

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8365 SENATE LABOR & COMMERCE

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, missing person procedures, and first
6 aid. Before the operation of the ski area for that season, the plan shall be reviewed
7 and approved by the commissioner of public safety.

8 (b) A ski area operator shall provide a ski patrol with qualifications meeting
9 or exceeding the standards of the National Ski Patrol System, Inc. *(*) This does not*
10 *apply to a non-profit corporation that operates a single rope tow*
11 Sec. 05.45.050. REQUIRED SIGNS FOR TRAMWAYS; DUTIES OF

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

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

20 (2) in the interior of each two-car and multicar tramway showing
21 (A) the maximum capacity in pounds of the car and the
22 maximum number of passengers allowed;

23 (B) instructions for procedures in emergencies;

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

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

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

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

1 designated for unloading;

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

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

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

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

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

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

13 (C) "Prepare to Unload," which shall be located not less than
14 50 feet ahead of each unloading area;

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

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

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

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

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

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

1 under conditions of ordinary visibility.

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

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

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

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

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

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

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

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

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

29 (e) A ski area operator shall

30 (1) place a sign at or near the beginning of each trail or slope, which
31 must contain the appropriate symbol of the relative degree of difficulty of that

1 particular trail or slope as described in (b) of this section; this paragraph does not
2 apply to a slope or trail designated "easiest" that to a skier is substantially visible in
3 its entirety under conditions of ordinary visibility before beginning to ski the slope or
4 trail;

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

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

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

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

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

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

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

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

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

10 WARNING

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

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

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

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

- 29 (1) one lighted head lamp;
30 (2) one lighted red tail lamp;
31 (3) a brake system maintained in operable condition; and

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

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

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

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

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

5 (c) A skier may not

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

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

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

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

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

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

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

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

28 (g) A skier involved in a collision with another skier or person that results in
29 an injury may not leave the vicinity of the collision before giving the skier's name and
30 current address to an employee of the ski area operator or a member of the voluntary
31 ski patrol, except for the purpose of securing aid for a person injured in the collision.

1 A person who leaves the scene of a collision to obtain aid shall give the person's name
2 and current address as required by this subsection after obtaining aid.

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

8 Sec. 05.45.200. DEFINITIONS. In this chapter,

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

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

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

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

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

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

31 (7) "ski area operator" means a person having operational responsibility

- 1 for a downhill ski area, and includes an agency of the state or a political subdivision
2 of the state;
- 3 (8) "skier" means an individual using a downhill ski area for the
4 purpose of
- 5 (A) skiing;
- 6 (B) sliding downhill on snow or ice on skis, a toboggan, a sled,
7 a tube, a ski-bob, a snowboard, or another skiing device; or
- 8 (C) using any of the facilities of a ski area, including ski slopes
9 and trails;
- 10 (9) "ski slopes or trails" means those areas designated by a ski area
11 operator to be used by a skier;
- 12 (10) "tramway" means a device that is a passenger tramway, aerial or
13 surface lift, ski lift, or rope tow regulated under AS 05.20.
- 14 Sec. 05.45.210. SHORT TITLE. This chapter may be cited as the Alaska Ski
15 Safety Act of 1993.
- 16 * Sec. 3. AS 09.65.135 and AS 18.60.822 are repealed.
- 17 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

8-LS0340J
Ford
3/25/93

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

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

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

See
Amend.
#13

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

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;

See
Amend.
#14

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

See
Amend. #14
(continued)

1 trier of fact may not treat the imminent 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.

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

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

(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;

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

- 1 (A) the maximum capacity in pounds of the car and the
2 maximum number of passengers allowed;
- 3 (B) instructions for procedures in emergencies;
- 4 (3) in a conspicuous place at each loading area of two-car and multicar
5 tramways stating the maximum capacity in pounds of the car and the maximum
6 number of passengers allowed;
- 7 (4) at all chair lifts stating the following:
- 8 (A) "Prepare to Unload," which shall be located not less than
9 50 feet ahead of the unloading area;
- 10 (B) "Keep Ski Tips Up," which shall be located ahead of any
11 point where the skis may come in contact with a platform or the snow surface;
- 12 (C) "Unload Here," which shall be located at the point
13 designated for unloading;
- 14 (D) "Safety Gate," which shall be located where applicable;
- 15 (E) "Remove Pole Straps from Wrists," which shall be located
16 prominently at each loading area;
- 17 (F) "Check for Loose Clothing and Equipment," which shall be
18 located before the "Prepare to Unload" sign;
- 19 (5) at all J-bars, T-bars, platter pulls, rope tows, and any other surface
20 lift, stating the following:
- 21 (A) "Remove Pole Straps from Wrists," which shall be placed
22 at or near the loading area;
- 23 (B) "Stay in Tracks," "Unload Here," and "Safety Gate," which
24 shall be located where applicable;
- 25 (C) "Prepare to Unload," which shall be located not less than
26 50 feet ahead of each unloading area;
- 27 (6) near the boarding area of all J-bars, T-bars, platter pulls, rope tows,
28 and any other surface lift, advising passengers to check to be certain that clothing,
29 scarves, and hair will not become entangled with the lift;
- 30 (7) at or near the boarding area of all lifts, stating the skier's duty set
31 out in AS 05.45.100(c)(2).

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

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

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

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

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

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

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

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

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

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

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

3 WARNING: This lift services (most difficult)
4 or (most difficult and more difficult) or
5 (more difficult) slopes only.

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

10 (e) A ski area operator shall

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

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

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

22 (4) mark hydrants, ^{roads, cables, & other terrain modifications} water pipes, and all other man-made structures on
23 slopes and trails that are not readily visible to skiers under conditions of ordinary
24 visibility from a distance of at least 100 feet and adequately and appropriately cover
25 man-made structures that create obstructions with a shock absorbent material that will
26 lessen injuries; any type of marker is sufficient, including wooden poles, flags, or
27 signs, if the marker is visible from a distance of 100 feet and if the marker itself does
28 not constitute a serious hazard to skiers; in this paragraph, "man-made structures" does
29 not include variations in steepness or terrain; ~~whether natural or as a result of slope~~
30 ~~design, snow making, grooming operations, roads and catwalks, or other terrain~~
31 modifications;

See
Amend.
#16

material

See Amend. #17a, 17b

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

(7) 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 specified in (g) of this section.

(g) The signs described in (e)(7) 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.

See Amend. #18

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

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

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

10 (1) one lighted head lamp;

11 (2) one lighted red tail lamp;

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

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

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

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

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

31 (b) A ski area operator, upon finding a person skiing in a careless and reckless

1 manner, may revoke that person's skiing privileges.

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

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

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

18 (c) A skier may not

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

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

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

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

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

31 (d) A skier shall stay clear of snow grooming equipment, vehicles, lift towers,

See
Amend.
#19

1 signs, and other equipment on the ski slopes and trails.

