members" to meet the "training" standards of the National Ski Patrol, since NSP does not promulgate standards for entire ski patrols.

The exception is the [same].

Add: "the commissioner of natural resources"

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resulting from review and approval of a plan of operation under (a) of this section.

not civilly liable for damages resulting from an act or omission in reviewing, approving, or disapproving a plan of operation under (a) of this section.

Add: "act or omission"

Add: "disapproving"

Sec. 05.45.050. REQUIRED SIGNS FOR TRAMWAYS; DUTIES OF OPERATORS. (a) A ski area operator who operates a tramway shall maintain a sign system with concise, simple, and pertinent information for the protection and instruction of passengers. Signs shall be prominently placed on each tramway, readable in conditions of ordinary visibility, and where applicable adequately lighted for nighttime passengers. Signs shall be posted

Sec. 05.45.050. REQUIRED SIGNS FOR TRAMWAYS; DUTIES OF OPERATORS. (a) A ski area operator who operates a tramway shall maintain a sign system with concise, simple, and pertinent information for the protection and instruction of passengers. Signs shall be prominently placed on each tramway, readable in conditions of ordinary visibility, and where applicable adequately lighted for nighttime passengers. Signs shall be posted

[same]

(1) at or near the loading point of each tramway, regardless of the type, advising that a person not familiar with the operation of the device must ask the operator of the device for assistance and instruction;

(1) at or near the loading point of each tramway, regardless of the type, advising that a person not familiar with the operation of the device must ask the operator of the device for assistance and instruction;

[same]

(2) in the interior of each two-car and multicar tramway showing

(2) in the interior of each two-car and multicar tramway showing

[same]

(A) the maximum capacity in pounds of the car and the maximum number of passengers allowed;

(A) the maximum capacity in pounds of the car and the maximum number of passengers allowed;

[same]

(B) instructions for procedures in emergencies;

(B) instructions for procedures in emergencies;

[same]

(3) in a conspicuous place at each loading area of two-car and multicar tramways stating the maximum capacity in pounds of the car and the maximum number of passengers allowed;

(3) in a conspicuous place at each loading area of two-car and multicar tramways stating the maximum capacity in pounds of the car and the maximum number of passengers allowed;

[same]

(4) at all chair lifts stating the following:

(4) at all chair lifts stating the following:

[same]

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(A) "Prepare to Unload," which shall be located not less than 50 feet ahead of the unloading area;

(B) "Keep Ski Tips Up," which shall be located ahead of any point where the skis may come in contact with a platform or the snow surface;

(C) "Unload Here," which shall be located at the point designated for unloading;

(D) "Safety Gate," which shall be located where applicable;

(E) "Remove Pole Straps from Wrists," which shall be located prominently at each loading area;

(F) "Check for Loose Clothing and Equipment," which shall be located before the "Prepare to Unload" sign;

(5) at all J-bars, T-bars, platter pulls, rope tows, and any other surface lift, stating the following:

(A) "Remove Pole Straps from Wrists," which shall be placed at or near the loading area;

(B) "Stay in Tracks," "Unload Here," and "Safety Gate," which shall be located where applicable;

(C) "Prepare to Unload," which shall be located not less than 50 feet ahead of each unloading area;

(6) near the boarding area of all J-bars, T-bars, platter pulls, rope tows, and any other

(A) "Prepare to Unload," which shall be located not less than 50 feet ahead of the unloading area;

(B) "Keep Ski Tips Up," which shall be located ahead of any point where the skis may come in contact with a platform or the snow surface;

(C) "Unload Here," which shall be located at the point designated for unloading;

(D) "Stop Gate," which shall be located where applicable;

(E) "Remove Pole Straps from Wrists," which shall be located prominently at each loading area;

(F) "Check for Loose Clothing and Equipment," which shall be located before the "Prepare to Unload" sign;

(5) at all J-bars, T-bars, platter pulls, rope tows, and any other surface lift, stating the following:

(A) "Remove Pole Straps from Wrists," which shall be placed at or near the loading area;

(B) "Stay in Tracks," "Unload Here," and "Safety Gate," which shall be located where applicable;

(C) "Prepare to Unload," which shall be located not less than 50 feet ahead of each unloading area;

(6) near the boarding area of all J-bars, T-bars, platter pulls, rope tows, and any other

[same]

[same]

[same]

[same]

[same]

[same]

[same]

[same]

[same]

[same]

[same]

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surface lift, advising passengers to check to be certain that clothing, scarves, and hair will not become entangled with the lift;

surface lift, advising passengers to check to be certain that clothing, scarves, and hair will not become entangled with the lift;

(7) at or near the boarding area of all lifts, stating the skier's duty set out in AS 05.45.100(c)(2).

(7) at or near the boarding area of all lifts, stating the skier's duty set out in AS 05.45.100(c)(2).

[same]

(b) Signs not specified by (a) of this section may be posted at the discretion of the ski area operator.

(b) Signs not specified by (a) of this section may be posted at the discretion of the ski area operator.

[same]

(c) A ski area operator, before opening the tramway to the public each day, shall inspect the tramway for the presence and visibility of the signs required by (a) of this section.

(c) A ski area operator, before opening the tramway to the public each day, shall inspect the tramway for the presence and visibility of the signs required by (a) of this section.

[same]

(d) A ski area operator shall post and maintain signs that are required by (a) of this section in a manner that they may be viewed during conditions of ordinary visibility.

(d) The extent of the responsibility of the ski area operator under this section shall be to post and maintain such signs as are required by subsection (a) of this section in such condition that they may be viewed during conditions of ordinary visibility. Evidence that signs required by subsection (a) of this section were present, visible, and readable where required at the beginning of the passenger tramway operation on any given day raises a presumption that all passengers using said devices have seen and understood said signs.

Revised:

The duty of the operator is to post and maintain the signs in conditions of ordinary visibility.

Add: A presumption that passengers have seen and understood the signs, provided the operator verifies that the signs were present, visible, and readable at the beginning of tramway operations each day.

Sec. 05.45.060. REQUIRED SIGNS FOR TRAILS AND SLOPES; DUTIES OF OPERATORS. (a) A ski area operator shall maintain a sign and marking system as required in this section in addition to that required by AS 05.45.050. All signs required by this section shall be maintained so as to be readable and recognizable under conditions of ordinary visibility.

Sec. 05.45.060. REQUIRED SIGNS FOR TRAILS AND SLOPES; DUTIES OF OPERATORS. (a) A ski area operator shall maintain a sign and marking system as required in this section in addition to that required by AS 05.45.050. All signs required by this section shall be maintained so as to be readable and recognizable under conditions of ordinary visibility.

[same]

(b) A ski area operator shall post a sign

(b) A ski area operator shall post a sign

[same]

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recognizable to skiers proceeding to the uphill loading point of each base area lift that depicts and explains signs and symbols that the skier may encounter at the ski area. The sign must include the following:

(1) the least difficult trails and slopes, designated by a green circle and the word "easiest";

(2) the most difficult trails and slopes, designated by a black diamond and the words "most difficult";

(3) the trails and slopes that have a degree of difficulty that falls between the green circle and the black diamond designation, designated by a blue square and the words "more difficult";

(4) danger areas designated by a red exclamation point inside a yellow triangle with a red band around the triangle and the word "danger" printed beneath the emblem;

(5) closed trails or slopes designated by a sign with a red circle or octagon around a white interior containing a black figure in the shape of a skier with a black band running diagonally across the sign from the upper right-hand side to the lower left-hand side and with the word "Closed" printed beneath the emblem.

(c) If applicable, a sign shall be placed at or near the loading point of each tramway as follows:

WARNING: This lift services (most difficult) or

recognizable to skiers proceeding to the uphill loading point of each base area lift that depicts and explains signs and symbols that the skier may encounter at the ski area. The sign must include the following:

(1) the least difficult trails and slopes, designated by a green circle and the word "easier";

(2) the most difficult trails and slopes, designated by a black diamond and the words "most difficult"; trails intended for expert skiers may be marked with a double black diamond and the words "expert only";

(3) the trails and slopes that have a degree of difficulty that falls between the green circle and the black diamond designation, designated by a blue square and the words "more difficult";

(4) danger areas designated by a red exclamation point inside a yellow triangle with a red band around the triangle and the word "Danger" printed beneath the emblem; danger areas do not include areas presenting inherent dangers and risks of skiing;

(5) closed trails or slopes designated by a sign with a red circle or octagon around a white interior containing a black figure in the shape of a skier with a red band running diagonally across the sign from the upper right-hand side to the lower left-hand side and with the word "Closed" printed beneath the emblem.

