

ALASKA LEGISLATURE COMMITTEE FILES

1993-1994

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SENATE LABOR & COMMERCE

(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;

(S) 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;

(S) 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;

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

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

(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.

(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.

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.

(b) A ski area operator shall post a sign

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).

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

(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.

(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.

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.

(b) A ski area operator shall post a sign

[same]

[same]

[same]

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.

[same]

[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]

(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.

(e) A ski area operator shall

(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;

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

(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;

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

(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. 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

(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;

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

(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;

(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

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."

[same]

Change "easiest" to "easier"

[same]

Add: "in writing"

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(c)(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.

P. 21-23

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 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,

MAR 15 1994 09:44AM DELANEY WILES HAYES

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 FOR 15 '14 09:44AM DELAWARE WILES HAYES

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

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

(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;

(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;

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

(A) skiing;

(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

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

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;

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

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

(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;

(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;

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

(A) skiing;

(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

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."

[same]

[same]

[same]

[same]

[same]

[same]

Add: "sliding"

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

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

[same]

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

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

[same]

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

[same]

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

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

[same]

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

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[same]

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

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

[same]

0.1/1

MAR 15 '94 09:54AM DELANEY WILES HAYES

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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

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

MEMORANDUM

January 14, 1994

SUBJECT: Sectional analysis (CSSB 44(JUD))
TO: Senator Robin Taylor
FROM: Michael F. Ford *M.F.*
Legislative Counsel

The following is a section by section analysis of CSSB 44(JUD):

Section 1 - Legislative Findings and Purpose.

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.

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.

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

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.

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

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.

Senator Robin Taylor
January 14, 1994
Page 2

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

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.

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.

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.

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.

Sec. 05.45.200 - Definitions.

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.

Section 4 - Effective date.

MFF:pl
94-031.plm



Alaska Action Trust

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

FAX TRANSMITTAL

TO: Senator Kelly, Chair of Senate Labor & Commerce
Senator Rieger, Vice-Chair of Senate Labor & Commerce
Senator Pearce
Senator Lincoln
Senator Salo

FROM: Dennis Mestas

DATE: January 18, 1993

RE: SB 44

On behalf of the Academy of Trial Lawyers, I have been asked to express our strong opposition to SB 44. SB 44 would grant immunity for negligent maintenance, construction and design activities that would virtually insulate the ski area from any liability for the operation of the ski area operations.

The state law Seibu wishes to repeal and revise via SB 44 was largely the result of one lawsuit which was filed against Seibu. In that case, a 16 year old boy was skiing on the newly opened night skiing area at Alyeska when he skied over an unmarked, unsigned, unlighted 15 foot drop-off that was in a shadowed area in the middle of the night skiing course. The shadows that obscured the drop-off were a result of Seibu placing the largest group of lights on the course immediately behind a grove of trees. As the case developed, it appeared that Seibu failed to advise the lighting engineers of the trees' existence (according to the lighting engineer) and Seibu somehow failed to notice the trees when it was placing the lights behind them. This is somewhat difficult to do when each light must be separately aimed with a sighting mechanism on it. Further, neither Seibu nor the lighting engineer noticed the trees and the shadow after the system was built and the area was open. This young boy was paralyzed for life from the waist down when he went off the drop-off and landed on a flat "cat track" - a road.

The drop-off was created by a road cut made by a dozer as it cut through the ridge comprising the ski area between lifts 1 and 4. Seibu left a near 90 degree cut-bank in the middle of the ski area instead of shaving off its upper edge to make a "roll." An expert, who was a former National Ski Areas Association president

TRIAL LAWYERS' POSITION

and extremely revered figure in the national ski industry, testified that the situation was "murderous and totally unacceptable." He further indicated it was far beyond the role (pale) of normal industry standards and was an easily, cheaply remedied situation.

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

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

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

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

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

Finally, we believe SB 44 is brought before the legislature because of not only the recent Hiibschman decision but also because of a recent death that occurred at Seibu's resort at Alyeska. On December 8, 1991, Bart Rizer, a 12 year old boy, died of hypothermia on an open slope in the bowl at Alyeska. Approximately four feet of snow had fallen in the 48 hours before his death and the bowl had not previously been open for skiing and had not been groomed. December 8, 1991, was a Sunday. On Saturday, skiing had been allowed on the ridge from the roundhouse down where a packed base was present. On Sunday, in the late afternoon, Seibu opened the bowl for skiing even though the bowl had not been adequately signed or roped off so as to warn skiers of extremely dangerous and indeed life threatening snow conditions that were present in some areas. Further, there was not even sufficient grooming done to allow the ski patrol to visually inspect and gain access to all parts of the bowl to check for downed skiers when the final sweep of the hill was made after the bowl was closed at 3:30 p.m. Many skiers had to be literally dug out of the snow as it was "bottomless powder" up to skiers' chests when off their skis.

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

Apparently, he was in a very small hollow where he could not be seen from the only packed area down through the bowl. Seibu had packed one narrow track up through the bowl and therefore, this portion of Horror Hill could not be visualized from immediately below it as it could be when the whole area is packed because the snow was five or six feet deep and the ski patrol would have found it extremely difficult to walk through this deep snow across the bottom of the hill scrutinizing it for downed skiers. Similarly, because of the deep snow, a walk across the top of the hill could not be made without extreme difficulty. Apparently, one ski patrolman may have skied down a small portion of Horror Hill, but

did not see Bart due to the snow condition and his location. There is no way that a proper sweep could have been made of this area given the extreme snow and the limited number of ski patrollers. Thus, for no good reason, a very bright and promising young man is dead.

You will note that a portion of the proposed bill is focused on grooming operations. Further, a portion of it is also focused at every possible snow condition. If this bill is passed as written, it would even insulate Alyeska from foreseeable avalanches that could kill hundreds of people because "snow on the ground is constantly changing". This is truly outrageous.

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

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

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

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

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

The question is this, if Seibu and other ski areas on public Forest Service land are already required to try to achieve maximum public safety, why are they now trying to escape responsibility for what they are required to do? Why should Seibu be insulated for negligent use of our land? The clear import of Forest Service regulation and the Forest Service mandated safety plan is to maximize public safety, not eliminate it. SB 44 will cause further erosion of safety procedures at Alyeska and other ski areas rather than enhancing the stated Forest Service goal of maximum safety for recreational users of federal land.

Alaska State Legislature

Sen. Robin Taylor, *Chair*
Sen. Rick Halford, *Vice Chair*
Sen. George Jacko, *Member*
Sen. Dave Donley, *Member*
Sen. Suzanne Little, *Member*



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Senate Judiciary Committee

TO: Arbe Williams
Special Assistant to the Commissioner
Department of Labor

FROM: Kenny Leaf
Senate Judiciary Committee Staff

RE: CSSB 44 (L&C) Civil Liability of Ski Area Operators
Department of Labor Regulations under AS 05.20.070

DATE: 6 March 1993

Committee Substitute for Senate Bill 44 entitled "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" is currently under the scrutiny of the Senate Judiciary Committee.

Section 05.45.020 (pg. 4, line 6) of the bill states the following:

(b) "A ski area operator 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."

AS 05.20.070 states

"The department may adopt reasonable regulations and codes relating to public safety in the construction, operation, and maintenance of devices. The regulations and codes must be in accordance with established standards, if any, and may not be discriminatory in their application."

The Judiciary Committee respectfully requests that the department provide the following information:

- 1) What regulations are referred to by Sec. 05.45.020 (b) of CSSB 44?
- 2) By what method does the department monitor ski area operators for compliance to these regulations?

Department of Labor
Ski Area Operator Regs.

A work session CSSB 44 is scheduled in committee for Monday, March 15, thus a response to this inquiry is required no later than close of business on Friday, March 19.

If you have any questions, please do not hesitate to contact me at 3717. The committee thanks you in advance for your cooperation in this matter.

MEMORANDUM

STATE OF ALASKA DEPARTMENT OF LABOR Office of the Commissioner

TO: Kenny Leaf
Staff to
Senate Judiciary Committee

DATE: March 15, 1993

FILE: LLR 1-1

PHONE: 465-2700

FROM: Arbe J. Williams *ajw*
Special Assistant
to the Commissioner

SUBJECT: CSSB 44(L&C)

This is in response to your memorandum concerning Committee Substitute for Senate Bill No. 44 (Labor & Commerce) relating to civil liability for skiing accidents.