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

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

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

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

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

26 Sec. 05.45.200. DEFINITIONS. In this chapter,

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

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

31 (3) "inherent danger and risk of skiing" means a danger or condition

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(continued)

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

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

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

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

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

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

23 (A) skiing;

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

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

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

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

- 1 Sec. 05.45.210. SHORT TITLE. This chapter may be cited as the Alaska Ski
- 2 Safety Act of 1993.
- 3 * Sec. 3. AS 09.65.135 and AS 18.60.822 are repealed.
- 4 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

Josh's Copy

SENATE BILL NO. 44

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR KELLY

Introduced: 1/11/93
Referred: L&C, JUD

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, snow of infinite variety, 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 an infinite range 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 participants could not ski without~~
22 ~~them~~, and the facilities are obvious and 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 (all) - 2 do} the conditions under
25 which skiing takes place;
26 (9) ski area operators have a ~~very~~ limited ability to alter terrain features; it is
27 not reasonable to expect operators to turn wild, natural, alpine terrain into ~~croquet lawns~~; there
28 will always be rocks, trees, stumps, tree roots, bushes, branches, undergrowth, and other
29 natural alpine features within a property operated by a ski area;
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

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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 every inch of snow to a smooth, even finish;

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

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

10 (14) falling is an ordinary, obvious, and necessary component of the sport; all
11 skiers, even expert skiers, fall on all kinds of terrain; a particular fall is no indication of the
12 risks of a particular slope or set of conditions; the same factors that offer the excitement of
13 skiing contribute to its inherent risks; skiers may slide when they fall, and they may encounter
14 obstacles or other skiers; skiers can be injured while skiing due to the intrinsic risks of the
15 sport, whether natural or man-made; ~~most injuries are minor, but some injuries impair lifestyle
16 and a very few are fatal; these injuries are ordinary, though unfortunate, consequences of the
17 skier's choice to take part in the sport.~~ ✓

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

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

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

24 (3) define those areas of responsibility and affirmative acts for which ski area
25 operators may be liable for loss, damage, injury, or death, and to define those risks that the
26 skier expressly assumes ^{expressly assumes as an inherent risk of skiing} ~~(and for which there can be no recovery);~~ *Peace*

27 ~~(4) exclude a comparative negligence or comparative fault analysis from the
28 ski context where an injury is the result of an inherent risk of skiing; and~~ *does not apply*

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29 ~~(5) create the necessary conditions to permit ski area operators to continue to
30 offer facilities to Alaskans and nonresidents for the sport of skiing.~~ ✓ *Peace*

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

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

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

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

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

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

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

12 Sec. 05.45.030. DUTIES OF PASSENGERS. (a) A passenger may not board
13 a tramway if the passenger ⁽¹⁾ does not have sufficient physical dexterity, ability, and ⁽¹⁾
14 knowledge to negotiate or use the facility safely or until the passenger has asked for
15 and received information sufficient to enable the passenger to use the equipment
16 safely.

17 (b) A passenger may not

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

22 (2) ^{(intentionally) Pearce} throw or expel an object from a tramway while riding on the
23 tramway, except as permitted by the operator;

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

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

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

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

31 (7) disobey instructions posted in accordance with this chapter or oral

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1.) delineate what is in plan? ^{Universe of what must be in plan of operation}
2.) have inspector w/ regulate process delineate appropriate plan

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 ^{an adequate} a plan of operation for each ski season. ^{& implement that plan throughout the season.} Before the operation of the ski area for that season, the plan shall be reviewed and approved by the

- (1) commissioner of public safety; 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. ^{ask for that}

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

(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;

- (2) in the interior of each two-car and multicar tramway showing
 - (A) the maximum capacity in pounds of the car and the maximum number of passengers allowed;
 - (B) instructions for procedures in emergencies;

(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;

- (4) at all chair lifts stating the following:
 - (A) "Prepare to Unload," which shall be located not less than 50 feet ahead of the unloading area;

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the limit is 50 feet.
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(B) "Keep Ski Tips Up," which shall be located ahead of any point where the skis may come in contact with a platform or the snow surface;

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

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

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

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

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

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

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

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

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

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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) 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 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.

(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 (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.

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(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;

(Pearce)

(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; this paragraph does not apply in a heavily wooded area or other nonskiable terrain;

real relative better term? (Pearce)

*delete
can we
define
**

(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 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

define

should be marked

1 height.

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

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

7 WARNING

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



*Pearce
thinks
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Maha found
agrees
ski patrols
have a B resp.
to control skiers
(Pearce)*

little strong

fathers (Pearce)

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

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

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

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

24 (c) A skier may not

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

27 (2) use a ski unless the ski is equipped with a strap or other device
28 capable of stopping the ski should the ski become unattached from the skier; this
29 subsection does not apply to cross-country skis;

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

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*Pearce
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skier
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*should
be
dropped*

*Pearce
ski op.
share civil
respons.*

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

*Ford
will
work
on*

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

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

(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.

*Presumption
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same all day*

*is
rebuttable*

(f) Before beginning to ski from a 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.

*must
be some
responsibility
on ski
patrol*

(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. ~~(X)~~

*violation - non criminal
misdemeanor*

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 danger or condition that is an integral part of the sport of skiing, including changing weather conditions;

*Pearce
needs
work*

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

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

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

14 (6) "ski area" means all ski slopes or trails and ^{alpine} other places under the
15 control of a ski area operator [and administered as a single enterprise;]

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

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

20 (A) skiing;

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

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

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

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

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

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

1

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

SB

44

(File 3)

Research/
Amendments

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January 15, 1993

John Heiser
Director, Mountain Operations
Seibu Alaska, Inc., dba Alyeska Resort
PO Box 249
Girdwood AK 99587

VIA FACSIMILE
783-2814

Re: Alaska Ski Safety Act of 1993

Dear John:

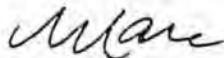
I have reviewed Mike Ford's comments on the proposed Alaska Ski Safety Act of 1993, in particular his comment that he is not certain the draft legislation changes the result in *Hiibschan*. I have not reviewed the entire draft, not having had time to do so, but I have redrafted the first two sections in Section 2 of the bill.

The redraft borrows heavily from the New Jersey inherent risk statute. The redraft clearly and unambiguously sets forth that there is no liability for a ski injury arising either from an inherent risk of skiing, or a violation of the passenger or skier duties set forth in the act, unless the ski area operator violated its duties and that violation contributed to the injury. In that case, the usual rules of comparative negligence and allocation of fault would apply.

I recommend that the two redrafted sections be substituted in the present legislative proposal. As we have discussed, there is an outside chance that the Alaska Supreme Court would declare this unconstitutional, but that is a chance we must take. I see no other way to achieve the desired result and take care of any "equal protection of the laws" concerns.

Very truly yours,

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



Marc D. Bond

Enc.

Redraft of the first two sections in Section 2 of the Alaska Ski Safety Act of 1993:

Sec. 05.45.010. LIMITATION ON ACTIONS ARISING FROM SKIING. A skier assumes the risk of injury arising from an inherent danger and risk of skiing, and may not bring an action against a ski area operator for an injury resulting from an inherent danger and risk of skiing.

Sec. 05.45.020. CIVIL ACTIONS. (a) A person who violates a requirement of this chapter is negligent and civilly liable to the extent the violation causes injury.

(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.

(c)(1) Notwithstanding the provisions of AS 09.17.080, the assumption of risk set forth in AS 05.45.010 shall be a complete bar of suit and shall serve as a complete defense to a suit against a ski area operator for injuries where an assumed risk is found to be a contributory factor in the resulting injury, unless the ski area operator has violated a requirement of this chapter or a regulation adopted by the Department of Labor under AS 05.20.070.

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

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

MUNICIPALITY OF ANCHORAGE

MEMORANDUM

DATE: February 9, 1993

TO: Connie R. Jones, Director, C. R. S.