(c) If applicable, a sign shall be placed at or near the loading point of each tramway as follows:

WARNING: This lift services (most difficult) or

Change "easiest" to "easier" to conform to the new national term for least difficult trails and slopes.

Add: option of placing double black diamond signs for trails intended for expert skiers.

[same]

Add: "danger areas do not include areas presenting inherent dangers and risks of skiing" from Colorado statute. See CRS 33-44-107(2)(d).

Change "black" to "red"

[same]

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(most difficult and more difficult) or (more difficult) slopes only.

(most difficult and more difficult) or (more difficult) slopes only.

(d) If a particular trail or slope or portion of a trail or slope is closed to the public by a ski area operator, the operator shall place a sign notifying the public of that fact at each identified entrance of each portion of the trail or slope involved. This subsection does not apply if the trail or slope is closed with ropes or fences.

(d) If a particular trail or slope or portion of a trail or slope is closed to the public by a ski area operator, the operator shall place a sign notifying the public of that fact at each identified entrance of each portion of the trail or slope involved. This subsection does not apply if the trail or slope is closed with ropes or fences. Slopes without entrances defined by terrain or forest growth may be closed with a line of signs in a fashion readily visible to skiers under conditions of ordinary visibility.

Add: "Slopes without entrances defined by terrain or forest growth may be closed with a line of signs in a fashion readily visible to skiers under conditions of ordinary visibility."

(e) A ski area operator shall

(e) A ski area operator shall

[same]

(1) place a sign at or near the beginning of each trail or slope, which must contain the appropriate symbol of the relative degree of difficulty of that particular trail or slope as described in (b) of this section; this paragraph does not apply to a slope or trail designated "easiest" that to a skier is substantially visible in its entirety under conditions of ordinary visibility before beginning to ski the slope or trail;

(1) place a sign at or near the beginning of each trail or slope, which must contain the appropriate symbol of the relative degree of difficulty of that particular trail or slope as described in (b) of this section; this paragraph does not apply to a slope or trail designated "easier" that to a skier is substantially visible in its entirety under conditions of ordinary visibility before beginning to ski the slope or trail;

Change "easiest" to "easier"

(2) mark the ski area boundaries in a fashion readily visible to skiers under conditions of ordinary visibility;

(2) mark the ski area boundaries in a fashion readily visible to skiers under conditions of ordinary visibility;

[same]

(3) mark that portion of the boundary with signs as required by (b)(5) of this section if the owner of land adjoining a ski area closes all or part of the land and advises the ski area operator of the closure;

(3) mark that portion of the boundary with signs as required by (b)(5) of this section if the owner of land adjoining a ski area closes all or part of the land and so advises the ski area operator of the closure in writing;

Add: "in writing"

(4) mark hydrants, water pipes, roads, catwalks, terrain modifications, and all other man-made structures on slopes and trails that are

(4) mark hydrants, water pipes, and all other man-made structures on slopes and trails that are not readily visible to skiers under conditions of

Revised:

An area operator should not have to mark

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not readily visible to skiers under conditions of ordinary visibility from a distance of at least 100 feet and adequately and appropriately cover man-made structures that create obstructions with a shock absorbent material that will lessen injuries; any type of marker is sufficient, including wooden poles, flags, or signs, if the marker is visible from a distance of 100 feet and if the marker itself does not constitute a serious hazard to skiers; in this paragraph, "man-made structures" does not include natural variations in steepness or terrain;

(5) mark exposed forest growth, rocks, stumps, streambeds, trees, or other natural objects that are located on open slopes or trails and that are not readily visible to skiers under conditions of ordinary visibility from a distance of at least 100 feet;

(6) post and maintain signs that contain the warning notice specified in (g) of this section; the notice shall be placed in a clearly visible location at the ski area where lift tickets and ski school lessons are sold and in a position to be recognizable as a sign to skiers proceeding to the uphill loading point of each base area lift; the signs may not be smaller than three feet by three feet and must be white with black and red letters as specified in this paragraph; the word "WARNING" must appear on the sign in red letters; the warning notice specified in this paragraph must appear on the sign in black letters with each letter to be a minimum of one inch in height.

(f) A ski lift ticket sold or made available for sale to skiers by a ski area operator must contain in clearly readable print the warning notice

ordinary visibility from a distance of at least 100 feet and adequately and appropriately cover man-made structures that create obstructions with a shock absorbent material that will lessen injuries; any type of marker is sufficient, including wooden poles, flags, or signs, if the marker is visible from a distance of 100 feet and if the marker itself does not constitute a serious hazard to skiers; in this paragraph, "man-made structures" does not include variations in steepness or terrain, whether natural or as a result of slope design, snow making, grooming operations, roads and catwalks, or other terrain modifications;

(5) post and maintain signs that contain the warning notice specified in (g) of this section; the notice shall be placed in a clearly visible location at the ski area where lift tickets and ski school lessons are sold and in a position to be recognizable as a sign to skiers proceeding to the uphill loading point of each base area lift; the signs may not be smaller than three feet by three feet and must be white with black and red letters as specified in this paragraph; the word "WARNING" must appear on the sign in red letters; the warning notice specified in this paragraph must appear on the sign in black letters with each letter to be a minimum of one inch in height.

(f) A ski lift ticket sold or made available for sale to skiers by a ski area operator must contain in clearly readable print the warning notice

variations in steepness or terrain, whether natural or manmade. Such a requirement would dictate marking slopes where grooming had reduced or eliminated moguls. There is no similar requirement in the Colorado statute, CRS 33-44-107(7), which specifically states: "Variations in steepness or terrain, whether natural or as a result of slope design or snowmaking or grooming operations, including but not limited to roads and catwalks or other terrain modifications, are not man-made structures, as that term is used in this article."

Deleted: This subsection would result in a forest of bamboo and other markings. Even so, an operator would be unable to keep up with changing snow and surface conditions. The section would generate great battles over what rocks, tree roots, etc., were or were not visible at that precise time of the incident.

[same]

[same]

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specified in (g) of this section.

(g) The signs described in (e)(6) of this section and the lift tickets described in (f) of this section must contain the following warning notice:

WARNING

Under Alaska law, the risk of an injury to person or property resulting solely from any of the inherent dangers and risks of skiing rests with the skier. A skier may not recover from a ski area operator for an injury resulting solely from any of the inherent dangers and risks of skiing, including changing weather conditions, existing and changing snow conditions, bare spots, rocks, stumps, trees, collisions with natural objects, man made objects, or other skiers, variations in terrain, and the failure of skiers to ski within their own abilities. A ski area operator is responsible if the ski area operator's own negligence is a cause of an injury or death.

Sec. 05.45.070. OTHER DUTIES OF SKI AREA OPERATORS. (a) A ski area operator shall equip a motorized snow-grooming vehicle with a light visible at any time the vehicle is moving on or in the vicinity of a ski slope or trail.

(b) When maintenance equipment is being employed to maintain or groom a ski slope or trail while the ski slope or trail is open to the public, the ski area operator shall place a conspicuous notice regarding the maintenance or grooming at or near the top of that ski slope or trail.

(c) A motor vehicle operated on the ski slope or trails of a ski area shall be equipped with at least

- (1) one lighted head lamp;

specified in (g) of this section.

(g) The signs described in (e)(5) of this section and the lift tickets described in (f) of this section must contain the following warning notice:

WARNING

Under Alaska law, the risk of an injury to person or property resulting from any of the inherent dangers and risks of skiing rests with the skier. A skier may not recover from a ski area operator for an injury resulting from any of the inherent dangers and risks of skiing, including changing weather conditions; existing and changing snow conditions; bare spots; rocks; stumps; trees; collisions with natural objects, man-made objects, or other skiers; variations in terrain; and the failure of skiers to ski within their own abilities.

Sec. 05.45.070. OTHER DUTIES OF SKI AREA OPERATORS. (a) A ski area operator shall equip a motorized snow-grooming vehicle with a light visible at any time the vehicle is moving on or in the vicinity of a ski slope or trail.

(b) When maintenance equipment is being employed to maintain or groom a ski slope or trail while the ski slope or trail is open to the public, the ski area operator shall place a conspicuous notice regarding the maintenance or grooming at or near the top of that ski slope or trail.