1) The regulations referred to by Sec. 05.45.020(b) of CSSB 44(L&C) are 8 AAC 78.250 -- 900. These regulations adopt the 1982 edition of the American National Standards Institute Safety Code (ANSI B77.1-1982) and the 1986 supplement (ANSI B77.1a-1986) for the installation and maintenance of passenger tramways, aerial tramways and lifts, surface lifts and tows. A copy of the regulations are attached for your information.

2) Staff of the Mechanical Inspection section of the department's Division of Labor Standards & Safety perform annual inspections, as required by AS 05.20.060. Twenty-three chair lifts and nine rope tows are inspected. Enforcement of minimum safety standards apply only to the mechanical equipment used, not to other safety concerns such as trail markings, signage or site layout.

Please do not hesitate to contact me if you have additional questions.

Attachment

(c) After the director's review of the variance request and the inspector's recommendations, the director will make a final determination on the variance request. A variance will be granted only if the applicant has demonstrated that he or she will provide safety protection equal to or better than the standard from which the variance is sought.

(d) The department's denial of a variance from a safety standard may be appealed to the commissioner in the manner set out in 8 AAC 78.180. (Eff. 11/30/89, Register 112)

Authority: AS 05.20.070
AS 05.20.080

Editor's notes. — The address for the Standards and Safety, P.O. Box 020630, division of labor standards and safety is Juneau, AK 99802. Department of Labor, Division of Labor

8 AAC 78.180. APPEALS. (a) A notice issued under AS 05.20.050 for a violation of AS 05.20 or 8 AAC 78.010 — 8 AAC 78.180, based upon inspection under AS 05.20.060, is final unless the owner or operator of the amusement ride files an appeal with the commissioner within 15 days after receipt of the inspector's report. The appeal must be in writing and must include

- (1) a specification of objections to the department's findings, and a concise summary of facts in support of each objection; and
- (2) a description of the relief sought.

(b) As required by AS 05.20.080, a hearing held under this section will be conducted in accordance with AS 44.62.330 -- AS 44.62.630. The commissioner, or his or her designee, will hear the case with the hearing officer assigned to the matter. (Eff. 11/30/89, Register 112)

Authority: AS 05.20.070
AS 05.20.080
AS 44.62.450

Article 2. Tramways

Section

250. Minimum tramway standards
260. Registration
270. New construction and modifications
280. Inspection and certification
290. Accidents and injuries

Section

300. Inspection, maintenance, and repair
310. Miscellaneous provisions
320. Attendants
330. Variances
340. Appeals

8 AAC 78.250. MINIMUM TRAMWAY STANDARDS. The department adopts by reference the 1982 edition of the American National Standards Institute Safety Code, B77.1-1982, for passenger tramways, aerial tramways and lifts, surface lifts, and tows, and sup-

plement to safety requirements ANSI B77.1a-1986. (Eff. 11/30/89, Register 112)

Authority: AS 05.20.070

Editor's notes. — Copies of the safety code referred to in 8 AAC 78.250 are available from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

8 AAC 78.260. REGISTRATION. An owner or operator shall register a new or modified tramway with the department at least 30 days before installation. The registration must provide the name and mailing address of the area operator, the location of the tramway, basic design data, a profile of the lift line showing terrain features and proximity of power lines, and other related information that might be requested by the department. (Eff. 11/30/89, Register 112)

Authority: AS 05.20.070

8 AAC 78.270. NEW CONSTRUCTION AND MODIFICATIONS. (a) New tramway construction must be approved and sealed by an engineer who is registered under AS 08.48 and who is competent in tramway design, and must be approved in writing by the department, before construction begins. Within 15 days after receipt of an engineer's approval, the department will complete its review and notify the operator that the design is approved or notify the owner or operator of any deficiencies found.

(b) A modification to a tramway must be approved and sealed by an engineer registered under AS 08.48, be approved in writing by the department before the modification begins, and be performed in accordance with 8 AAC 78.250. The department will complete the modification design review, and will notify the operator of any deficiencies, within 15 working days after receipt of an engineer's approval.

(c) A newly constructed tramway must be subjected to a full load running test as specified by the manufacturer. The test must be witnessed by an inspector or a tramway specialist and must be performed before a tramway is used by the public.

(d) The movement of a portable tramway to a new location is not considered new construction. (Eff. 11/30/89, Register 112)

Authority: AS 05.20.050
AS 05.20.070

8 AAC 78.280. INSPECTION AND CERTIFICATION. (a) Each tramway used or proposed to be used in the state must be inspected annually by an inspector or tramway specialist. The inspec-

tion report must be submitted to the department within 15 days after the inspection.

(b) If, upon inspection by an inspector or tramway specialist, an aerial or surface lift complies with 8 AAC 78.250 — 8 AAC 78.340, the department will issue to the owner or operator an inspection certificate showing the date of inspection. (Eff. 11/30/89, Register 112)

Authority: AS 05.20.060
AS 05.20.070

8 AAC 78.290. ACCIDENTS AND INJURIES. (a) The owner or operator of a tramway must have at least \$1,000,000 liability insurance. If the owner or operator of a tramway is a municipality, the municipality is not required to post a liability insurance binder if it can provide proof of self insurance satisfactory to the department. Evidence of the insurance or proof of self insurance must be received by the department at least 10 days before planned operation of the tramway, and must be available at the tramway site.

(b) An operator must have provisions for rendering first aid and for transporting an injured person to the nearest medical facility.

(c) At least two persons who are trained in first aid, and whose qualifications are equivalent to or exceed those set out in the National Ski Patrol's Outdoor Emergency Care, 1985 edition, must be available at all times when a tramway is in use by the public.

(d) A tramway operator shall immediately, by telephone, report to the department's mechanical inspection section, any accident involving the tramway that results in a fatality or an injury that requires a person to receive a doctor's care. If that office is closed, the local police, or the local office of the Department of Public Safety, division of state troopers, shall be notified. Within 48 hours, a written report of the accident shall be mailed to the department's mechanical inspection section. If a mechanical or structural failure causes a fatality or an injury that requires a person to receive a doctor's care, the scene of the accident must be secured and not disturbed to any greater extent than is necessary to prevent additional injuries and to remove the deceased or injured person. If the tramway must be removed from service, the department will conduct an immediate investigation and the tramway may not be repaired or operated until the investigation is completed. (Eff. 11/30/89, Register 112; em am 1/16/90 — 5/15/90, Register 113)

Authority: AS 05.20.070

Editor's notes. — The address for the mechanical inspection section is: Department of Labor, Mechanical Inspection Section, P.O. Box 107020, Anchorage, AK 99510; the telephone number is (907)

264-2447. The National Ski Patrol publication may be obtained from: National Ski Patrol System, Inc., 133 S. Van Gordan, Suite 100, Lakewood, CO 80228-1706.

8 AAC 78.300. INSPECTION, MAINTENANCE, AND REPAIR. (a) The operator of a tramway, or his or her designee, shall give the tramway a daily operating test, in accordance with the manufacturer's recommendations, before the public is permitted to ride. An unsafe condition discovered during the test must be corrected before the public is permitted to ride.

(b) After accidental activation of a tramway's safety stop or gate, the operator, or his or her designee, shall inspect the tramway to determine the cause. An unsafe condition identified during the inspection must be corrected before a passenger is permitted to ride, except that operation of a tramway is permitted in order to unload passengers. A safety or automatic stopping device that allows an automatic restart of a tramway may not be installed.

(c) The operator of a tramway shall maintain a permanent record of every inspection or repair made to the tramway and shall make the records available to the inspector or tramway specialist.

(d) If the department determines that a tramway needs corrections to comply with the requirements of 8 AAC 78.250 — 8 AAC 78.340, the department will, in its discretion, order that the tramway be closed to public use. The department will issue a report to the owner or operator identifying the specific reason for closure and will tag the tramway as being out of service. The operator shall immediately stop operation of the tramway and may not open it to public use until all corrections have been made and the department has approved, in writing, its operation. The department will inspect the tramway within 24 hours after receipt of a notice of correction. (Eff. 11/30/89, Register 112)

Authority: AS 05.20.020
AS 05.20.030

AS 05.20.060
AS 05.20.070

8 AAC 78.310. MISCELLANEOUS PROVISIONS. Rope grippers approved by the department may be used on fiber rope tows. (Eff. 11/30/89, Register 112)

Authority: AS 05.20.070

8 AAC 78.320. ATTENDANTS. (a) An attendant may not act as a ticket seller or receive money while the tramway is in operation.