FROM: *MD* Marianne H. Defendorf, Contract Manager, C. R. S.
343.4481

SUBJECT: HB41 & SB44 - Civil Liability for Skiing Accidents
"Alaska Ski Safety Act of 1993"

After reviewing the above two companion bills, I have identified several areas of inquiry. Overall, this appears to be an appropriate action intended to protect ski area operators and owners from civil liability due to the inherent risks of skiing. We have two facilities which would be impacted by this act, i.e. Russian Jack Park and Hilltop Ski Area.

The most obvious and immediate impact will be the need for increased signage. Additional costs of such signage would fiscally impact our department but only for the Russian Jack facility. Amount unknown. The costs at Hilltop Ski Area would be borne by Hilltop Youth Inc. and will run about \$200-300 per Steve Remme.

Several sections could use editing or clarification:
Page 2 Line 26: Delete beginning with "it is" and continuing on Line 27 through "croquet lawns"; this language is sarcastic and has no place in state law.

Page 5 Line 9: Required Plan of Operation - requires review and approval by either the Commissioner of Public Safety or agency of the U.S. that manages land on which the ski area operates. For Russian Jack and Hilltop, does this mean the MOA? or does the MOA and HYI submit their respective plans to the Commissioner of Public Safety? unclear here

Page 6 Line 27 after "of this section" add "and document findings."

Page 9 Line 26 change (c) to read " A [snowmobile] motorized vehicle operated on the ski slope or trails...."

Page 10 Sec. 05.45.090 REVOCATION OF SKIING PRIVILEGES - last sentence lines 8-10: "This section may not be construed to create an affirmative duty on the part of the ski area operator..." It

seems like an appropriate duty of a ski area operator to protect skiers from another skier's carelessness or recklessness, indeed is this not one of the responsibilities of the ski patrol?

Page 12, Line 15 - What does "administered as a single enterprise" mean? This possibly could be construed to mean a stand alone ski area, in which case, would Russian Jack be an exception since it also has a golf course, bike trails, meeting rooms, greenhouse, walking trails, etc.

Pages 11-12, DEFINITIONS: add definitions for 1.) Skiing a) downhill b) cross-country; and 2.) Trails

John McCleary indicated that he was also responding to these bills on behalf of Parks & Rec. with a view toward the impacts at Russian Jack. If you have any questions, please let me know.

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

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

NOTATION 2:

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

NOTATION 3:

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

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

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

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

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

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

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

NOTATION 10: "or while under"

NOTATION 11: "and administered as a single enterprise"

January 27, 1993

TO: Josh Fink
FR: Patti Rizer
RE: SB 44

Thank you for sending Bruce and me the committee tapes. We appreciate your listening to us and keeping us informed about this piece of legislation.

Since I last talked with you, I have read ALL the states' statutes for ski safety. No other state has a statute that gives so much to the industry and so little to the skier.

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

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

Insurance rates drop when an industry improves its safety standards. Why doesn't the industry approach lowering insurance rates by improving safety instead of limiting their liability? Money lobbying this bill could be spent to:

- put up new signs
- buy new equipment to keep up with Colorado and other resorts (for example, snow machines equipped to carry ski patrollers and their skis and head lamps with halogen bulbs)
- give safety workshops for patrollers, make available at reasonable fees instruction and education for skiers relative to the risks inherent in the sport and the duties prescribed for skiers, (This duty is built into New York's ski safety statute. See attached.)

Proponents of this bill cite increased tourism because of this bill. However, not one person has been able to give me a clear, logical way this bill can increase tourism.

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

When the bill comes to the floor, I hope it has been amended to be similar to most of the statutes in the United States, not ride on the coattails of another state whose ski resorts are far superior to ours in every way. The ski industry has money and power and is calling on other industries (for example, tourism and hotel) to help support this bill. But once again:

What's in it for Alaskans?

cc: Senators Rieger, Pearce, Lincoln, Salo

THE
FOLLOWING
DOCUMENTS
ARE
POOR
ORIGINAL
COPIES

Aspen, Deer Valley at top of price mountain

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

By John Meyer

Rocky Mountain News Staff Writer

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

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

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

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

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

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

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

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

Discount tickets are available at various locations, including major supermarkets, Gas Bars, Victoria's, Emerald Ski Rentals and Chisler Sports.

(*) The holiday price (Dec. 19-Jan. 2) for Aspen Skiing Co. mountains will be \$46.

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

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

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

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

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

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

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

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

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

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

BRUCE PATTI RIZER

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P. 02

10-21-92

constitute a waiver of any action for negligent provision of the service by the ski patrol personnel.

24-15-11. Liability of ski area operators.

Any ski area operator shall be liable for loss or damages caused by the failure to follow the duties set forth in Sections 24-15-7 and 24-15-8 NMSA 1978 where the violation of duty is causally related to the loss or damage suffered, and shall continue to be subject to liability in accordance with common-law principles of vicarious liability for the willful or negligent actions of its principals, agents or employees which cause injury to a passenger, skier or other person. The ski area operator shall not be liable to any passenger or skier acting in violation of his duties as set forth in Sections 24-15-9 and 24-15-10 NMSA 1978 where the violation of duty is causally related to the loss or damage suffered.

24-15-12. Liability of passengers.

Any passenger shall be liable for loss or damages resulting from violations of the duties set forth in Section 24-15-9 NMSA 1978, and shall not be able to recover from the ski area operator for any losses or damages where the violation of duty is causally related to the loss or damage suffered.

24-15-13. Liability of skiers.

Any skier shall be liable for loss or damages resulting from violations of the duties set forth in Section 24-15-10 NMSA 1978, and shall not be able to recover from the ski area operator for any losses or damages where the violation of duty is causally related to the loss or damage suffered.

24-15-14. Limitation of actions; notice of claim.

A. Unless a ski area operator is in violation of the Ski Safety Act [this article], with respect to the skiing area and ski lifts, and the violation is a proximate cause of the injury complained of, no action shall lie against such ski area operator by any skier or passenger or any representative of a skier or passenger. This prohibition shall not prevent the bringing of an action against a ski area operator for damages arising from injuries caused by negligent operation, maintenance or repair of the ski lift.

B. No suit or action shall be maintained against any ski area operator for injuries incurred as a result of the use of a ski lift or ski area unless the same is commenced within three years of the time of the occurrence of the injuries complained of.

NEW YORK

**MCKINNEY'S CONSOLIDATED LAWS OF NEW
YORK ANNOTATED
COPR. (c) WEST 1991, 1992 No Claim to Orig. Govt.
Works**

**GENERAL OBLIGATIONS LAW
CHAPTER 24-A OF THE CONSOLIDATED LAWS
ARTICLE 18--SAFETY IN SKIING CODE**

§ 18-101. Legislative purpose

The legislature hereby finds that alpine or downhill skiing is both a major recreational sport and a major industry within the state of New York. The legislature further finds: (1) that downhill skiing, like many other sports, contains inherent risks including, but not limited to, the risks of personal injury or death or property damage, which may be caused by variations in terrain or weather conditions; surface or subsurface snow, ice, bare spots or areas of thin cover, moguls, ruts, bumps; other persons using the facilities; and rocks, forest growth, debris, branches, trees, roots, stumps or other natural objects or man-made objects that are incidental to the provision or maintenance of a ski facility in New York state; (2) that downhill skiing, without established rules of conduct and care, may result in injuries to persons and property; (3) that it is appropriate, as well as in the public interest, to take such steps as are necessary to help reduce the risk of injury to downhill skiers from undue, unnecessary and unreasonable hazards; and (4) that it is also necessary and appropriate that skiers become apprised of, and understand, the risks inherent in the sport of skiing so that they may make an informed decision of whether or not to participate in skiing notwithstanding the risks. Therefore, the purpose and intent of this article is to establish a code of conduct for downhill skiers and ski area operators to minimize the risk of injury to persons engaged in the sport of downhill skiing and to promote safety in the downhill ski industry.