(c) A snowmobile operated on the ski slope or trails of a ski area shall be equipped with at least

- (1) one lighted head lamp;

[same]

Revised:

delete "solely"

delete last sentence

[same]

[same]

Change "motor vehicle" to "snow machine"

[same]

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(2) one lighted red tail lamp;

(2) one lighted red tail lamp;

[same]

(3) a brake system maintained in operable condition; and

(3) a brake system maintained in operable condition; and

[same]

(4) a fluorescent flag at least 40 square inches mounted at least six feet above the bottom of the tracks.

(4) a fluorescent flag at least 40 square inches in total area mounted at least six feet above the bottom of the tracks.

Add: "in total area"

(d) A ski area operator shall make available at reasonable fees, instruction and education regarding the inherent danger and risk of skiing and the duties imposed on skiers under this chapter. Notice of the times and places of the instruction and education required under this subsection shall be conspicuously posted at locations likely to be seen by skiers and printed on equipment rental agreements.

(d) A ski area operator shall make available at reasonable fees, instruction and education regarding the inherent danger and risk of skiing and the duties imposed on skiers under this chapter. Notice of the availability of the instruction and education required under this subsection shall be placed in a clearly visible location at the ski area where lift tickets and ski school lessons are sold and in a position to be recognizable as a sign to skiers proceeding to the uphill loading point of each base area lift, and printed on equipment rental agreements.

Revised: The operator must notify patrons of the availability of the training, and the notice must be posted in the same place as the sign warning of inherent dangers and risks of skiing.

Sec. 05.45.080. SKIERS OUTSIDE MARKED BOUNDARIES. A ski area operator does not have a duty arising out of the operator's status as a ski area operator to a skier skiing beyond the area boundaries if the boundaries are marked as required by AS 05.45.060(e)(2).

Sec. 05.45.080. SKIERS OUTSIDE MARKED BOUNDARIES. A ski area operator does not have a duty arising out of the operator's status as a ski area operator to a skier skiing beyond the area boundaries if the boundaries are marked as required by AS 05.45.060(e)(2).

[same]

Sec. 05.45.090. REQUIRED SKIER POLICY; REVOCATION OF SKIING PRIVILEGES. (a) A ski area operator shall develop and maintain a written policy covering situations involving reckless skiers, including a definition of reckless skiing, procedures for approaching and warning skiers regarding reckless conduct, and procedures for taking action against reckless skiers, including revocation of ski privileges. A ski area operator shall designate ski patrol personnel responsible for implementing the

Sec. 05.45.090. RECKLESS SKIERS; REVOCATION OF SKIING PRIVILEGES. (a) A ski area operator shall develop and maintain a written policy covering situations involving reckless skiers, including a definition of reckless skiing, procedures for approaching and warning skiers regarding reckless conduct, and procedures for taking action against reckless skiers, including revocation of ski privileges. A ski area operator shall designate ski patrol personnel who are responsible for implementing the ski area

Change: "REQUIRED SKIER POLICY" to "RECKLESS SKIERS"

Add: "who are"

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ski area operator's policy regarding reckless skiers.

(b) A ski area operator, upon finding a person skiing in a careless and reckless manner, may revoke that person's skiing privileges.

(c) This section may not be construed to create an affirmative duty on the part of the ski area operator to protect skiers from their own or from another skier's carelessness or recklessness.

Sec. 05.45.100. DUTIES AND RESPONSIBILITIES OF SKIERS. (a) A skier is responsible for knowing the range of the skier's own ability to negotiate a ski slope or trail and to ski within the limits of the skier's ability. A skier is responsible for an injury to a person or property resulting from an inherent danger and risk of skiing, except that a skier is not precluded under this chapter from suing another skier for an injury to person or property resulting from the other skier's acts or omissions.

(b) A skier has the duty to maintain control of the skier's speed and course at all times when skiing and to maintain a proper lookout so as to be able to avoid other skiers and objects. However, a person skiing downhill has the primary duty to avoid collision with a person or object below the skier.

(c) A skier may not

(1) ski on a ski slope or trail that has been posted as "Closed" under AS 05.45.060(b)(5) and (d);

operator's policy regarding reckless skiers.

(b) A ski area operator, upon finding a person skiing in a careless and reckless manner, may revoke that person's skiing privileges. This section may not be construed to create an affirmative duty on the part of the ski area operator to protect skiers from their own or from another skier's carelessness or recklessness.

Sec. 05.45.100. DUTIES AND RESPONSIBILITIES OF SKIERS. (a) A skier is solely responsible for knowing the range of the skier's own ability to negotiate a ski slope or trail and to ski within the limits of the skier's ability. A skier is responsible for an injury to a person or property resulting from an inherent danger and risk of skiing, except that a skier is not precluded under this chapter from suing another skier for an injury to person or property resulting from the other skier's acts or omissions. Notwithstanding any other provision of law, the risk of a skier's collision with another skier is not an inherent danger or risk of skiing in an action by one skier against another.

(b) A skier has the duty to maintain control of the skier's speed and course at all times when skiing and to maintain a proper lookout so as to be able to avoid other skiers and objects. However, a person skiing downhill has the primary duty to avoid collision with a person or object below the skier.

(c) A skier may not

(1) ski on a ski slope or trail that has been posted as "Closed" under AS 05.45.060(b)(5) and (d);

Combine (b) and (c)

Add: "solely"

Add last sentence

[same]

[same]

[same]

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(2) use a ski unless the ski is equipped with a strap or other device capable of stopping the ski should the ski become unattached from the skier;

(2) use a ski unless the ski is equipped with a strap or other device capable of stopping the ski should the ski become unattached from the skier;

[same]

(3) cross the uphill track of a J-bar, T-bar, platter pull, or rope tow except at locations designated by the operator, or place an object in an uphill track;

(3) cross the uphill track of a J-bar, T-bar, platter pull, or rope tow except at locations designated by the operator, or place an object in an uphill track;

[same]

(4) move uphill on a tramway or use a ski slope or trail while the skier's ability is impaired by the influence of alcohol or a controlled substance as defined in AS 11.71.900 or other drug;

(4) move uphill on a tramway or use a ski slope or trail while the skier's ability is impaired by the influence of alcohol or a controlled substance as defined in AS 11.71.900 or other drug;

[same]

(5) knowingly enter upon public or private land from an adjoining ski area when the land has been closed by an owner and is posted by the owner or by the ski area operator under AS 05.45.060(e)(3).

(5) knowingly enter upon public or private land from an adjoining ski area when the land has been closed by an owner and is posted by the owner or by the ski area operator under AS 05.45.060(c)(3).

[same]

(d) A skier shall stay clear of snow grooming equipment, vehicles, lift towers, signs, and other equipment on the ski slopes and trails.

(d) A skier shall stay clear of snow grooming equipment, vehicles, lift towers, signs, and other equipment on the ski slopes and trails.

[same]

(e) A skier has the duty to heed all posted information and other warnings and to refrain from acting in a manner that may cause or contribute to the injury of the skier or others. Evidence that the signs required by AS 05.45.050 and 05.45.060 were present, visible, and readable at the beginning of a given day creates a rebuttable presumption that all skiers using the ski area on that day have seen and understood the signs.

(e) A skier has the duty to heed all posted information and other warnings and to refrain from acting in a manner that may cause or contribute to the injury of the skier or others. Evidence that the signs required by AS 05.45.050 and 05.45.060 were present, visible, and readable at the beginning of a given day creates a presumption that all skiers using the ski area on that day have seen and understood the signs. Under conditions of decreased visibility, the duty is on the skier to locate and ascertain the meaning of all signs posted in accordance with AS 05.45.050 and 060.

Delete "rebuttable" and add the last sentence to make this subsection more consistent with the Colorado law. See CRS 33-44-109(5).

(f) Before beginning to ski from a

(f) Before beginning to ski from a

[same]

stationary position or before entering a ski slope or trail from the side, a skier has the duty to avoid moving skiers already on the ski slope or trail.

(g) A skier involved in a collision with another skier or person that results in an injury may not leave the vicinity of the collision before giving the skier's name and current address to an employee of the ski area operator or a member of the voluntary ski patrol, except for the purpose of securing aid for a person injured in the collision. A person who leaves the scene of a collision to obtain aid shall give the person's name and current address as required by this subsection after obtaining aid.

(h) A person who violates a provision of (c) or (g) of this section is guilty of a violation as defined in AS 11.81.900. The commissioner of natural resources or an employee of the Department of Natural Resources authorized by the commissioner may issue a citation in accordance with the provisions of AS 41.21.960 to a person who violates (c) or (g) of this section on state land.