(b) An attendant of a fiber rope tow is exempt from the provisions of this section. (Eff. 11/30/89, Register 112)

Authority: AS 05.20.070

8 AAC 78.330. VARIANCES. (a) The owner or operator of a tramway who desires a variance from a safety standard adopted in or

under AS 05.20 may file a written request for variance with the director of the department's division of labor standards and safety.

(b) A request filed under (a) of this section must include

- (1) the name and address of the applicant;
- (2) the name and address of the place where the tramway is located;
- (3) specification of the standard or portion of it from which the applicant seeks a variance;
- (4) an explanation of why the applicant is unable to comply with that standard or portion of it;
- (5) a description of the alternative measures that the applicant has taken or will take, with specific dates, to adequately safeguard persons from the hazards covered by the standard; and
- (6) a statement of the effect a grant of a variance will have on the safety of persons in or around the tramway.

(c) After the director's review of the variance request and the tramway inspector's final recommendations, the director will make a final determination on the variance request. A variance will be granted only if the applicant has demonstrated that he or she will provide safety protection equal to or better than the standard from which the variance is sought.

(d) The department's denial of a variance from a safety standard may be appealed to the commissioner in the manner set out in 8 AAC 78.340. (Eff. 11/30/89, Register 112)

Authority: AS 05.20.070
AS 05.20.080

Editor's notes. — The address for the Standards & Safety, P.O. Box 020630, Juneau, AK 99802.
division of labor standards and safety is: Department of Labor, Division of Labor

8 AAC 78.340. APPEALS. (a) A notice issued under AS 05.20.050 for a violation of AS 05.20 or 8 AAC 78.250 — 8 AAC 78.340, based upon inspection under AS 05.20.060, is final unless the owner or operator of the tramway files an appeal with the commissioner within 15 days after receipt of the inspector's report. The appeal must be in writing and must include

- (1) a specification of objections to the department's findings, and a concise summary of facts in support of each objection; and
- (2) a description of the relief sought.

(b) As required by AS 05.20.080, a hearing held under this section will be conducted in accordance with AS 44.62.330 — AS 44.62.630. The commissioner, or his or her designee, will hear the case with the hearing officer assigned to the matter. (Eff. 11/30/89, Register 112)

Authority: AS 05.20.070

AS 05.20.080
AS 44.62.450

Article 3. General Provisions

Section

900. Definitions

8 AAC 78.900. DEFINITIONS. (a) In this chapter, unless the context requires otherwise,

(1) "amusement ride" means a device such as a roller-coaster, merry-go-round, or Ferris wheel;

(2) "attendant" means a person who acts as an engine or motor operator, a person stationed at a loading or unloading area, or other person whose duties pertain specifically to the mechanical operation of a device;

(3) "automatic restart" means a mechanism designed to restart equipment without human intervention;

(4) "buffer zone" means a clear area designed to cushion against shock;

(5) "commissioner" means the commissioner of the Alaska Department of Labor;

(6) "department" means the Alaska Department of Labor;

(7) "director" means the director of the division of labor standards and safety in the Department of Labor;

(8) "disassembly" means the dismantling of equipment to the extent that concealed shafts, bearings, or struts may be visually examined;

(9) "division" means the division of labor standards and safety in the Department of Labor;

(10) "enclosure" means a visible barrier surrounding an amusement ride;

(11) "equipment" includes all types of amusement rides and tramways, as well as the machinery, safeguards, and protective facilities used in conjunction with the operation and maintenance of amusement rides and tramways;

(12) "modification" means a change in the original manufacturer's engineering, design, or installation requirements;

(13) "portable tramway" means a tramway that, by design, is movable to a new location without installation of permanent apparatus such as poles, towers, and anchors;

(14) "safety gate" means a device that, due to the passenger's weight or contact, will automatically stop a tramway;

(15) "tramway" means a device that is a passenger tramway, aerial or surface lift, ski lift, or rope tow;

(16) "tramway specialist" means a person authorized in writing by the department to inspect and review the installation, maintenance, or operation of a tramway.

(b) In this chapter and in AS 05.20,

(1) "inspector" means a person employed by the department to inspect and review the installation, maintenance, or operation of a tramway or amusement ride;

(2) "operator" means a person or persons who lease or otherwise control the operation of an amusement ride, amusement park, carnival, or tramway;

(3) "owner" means a person or persons who own or have financial interest in the operation of an amusement ride, amusement park, carnival, or tramway. (Eff. 11/30/89, Register 112)

Authority: AS 05.20.070
AS 05.20.120

CHAPTER 80. BOILER AND PRESSURE VESSEL CONSTRUCTION CODE

Article

1. Boiler and Pressure Vessel Construction Code (8 AAC 80.010 — 8 AAC 80.060)
2. Operation Controls (8 AAC 80.070 — 8 AAC 80.090)
3. Special Requirements for Alterations or Repair Authorization (8 AAC 80.100 — 8 AAC 80.120)
4. Requirements for Boiler Operator License (8 AAC 80.130)
5. General Provisions (8 AAC 80.900)

Article 1. Boiler and Pressure Vessel Construction Code

Section

10. Boiler and pressure vessel construction code
20. Inspection fees

Section

30. Certificates of inspection
40. Identification of special inspectors
60. Inspection and stamping

8 AAC 80.010. BOILER AND PRESSURE VESSEL CONSTRUCTION CODE. (a) The Alaska Department of Labor adopts by reference the following sections and addenda in the 1980 edition of the American Society of Mechanical Engineers' Boiler and Pressure Vessel Construction Code, as amended and interpreted as of December 31, 1983:

ASME Code Section

1. Power boilers, including ANSI-B31.1 Power Piping
2. A. & B. & C. Material Specifications
3. Nuclear Power Plant Components, Division I & II
4. Heating Boilers
5. Nondestructive Examination
8. Pressure Vessels, Division I and II
9. Welding & Brazing Qualifications

ALASKA

ALASKA STATUTES

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Title 9. Code of Civil Procedure.

Chapter 65. Miscellaneous Provisions.

Sec. 09.65.135. Limitations on claims arising from skiing. (a) A skier may not recover from a ski area operator for injury resulting from an inherent risk of skiing unless the injury occurred when the ski area operator was not providing the information required by (b) of this section.

(b) A ski area operator shall post trail signs at prominent locations within a ski area which shall include a list of the inherent risks of skiing and the limitation on liability of the ski area operator provided by this section.

(c) In this section

(1) "inherent risks of skiing" means the danger or conditions which are an integral part of the sport of skiing, including, but not limited to,

(A) changing weather conditions;

(B) variations or steepness in terrain;

(C) snow or ice conditions;

(D) surface or subsurface conditions such as bare spots, forest growth, and rocks;

(E) collisions with lift towers, other structures, and their components unless the skier is on the lift;

(F) collisions with other skiers; and

(G) a skier's failure to ski within the limits of the skier's ability;

(2) "injury" means a personal injury or property damage or loss;

(3) "skier" means a person in a ski area engaged in the sport of skiing, sliding downhill on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, or other device for recreation in snow;

(4) "ski area" means all ski slopes, trails and other places under the control of a ski area operator and administered as a single enterprise in the state;

(5) "ski area operator" means the operator of a ski area.

CALIFORNIA

WEST'S ANNOTATED CALIFORNIA CODES COPR. (c) WEST 1991 No Claim to Orig. Govt. Works PENAL CODE

PART 1. OF CRIMES AND PUNISHMENTS TITLE 15. MISCELLANEOUS CRIMES MISCELLANEOUS CRIMES CHAPTER 2. OF OTHER AND MISCELLANEOUS OFFENSES

§ 653i. Leaving scene of ski accident; infraction; punishment

Any person who is involved in a skiing accident and who leaves the scene of the accident knowing or having reason to believe that any other person involved in the accident is in need of medical and other assistance, except to notify the proper authorities or to obtain assistance, shall be guilty of an infraction punishable by fine not exceeding one thousand dollars (\$1,000).