§ 18-102. Definitions

The following words and phrases when used in this article shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

1. "Lift ticket" means any item issued by a ski area operator to any skier that is intended to be affixed to the outerwear of the skier, or otherwise displayed by a skier, to signify lawful entry upon and use of the passenger tramways or ski slopes or trails maintained by the ski area operator.

2. "Passenger tramway" means a mechanical device intended to transport skiers for the purpose of providing

access to ski slopes and trails as defined by the commissioner of labor pursuant to section two hundred two-c or eight hundred sixty-seven of the labor law.

3. "Passenger" means a person in or on or being transported by a tramway.

4. "Ski area" means all ski slopes, ski trails and passenger tramways administered as a single enterprise within this state.

5. "Ski area operator" means a person, firm or corporation, and its agents and employees, having operational and administrative responsibility for any ski area, including any agency of the state, any political subdivision thereof, and any other governmental agency or instrumentality.

6. "Skier" means any person wearing a ski or skis and any person actually on a ski slope or trail located at a ski area, for the purpose of skiing.

7. "Ski slopes and trails" mean those areas designated by the ski area operator for skiing.

§ 18-103. Duties of ski area operators

Every ski area operator shall have the following duties:

1. To equip all trail maintenance vehicles with such warning implements or devices as shall be specified by the commissioner of labor pursuant to section eight hundred sixty-seven of the labor law. Such implements or devices shall be present and operating whenever the vehicle is within the borders of any slope or trail.

2. To post in a location likely to be seen by all skiers signs of such size and color as will enable skiers to have knowledge of their responsibilities under this article.

3. To hold employee training sessions at least once before the beginning of each season, the contents of which shall be specified by the commissioner of labor upon the recommendation of the passenger tramway advisory council, as follows:

a. for operators of trail maintenance equipment concerning the safe operation of such vehicles in the ski area;

b. for passenger tramway attendants concerning the safe operation of passenger tramways;

c. for ski personnel charged with the responsibility of evacuating passengers from passenger tramways concerning proper evacuation techniques; and

d. for all other personnel charged with on-mountain maintenance, inspection or patrol duties as to methods to be used for summoning aid in emergencies.

4. To conspicuously mark with such implements as may be specified by the commissioner of labor pursuant to section eight hundred sixty-seven of the labor law, the location of such man-made obstructions as, but not limited to, snow-making equipment, electrical outlets, timing

equipment, stanchions, pipes, or storage areas that are within the borders of the designated slope or trail, when the top of such obstruction is less than six feet above snow level.

5. To maintain in a central location at the ski area an information board or boards showing at a minimum the following:

a. the location of tramways, slopes or trails;

b. the status of each trail--open or closed;

c. the location of emergency communications or medical equipment and sites designated by the ski area operator for receipt of notice from skiers pursuant to subdivision thirteen of this section;

d. the relative degree of difficulty of each slope or trail (at a minimum easier, more difficult, most difficult); and

e. the general surface condition of each slope and trail as most recently recorded in the log required to be maintained by subdivision six of this section.

6. To inspect each open slope or trail that is open to the public within the ski area at least twice a day, and enter the results of such inspection in a log which shall be available for examination by the commissioner of labor. The log shall note:

a. the general surface conditions on such trail at the time of inspection (powder, packed powder, frozen granular, icy patches or icy surface, bare spots or other surface conditions);

b. the time of inspection and the name of the inspector;

c. the existence of any obstacles or hazards other than those which may arise from:

(i) skier use;

(ii) weather variations including freezing and thawing;

or

(iii) mechanical failure of snow grooming or emergency equipment which may position such equipment within the borders of a slope or trail.

7. To develop and maintain a written policy consistent with the regulations of the commissioner of labor upon the advice of the passenger tramway advisory council for situations involving the reckless conduct of skiers, which shall include, but not be limited to:

a. a definition of reckless conduct; and

b. procedures for approaching and warning skiers of reckless conduct and procedures for dealing with such skiers which may include the revocation of the lift tickets of such skiers.

8. To designate personnel to implement the ski area's policy on reckless conduct.

9. To report to the commissioner of labor by telephone within twenty-four hours any fatality or injury resulting in a fatality at the ski area.

10. To conspicuously post and maintain such ski area signage, including appropriate signage at the top of affected

ski slopes and trails, notice of maintenance activities and for passenger tramways as shall be specified by the commissioner of labor pursuant to section two hundred two-c or eight hundred sixty-seven of the labor law.

11. To post in a conspicuous location at each lift line a sign, which shall indicate the degree of difficulty of trails served by that lift with signs as shall be specified by the commissioner of labor pursuant to section two hundred two-c or eight hundred sixty-seven of the labor law.

12. To ensure that lift towers located within the boundaries of any ski slope or trail are padded or otherwise protected and that no protruding metal or wood objects, such as ladders or steps, shall be installed on the uphill or side portion of lift towers within the borders of a ski slope or trail, unless such objects are below the snow line, at least six feet above it, or padded or otherwise protected with such devices as, but not limited to, the following:

- a. commercially available tower padding;
- b. air or foam filled bags;
- c. hay bales encased in a waterproof cover; or
- d. soft rope nets properly spaced from the tower.

13. To, within a reasonable amount of time after the inspection required by subdivision six of this section, conspicuously mark with such implements as may be specified by the commissioner of labor pursuant to section eight hundred sixty-seven of the labor law and to provide sufficient warning to skiers by such marking or remove such obstacles or hazards which are located within the boundaries of any ski slope or trail and were noted pursuant to paragraph c of subdivision six of this section; and to also conspicuously mark with such implements and provide such warning or remove such obstacles or hazards within a reasonable amount of time after receipt of notice by the ski area operator from any skier as to the presence of such obstacles or hazards when notice is given at sites designated by the ski area operator for such receipt and the locations of which are made known to skiers pursuant to paragraph c of subdivision five of this section.

14. To have present at all times when skiing activity is in progress, individuals properly and appropriately trained for the safe operation of on-slope vehicles; trail maintenance equipment; tramways; tramway evacuations; implementation of the reckless skier policy; first aid and outdoor rescue; and, to have present according to a schedule posted for access by skiers, by the ski area operator, personnel appropriately trained in the instruction of skiers and passengers in methods of risk reduction while using ski slopes and passenger tramways and the instruction of skiers with respect to the risks inherent in the sport.

§ 18-104. Duties of passengers

All passengers shall have the following duties:

1. To familiarize themselves with the safe use of any tramway prior to its use;
2. To remain in the tramway if the operation of a passenger tramway, as defined pursuant to section two hundred two-c of the labor law, is interrupted for any reason, until instructions or aid are provided by the ski area operator;
3. To board or disembark from passenger tramways only at points or areas designated by the ski area operator;
4. Not to eject any objects or material from a passenger tramway;
5. To use restraint devices in accordance with posted instructions;
6. To wear retention straps or other devices to prevent runaway skis;
7. Not to interfere with the operation of a passenger tramway;
8. Not to place or caused to be placed on the uphill track of a surface lift any object which may interfere with its normal operation; and
9. Not to wear loose scarves, clothing or accessories or expose long hair which may become entangled with any part of the device.