Sec. 05.45.110. RELEASE FROM LIABILITY PROHIBITED. A ski area operator may not require a skier to sign an agreement releasing the ski area operator from liability in exchange for the right to ski in the ski area. A ski area operator who violates this section is subject to a civil penalty of \$10,000 in an action brought by the state.

stationary position or before entering a ski slope or trail from the side, a skier has the duty to avoid moving skiers already on the ski slope or trail.

(g) A skier involved in a collision with another skier or person that results in an injury may not leave the vicinity of the collision before giving the skier's name and current address to the other person(s) involved in the collision, except for the purpose of securing aid for a person injured in the collision. A person who leaves the scene of a collision to obtain aid shall give the person's name and current address as required by this subsection after obtaining aid.

(h) A person who violates a provision of (c) or (g) of this section is guilty of a violation as defined in AS 11.81.900. The commissioner of natural resources or an employee of the Department of Natural Resources authorized by the commissioner may issue a citation in accordance with the provisions of AS 41.21.960 to a person who violates (c) or (g) of this section on state land.

Sec. 05.45.110. COMPETITION. (a) The ski area operator shall, prior to the beginning of a competition or training for competition, allow

Revised: The revised section requires the skiers involved in the collision to exchange information with each other, rather than giving the information to the ski area.

[same]

This subsection was requested by DNR in order to have enforcement authority similar to the US Forest Service on Forest Service land.

Deleted. No inherent risk statutes limit the use of release agreements. Courts will enforce such agreements when they are made between adults and are properly drafted. Skiers routinely sign such release agreements for season passes, and to enter special events, such as ski races and carnival activities. All ski racers (such as Tommy Moe) execute a release drafted by the United States Ski Association in order to enter sanctioned races. Release agreements are a very important part of ski area risk management.

Section added. See CRS 33-44-110 which provides similar language.

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Sec. 05.45.200. DEFINITIONS. In this chapter,

(1) "base area lift" means a tram way that skiers ordinarily use without first using some other tramway;

(2) "conditions of ordinary visibility" means daylight or nighttime in nonprecipitating weather;

(3) "inherent danger and risk of skiing" means a necessary condition that is an integral part of the sport of skiing and that may not be eliminated or mitigated; the term "inherent danger and risk of skiing" does not include the negligence of a ski area operator under AS 05.45.020(b), or acts or omissions of a ski area operator involving the use or operation of ski lifts;

each athlete who will ski in the competition or training a reasonable visual inspection of the course or area where the competition or training is to be held.

(b) Each athlete shall be held to assume the risk of all course or area conditions including but not limited to, weather and snow conditions, course construction or layout, and obstacles which a visual inspection should have revealed. No liability shall attach to a ski area operator for injury of any athlete who skis in the competition or training as a result of such assumed risk.

Sec. 05.45.200. DEFINITIONS. In this chapter,

(1) "base area lift" means a tramway that skiers ordinarily use without first using some other tramway;

(2) "conditions of ordinary visibility" means daylight or, where applicable, nighttime, in nonprecipitating weather;

(3) "inherent danger and risk of skiing" means a danger or condition that is an integral part of the sport of skiing, including changing weather conditions; snow conditions as they exist or may change, such as ice, hard pack, powder, packed powder, wind pack, corn, crust, slush, cut-up snow, and machine-made snow; surface or subsurface conditions including bare spots, forest growth, rocks, stumps, streams, streambeds, and trees, or other natural objects, and collisions with natural objects; impact with lift towers, signs, posts, fences or enclosures, hydrants, water pipes, other man-made structures, and their components; variations in steepness or terrain, whether natural or as a result of slope design, construction,

[same]

[same]

Add: "where applicable" since there are many areas in the state which do not offer night skiing.

Revised: The revised section closely tracks the Colorado definition of inherent danger and risk of skiing, CRS 33-44-103(10), which provides:

"(10) 'Inherent dangers and risks of skiing' means those dangers or conditions which are an integral part of the sport of skiing, including changing weather conditions; snow conditions as they exist or may change, such as ice, hard pack, powder, packed powder, wind pack, corn, crust, slush, cut-up snow, and machine-made snow; surface or subsurface conditions such as bare spots, forest growth, rocks, stumps, streambeds, and trees, or other natural objects, and collisions with such natural objects; impact with lift towers, signs,

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maintenance, snowmaking or grooming operations, including roads and catwalks or other terrain modifications; collision with other skiers; and the failure of skiers to ski within their own abilities; the term "inherent danger and risk of skiing" does not include the negligence of a ski area operator under AS 05.45.020(b), or acts or omissions of a ski area operator involving the use or operation of ski lifts;

posts, fences or enclosures, hydrants, water pipes, other man-made structures and their components; variations in steepness or terrain, whether natural or as a result of slope design, snowmaking or grooming operations, including but not limited to roads and catwalks or other terrain modifications; collisions with other skiers; and the failure of skiers to ski within their own abilities. The term "inherent dangers and risks of skiing" does not include the negligence of a ski area operator as set forth in section 33-44-104(2). 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."

(4) "injury" means property damage, personal injury, or death;

(4) "injury" means property damage, personal injury, or death;

[same]

(5) "passenger" means a person who is lawfully using a tramway;

(5) "passenger" means a person who is lawfully using a tramway;

[same]

(6) "ski area" means all downhill ski slopes or trails and other places under the control of a downhill ski area operator; "ski area" does not include a cross-country ski trail;

(6) "ski area" means all downhill ski slopes or trails and other places under the control of a downhill ski area operator; "ski area" does not include a cross-country ski trail;

[same]

(7) "ski area operator" means a person having operational responsibility for a downhill ski area, and includes an agency of the state or a political subdivision of the state;

(7) "ski area operator" means a person having operational responsibility for a downhill ski area, and includes an agency of the state or a political subdivision of the state;

[same]

(8) "skier" means an individual using a downhill ski area for the purpose of

(8) "skier" means an individual using a downhill ski area for the purpose of

[same]

(A) skiing;

(A) skiing;

[same]

(B) sliding downhill on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, a snowboard, or another skiing device; or

(B) sliding downhill on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, a snowboard, or another skiing or sliding device; or

Add: "sliding"

(C) using any of the facilities of a ski area, including ski slopes and trails;

(9) "ski slopes or trails" means those areas designated by a ski area operator to be used by a skier;

(10) "tramway" means a device that is a passenger tramway, aerial or surface lift, ski lift, or rope tow regulated under AS 05.20.

Sec. 05.45.210. SHORT TITLE. This chapter may be cited as the Alaska Ski Safety Act of 1994.

* Sec. 3. AS 09.65.135 and AS 18.60.822 are repealed.

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

(C) using any of the facilities of a ski area, including ski slopes and trails;

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Sec. 05.45.210. SHORT TITLE. This chapter may be cited as the Alaska Ski Safety Act of 1994.

*Sec. 3. AS 09.65.135 and AS 18.60.822 are repealed.

*Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

[same]

[same]

[same]

[same]

[same]

[same]

P.23/23

MAR 15 '94 09:13AM DELANEY WILES HAYES

Senator Kelly's Amendments

8-LS0340NE.1
Ford
3/3/93

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 44(L&C)

#1

Page 5, line 5, after "hazard marking,"

Insert "missing persons procedures,"

#2

Page 5, line 11, after "Inc.":

Insert "This subsection does not apply to a ski area if the operator transports skiers using only a single tramway consisting of a rope tow, the rope tow does not transport skiers more than 500 vertical feet, and the ski area is operated by a nonprofit corporation or a municipality. In this subsection, "nonprofit corporation" means a corporation that qualifies for exemption from taxation under 26 U.S.C. 501(c)(3) or (4) (Internal Revenue Code)."

#3

Page 9, line 29:

Delete "snowmobile"

Insert "motor vehicle"

#4

PAGE 9, LINE 10

DELETE "(5)"

INSERT "(7)"

#5

Page 10, after line 4:

Insert a new subsection to read:

"(d) A ski area operator shall make available at reasonable fees, instruction and education regarding the inherent danger and risk of skiing and the duties imposed on skiers under this chapter. Notice of the times and places of the instruction and education required under this subsection shall be conspicuously posted at locations likely to be seen by skiers and printed on equipment rental agreements."