COLORADO

WEST'S COLORADO REVISED STATUTES ANNOTATED COPR. WEST 1991 No Claim to Orig. Govt. Works TITLE 33. WILDLIFE AND PARKS AND OUTDOOR RECREATION RECREATIONAL AREAS AND SKI SAFETY ARTICLE 44. SKI SAFETY AND LIABILITY

Sections 1, 9 and 10 of Laws 1990, S.B.90-80, provide:

Section 1. Legislative declaration. The general assembly hereby finds and declares that the sport of skiing is practiced by a large number of residents of Colorado and attracts a large number of nonresidents, significantly contributing to the economy of this state. The general assembly further finds that, despite the passage of the "Ski Safety Act of 1979", ski area operators of this state continue to be subjected to claims and litigation involving accidents which occur during the course of the sport of snow skiing, which claims and litigation and threat thereof unnecessarily increase Colorado ski area operators' costs. The general assembly further finds that such increased costs are due, in part, to confusion under the "Ski Safety Act of 1979" as to whether a skier accepts and assumes the dangers and risks inherent in the sport of skiing. It is the purpose of this act, therefore, to clarify the law in relation

to skiing injuries and the dangers and risks inherent in that sport, to establish as a matter of law that certain dangers and risks are inherent in that sport, and to provide that, as a matter of public policy, no person engaged in that sport shall recover from a ski area operator for injuries resulting from those inherent dangers and risks.

Section 9. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Section 10. Effective date--applicability. This act shall take effect July 1, 1990, and shall apply to all civil actions filed on or after said date.

§ 33-44-101. Short title

This article shall be known and may be cited as the "Ski Safety Act of 1979".

§ 33-44-102. Legislative declaration

The general assembly hereby finds and declares that it is in the interest of the state of Colorado to establish reasonable safety standards for the operation of ski areas and for the skiers using them. Realizing the dangers that inhere in the sport of skiing, regardless of any and all reasonable safety measures which can be employed, the purpose of this article is to supplement the passenger tramway safety provisions of part 7 of article 5 of title 25, C.R.S.; to further define the legal responsibilities of ski area operators and their agents and employees; to define the responsibilities of skiers using such ski areas; and to define the rights and liabilities existing between the skier and the ski area operator and between skiers.

§ 33-44-103. Definitions

As used in this article, unless the context otherwise requires:

(1) "Base area lift" means any passenger tramway which skiers ordinarily use without first using some other passenger tramway.

(2) "Competitor" means a skier actually engaged in competition or in practice therefor with the permission of the ski area operator on any slope or trail or portion thereof designated by the ski area operator for the purpose of competition.

(3) "Conditions of ordinary visibility" means daylight and, where applicable, nighttime in nonprecipitating weather.

(4) "Passenger" means any person who is lawfully

using any passenger tramway.

(5) "Passenger tramway" means a device as defined in section 25-5-702(4), C.R.S.

(6) "Ski area" means all ski slopes or trails and other places under the control of a ski area operator and administered as a single enterprise within this state.

(7) "Ski area operator" means "operator" as defined in section 25-5-702(3), C.R.S., and any person, partnership, corporation, or other commercial entity having operational responsibility for any ski areas, including an agency of this state or a political subdivision thereof.

(8) "Skier" means any person using a ski area for the purpose of skiing; for the purpose of sliding downhill on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, a snowboard, or any other device; or for the purpose of using any of the facilities of the ski area, including but not limited to ski slopes and trails.

(9) "Ski slopes or trails" means those areas designated by the ski area operator to be used by skiers for any of the purposes enumerated in subsection (8) of this section. Such designation shall be set forth on trail maps, if provided, and designated by signs indicating to the skiing public the intent that such areas be used by skiers for the purpose of skiing. Nothing in this subsection (9) or in subsection (8) of this section, however, shall imply that ski slopes or trails may not be restricted for use by persons using skis only or for use by persons using any other device described in subsection (8) of this section.

(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, 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.

§ 33-44-104. Negligence--civil actions

(1) A violation of any requirement of this article shall, to the extent such violation causes injury to any person or damage to property, constitute negligence on the part of the person violating such requirement.

(2) A violation by a ski area operator of any requirement of this article or any rule or regulation promulgated by the passenger tramway safety board pursuant to section 25-5-710(1)(a), C.R.S., shall, to the extent such violation causes injury to any person or damage to property, constitute negligence on the part of such operator.

(3) All rules adopted or amended by the passenger tramway safety board on or after July 1, 1979, shall be subject to sections 24-4-103(8)(c) and (8)(d) and 24-34-104(9)(b)(II), C.R.S.

§ 33-44-105. Duties of passengers

(1) No passenger shall board a passenger tramway if he does not have sufficient physical dexterity, ability, and knowledge to negotiate or use such facility safely or until such passenger has asked for and received information sufficient to enable him to use the equipment safely. A passenger is required to follow any written or verbal instructions that are given to him regarding the use of the passenger tramway.

(2) No passenger shall:

(a) Embark upon or disembark from a passenger tramway except at a designated area except in the event of a stoppage of the passenger tramway (and then only under the supervision of the operator) or unless reasonably necessary in the event of an emergency to prevent injury to the passenger or others;

(b) Throw or expel any object from any passenger tramway while riding on such device, except as permitted by the operator;

(c) Act, while riding on a passenger tramway, in any manner that may interfere with proper or safe operation of such passenger tramway;

(d) Engage in any type of conduct that may contribute to or cause injury to any person;

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

(f) Embark upon a passenger tramway marked as closed;

(g) Disobey any instructions posted in accordance with this article or any verbal instructions by the ski area operator regarding the proper or safe use of a passenger tramway unless such verbal instructions are contrary to this article or the rules promulgated under it, or contrary to

posted instructions.

§ 33-44-106. Duties of operators--signs

(1) Each ski area operator 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 passenger tramway readable in conditions of ordinary visibility and, where applicable, adequately lighted for nighttime passengers. Signs shall be posted as follows:

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

(b) At the interior of each two-car and multicar passenger tramway, showing:

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

(II) Instructions for procedures in emergencies.

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

(d) At all chair lifts, stating the following:

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

(II) "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;

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

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

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

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

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

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

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

(III) "Prepare to Unload", which shall be located not less than fifty feet ahead of each unloading area.

(f) Near the boarding area of all J-bars, T-bars, platter pulls, rope tows, and any other surface lift, advising passengers to check to be certain that clothing, scarves, and hair will not become entangled with the lift;

(g) At or near the boarding area of all lifts, regarding the requirements of section 33-44-109(6).

(2) Other signs not specified by subsection (1) of this

section may be posted at the discretion of the ski area operator.

(3) The ski area operator, before opening the passenger tramway to the public each day, shall inspect such passenger tramway for the presence and visibility of the signs required by subsection (1) of this section.

(4) 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 (1) of this section in such condition that they may be viewed during conditions of ordinary visibility. Evidence that signs required by subsection (1) 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.

§ 33-44-107. Duties of ski area operators--signs and notices required for skiers' information

(1) Each ski area operator shall maintain a sign and marking system as set forth in this section in addition to that required by section 33-44-106. All signs required by this section shall be maintained so as to be readable and recognizable under conditions of ordinary visibility.

(2) A sign shall be placed in such a position as to be recognizable as a sign to skiers proceeding to the uphill loading point of each base area lift depicting and explaining signs and symbols which the skier may encounter at the ski area as follows:

(a) The ski area's least difficult trails and slopes, designated by a green circle and the word "easiest";

(b) The ski area's most difficult trails and slopes, designated by a black diamond and the words "most difficult";

(c) The ski area's trails and slopes which 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";

(d) 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.

(e) Closed trails or slopes, designated by an octagonal-shaped sign with a red border 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.

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

"WARNING: This lift services (most difficult) or

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

(4) If a particular trail or slope or portion of a trail or slope is closed to the public by a ski area operator, such operator shall place a sign notifying the public of that fact at each identified entrance of each portion of the trail or slope involved. Alternatively, such a trail or slope or portion thereof may be closed with ropes or fences.

(5) The ski area operator shall place a sign at or near the beginning of each trail or slope, which sign shall contain the appropriate symbol of the relative degree of difficulty of that particular trail or slope as set forth by subsection (2) of this section. This requirement shall not apply to a slope or trail designated "easiest" which to a skier is substantially visible in its entirety under conditions of ordinary visibility prior to his beginning to ski the same.

(6) The ski area operator shall mark its ski area boundaries in a fashion readily visible to skiers under conditions of ordinary visibility. Where the owner of land adjoining a ski area closes all or part of his land and so advises the ski area operator, such portions of the boundary shall be signed as required by paragraph (e) of subsection (2) of this section. This requirement shall not apply in heavily wooded areas or other nonskiable terrain.

(7) The ski area operator shall mark hydrants, water pipes, and all other man-made structures on slopes and trails which are not readily visible to skiers under conditions of ordinary visibility from a distance of at least one hundred feet and shall adequately and appropriately cover such obstructions with a shock-absorbent material that will lessen injuries. Any type of marker shall be sufficient, including but not limited to wooden poles, flags, or signs, if the marker is visible from a distance of one hundred feet and if the marker itself does not constitute a serious hazard to skiers. 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.