§ 18-105. Duties of skiers

All skiers shall have the following duties:

1. Not to ski in any area not designated for skiing;
2. Not to ski beyond their limits or ability to overcome variations in slope, trail configuration and surface or subsurface conditions which may be caused or altered by weather, slope or trail maintenance work by the ski area operator, or skier use;
3. To abide by the directions of the ski area operator;
4. To remain in constant control of speed and course at all times while skiing so as to avoid contact with plainly visible or clearly marked obstacles and with other skiers and passengers on surface operating tramways;
5. To familiarize themselves with posted information before skiing any slope or trail, including all information posted pursuant to subdivision five of section 18-103 of this article;
6. Not to cross the uphill track of any surface lift, except at points clearly designated by the ski area operator;
7. Not to ski on a slope or trail or portion thereof that has been designated as "closed" by the ski area operator;
8. Not to leave the scene of any accident resulting in personal injury to another party until such times as the ski area operator arrives, except for the purpose of summoning aid;

9. Not to overtake another skier in such a manner as to cause contact with the skier being overtaken and to yield the right-of-way to the skier being overtaken;

10. Not to willfully stop on any slope or trail where such stopping is likely to cause a collision with other skiers or vehicles;

11. To yield to other skiers when entering a trail or starting downhill;

12. To wear retention straps or other devices to prevent runaway skis;

13. To report any personal injury to the ski area operator before leaving the ski area; and

14. Not to willfully remove, deface, alter or otherwise damage signage, warning devices or implements, or other safety devices placed and maintained by the ski area operator pursuant to the requirements of section 18-103 of this article.

§ 18-106. Duties of skiers and ski area operators with respect to inherent risks

It is recognized that skiing is a voluntary activity that may be hazardous regardless of all feasible safety measures that can be undertaken by ski area operators. Accordingly:

1. Ski area operators shall have the following additional duties:

a. To post at every point of sale or distribution of lift tickets, whether on or off the premises of the ski area operator, a conspicuous "Warning to Skiers" relative to the inherent risks of skiing in accordance with regulations promulgated by the commissioner of labor pursuant to subdivision four of section eight hundred sixty-seven of the labor law, and to imprint upon all lift tickets sold or distributed, such text and graphics as the commissioner of labor shall similarly specify, which shall conspicuously direct the attention of all skiers to the required "Warning to Skiers";

b. To post at every point of sale or distribution of lift tickets at a ski area notice to skiers and passengers that this article prescribes certain duties for skiers, passengers and ski area operators, and to make copies of this article in its entirety available without charge upon request to skiers and passengers in a central location at the ski area;

c. To make available at reasonable fees, as required by subdivision thirteen of section 18-103 of this article, instruction and education for skiers relative to the risks inherent in the sport and the duties prescribed for skiers by this article, and to conspicuously post notice of the times and places of availability of such instruction and education in locations where it is likely to be seen by skiers; and

d. To post notice to skiers of the right to a refund to the purchaser in the form and amount paid in the initial sale of any lift ticket returned to the ski area operator, intact and

unused, upon declaration by such purchaser that he or she is unprepared or unwilling to ski due to the risks inherent in the sport or the duties imposed upon him or her by this article.

2. Skiers shall have the following additional duties to enable them to make informed decisions as to the advisability of their participation in the sport:

a. To seek out, read, review and understand, in advance of skiing, a "Warning to Skiers" as shall be defined pursuant to subdivision five of section eight hundred sixty-seven of the labor law, which shall be displayed and provided pursuant to paragraph a of subdivision one of this section; and

b. To obtain such education in the sport of skiing as the individual skier shall deem appropriate to his or her level of ability, including the familiarization with skills and duties necessary to reduce the risk of injury in such sport.

§ 18-107. Construction

Unless otherwise specifically provided in this article, the duties of skiers, passengers, and ski area operators shall be governed by common law.

§ 18-108. 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 this article that can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

NORTH CAROLINA

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GENERAL STATUTES OF NORTH CAROLINA CHAPTER 99C. ACTIONS RELATING TO SKIER SAFETY AND SKIING ACCIDENTS.

§ 99C-1. Definitions.

When used in this Chapter, unless the context otherwise requires:

(1) "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.

(2) "Passenger" means any person who is being transported or is awaiting transportation, or being conveyed

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

[Handwritten initials]

DATE: 1/11/93

FURTHER: JUDICIARY

Date of 5-Day Notice: 1/14/93
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 1/20/93

L&C Committee considered SENATE BILL NO. 44

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

and recommends:

replace with _____ CS SB 44 ~~44~~ (L&C)

- same title
- new title
- technical title change (HB only)

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
COURT SYSTEM	1/26/93	X	
DCED	1/15/93	X	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

OTHER RECOMMENDATIONS:

Aug Pearce - No Rec
Alvin King - No Rec
J. S. Salo - No Rec
[Signature] - NR

Tim Kelly - Do Pass

Chair: Signature and Recommendation

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 44(L&C)

Page 11, after line 29:

Insert a new section to read:

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

Per Sen. Adams

^{or}
Commissioner of the

The Department of Natural Resources, or his or her designee, shall have authority to enforce this provision on state land.

Allegster will support
some deal w/ Forest Service now

Amendment #1 to SB 44

by Senator Kelly

Page 5, line 9, after "United States" insert:

"or State of Alaska"

Amendment #2 to SB 44

by Senator Kelly

Page 8, line 24, insert:

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

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

renumber accordingly

Amendment #3 to SB 44

by Senator Kelly

Page 12, line 14, insert after "'ski area" means all':

"alpine"

Amendment # 4 ✓ By Rieger
Page 4, Line 4, after "skiing." insert:

In apportioning comparative fault if there
is negligence by a ski operator, the
court shall treat the inherent risk ~~of skiing~~
of skiing, to the extent that it contributed
to the damage, as part of the fault of
the skier. ()

found
w/over

Page 3, Lines 27 - 28 : delete

modify

add language to say
if only "inherent risk"
& no negligence, then

Amendment #5

By Rieger

Page 2, lines 26 - 29 : delete

Amendment #6

By Rieyer

Page 3, line 9

after "shiny;" delete "it is

impractical to expect the operator to

eliminate or mitigate these hazards."

in concept
work w/
Rieyer

Amendment #7

By Rieyer

Page 4, line 13

after "if" insert "(1)"

after "and" insert "(2)"

✓

Page 3. Lines ~~with~~ 3-5

Replace with:

ski area operators have a limited ability to alter terrain features; in addition, some terrain features may ~~be~~ offer some hazard to the skier but ~~at the same time~~ offers additional challenge or enjoyment for skiers; there will always be ^{natural and artificial hazards in the} ~~rather than, instead, or otherwise~~ sport of skiing, and the skier must accept these hazards as part of the risks of the sport;

Page 2, Line 26-27: delete all wording through the word "...lawns;"



Alaska State Legislature
LEGISLATIVE RESEARCH AGENCY
130 Seward Street, Suite 218, Juneau, Alaska 99801-2196
907-465-3991 Fax: 907-463-3351

TO: Rep. Cynthia Toohey DATE: 1/20/93
FROM: Chris Cheff *cmc*
 Legislative Analyst
RE: Ski Liability Laws

Here are copies of the current laws regarding skiing liability and safety in the states of Utah, Washington and Wyoming.

Please let me know if you would like additional information.