#6

Page 10, line 9:

After "Sec. 05.45.090.":

Insert "REQUIRED SKIER POLICY;"

After "PRIVILEGES.":

#7

Insert "(a) A ski area operator shall develop and maintain a written policy covering situations involving reckless skiers, including a definition of reckless skiing, procedures for approaching and warning skiers regarding reckless conduct, and procedures for taking action against reckless skiers, including revocation of ski privileges. A ski area operator shall designate ski patrol personnel responsible for implementing the ski area operator's policy regarding reckless skiers.

(b)"

#8

Page 10, line 11, after "privileges.":

Insert "(c)"

Senator Kelly's Amendment

8-LS0340NE.2
Ford
3/5/93

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 44(L&C)

Page 11, after line 29:

Insert a new section to read:

#9
"Sec. 05.45.110. RELEASE FROM LIABILITY PROHIBITED. A ski area operator may not require a skier to sign an agreement releasing the ski area operator from liability in exchange for the right to ski in the ski area. ~~An agreement that violates this section may not be enforced in a court.~~ A ski area operator who violates this section is subject to a civil penalty of \$10,000 in an action brought by the state."

Department of Natural Resources
Proposed Amendment to CSSB 44(L&C)

March 16, 1993

Page 5, line 7

10 delete "public safety"
insert "natural resources"

Page 5, line 8

1 delete "or the state" after United States

Page 5, line 10

12 insert the following sentence to the end of subsection (a):

The review and approval required by this section is an exercise of the police power of the state and does not impose liability upon the state for injury or damage.

PROPOSED AMENDMENTS TO CR44

Amendment 13A

Section 1(b) Page 3, lines 15-23

Failed T-Y J-N
L-Y

The purpose of this act is to repeal and revise state law relating to skiing enacted by CH.80, SLA 1980. (Delete remainder of Section b as unnecessary and confusing as implies disapproval of Supreme Court reasoning and holdings in Hibschman Inappropriate intrusion on the Supreme Court opinion in which has numerous legal rulings in it.

13B

Delete Section 1(b)(4) (this section is completely unnecessary as the law already provides that if an injury is solely the result of the inherent risk of skiing then no comparative negligence or any other negligence would apply)

withdrawn

Amendment

14

Page 3, lines 30-31 through page 4, lines 1-2

Section 05.45.010(2) delete in its entirety. This section could create a completely different form of comparative negligence for ski areas. It is confusing and misleading. Further, it completely misstates the law of negligence as it has always been treated by the courts. Negligence is attributable only to a person or an organization. It is never attributable to a thing such as an inherent danger and risk. However, it is quite often the thing -- such as an unmarked cliff, an unmarked road cut or snow grooming equipment which kills you. The ski area's failure to warn or failure to make safe, may lead to one being killed or injured by the thing. If the inherent danger and risk is put into the formula for determining fault, this is mixing apples and oranges. Cliffs and drop-offs, the laws of gravity and physics cannot "contribute" merely by existing. This section could allow some measure of fault to be attributed to a cliff or piece of equipment. Attributing "contribution" to mother nature is not accepted in any case, in any court, or in any other law I have ever heard of. If a manufacturer manufactures a defective car, does the jury or judge parcel out a "contribution" to the car as opposed to the manufacturer who made it? If a person speeds on an icy road and causes an accident, does the judge or jury parcel out a "contribution" to the icy road? This is nonsense of course. This radical departure from the law of negligence should be stricken from the statute.

Passed

Amendment **15**

Page 5, lines 2-10

5.45.040 Section (a)

*Commissioner of Resources
Dept.*

Regulations shall be established by the Department of Public Safety setting forth the required elements of operating plans and in no case shall a ski area have a plan that is less stringent than one that is already in place as of the date of the statute.

FAILED

T - New
R - New
J - New

Amendment **16**

Page 8, lines 22-31

Section 05.45.060(e)(4)

Mark hydrants, water pipes, roads, catwalks, terrain modifications, and all other man made structures or hazards on slopes and trails that are not really visible to skiers under conditions of ordinary visibility from a distance of at least 100 feet and adequately and appropriately cover man made structures that create obstructions with a shock absorbent material that will lessen injuries; any type of marker is sufficient, including wooden poles, flags or signs, if the marker is visible from a distance of at least 100 feet and if the marker itself does not constitute a serious hazard to skiers; in this paragraph, "man made structures and hazards" does not include natural variations in steepness or terrain but does include such hazards that are a result of man made slope design, snow making, grooming operations, roads and catwalks, and other man made terrain modifications and/or activity;

Failed

Amendment **17a** Page 9, lines 1-4

5.45.060(e) (5)

Mark exposed forest growth, rocks, stumps, stream beds, trees or other natural hazards that are located on open slopes or trails and that are not readily visible to skiers under conditions of ordinary visibility. ("Groomed" should be changed to "open" Limiting this to groomed slopes would result in a very significant downgrading of marking responsibilities for marking from the present responsibility in the plan of Seibu and Eagle Crest, which presently is not so limited. Grooming changes from day to day and many runs that are heavily used are never groomed at all. The most hazardous areas are on the ungroomed runs at Alyeska. There is no rationale for not marking ungroomed runs. On some days even beginner areas are not groomed if new snow has fallen.

5.45.060(e) (6) Page 9, lines 5-7

Amendment 17b

Delete this as unnecessary.

Passed

Amendment 18

Section 05.45.060(g)

Page 9, lines 20-31

The signs described in (e)(7) of this section and lift tickets described in (f) of this section must contain the following warning:

Notice: Warning! Under Alaska Law, the risk of an injury to person or property resulting solely from any of the inherent dangers and risks of skiing rests with the skier. A skier may not recover from a ski area operator for an injury resulting solely from any of the inherent dangers and risks of skiing, including changing weather conditions, existing and changing snow conditions, bare spots, rocks, stumps, trees, collisions with natural objects, man made structures, or other skiers, variations in terrain and the failure of skiers to ski within their own ability. A ski area is responsible if its own negligence is a cause of an injury or death.

Parres

Amendment **19** Page 11, lines 11-13
Section 05.45.100(a)

Delete the last line of this section. Risk of collision must either be an inherent risk for both a skier and a ski area or not an inherent risk for either.

Passed

Amendment 30

Page 12, line 5

Section 05.45.100(e)

A skier has a duty to heed all posted information and other warnings and to refrain from acting in a manner that may cause or contribute to the injury of the skier or others. Evidence that the signs required by AS 05.45.050 and 05.45.060 were present, visible and readable at the beginning of a given day creates a rebuttable presumption that all skiers using the ski area on that day have seen and understood the signs. (Victims and especially children should be allowed to rebut a presumption as a sign may not be either readable or understandable to some people including children. Further, the language or location of the sign may inadequately warn or describe a hazard or condition.)

Passed

Amendment 21

Section 545.200

Page 12, line 31 through page 13, lines 1-12

Definition 3. Inherent danger and risk of skiing means a necessary condition that is an integral part of the sport of skiing and which condition may not be eliminated or mitigated. The term "inherent danger and risk of skiing" does not include the negligence of a ski area operator under A.S. 05.45.020(b), or acts or omissions of a ski area operator involving the use or operation of ski lifts. (The present definition is completely unworkable and confusing. It is inconsistent with other sections above. It lists numerous items as supposedly being an inherent danger of risk and skiing which are not necessary or integral parts of the sport of skiing. Certainly man made hazards created by slope design, snow making or grooming operations, roads and catwalks (and especially hidden or not readily visible areas) are not necessarily inherent dangers and risks of skiing. Further, the present section indicates the negligence of a ski area operator is not an inherent danger and risk of skiing under 05.45.020(b) which requires a ski area operator to comply with the rest of this chapter. This includes marking man made hazards such as catwalks that cannot be seen from at least 100 feet. Inevitable confusion occurs as under the present section a catwalk or road cut created by grooming operations even if not visible from 100 feet would be an "inherent danger and risk of skiing" but the failure to mark it would not be an inherent danger and risk of skiing. This is nonsense and needlessly confusing. The far more simple definition is more workable.

Parseef

Hi Josh -

More out as this
"side-by-side" work-day - I have
briefly scanned it & it should
be helpful for the subcommittee.

We will be meeting next week
in the House Rooms. I was
finally able to get the number for
this weekend but then Mitch was
unavailable. I wanted to make it
clear that I am supportive of legislation -
I am busy with our problem
call us if you can. Michael
2005

CSSB 44(JUD) AM
Section 2

VIOLATIONS THAT CONSTITUTE NEGLIGENCE

(b) A ski operator who violates a requirement of this chapter, a provision of a ski area plan of operation, or a regulation adopted by the Department of Labor under AS 05.20.070 is negligent and civilly liable to the extent the violation causes injury to a person or damage to property.