(8)(a) Each ski area operator shall post and maintain signs which contain the warning notice specified in paragraph (c) of this subsection (8). Such signs shall be placed in a clearly visible location at the ski area where the lift tickets and ski school lessons are sold and in such a position to be recognizable as a sign to skiers proceeding to the uphill loading point of each base area lift. Each sign shall be no smaller than three feet by three feet. Each sign shall be white with black and red letters as specified in this paragraph (a). The words "WARNING" shall appear on the sign in red letters. The warning notice specified in paragraph (c) of this subsection (8) shall appear on the sign in black letters, with each letter to be a minimum of one inch in height.

(b) Every ski lift ticket sold or made available for sale to skiers by any ski area operator shall contain in clearly readable print the warning notice specified in paragraph (c) of this subsection (8).

(c) The signs described in paragraph (a) of this subsection (8) and the lift tickets described in paragraph (b) of this subsection (8) shall contain the following warning notice:

WARNING

Under Colorado law, a skier assumes the risk of any injury to person or property resulting from any of the inherent dangers and risks of skiing and may not recover from any ski area operator for any 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.

§ 33-44-108. Ski area operators--additional duties

(1) Any motorized snow-grooming vehicle shall be equipped with a light visible at any time the vehicle is moving on or in the vicinity of a ski slope or trail.

(2) Whenever maintenance equipment is being employed to maintain or groom any ski slope or trail while such ski slope or trail is open to the public, the ski area operator shall place or cause to be placed a conspicuous notice to that effect at or near the top of that ski slope or trail.

(3) All snowmobiles operated on the ski slopes or trails of a ski area shall be equipped with at least the following: One lighted headlamp, one lighted red tail lamp, a brake system maintained in operable condition, and a fluorescent flag at least forty square inches mounted at least six feet above the bottom of the tracks.

(4) The ski area operator shall have no duty arising out of its status as a ski area operator to any skier skiing beyond the area boundaries marked as required by section 33-44-107(6).

(5) The ski area operator, upon finding a person skiing in a careless and reckless manner, may revoke that person's skiing privileges. This subsection (5) shall 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.

§ 33-44-109. Duties of skiers--penalties

(1) Each skier solely has the responsibility for knowing the range of his own ability to negotiate any ski slope or trail and to ski within the limits of such ability. Each skier expressly accepts and assumes the risk of and all legal responsibility for any injury to person or property resulting from any of the inherent dangers and risks of skiing; except that a skier is not precluded under this article from suing another skier for any injury to person or property resulting from such other skier's acts or omissions. Notwithstanding any provision of law or statute to the contrary, the risk of a skier/skier collision is neither an inherent risk nor a risk assumed by a skier in an action by one skier against another.

(2) Each skier has the duty to maintain control of his 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, the primary duty shall be on the person skiing downhill to avoid collision with any person or objects below him.

(3) No skier shall ski on a ski slope or trail that has been posted as "Closed" pursuant to section 33-44-107(2)(e) and (4).

(4) Each skier shall stay clear of snow-grooming equipment, all vehicles, lift towers, signs, and any other equipment on the ski slopes and trails.

(5) Each skier has the duty to heed all posted information and other warnings and to refrain from acting in a manner which may cause or contribute to the injury of the skier or others. Each skier shall be presumed to have seen and understood all information posted in accordance with this article near base area lifts, on the passenger tramways, and on such ski slopes or trails as he is skiing. Under conditions of decreased visibility, the duty is on the skier to locate and ascertain the meaning of all signs posted in accordance with sections 33-44-106 and 33-44-107.

(6) Each ski used by a skier while skiing shall be equipped with a strap or other device capable of stopping the ski should the ski become unattached from the skier. This requirement shall not apply to cross country skis.

(7) No skier shall cross the uphill track of a J-bar, T-bar, platter pull, or rope tow except at locations designated by the operator; nor shall a skier place any object in such an uphill track.

(8) Before beginning to ski from a stationary position or before entering a ski slope or trail from the side, the skier shall have the duty of avoiding moving skiers already on the ski slope or trail.

(9) No person shall move uphill on any passenger tramway or use any ski slope or trail while such person's ability to do so is impaired by the consumption of alcohol or by the use of any controlled substance, as defined in

section 12-22-303(7), C.R.S., or other drug or while such person is under the influence of alcohol or any controlled substance, as defined in section 12-22-303(7), C.R.S., or other drug.

(10) No skier involved in a collision with another skier or person in which an injury results shall leave the vicinity of the collision before giving his 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; in which event the person so leaving the scene of the collision shall give his name and current address as required by this subsection (10) after securing such aid.

(11) No person shall knowingly enter upon public or private lands from an adjoining ski area when such land has been closed by its owner and so posted by the owner or by the ski area operator pursuant to section 33-44-107(6).

(12) Any person who violates any of the provisions of subsection (3), (9), (10), or (11) of this section is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars.

§ 33-44-110. Competition

(1) The ski area operator shall, prior to the beginning of a competition, allow each competitor a reasonable visual inspection of the course or area where the competition is to be held.

(2) The competitor shall be held to assume the risk of all course 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 or death of any competitor proximately caused by such assumed risk.

§ 33-44-111. Statute of limitation

All actions against any ski area operator or its employees brought to recover damages for injury to person or property caused by the maintenance, supervision, or operation of a passenger tramway or a ski area shall be brought within two years after the claim for relief arises and not thereafter.

§ 33-44-112. Limitation on actions for injury resulting from inherent dangers and risks of skiing

Notwithstanding any judicial decision or any other law or statute to the contrary, including but not limited to sections 13-21-111 and 13-21-111.7, C.R.S., no skier may make any claim against or recover from any ski area

operator for injury resulting from any of the inherent dangers and risks of skiing.

§ 33-44-113. Limitation of liability

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

§ 33-44-114. Inconsistent law or statute

Insofar as any provision of law or statute is inconsistent with the provisions of this article, this article controls.

HOUSE CS FOR CS FOR SENATE BILL NO. 44(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/22/94

Referred: Rules

Sponsor(s): SENATOR KELLY

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

13 (3) skiing is an active sport conducted in the outdoor alpine environment; this
14 environment consists of several elements, including terrain, weather, snow conditions, and

1 amenities created and maintained by the ski area operator;

2 (4) the terrain necessary for downhill skiing is characterized by large areas of
3 land, that vary tremendously in steepness and feature bumps, hillocks, drops, cliffs, gullies,
4 ridges, and knobs of infinite variety; the surface and subsurface include trees, bushes,
5 undergrowth, rocks, boulders, springs, streams, stumps, branches, roots, and other debris;

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

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

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

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

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

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

31 (11) under the proper weather conditions, ski area operators can and do

1 generate a form of artificial snow and can spread the snow on the surface of the terrain;
2 however, it is not possible nor is it desirable to groom all snow to a particular finish;

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

7 (13) falling is an ordinary, obvious, and necessary component of the sport; all
8 skiers, even expert skiers, fall on all kinds of terrain; a particular fall is no indication of the
9 risks of a particular slope or set of conditions; the same factors that offer the excitement of
10 skiing contribute to its inherent risks; skiers may slide when they fall, and they may encounter
11 obstacles or other skiers; skiers can be injured while skiing due to the intrinsic risks of the
12 sport, whether natural or man-made.

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

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

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

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

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

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

25 CHAPTER 45. SKI LIABILITY, SAFETY, AND RESPONSIBILITY.

26 Sec. 05.45.010. LIMITATION ON ACTIONS ARISING FROM SKIING.

27 Notwithstanding any other provision of law, a person may not bring an action against
28 a ski area operator for an injury resulting from an inherent danger and risk of skiing.

29 Sec. 05.45.020. EFFECT OF VIOLATIONS. (a) A ski area operator or other
30 person who violates a requirement of this chapter, a provision of a plan of operation
31 prepared under AS 05.45.040, or a regulation adopted by the Department of Labor

1 under AS 05.20.070 is negligent and civilly liable to the extent the violation causes
2 injury to a person or damage to property.