:cmc
attachments

**UTAH CODE
ANNOTATED**

1953

**VOLUME 9
1992 REPLACEMENT**

Title 78

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the solar easement extends over the real property subject to the solar easement, or any other description which defines the three dimensional space, or the place and times of day in which an obstruction to direct sunlight is prohibited or limited;

(c) any terms or conditions under which the solar easement is granted or may be terminated;

(d) any provisions for compensation of the owner of the real property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement, or compensation of the owner of the real property subject to the solar easement, or compensation of the owner of the real property subject to the solar easement for maintaining the solar easement; and

(e) any other provisions necessary or desirable to execute the instrument.

(3) A solar easement may be enforced by injunction or proceedings in injunction or other civil action.

History: L. 1979, ch. 82, § 2.

CHAPTER 14

LIMITATION OF LANDOWNER LIABILITY—PUBLIC RECREATION

<p>Section 57-14-1. Legislative purpose. 57-14-2. Definitions. 57-14-3. Owner owes no duty of care or to give warning — Exceptions. 57-14-4. Owner's permitting another to use land without charge — Effect. 57-14-5. Land leased to state or political sub-</p>	<p>Section 57-14-6. Liability not limited where willful or malicious conduct involved or admission fee charged. 57-14-7. Person using land of another not relieved from duty to exercise care.</p>
--	--

57-14-1. Legislative purpose.

The purpose of this act is to encourage public and private owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for those purposes.

History: L. 1979, ch. 129, § 1; 1987, ch. 162, § 43.

Amendment Notes. — The 1987 amendment inserted "public and private" following "is to encourage."

Meaning of "this act." — Laws 1979, ch. 129 enacted this chapter.

NOTES TO DECISIONS

Owners not allowing public use.

Landowners who have not made their property available to at least some members of the

general public for recreational purposes may not invoke the protection of this chapter. *Crawford v. Tilley*, 780 P.2d 1248 (Utah 1989).

COLLATERAL REFERENCES

Utah Law Review. — Utah Legislative Survey — 1979, 1980 Utah L. Rev. 155.

Outdoor Sports and Torts: An Analysis of Utah's Recreational Use Act, 1988 Utah L. Rev. 47.

A.L.R. — Effect of statute limiting landowner's liability for personal injury to recreational user, 47 A.L.R.4th 262.

Strict liability of landlord for injury or death of tenant or third person caused by defect in premises leased for residential use, 48 A.L.R.4th 638.

Parking facility proprietor's liability for criminal attack on patron, 49 A.L.R.4th 1257.

Tennis club's liability for tennis player's injuries, 52 A.L.R.4th 1253.

Liability to one struck by golf ball, 53 A.L.R.4th 282.

Tree or limb falls onto adjoining private property: personal injury and property damage liability, 54 A.L.R.4th 530.

Baseball player's right to recover for baseball-related personal injuries from nonplayer, 55 A.L.R.4th 664.

57-14-2. Definitions.

As used in this act:

(1) "Land" means any land within the territorial limits of the state of Utah and includes roads, water, water courses, private ways and buildings, structures, and machinery or equipment when attached to the realty.

(2) "Owner" includes the possessor of any interest in the land, whether public or private land, a tenant, a lessee, and an occupant or person in control of the premises.

(3) "Recreational purpose" includes, but is not limited to, any of the following or any combination thereof: hunting, fishing, swimming, skiing, snowshoeing, camping, picnicking, hiking, studying nature, waterskiing, engaging in water sports, using boats, using off-highway vehicles or recreational vehicles, and viewing or enjoying historical, archaeological, scenic, or scientific sites.

(4) "Charge" means the admission price or fee asked in return for permission to enter or go upon the land.

(5) "Person" includes any person, regardless of age, maturity, or experience, who enters upon or uses land for recreational purposes.

History: L. 1979, ch. 129, § 2; 1987, ch. 162, § 44.

Amendment Notes. — The 1987 amendment, in Subsection (2), inserted "whether public or private land"; in Subsection (3), inserted

"using off-highway vehicles" following "using boats"; and made minor changes in punctuation throughout the section.

Meaning of "this act." — See note under same catchline following § 57-14-1.

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57-14-3. Owner owes no duty of care or to give warning — Exceptions.

Except as specifically provided in Subsections (1) and (2) of Section 57-14-6, an owner of land owes no duty of care to keep the premises safe for entry or use by any person using the premises for any recreational purpose, or to give any warning of a dangerous condition, use, structure, or activity on those premises to those persons.

History: L. 1979, ch. 129, § 3.

NOTES TO DECISIONS

ANALYSIS

Federal government.
Cited.

Federal government.

This section applies to immunize the federal government from liability for injuries sustained by a plaintiff engaged in recreational use of federal property unless the plaintiff can come within one of the exceptions provided in § 57-14-6. *Ewell ex rel. Ewell v. United States*, 579 F. Supp. 1291 (D. Utah 1984).

When sued under the Federal Torts Claim Act (FTCA), immunities created by state law

that are available to private persons will immunize the federal government, because it is liable only so far as a private individual would be under like circumstances. Thus, whether or not this section is applicable to land publicly controlled, the immunity afforded by it to private landowners was applicable to the United States when it was sued under the FTCA arising out of a motorcycle accident on federal land. *Ewell v. United States*, 776 F.2d 246 (10th Cir. 1985).

Cited in *Crawford v. Tilley*, 780 P.2d 1248 (Utah 1989).

57-14-4. Owner's permitting another to use land without charge — Effect.

Except as specifically provided in Subsection (1) of Section 57-14-6, an owner of land who either directly or indirectly invites or permits without charge any person to use the land for any recreational purpose does not thereby:

- (1) make any representation or extend any assurance that the premises are safe for any purpose;
- (2) confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed;
- (3) assume responsibility for or incur liability for any injury to persons or property caused by an act or omission of the person or any other person who enters upon the land; or
- (4) owe any duty to curtail his use of his land during its use for recreational purposes.

History: L. 1979, ch. 129, § 4.

recreational purposes may
section of this chapter. *Craw-*
0 P.2d 1248 (Utah 1989).

y proprietor's liability for
patron, 49 A.L.R.4th 1257.
bility for tennis player's in-
th 1253.
e struck by golf ball, 53

alls onto adjoining private
injury and property damage
4th 530.
s right to recover for base-
al injuries from nonplayer,

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nature, waterskiing,
hway vehicles or rec-
l, archaeological, sce-

ed in return for per-

e, maturity, or expe-
nal purposes.

ehicles" following "using
nor changes in punctua-
section.
act." — See note under
ving § 57-14-1.

NOTES TO DECISIONS

Cited in Crawford v. Tilley, 780 P.2d 1248
(Utah 1989).

57-14-5. Land leased to state or political subdivision for recreational purposes.

Unless otherwise agreed in writing, the provisions of Sections 57-14-3 and 57-14-4 of this act are applicable to the duties and liability of an owner of land leased to the state or any subdivision thereof for recreational purposes.

History: L. 1979, ch. 129, § 5.

57-14-6. Liability not limited where willful or malicious conduct involved or admission fee charged.

- (1) Nothing in this act shall limit any liability which otherwise exists for:
- (a) willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity;
 - (b) deliberate, willful, or malicious injury to persons or property; or
 - (c) an injury suffered where the owner of land charges a person to enter or go on the land or use the land for any recreational purpose, except that where land is leased to the state or a subdivision of the state, any consideration received by the owner for the lease is not a charge within the meaning of this section.

(2) Any person who hunts upon a posted hunting unit, as authorized by Title 23, Chapter 23, is not considered to have paid a fee within the meaning of this section.