DUTIES OF PASSENGERS

(a) A passenger may not board a tramway if the passenger does not have

- (1) sufficient physical dexterity or ability; and
- (2) knowledge to negotiate or use the facility safely.

REQUIRED PLAN AND PATROL BY SKI AREA OPERATORS

(a) A ski area operator shall prepare a plan of operation for each ski season and shall implement the plan throughout the ski season. A plan of operation must include provisions for ski patrol, avalanche control, avalanche rescue, grooming procedures, tramway evacuation, hazard marking, missing person procedures, and first aid. Before the operation of the ski area for that season, the plan shall be reviewed and approved by the

- (1) commissioner of natural resources; or
- (2) agency of the United States that manages land on which the ski area operates.

CSHB 41 (JUD)

same, with exception of underlined text

combines (1) & (2) adds new
(2) the assistance of a person authorized by the ski area operator to assist a skier.

same, but adds sentence

"The commissioner of natural resources shall adopt regulations to implement this subsection."

Post-it [®] Fax Note	7671	Date	# of pages 5
To	Deann Mestas	From	Rep. Parnell
Co./Dept.		Co.	
Phone #		Phone #	465-2995
Fax #	272-4354	Fax #	

REQUIRED PLAN AND PATROL BY SKI AREA OPERATORS

(c) Notwithstanding any other provision of law, the state is not liable for civil damages resulting from review and approval of a plan of operation under (a) of this section.

(c) Notwithstanding any other law, the state and commissioner of natural resources are not civilly liable for damages resulting from an act or omission in reviewing, approving, or disapproving a plan of operation under (a) of this section.

REQUIRED SIGNS FOR TRAMWAYS: DUTIES OF OPERATORS

(4)(D) "Safety Gate," which shall be located where applicable;

(4)(D) "Stop Gate," which shall be located where applicable;

REQUIRED SIGNS FOR TRAILS AND SLOPES: DUTIES OF OPERATORS

(e)(4) mark hydrants, water pipes, roads, catwalks, terrain modifications, and all other man-made structures on slopes and trails. . . in this paragraph, "man-made structures" does not include natural variations in steepness or terrain;

(e)(4) mark hydrants, water pipes, and all other man-made structures on slopes and trails. . . in this paragraph, "man-made structures" does not include variations in steepness or terrain, whether natural or as a result of slope design, snow making, grooming operations, roads and catwalks, or other terrain modifications;

(e)(5) mark exposed forest growth, rocks, stumps, streambeds, trees, or other natural objects that are located on open slopes or trails and that are not readily visible. . .

(e)(5) mark exposed forest growth, rocks, stumps, streambeds, trees, or other natural objects that are located on a groomed slope or trail and that are not readily visible. . .

wording was incorporated into (e)(4)

(e)(6) mark roads, catwalks, cliffs, or other terrain modifications that are not readily visible. . .

*P.S.
2/11/94
P.S.*

REQUIRED SIGNS FOR TRAILS AND SLOPES: DUTIES OF OPERATORS

(g) The signs described in (e)(6) of this section and the lift tickets must contain the following notice:

WARNING

Under Alaska law, the risk of an injury to person or property resulting solely from any of the inherent dangers and risks of skiing rests with the skier. A skier may not recover from a ski operator for an injury resulting solely from any of the inherent dangers and risks of skiing, including changing weather conditions, existing and changing snow conditions, bare spots, rocks, stumps, trees, collisions with natural objects, man made objects, or other skiers, variations in terrain, and the failure of skiers to ski within their own abilities. A ski area operator is responsible if the ski area operator's own negligence is a cause of injury or death.

delete "solely"

delete "solely"

after "trees" add "readily visible under ordinary visibility conditions from a distance of at least 100 feet on groomed slopes or trails"

Delete last sentence relating to ski area operator responsibility

2.9 ^{no}

OTHER DUTIES OF SKI AREA OPERATORS

(c) A motor vehicle operated on the ski slope or trails of a ski area shall be equipped with at least. . .

(c) A snowmobile operated on the ski slope or trails of a ski area shall be equipped with at least. . .

(d) **this text is found in REQUIRED SKIER POLICY of CSSB 44 subsection (a)

REQUIRED SKIER POLICY: REVOCATION OF SKIING PRIVILEGES

**this section combines OTHER DUTIES OF SKI AREA OPERATORS CSHB 41 subsection (d) and REVOCATION OF SKIING PRIVILEGES from the same bill

DUTIES AND RESPONSIBILITIES OF SKIERS

(a) A skier is responsible for knowing the range of the skier's own ability to negotiate a ski slope or trail and to ski within the limits of the skier's ability. A skier is responsible for an injury to a person or property resulting from an inherent danger and risk of skiing, except that a skier is not precluded under this chapter from suing another skier for an injury to person or property resulting from the other skier's acts or omissions.

add "Notwithstanding any other provision of law, the risk of a skier's collision with another skier is not an inherent danger or risk of skiing in an action by one skier against another."

(e) . . . Evidence that the signs required by AS 05.45.050 and 05.45.060 were present, visible, and readable at the beginning of a given day creates a rebuttable presumption that all skiers using the ski area on that day have seen and understood the signs.

delete "rebuttable" J 1. //

RELEASE FROM LIABILITY PROHIBITED

A ski area operator may not require a skier to sign an agreement releasing the ski area operator from liability in exchange for the right to ski in the ski area. A ski area operator who violates this section is subject to a civil penalty of \$10,000 in an action brought by the state.

no such provision

DEFINITIONS

no such provisions

(3) "groomed slopes or trail" means that portion of a slope or trail that is regularly packed and prepared for skiing by a ski area operator with an over-the-snow vehicle and attached implements, and that has been packed or prepared within the previous 12 hours;

(3) "inherent danger and risk of skiing" means a necessary condition that is an integral part of the sport of skiing and that may not be eliminated or mitigated; the term "inherent danger and risk of skiing" does not include the negligence of a ski area operator under AS 05.45.020(b), or acts or omissions of a ski area operator involving the use or operation of ski lifts;

(4) "inherent danger and risk of skiing" means a danger or condition that is an integral part of the sport of skiing, including changing weather conditions; snow conditions as they exist or may change, including ice, hard pack, powder, packed powder, wind pack, corn, crust, slush, cut-up snow, and machine-made snow; surface or sub-surface conditions

DEFINITIONS (cont.)

including bare spots, forest growth, rocks, stumps, streambeds, and trees, or other natural objects, and collisions with natural objects; impact with lift towers, signs, posts, fences or enclosures, hydrants, water pipes, other man-made structures, and their components; variations in steepness or terrain, whether natural or as a result of slope design, snowmaking or grooming operations, including roads and catwalks or other terrain modifications; collision with other skiers; and the failure of skiers to ski within their own abilities; the term "inherent danger and risk of skiing" does not include the negligence of a ski area operator under AS 05.45.020(b), or acts or omissions of a ski area operator involving the use or operation of ski lifts; (5) "injury" means property damage, personal injury, or death;



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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 \$600 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

Ski area insurance dropping despite industry's claims

Lawyers opposing liability cap say the Legislature was snowed

By Dave Curtin/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, they don't expect prices to tumble, industry observers say.

The insurance industry created an unrealistic pressure on the ski areas ...

Colorado Trial Lawyers Association President Joe Epstein

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 industry and ski operators. This tells me it was a phony deal to begin with."

It wasn't phony, ski lobbyists say. Insurance premiums more than doubled 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/88

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 Butter-milk-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.

SKI AREA	1991-92	1992-93	1992-93 (off-site discount)
Arapahoe Basin	\$33	\$33	\$24
Arrowhead	\$23	\$28	\$23
Aspen Highlands	\$30	\$30	\$25
Aspen Mountain	\$41	\$43	\$38
Beaver Creek	\$40	\$42	\$40
Breckenridge	\$36	\$36	\$28 or \$29
Buttermilk	\$41	\$43	\$26
Copper Mountain	\$35	\$37	\$30
Crested Butte	\$36	\$39	\$28
Ellora	\$25	\$27	\$23
Keystone	\$37	\$38	\$30
Loveland	\$28	\$30	\$24
Monarch	\$25	\$26	\$24
Powderhorn	\$25	\$25	N/A
Purgatory	\$34	\$35	\$34
Silver Creek	\$24	\$26	\$21
Ski Cooper	\$18	\$22	\$20
Ski Sunlight	\$28	\$28	\$25
Snowmass	\$41	\$43	\$38
Steamboat	\$37	\$39	N/A
Telluride	\$36	\$39	N/A
Vail	\$40	\$42	\$40
Winter Park	\$34	\$33	\$30

Discount tickets are available at various locations, including major supermarkets, Gart Bros., Vickers, Brezza Ski Rentals and Christy Sports.
(*) The holiday price (Dec. 19-Jan. 2) for Aspen Skiing Co. mountains will be \$45.