3 (b) Notwithstanding the provisions of AS 09.17.080,

4 (1) the limitation of liability described under AS 05.45.010 is a
5 complete defense in an action against a ski area operator for an injury if an inherent
6 danger or risk of skiing is determined to be a contributory factor in the resulting
7 injury, unless the ski area operator has violated a requirement of this chapter, a
8 provision of a plan of operation prepared under AS 05.45.040, or a regulation adopted
9 by the Department of Labor under AS 05.20.070;

10 (2) a violation of the passenger duties imposed under AS 05.45.030 or
11 skier duties imposed under AS 05.45.100 is a complete defense in an action against
12 a ski area operator if the violation is determined to be a contributory factor in the
13 resulting injury, unless the ski area operator has violated a requirement of this chapter,
14 a provision of a plan of operation prepared under AS 05.45.040, or a regulation
15 adopted by the Department of Labor under AS 05.20.070.

16 (c) If the ski area operator is determined to have violated a requirement of this
17 chapter, a provision of a plan of operation prepared under AS 05.45.040, or a
18 regulation adopted by the Department of Labor under AS 05.20.070, the provisions of
19 AS 09.17.080 apply in an action against a ski area operator for an injury resulting from
20 the violation.

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

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

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

27 (b) A passenger may not

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

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

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

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

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

9 (6) embark upon a tramway marked as closed;

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

14 Sec. 05.45.040. REQUIRED PLAN AND PATROL BY SKI AREA
15 OPERATORS. (a) A ski area operator shall prepare a plan of operation for each ski
16 season and shall implement the plan throughout the ski season. A plan of operation
17 must include written provisions for ski patrol, avalanche control, avalanche rescue,
18 grooming procedures, tramway evacuation, hazard marking, missing person procedures,
19 and first aid. Before the operation of the ski area for that season, the plan shall be
20 reviewed and approved by the commissioner of natural resources except that if an
21 agency of the United States manages the land on which the ski area operates, the plan
22 shall be reviewed and approved by that agency. The commissioner of natural
23 resources may require a ski area operator to pay a fee not to exceed the department's
24 cost of reviewing the plan, and may adopt regulations to implement this subsection.

25 (b) A ski area operator shall provide a ski patrol whose members meet or
26 exceed the training standards of the National Ski Patrol System, Inc. This subsection
27 does not apply to a ski area if the operator transports skiers using only a single
28 tramway consisting of a rope tow, the rope tow does not transport skiers more than
29 500 vertical feet, and the ski area is operated by a nonprofit corporation or a
30 municipality. In this subsection, "nonprofit corporation" means a corporation that
31 qualifies for exemption from taxation under 26 U.S.C. 501(c)(3) or (4) (Internal

1 Revenue Code).

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

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

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

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

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

17 (B) instructions for procedures in emergencies;

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

21 (4) at all chair lifts stating the following:

22 (A) "Prepare to Unload," which shall be located not less than
23 50 feet ahead of the unloading area;

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

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

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

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

31 (F) "Check for Loose Clothing and Equipment," which shall be

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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 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).

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

(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.

(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.

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.

(b) A ski area operator shall post a sign 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 (1) the least difficult trails and slopes, designated by a green circle and
2 the word "easier";

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

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

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

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

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

18 WARNING: This lift services (most difficult) or
19 (most difficult and more difficult) or (more
20 difficult) slopes only.

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

27 (e) A ski area operator shall

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

1 entirety under conditions of ordinary visibility before beginning to ski the slope or
2 trail;

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

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

8 (4) mark hydrants, water pipes, and all other man-made structures on
9 slopes and trails that are not readily visible to skiers under conditions of ordinary
10 visibility from a distance of at least 100 feet and adequately and appropriately cover
11 man-made structures that create obstructions with a shock absorbent material that will
12 lessen injuries; any type of marker is sufficient, including wooden poles, flags, or
13 signs, if the marker is visible from a distance of 100 feet and if the marker itself does
14 not constitute a serious hazard to skiers; in this paragraph, "man-made structures" does
15 not include variations in steepness or terrain, whether natural or as a result of slope
16 design, snow making, grooming operations, roads and catwalks, or other terrain
17 modifications;

18 (5) mark exposed forest growth, rocks, stumps, streambeds, trees, or
19 other natural objects that are located on a slope or trail that is regularly used by skiers
20 or that is regularly packed and prepared by a ski area operator using a snow vehicle
21 and attached implements and that are not readily visible to skiers under conditions of
22 ordinary visibility from a distance of at least 100 feet;

23 (6) mark roads, catwalks, cliffs, or other terrain modifications that are
24 not readily visible to skiers under conditions of ordinary visibility from a distance of
25 at least 100 feet;

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

1 appear on the sign in red letters; the warning notice specified in this paragraph must
2 appear on the sign in black letters with each letter to be a minimum of one inch in
3 height.

4 (f) A ski lift ticket sold or made available for sale to skiers by a ski area
5 operator must contain in clearly readable print the warning notice specified in (g) of
6 this section.

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

9 **WARNING**

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

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

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

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

- 28 (1) one lighted head lamp;
29 (2) one lighted red tail lamp;
30 (3) a brake system maintained in operable condition; and
31 (4) a fluorescent flag at least 40 square inches mounted at least six feet

1 above the bottom of the tracks.

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

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

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

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

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

1 another.

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

6 (c) A skier may not

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

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

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

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

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

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

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

26 (f) Before beginning to ski from a stationary position or before entering a ski
27 slope or trail from the side, a skier has the duty to avoid moving skiers already on the
28 ski slope or trail.

29 (g) Except for the purpose of securing aid for a person injured in the collision,
30 a skier involved in a collision with another skier or person that results in an injury may
31 not leave the vicinity of the collision before giving the skier's name and current

1 address to the other person involved in the collision and to an employee of the ski area
2 operator or a member of the voluntary ski patrol. A person who leaves the scene of
3 a collision to obtain aid shall give the person's name and current address as required
4 by this subsection after obtaining aid.

5 (h) A person who violates a provision of (c) or (g) of this section is guilty of
6 a violation as defined in AS 11.81.900. The commissioner of natural resources, a
7 person designated by the ski area operator who is authorized by the commissioner, or
8 an employee of the Department of Natural Resources authorized by the commissioner
9 may issue a citation in accordance with the provisions of AS 41.21.960 to a person
10 who violates (c) or (g) of this section within a ski area over which the state has
11 jurisdiction.

12 Sec. 05.45.110. COMPETITION; IMMUNITY FOR SKI AREA OPERATOR.

13 (a) The ski area operator shall, before the beginning of a ski competition, allow an
14 athlete who will ski in the competition a reasonable visual inspection of the course or
15 area where the competition is to be held.

16 (b) An athlete skiing in competition assumes the risk of all course or area
17 conditions, including weather and snow conditions, course construction or layout, and
18 obstacles that a visual inspection would have revealed. A ski area operator is not
19 liable for injury to an athlete who skis in competition and who is injured as a result
20 of a risk described in this subsection.

21 Sec. 05.45.120. USE OF LIABILITY RELEASES. (a) A ski area operator
22 may not require a skier to sign an agreement releasing the ski area operator from
23 liability in exchange for the right to ride a ski area tramway and ski in the ski area.
24 A release that violates this subsection is void and may not be enforced.

25 (b) Notwithstanding (a) of this section, a ski area operator may

26 (1) require a special event coach, participant, helper, spectator, or rental
27 customer to sign an agreement releasing the ski area operator from liability in
28 exchange for the right to coach, participate, assist in, or observe the special event; or

29 (2) use a release agreement required by a third party as a condition of
30 operating a rental program or special event at the ski area.

31 (c) In this section, "special event" means an event, pass, race, program, rental

1 program, or service that offers competition or other benefits in addition to a ticket
2 representing the right to ride a ski area tramway and ski on the ski slopes or trails,
3 whether or not additional consideration is paid.