History: L. 1979, ch. 129, § 6; 1988, ch. 158, § 15.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, designated the previously undesignated introductory paragraph as the introductory paragraph in Subsection (1), divided the provisions of former Subsection (1) and designated them as present Subsections (1)(a) and (1)(b), redesignated for-

mer Subsection (2) as Subsection (1)(c), and redesignated former Subsection (3) as Subsection (2); substituted "Title 23, Chapter 23" for "§ 23-17-3 of the Wildlife Resources Code" and substituted "fee" for "charge" in Subsection (2); and made minor stylistic changes throughout.

Meaning of "this act." — See note under same catchline following § 57-14-1.

NOTES TO DECISIONS

Willful or malicious acts.

—Federal government.

There was no evidence that would support an inference of willful or malicious acts or omissions on the part of the United States, arising

out of a motorcycle accident occurring at a gravel pit on federal land, no federal employee being aware of the operation of the pit. *Ewell v. United States*, 776 F.2d 246 (10th Cir. 1985).

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57-14-7. Person using land of another not relieved from duty to exercise care.

Nothing in this act shall be construed to relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this act to exercise care in his use of the land and in his activities thereon, or from the legal consequences of failure to employ such care.

History: L. 1979, ch. 129, § 7.
 Meaning of "this act." — See note under same catchline following § 57-14-1.

**CHAPTER 15
 ASSUMPTION OF INDEBTEDNESS ON
 RESIDENTIAL REAL PROPERTY**

Section 57-15-1.	Legislative findings.	Section 57-15-8.	Procedure for assumption — Request to lender — Effect of failure to request — Approval or refusal by lender — Information furnished by lender.
57-15-2.	Provision for acceleration or increased interest on assumption unenforceable — Exception.	57-15-8.5.	Acceleration — Conditions authorizing — Exemption of loans sold to federal agencies.
57-15-3.	Substantial impairment of lender's prospect of prompt and full payment.	57-15-9.	Liability for damages caused by violation.
57-14-4.	Charge assessed by secured party for assumption — Limitation.	57-15-10.	Severability of provisions.
57-15-5.	Property subject to chapter.	57-15-11.	Limitation on enforcement of due-on-sale clauses.
57-15-6.	Exempt lenders.		
57-15-7.	Calling entire balance on impairment of security.		

57-15-1. Legislative findings.

The Legislature finds that clauses in instruments representing security interests in residential real property which allow a secured party to accelerate or mature an indebtedness secured by property, or increase the interest thereon, upon the sale or transfer of the property or upon assumption of the indebtedness, in certain circumstances, constitute unreasonable restraints on alienation to the detriment of the public welfare.

History: C. 1953, 57-15-1, enacted by L. 1981, ch. 224, § 1.

NOTES TO DECISIONS

Constitutionality. This chapter does not unconstitutionally impair contracts, violate equal protection, or deny due process of law. *Utah League of Insured Sav. Ass'ns v. Utah*, 555 F. Sup. 664 (D. Utah 1983).

UTAH CODE
ANNOTATED

1992 Cumulative Supplement

REPLACEMENT VOLUME 6A

1990 EDITION

Place in Pocket of Corresponding Bound Volume.

Including legislation through the 1992 General
Session and annotations through 822 P.2d 1291.
See Preface in Volume 1A Supplement.

Edited by
The Publisher's Editorial Staff

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may be imposed under this chapter, subject to the provisions of Section 61-2-12.

History: L. 1973, ch. 158, § 14; 1987, ch. 161, § 191; 1991, ch. 165, § 4.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, rewrote the introductory paragraph of Subsection (1)(a);

added Subsections (1)(a)(vi) through (1)(a)(ix); deleted "if set forth in statutory language" following "fact" in Subsection (1)(b); and rewrote Subsections (2) and (3).

CHAPTER 14

LIMITATION OF LANDOWNER LIABILITY — PUBLIC RECREATION

57-14-1. Legislative purpose.

NOTES TO DECISIONS

ANALYSIS

Applicability.
Defense to negligence.
 Owners not allowing public use.

Applicability.
 Immunity was not intended by the legislature to extend to a road on a county road system, maintained by a county, which can be used for recreational or nonrecreational purposes. *Jerz v. Salt Lake County*, 822 P.2d 770 (Utah 1991).

Defense to negligence.

This chapter provides an "affirmative defense" or an "avoidance" in a wrongful death action alleging negligence; to preserve the defense, it must be raised in the defendant's answer. *Golding v. Ashley Cent. Irrigation Co.*, 793 P.2d 897 (Utah 1990).

Owners not allowing public use.

In accord with bound volume. See *Golding v. Ashley Cent. Irrigation Co.*, 793 P.2d 897 (Utah 1990).

57-14-2. Definitions.

NOTES TO DECISIONS

Cited in *Jerz v. Salt Lake County*, 822 P.2d 770 (Utah 1991).

57-14-3. Owner owes no duty of care or to give warning — Exceptions.

NOTES TO DECISIONS

Cited in *Jerz v. Salt Lake County*, 822 P.2d 770 (Utah 1991).

57-14-6. Liability not limited where willful or malicious conduct involved or admission fee charged.

NOTES TO DECISIONS

Willful or malicious acts.

The term "willful or malicious" in this section incorporates the elements of knowledge of the dangerous condition and of the fact that

serious injury is a probable result, and inaction in the face of such knowledge. *Golding v. Ashley Cent. Irrigation Co.*, 793 P.2d 897 (Utah 1990).

CHAPTER 15

ASSUMPTION OF INDEBTEDNESS ON RESIDENTIAL REAL PROPERTY

57-15-1. Legislative findings.

COLLATERAL REFERENCES

A.L.R. — Validity and construction of provision of mortgage or other real-estate financing

contract prohibiting prepayment for a fixed period of time, 81 A.L.R.4th 423.

CHAPTER 17

RESIDENTIAL RENTERS' DEPOSITS

57-17-1. Return or explanation of retainage upon termination of tenancy.

COLLATERAL REFERENCES

Brigham Young Law Review. — Necessity or Overkill? Regulating Residential Landlord-Tenant Relations through the Utah Consumer Sales Practices Act, 1990 B.Y.U.L. Rev. 1063.

A.L.R. — What constitutes abandonment of residential or commercial lease — modern cases, 84 A.L.R.4th 183.

CHAPTER 19

TIMESHARE AND CAMP RESORT PROJECTS

<p>Section 57-19-5. Registration — Filing application. 57-19-6. Effective date of application. 57-19-8. Filing proposed documents. 57-19-9. Duration of registration — Amendment and renewal —</p>	<p>Section</p>
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<p>Section 57-19-11. Disclosure required. 57-19-14. Registration of salesperson. 57-19-15. Application for registration of salesperson.</p>	<p>Supplemental disclosure — Notice of amendment. Disclosure required. Registration of salesperson. Application for registration of salesperson.</p>
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78-27-51. Inherent risks of skiing — Public policy.

The Legislature finds that the sport of skiing is practiced by a large number of residents of Utah and attracts a large number of nonresidents, significantly contributing to the economy of this state. It further finds that few insurance carriers are willing to provide liability insurance protection to ski area operators and that the premiums charged by those carriers have risen sharply in recent years due to confusion as to whether a skier assumes the 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 risks inherent in that sport, to establish as a matter of law that certain 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 operator for injuries resulting from those inherent risks.

History: L. 1979, ch. 166, § 1.

Meaning of "this act." — The term "this act" in the last sentence means Laws 1979, Chapter 166, which appears as §§ 78-27-51 to 78-27-54.