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 price 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 I. 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

Bill would limit liability for ski areas

By DIRK MILLER

THE JUNEAU EMPIRE

Eaglecrest Ski Area is supporting a bill that limits the liability of ski areas for accidents and places more of the responsibility on skiers, but it is unclear if the city-owned ski run would benefit from the legislation.

The proposed law, operators say, would help limit insurance costs, which otherwise would be added to the price of lift tickets. It attempts to balance responsibility for the sport's inherent dangers between skiers and the ski areas.

The proposal is aimed at "single enterprises," businesses or groups that chiefly run ski areas. Eaglecrest, however, is owned and operated by the city-borough, which might disqualify it from the legislation's protective cover, said Michael Ford, a legislative attorney working on the bill.

Sen. Tim Kelly, R-Anchorage, and sponsor of the bill, said the measure, which is modeled after a similar law in Colorado, was intended to apply to all ski areas in the

See Skiing, back page

Skiing

Continued from Page 1
state. It will be changed to include Eaglecrest, he said.

"The intention always was to include Eaglecrest and that's why they are supporting the bill," Kelly said today.

The bill is being considered by Kelly's Senate Labor and Commerce Committee. A hearing on the bill was held Thursday. A similar bill has also been introduced in the House.

Ski area operators said the sport carries an inherent risk. Everything from the weather to bumps, cliffs, ridges, trees, bushes, rocks and lift towers present a danger to the skier, they said.

The bill lists several risks that would be considered inherent dangers of skiing: if something on the lift caused an accident, the ski area would likely not be considered negligent by the courts.

Kelly said the main reason behind the bill is to put a stop to nuisance suits filed over skiing accidents.

"If it's your lack of skill, you shouldn't be able to turn around and whine about how it was corn snow instead of powder and I should have been warned," he said.

The bill also defines the responsibilities and duties of ski areas and skiers. It requires a ski area to prepare an operational plan that meets with approval by the state Department of Public Safety, or the federal government if the ski area sits on federal land.

The ski operation also would have to provide a ski patrol that meets or exceeds the standards of the National Ski Patrol System.

There's no way to pad sign and protect everything and everybody in every conceivable incident," said Al Clough, former president of Eaglecrest Ski Area's board of directors, and a city-borough assembly member.

Clough said the Douglas Island ski area costs the city-borough about \$60,000 in insurance yearly to

guard against liability disputes.

"If (the legislation) does not totally absolve ski areas nor should it from obvious negligent acts on their parts," he said at a hearing this week.

Also testifying at the hearing was Paul Swanson of Eaglecrest. "The skier accepts the risk of participating in a sport and exercising responsibility for risks they can control themselves," he said.

Not everyone agreed with that sentiment during hearings this week by the Senate Labor and Commerce Committee.

"I'm here having to defend the consumer and general public against an obvious move to circumvent the intent of the people of the state of Alaska, short-change the consumers and basically protect a personal interest," said Bruce Rizer, testifying from Anchorage.

Rizer said his son had died as the result of a skiing accident at Alyeska Resort in Anchorage over a year ago. Alyeska, which is owned by the Japanese firm Setbu, is a big proponent of the bill. A lawsuit over the accident is still pending.

"There is nothing in this for consumers and the skiing public of Alaska," Rizer said. "There is nothing in this except for a multi-national Japanese corporation."

The Alaska Academy of Trial Lawyers is also opposing the bill, said Debra Cravo, executive director of the academy.

Alaska's ski liability law was thrown for a loop in 1991 when the Alaska Supreme Court ruled in a Valdez case that a skier could sue a ski area claiming negligence on the part of the operator. Legal fees and insurance costs are now likely to rise, the operators say.

Eaglecrest has not faced such litigation yet, said Gary Mendivil, Eaglecrest business manager, but the possibility remains.

"The worst-case scenario is if the law wasn't changed and a lot of cases went to jury trial, those costs would have to be passed on," Mendivil said.

"An Act relating to civil liability for skiing accidents, operation of ski areas, and duties of ski area operators and skiers; and providing for an effective date."

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[same]

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

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* Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds that

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[same]

(1) the sport of skiing is practiced by a large number of citizens of the state and also attracts a large number of nonresidents, providing significant contributions to the economy of the state through construction and operation of skiing facilities, and through the money spent by citizens of the state and nonresidents;

(1) the sport of skiing is practiced by a large number of citizens of the state and also attracts a large number of nonresidents, providing significant contributions to the economy of the state through construction and operation of skiing facilities, and through the money spent by citizens of the state and nonresidents;

[same]

(2) the sport of skiing serves important public social and policy goals in the state given the dominance of the winter season; skiing contributes to the health and well-being of Alaskans, including the physically and mentally challenged; it is highly desirable and necessary that Alaskans have convenient and inexpensive access to the sport of skiing;

(2) the sport of skiing serves important public social and policy goals in the state given the dominance of the winter season; skiing contributes to the health and well-being of Alaskans, including the physically and mentally challenged; it is highly desirable and necessary that Alaskans have convenient and inexpensive access to the sport of skiing;

[same]

(3) skiing is an active sport conducted in the outdoor alpine environment; this environment consists of several elements, including terrain, weather, snow conditions, and amenities created and maintained by the ski area operator;

(3) skiing is an active sport conducted in the outdoor alpine environment; this environment consists of several elements, including terrain, weather, snow conditions, and amenities created and maintained by the ski area operator;

[same]

(4) the terrain necessary for downhill skiing is characterized by large amounts of land, that vary tremendously in steepness and feature bumps, hillocks, drops, cliffs, gullies, ridges, and knobs of infinite variety; the surface and subsurface include trees, bushes, undergrowth,

(4) the terrain necessary for downhill skiing is characterized by large areas of land that vary tremendously in steepness and feature bumps, hillocks, drops, cliffs, streambeds, gullies, ridges, and knobs of infinite variety; the surface and subsurface include trees, bushes, undergrowth,

substitute "areas" for "amounts"

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rocks, stumps, branches, roots, and other debris;

rocks, boulders, springs, streams, stumps, branches, roots, and other debris;

add "boulders, springs, streams"

(5) weather that produces the snow necessary for skiing also produces factors that complicate the sport; weather varies from sunny and warm to bitterly cold and windy, with various forms of precipitation, including sleet, hail, varieties of snow, fog, mist, drizzle, rain, and showers; weather complicates the snow surface by constantly altering the snow consistency and snow level, covering, uncovering, and sculpting the terrain features described above;

(5) weather that produces the snow necessary for skiing also produces factors that complicate the sport; weather varies from sunny and warm to bitterly cold and windy, with various forms of precipitation, including sleet, hail, rime, varieties of snow, fog, mist, drizzle, rain and showers; weather complicates the snow surface by constantly altering the snow consistency and snow level, covering, uncovering, altering, and sculpting the terrain features described above;

add "rime"

add "altering"

(6) snow is a generic term covering a wide variety of solid precipitation and the frozen state of water as it exists and evolves on the ground; there are many different kinds of snow precipitation; in addition, snow on the ground is constantly changing until it either melts or sublimates; this metamorphosis depends on many variable factors and produces snow of substantially different texture and consistency, often in short periods of time; on any given day, the snow conditions vary substantially from location to location and from time to time during the day;

(6) snow is a generic term covering a wide variety of solid precipitation and the frozen state of water as it exists and evolves on the ground; there are many different kinds of snow precipitation; in addition, snow on the ground is constantly changing until it either melts or sublimates; this metamorphosis depends on many variable factors and produces snow of substantially different texture and consistency, often in short periods of time; on any given day, the snow conditions vary substantially from location to location and from time to time during the day;

[same]

(7) in order to facilitate the sport, ski area operators construct facilities, including ski runs, trails, roads, aerial tramways, snowmaking equipment, buildings, and signs; while these facilities may alter the natural conditions, the facilities are obvious and necessary to the sport;

(7) in order to facilitate the sport, ski area operators develop facilities, including ski runs, trails, roads, aerial tramways, snowmaking equipment, buildings, lighting, and signs; while these facilities may alter the natural conditions, the facilities are obvious and necessary to the sport;

change "construct" to "develop"

add "lighting"

(8) because of the size, power, and variation of the winter alpine environment, ski area operators are financially and physically incapable of controlling all the conditions under which skiing takes place;

(8) because of the size, power, and variation of the winter alpine environment, ski area operators are financially and physically incapable of controlling most of the conditions under which skiing takes place;

change "all" to "most of"

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(9) ski area operators have a limited ability to alter terrain features; some terrain features may offer a hazard to the skier but at the same time offer additional challenge or enjoyment for skiers; there will always be natural and artificial hazards in the sport of skiing and the skier must accept these hazards as a part of the risk of skiing;

(9) ski area operators have a limited ability to alter terrain features; some terrain features may offer a hazard to the skier but at the same time offer additional challenge or enjoyment for skiers; there will always be natural and artificial hazards in the sport of skiing and the skier must accept these hazards as a part of the risk of skiing; only the skier can determine the skier's skill and ability to ski any particular run, slope, or other terrain, together with the inherent dangers and risks presented by that terrain;

add last phrase starting with "only the skier can . . ."