4 Sec. 05.45.200. DEFINITIONS. In this chapter,

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

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

9 (3) "inherent danger and risk of skiing" means a danger or condition
10 that is an integral part of the sport of skiing, including changing weather conditions;
11 snow conditions as they exist or may change, including ice, hard pack, powder, packed
12 powder, wind pack, corn, crust, slush, cut-up snow, and machine-made snow; surface
13 or subsurface conditions including bare spots, forest growth, rocks, stumps, streams,
14 streambeds, and trees, or other natural objects, and collisions with natural objects;
15 impact with lift towers, signs, posts, fences or enclosures, hydrants, water pipes, other
16 man-made structures, and their components; variations in steepness or terrain, whether
17 natural or as a result of slope design, snowmaking or grooming operations, including
18 roads and catwalks or other terrain modifications; collision with other skiers; and the
19 failure of skiers to ski within their own abilities; the term "inherent danger and risk of
20 skiing" does not include the negligence of a ski area operator under AS 05.45.020, or
21 acts or omissions of a ski area operator involving the use or operation of ski lifts;

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

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

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

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

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

- 1 (A) skiing;
- 2 (B) sliding downhill on snow or ice on skis, a toboggan, a sled,
- 3 a tube, a ski-bob, a snowboard, or another skiing or sliding device; or
- 4 (C) using any of the facilities of a ski area, including ski slopes
- 5 and trails;
- 6 (9) "ski slopes or trails" means those areas designated by a ski area
- 7 operator to be used by a skier;
- 8 (10) "tramway" means a device that is a passenger tramway, aerial or
- 9 surface lift, ski lift, or rope tow regulated under AS 05.20.
- 10 Sec. 05.45.210. SHORT TITLE. This chapter may be cited as the Alaska Ski
- 11 Safety Act of 1994.
- 12 * Sec. 3. AS 09.65.135 and AS 18.60.822 are repealed.
- 13 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

CS FOR SENATE BILL NO. 44(JUD) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Amended: 2/9/94
Offered: 4/18/93

Sponsor(s): SENATOR KELLY

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

13 (3) skiing is an active sport conducted in the outdoor alpine environment; this
14 environment consists of several elements, including terrain, weather, snow conditions, and

1 amenities created and maintained by the ski area operator;

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

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

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

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

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

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

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

31 (11) under the proper weather conditions, ski area operators can and do make

1 a form of snow and can spread the snow on the surface of the terrain; however, it is not
2 possible nor is it desirable to groom all snow to a particular finish;

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

7 (13) falling is an ordinary, obvious, and necessary component of the sport; all
8 skiers, even expert skiers, fall on all kinds of terrain; a particular fall is no indication of the
9 risks of a particular slope or set of conditions; the same factors that offer the excitement of
10 skiing contribute to its inherent risks; skiers may slide when they fall, and they may encounter
11 obstacles or other skiers; skiers can be injured while skiing due to the intrinsic risks of the
12 sport, whether natural or man-made.

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

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

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

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

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

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

25 CHAPTER 45. SKI LIABILITY, SAFETY, AND RESPONSIBILITY.

26 Sec. 05.45.010. LIMITATION ON ACTIONS ARISING FROM SKIING;
27 APPORTIONMENT OF FAULT. Notwithstanding any other provision of law, a
28 person may not bring an action against a ski area operator for an injury resulting from
29 an inherent danger and risk of skiing.

30 Sec. 05.45.020. VIOLATIONS THAT CONSTITUTE NEGLIGENCE. (a)

31 A person who violates a requirement of this chapter is negligent and civilly liable to

1 rolled into (a) of House

the extent the violation causes injury to a person or damage to property.]

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

6 see House for comparative negligence

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

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

10 (b) A passenger may not

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

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

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

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

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

23 (6) embark upon a tramway marked as closed;

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

28 Sec. 05.45.040. REQUIRED PLAN AND PATROL BY SKI AREA
29 OPERATORS. (a) A ski area operator shall prepare a plan of operation for each ski
30 season and shall implement the plan throughout the ski season. A plan of operation
31 must include provisions for ski patrol, avalanche control, avalanche rescue, grooming

1 procedures, tramway evacuation, hazard marking, missing person procedures, and first
2 aid. Before the operation of the ski area for that season, the plan shall be reviewed
3 and approved by the

4 (1) commissioner of natural resources; or

5 (2) agency of the United States that manages land on which the ski area
6 operates.

7 (b) A ski area operator shall provide a ski patrol with qualifications meeting
8 or exceeding the standards of the National Ski Patrol System, Inc. This subsection
9 does not apply to a ski area if the operator transports skiers using only a single
10 tramway consisting of a rope tow, the rope tow does not transport skiers more than
11 500 vertical feet, and the ski area is operated by a nonprofit corporation or a
12 municipality. In this subsection, "nonprofit corporation" means a corporation that
13 qualifies for exemption from taxation under 26 U.S.C. 501(c)(3) or (4) (Internal
14 Revenue Code).

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

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

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

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

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

30 (B) instructions for procedures in emergencies;

31 (3) in a conspicuous place at each loading area of two-car and multicar

1 tramways stating the maximum capacity in pounds of the car and the maximum
2 number of passengers allowed;

3 (4) at all chair lifts stating the following:

4 (A) "Prepare to Unload," which shall be located not less than
5 50 feet ahead of the unloading area;

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

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

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

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

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

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

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

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

21 (C) "Prepare to Unload," which shall be located not less than
22 50 feet ahead of each unloading area;

23 (6) near the boarding area of all J-bars, T-bars, platter pulls, rope tows,
24 and any other surface lift, advising passengers to check to be certain that clothing,
25 scarves, and hair will not become entangled with the lift;

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

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

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

1 of this section.

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

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

10 (b) A ski area operator shall post a sign recognizable to skiers proceeding to
11 the uphill loading point of each base area lift that depicts and explains signs and
12 symbols that the skier may encounter at the ski area. The sign must include the
13 following:

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

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

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

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

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

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

30 WARNING: This lift services (most difficult)
31 or (most difficult and more difficult) or

1 (more difficult) slopes only.

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

6 (e) A ski area operator shall

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

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

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

18 (4) mark hydrants, water pipes, roads, catwalks, terrain modifications, ^{under}
19 and all other man-made structures on slopes and trails that are not readily visible to ⁱⁿ (6)
20 skiers under conditions of ordinary visibility from a distance of at least 100 feet and ^{house}
21 adequately and appropriately cover man-made structures that create obstructions with
22 a shock absorbent material that will lessen injuries; any type of marker is sufficient,
23 including wooden poles, flags, or signs, if the marker is visible from a distance of 100
24 feet and if the marker itself does not constitute a serious hazard to skiers; in this
25 paragraph, "man-made structures" does not include natural variations in steepness or
26 terrain;

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

31 (6) post and maintain signs that contain the warning notice specified

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

9 (f) A ski lift ticket sold or made available for sale to skiers by a ski area
10 operator must contain in clearly readable print the warning notice specified in (g) of
11 this section.

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

14 WARNING

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

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

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

1 top of that ski slope or trail.

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

4 (1) one lighted head lamp;

5 (2) one lighted red tail lamp;

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

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

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

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

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

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

27 not deleted ~~and~~ \Rightarrow [(c) This section may not be construed to create an affirmative duty on the part
28 covered of the ski area operator to protect skiers from their own or from another skier's
29 w/ (b) carelessness or recklessness.]

30 or have Sec. 05.45.100. DUTIES AND RESPONSIBILITIES OF SKIERS. (a) A
31 skier is responsible for knowing the range of the skier's own ability to negotiate a ski

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

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

9 (c) A skier may not

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

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

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

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

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

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

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

30 (f) Before beginning to ski from a stationary position or before entering a ski
31 slope or trail from the side, a skier has the duty to avoid moving skiers already on the

1 ski slope or trail.

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

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

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

18 Sec. 05.45.200. DEFINITIONS. In this chapter,

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

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

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

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

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

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

1 country ski trail;

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

5 (8) "sk'er" means an individual using a downhill ski area for the
6 purpose of

7 (A) skiing;

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

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

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

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

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

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

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

CS FOR SENATE BILL NO. 44(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 1/27/93
Referred: Judiciary

Sponsor(s): SENATOR KELLY

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

13 (3) skiing is an active sport conducted in the outdoor alpine environment; this
14 environment consists of several elements, including terrain, weather, snow conditions, and

1 amenities created and maintained by the ski area operator;

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

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

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

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

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

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

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

31 (11) under the proper weather conditions, ski area operators can and do make

1 a form of snow and can spread the snow on the surface of the terrain; however, it is not
2 possible nor is it desirable to groom all snow to a particular finish;

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

7 (13) falling is an ordinary, obvious, and necessary component of the sport; all
8 skiers, even expert skiers, fall on all kinds of terrain; a particular fall is no indication of the
9 risks of a particular slope or set of conditions; the same factors that offer the excitement of
10 skiing contribute to its inherent risks: skiers may slide when they fall, and they may encounter
11 obstacles or other skiers; skiers can be injured while skiing due to the intrinsic risks of the
12 sport, whether natural or man-made.

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

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

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

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

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

25 CHAPTER 45. SKI LIABILITY, SAFETY, AND RESPONSIBILITY.

26 Sec. 05.45.010. LIMITATION ON ACTIONS ARISING FROM SKIING;
27 APPORTIONMENT OF FAULT. Notwithstanding any other provision of law

28 (1) a person may not bring an action against a ski area operator for an
29 injury resulting from an inherent danger and risk of skiing;

30 (2) if a person is injured as a result of an inherent danger and risk of
31 skiing and negligence by the ski area operator, in determining percentages of fault the

1 [rier of fact may not treat the inherent danger and risk of skiing, to the extent it
2 contributed to the injury, as part of the fault attributed to the ski area operator.

3 Sec. 05.45.020. VIOLATIONS THAT CONSTITUTE NEGLIGENCE. (a)

4 A person who violates a requirement of this chapter is negligent and civilly liable to
5 the extent the violation causes injury to a person or damage to property.

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

10 Sec. 05.45.030. DUTIES OF PASSENGERS. (a) A passenger may not board

11 a tramway if the passenger does not have

12 (1) sufficient physical dexterity or ability; and

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

14 (b) A passenger may not

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

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

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

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

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

27 (6) embark upon a tramway marked as closed;

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

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

7 (1) commissioner of public safety; or

8 (2) agency of the United States or the state that manages land on which
9 the ski area operates.

10 (b) A ski area operator shall provide a ski patrol with qualifications meeting
11 or exceeding the standards of the National Ski Patrol System, Inc.

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

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

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

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

24 (B) instructions for procedures in emergencies;

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

28 (4) at all chair lifts stating the following:

29 (A) "Prepare to Unload," which shall be located not less than
30 50 feet ahead of the unloading area;

31 (B) "Keep Ski Tips Up," which shall be located ahead of any

1 point where the skis may come in contact with a platform or the snow surface;

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

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

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

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

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

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

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

15 (C) "Prepare to Unload," which shall be located not less than
16 50 feet ahead of each unloading area;

17 (6) near the boarding area of all J-bars, T-bars, platter pulls, rope tows,
18 and any other surface lift, advising passengers to check to be certain that clothing,
19 scarves, and hair will not become entangled with the lift;

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

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

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

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

30 Sec. 05.45.060. REQUIRED SIGNS FOR TRAILS AND SLOPES; DUTIES
31 OF OPERATORS. (a) A ski area operator shall maintain a sign and marking system

1 as required in this section in addition to that required by AS 05.45.050. All signs
2 required by this section shall be maintained so as to be readable and recognizable
3 under conditions of ordinary visibility.

4 (b) A ski area operator shall post a sign recognizable to skiers proceeding to
5 the uphill loading point of each base area lift that depicts and explains signs and
6 symbols that the skier may encounter at the ski area. The sign must include the
7 following:

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

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

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

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

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

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

24 WARNING: This lift services (most difficult)
25 or (most difficult and more difficult) or
26 (more difficult) slopes only.

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

31 (e) A ski area operator shall

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

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

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

12 (4) mark hydrants, water pipes, and all other man-made structures on
13 slopes and trails that are not readily visible to skiers under conditions of ordinary
14 visibility from a distance of at least 100 feet and adequately and appropriately cover
15 man-made structures that create obstructions with a shock absorbent material that will
16 lessen injuries; any type of marker is sufficient, including wooden poles, flags, or
17 signs, if the marker is visible from a distance of 100 feet and if the marker itself does
18 not constitute a serious hazard to skiers; in this paragraph, "man-made structures" does
19 not include variations in steepness or terrain, whether natural or as a result of slope
20 design, snow making, grooming operations, roads and catwalks, or other terrain
21 modifications;

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

26 (6) mark roads, catwalks, or other terrain modifications that are not
27 readily visible to skiers under conditions of ordinary visibility from a distance of at
28 least 100 feet;

29 (7) post and maintain signs that contain the warning notice specified
30 in (g) of this section; the notice shall be placed in a clearly visible location at the ski
31 area where lift tickets and ski school lessons are sold and in a position to be

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1 recognizable as a sign to skiers proceeding to the uphill loading point of each base
2 area lift; the signs may not be smaller than three feet by three feet and must be white
3 with black and red letters as specified in this paragraph; the word "WARNING" must
4 appear on the sign in red letters; the warning notice specified in this paragraph must
5 appear on the sign in black letters with each letter to be a minimum of one inch in
6 height.

7 (f) A ski lift ticket sold or made available for sale to skiers by a ski area
8 operator must contain in clearly readable print the warning notice specified in (g) of
9 this section.

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

12 WARNING

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

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

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

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

31 (1) one lighted head lamp;

- 1 (2) one lighted red tail lamp;
- 2 (3) a brake system maintained in operable condition; and
- 3 (4) a fluorescent flag at least 40 square inches mounted at least six feet
- 4 above the bottom of the tracks.

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

9 Sec. 05.45.090. REVOCATION OF SKIING PRIVILEGES. A ski area
10 operator, upon finding a person skiing in a careless and reckless manner, may revoke
11 that person's skiing privileges. This section may not be construed to create an
12 affirmative duty on the part of the ski area operator to protect skiers from their own
13 or from another skier's carelessness or recklessness.

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

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

27 (c) A skier may not

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

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

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

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

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

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

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

16 (f) Before beginning to ski from a stationary position or before entering a ski
17 slope or trail from the side, a skier has the duty to avoid moving skiers already on the
18 ski slope or trail.

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

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

30 Sec. 05.45.200. DEFINITIONS. In this chapter.

31 (1) "base area lift" means a tramway that skiers ordinarily use without

1 first using some other tramway;

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

4 (3) "inherent danger and risk of skiing" means a danger or condition
5 that is an integral part of the sport of skiing, including changing weather conditions;
6 snow conditions as they exist or may change, including ice, hard pack, powder, packed
7 powder, wind pack, corn, crust, slush, cut-up snow, and machine-made snow; surface
8 or subsurface conditions including bare spots, forest growth, rocks, stumps, streambeds,
9 and trees, or other natural objects, and collisions with natural objects; impact with lift
10 towers, signs, posts, fences or enclosures, hydrants, water pipes, other man-made
11 structures, and their components; variations in steepness or terrain, whether natural or
12 as a result of slope design, snowmaking or grooming operations, including roads and
13 catwalks or other terrain modifications; collision with other skiers; and the failure of
14 skiers to ski within their own abilities; the term "inherent danger and risk of skiing"
15 does not include the negligence of a ski area operator under AS 05.45.020(b), or acts
16 or omissions of a ski area operator involving the use or operation of ski lifts;

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

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

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

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

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

27 (A) skiing;

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

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

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

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

5 Sec. 05.45.210. SHORT TITLE. This chapter may be cited as the Alaska Ski
6 Safety Act of 1993.

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

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

CS FOR HOUSE BILL NO. 41(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 2/10/93

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES PHILLIPS, Hudson, Porter, Toohey

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

13 (3) skiing is an active sport conducted in the outdoor alpine environment; this
14 environment consists of several elements, including terrain, weather, snow conditions, and

1 amenities created and maintained by the ski area operator;

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

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

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13 the frozen state of water as it exists and evolves on the ground; there are many different kinds
14 of snow precipitation; in addition, snow on the ground is constantly changing until it either
15 melts or sublimates; this metamorphism depends on many variable factors and produces snow
16 of substantially different texture and consistency, often in short periods of time; on any given
17 day, the snow conditions vary substantially from location to location and from time to time
18 during the day;

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

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

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

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

31 (11) under the proper weather conditions, ski area operators can and do make

1 a form of snow and can spread the snow on the surface of the terrain; however, it is not
2 possible nor is it desirable to groom all snow to a particular finish;

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

7 (13) falling is an ordinary, obvious, and necessary component of the sport; all
8 skiers, even expert skiers, fall on all kinds of terrain; a particular fall is no indication of the
9 risks of a particular slope or set of conditions; the same factors that offer the excitement of
10 skiing contribute to its inherent risks; skiers may slide when they fall, and they may encounter
11 obstacles or other skiers; skiers can be injured while skiing due to the intrinsic risks of the
12 sport, whether natural or man-made.

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

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

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20 operators may be liable for loss, damage, injury, or death, and to define those risks that the
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30 (2) if a person is injured as a result of an inherent danger and risk of
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1 trier of fact may not treat the inherent danger and risk of skiing, to the extent it
2 contributed to the injury, as part of the fault attributed to the ski area operator.

3 Sec. 05.45.020. VIOLATIONS THAT CONSTITUTE NEGLIGENCE. (a)

4 A person who violates a requirement of this chapter is negligent and civilly liable to
5 the extent the violation causes injury to a person or damage to property.

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

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

12 (1) sufficient physical dexterity or ability; and

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

14 (b) A passenger may not

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

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

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

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

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

27 (6) embark upon a tramway marked as closed;

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