(10) ski area operators do not have control over natural weather conditions;

(10) ski area operators do not have control over natural weather conditions;

[same]

(11) under the proper weather conditions, ski area operators can and do make a form of snow and can spread the snow on the surface of the terrain; however, it is not possible nor is it desirable to groom all snow to a particular finish;

(11) under the proper weather conditions, ski area operators can and do generate a form of artificial snow and can spread the snow on the surface of the terrain; however, it is not possible nor is it desirable to groom all snow to a particular finish;

change "make" to "generate"
add "artificial"

(12) skiing is an exhilarating sport, the enjoyment of which includes several components: exercise, enjoyment of the outdoor environment, physical and mental challenge of a sporting activity, companionship of family and friends, and the excitement of taking physical risks;

(12) skiing is an exhilarating sport, the enjoyment of which includes several components: exercise, enjoyment of the outdoor environment, physical and mental challenge of a sporting activity, companionship of family and friends, and the excitement of taking physical risks;

[same]

(13) falling is an ordinary, obvious, and necessary component of the sport; all skiers, even expert skiers, fall on all kinds of terrain; a particular fall is no indication of the risks of a particular slope or set of conditions; the same factors that offer the excitement of skiing contribute to its inherent risks; skiers may slide

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[same]

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when they fall, and they may encounter obstacles or other skiers; skiers can be injured while skiing due to the intrinsic risks of the sport, whether natural or man-made.

(b) The purpose of this Act is to repeal and revise state law relating to skiing enacted by ch. 80, SLA 1980, as interpreted by the Alaska Supreme Court in *Hübschman v. City of Valdez*, 821 P.2d 1354, (Alaska 1991). It is also the purpose of this Act to

(1) define the responsibilities of ski area operators and their agents and employees;

(2) define the responsibilities of skiers using ski areas;

(3) define those areas of responsibility and affirmative acts for which ski area operators may be liable for loss, damage, injury, or death, and to define those risks that the skier expressly assumes as an inherent danger and risk of skiing; and

(4) provide that where an injury is the result only of an inherent risk of skiing, a comparative negligence or comparative fault analysis does not apply.

* Sec. 2. AS 05 is amended by adding a new chapter to read:

CHAPTER 45. SKI LIABILITY, SAFETY, AND RESPONSIBILITY.

Sec. 05.45.010. LIMITATION ON ACTIONS ARISING FROM SKIING; APPORTIONMENT OF FAULT.

Notwithstanding any other provision of law, a person may not bring an action against a ski area

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CHAPTER 45. SKI LIABILITY, SAFETY, AND RESPONSIBILITY.

Sec. 05.45.010. LIMITATION ON ACTIONS ARISING FROM SKIING.

Notwithstanding any other provision of law, a person may not bring an action against a ski area operator for an injury resulting from an inherent

delete ", " after 1354

[same]

[same]

[same]

delete "only"

[same]

[same]

delete "; APPORTIONMENT OF FAULT"

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operator for an injury resulting from an inherent danger and risk of skiing.

Sec. 05.45.020. VIOLATIONS THAT CONSTITUTE NEGLIGENCE. (a) A person who violates a requirement of this chapter is negligent and civilly liable to the extent the violation causes injury to a person or damage to property.

(b) A ski area operator who violates a requirement of this chapter, a provision of a ski area plan of operation, or a regulation adopted by the Department of Labor under AS 05.20.070 is negligent and civilly liable to the extent the violation causes injury to a person or damage to property.

danger and risk of skiing.

Sec. 05.45.020. VIOLATIONS THAT CONSTITUTE NEGLIGENCE. (a) A ski area operator or other person who violates a requirement of this chapter or a regulation adopted by the Department of Labor under AS 05.20.070 is negligent and civilly liable to the extent the violation causes injury to a person or damage to property.

(b)(1) Notwithstanding the provisions of AS 09.17.080, the limitation of liability set forth in AS 05.45.010 shall be a complete defense to a claim against a ski area operator for injuries where an inherent danger or risk of skiing is found to be a contributory factor in the resulting injury, unless the ski area operator has violated a requirement of this chapter or a regulation adopted by the Department of Labor under AS 05.20.070.

(2) Notwithstanding the provisions of AS 09.17.080, a violation of the passenger or skier duties set forth in this chapter shall be a complete defense to a claim against a ski area operator where such violation is found to be a contributory factor in the resulting injury, unless the ski area operator has violated a requirement of this chapter or a regulation adopted by the Department of Labor under AS 05.20.070.

(3) If the ski area operator has violated a requirement of this chapter or a regulation adopted by the Department of Labor under AS 05.20.070, the provisions of AS 09.17.080 shall apply to a claim against a ski area operator based on such violation.

Rewritten to incorporate New Jersey provisions regarding apportionment of fault (see NJSA § 5:13-6):

A ski area operator is negligent if he violates the duties listed under this statute and the lift statute, and regulations.

A skier may not make a claim for an injury arising from an inherent danger and risk of skiing, unless the operator has violated duties listed under this statute and the lift statutes and regulations.

A skier may not make a claim for an injury arising from the skier's violation of the skier duties listed in this statute, unless the operator has violated duties listed under this statute and the lift statutes and regulations.

If the operator violates the duties listed under this statute and the lift statutes and regulations, the comparative negligence statute applies.

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Sec. 05.45.030. DUTIES OF PASSENGERS. (a) A passenger may not board a tramway if the passenger does not have

(1) sufficient physical dexterity or ability; and

(2) knowledge to negotiate or use the facility safely.

(b) A passenger may not

(1) embark upon or disembark from a tramway except at a designated area unless reasonably necessary to prevent injury to the passenger or others; this paragraph does not apply if the tramway stops and the operator assists the passengers to disembark from the tramway;

(2) intentionally throw or expel an object from a tramway while riding on the tramway, except as permitted by the operator;

(3) act while riding on a tramway in a manner that may interfere with proper or safe operation of the tramway;

(4) engage in conduct that may contribute to or cause injury to a person;

(5) intentionally place in an uphill track of a J-bar, T-bar, platter pull, rope tow, or another surface lift an object that could cause another skier to fall;

(6) embark upon a tramway marked as closed;

Sec. 05.45.030. DUTIES OF PASSENGERS. (a) A passenger may not board a tramway if the passenger does not have

(1) sufficient physical dexterity or ability and knowledge to negotiate or use the facility safely; or

(2) the assistance of a person authorized by the ski area operator to assist a skier.

(b) A passenger may not

(1) embark upon or disembark from a tramway except at a designated area unless reasonably necessary to prevent injury to the passenger or others; this paragraph does not apply if the tramway stops and the operator assists the passengers to disembark from the tramway;

(2) intentionally throw or expel an object from a tramway while riding on the tramway, except as permitted by the operator;

(3) act while riding on a tramway in a manner that may interfere with proper or safe operation of the tramway;

(4) engage in conduct that may contribute to or cause injury to a person;

(5) intentionally place in an uphill track of a J-bar, T-bar, platter pull, rope tow, or other surface lift an object that could cause another skier to fall;

(6) embark upon a tramway marked as closed;

[same]

add "knowledge to negotiate or use the facility safely" from former subsection (a)(2)

add "(2) the assistance of a person authorized by the ski area operator to assist a skier" to allow physically challenged skiers to ride lifts with assistance, if necessary.

[same]

[same]

[same]

[same]

[same]

[same]

[same]