Cross-References. — Hazards inherent in mountaineering, skiing and hiking and hazards of area served by passenger tramways assumed by skier or sportsman, § 63-11-37.

COLLATERAL REFERENCES

Utah Law Review. — Utah's Inherent Risks of Skiing Act: Avalanche from Capitol Hill, 1980 Utah L. Rev. 355.

From Wright to Sunday and Beyond: Is the Law Keeping Up With the Skiers?, 1985 Utah L. Rev. 885.

Am. Jur. 2d. — 4 Am. Jur. 2d Amusements and Exhibitions § 81 et seq.

C.J.S. — 86 C.J.S. Theaters & Shows § 39 et seq.

A.L.R. — Liability for injury or death from ski lift, ski tow, or similar device, 95 A.L.R.3d 203.

Ski resort's liability for skier's injuries resulting from condition of ski run or slope, 55 A.L.R.4th 632.

Key Numbers. — Theaters and Shows ⇐ 6.

78-27-52. Inherent risks of skiing — Definitions.

As used in this act:

(1) "Inherent risks of skiing" means those dangers or conditions which are an integral part of the sport of skiing, including, but not limited to: changing weather conditions, variations or steepness in terrain; snow or ice conditions; surface or subsurface conditions such as bare spots, forest growth, rocks, stumps, impact with lift towers and other structures and their components; collisions with other skiers; and a skier's failure to ski within his own ability.

(2) "Injury" means any personal injury or property damage or loss.

(3) "Skier" means any person present in a ski area for the purpose of engaging in the sport of skiing.

(4) "Ski area" means any area designated by a ski area operator to be used for skiing.

(5) "Ski area operator" means those persons, and their agents, officers, employees or representatives, who operate a ski area.

History: L. 1979, ch. 166, § 2.

Meaning of "this act." — See note following same catchline in notes to § 78-27-51.

NOTES TO DECISIONS

Public policy.

practiced by a large number of nonresidents, significantly fewer finds that few insurance protection to ski area operators have risen sharply in assumes the risks inherent therefore, to clarify the law in that sport, to establish in that sport, and to provide in that sport shall recover those inherent risks.

ferences. — Hazards inherent in ing, skiing and hiking and haz- served by passenger tramways as- er or sportsman, § 63-11-37.

C.J.S. Theaters & Shows § 39 et

liability for injury or death from W, or similar device, 95 A.L.R.3d

liability for skier's injuries re- ondition of ski run or slope, 55

rs. — Theaters and Shows ⇐ 6.

Definitions.

ngers or conditions which ding, but not limited to: oness in terrain; snow or uch as bare spots, forest and other structures and d a skier's failure to ski

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ski area operator to be

d their agents, officers, i area.

Inherent risk.

The term "inherent risk of skiing," using the ordinary and accepted meaning of the term "inherent," refers to those risks that are essential characteristics of skiing — risks that are so integrally related to skiing that the sport cannot be undertaken without confronting these

risks. *Clover v. Snowbird Ski Resort*, 808 P.2d 1037 (Utah 1991).

The determination of whether a risk is inherent is to be made on a case-by-case basis, using the entire statute, not solely the list provided in Subsection (1). *Clover v. Snowbird Ski Resort*, 808 P.2d 1037 (Utah 1991).

78-27-53. Inherent risks of skiing — Bar against claim or recovery from operator for injury from risks inherent in sport.

Notwithstanding anything in Sections 78-27-37 through 78-27-43 to the contrary, no skier may make any claim against, or recover from, any ski area operator for injury resulting from any of the inherent risks of skiing.

History: L. 1979, ch. 166, § 3; 1986, ch. 199, § 8.

NOTES TO DECISIONS

ANALYSIS

Assumption of risk.
Comparative fault.
Comparative legislation.
Duty to protect skiers.
Negligence.

—Design or maintenance or ski run.
—Supervision of employees.

Assumption of risk.

This statute is meant to achieve the same results achieved under the doctrine of primary assumption of risk. *Clover v. Snowbird Ski Resort*, 808 P.2d 1037 (Utah 1991).

Comparative fault.

Exempting suits concerning injuries caused by an inherent risk of skiing from the comparative fault statute is consistent with the assertion that the ski area operators are not at fault in such situations — that is, ski area operators have no duty to protect a skier from inherent risks of skiing. *Clover v. Snowbird Ski Resort*, 808 P.2d 1037 (Utah 1991).

Comparative legislation.

The protections ski area operators possess under § 63-11-37 are not more expansive than the protections they possess under this statute. *Clover v. Snowbird Ski Resort*, 808 P.2d 1037 (Utah 1991).

Duty to protect skiers.

Beyond the general warning prescribed by § 78-27-54 a ski area operator is under no duty to protect its patrons from the inherent risks of skiing. *Clover v. Snowbird Ski Resort*, 808 P.2d 1037 (Utah 1991).

A ski area operator is under no duty to make all of its runs as safe as possible by eliminating the type of dangers that skiers wish to confront as an integral part of skiing, such as powder, moguls, and steep grades. *Clover v. Snowbird Ski Resort*, 808 P.2d 1037 (Utah 1991).

Negligence.**—Design or maintenance or ski run.**

Evidence raised a genuine issue of material fact, precluding summary judgment, in regard to the allegedly negligent design and maintenance of a ski run that was alleged to create a hazard to skiers. *Clover v. Snowbird Ski Resort*, 808 P.2d 1037 (Utah 1991).

—Supervision of employees.

Evidence raised a genuine issue of material fact, precluding summary judgment, as to whether a ski area operator was negligent in not supervising its employees in regard to the practice of reckless skiing. *Clover v. Snowbird Ski Resort*, 808 P.2d 1037 (Utah 1991).

COLLATERAL REFERENCES

Utah Law Review. — Utah's Inherent Risks of Skiing Act: Avalanche from Capitol Hill, 1980 Utah L. Rev. 355.

78-27-54. Inherent risks of skiing — Trail boards listing inherent risks and limitations on liability.

Ski area operators shall post trail boards at one or more prominent locations within each ski area which shall include a list of the inherent risks of skiing, and the limitations on liability of ski area operators, as defined in this act.

History: L. 1979, ch. 166, § 4.

Meaning of "this act." — See note following same catchline in notes to § 78-27-51.

78-27-55. Repealed.

Repeals. — Section 78-27-55 (L. 1979, ch. 166, § 5), relating to notice requirements in case of injury arising from the inherent risks of skiing and the statute of limitations on such action, was repealed by Laws 1980, ch. 43, § 1.

78-27-56. Attorney's fees — Award where action or defense in bad faith — Exceptions.

(1) In civil actions, the court shall award reasonable attorney's fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith, except under Subsection (2).

(2) The court, in its discretion, may award no fees or limited fees against a party under Subsection (1), but only if the court:

(a) finds the party has filed an affidavit of impecuniosity in the action before the court; or

(b) the court enters in the record the reason for not awarding fees under the provisions of Subsection (1).

History: L. 1981, ch. 13, § 1; 1988, ch. 92, § 1.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, inserted the Subsection designation (1); deleted "where not otherwise provided by statute or agreement"

following "civil actions" in Subsection (1); substituted "shall" for "may" following "the court" in Subsection (1); added "except under Subsection (2)" at the end of Subsection (1) and added Subsection (2).

NOTES TO DECISIONS

ANALYSIS

Breach of covenant of good faith by insurer.
Discretion of court.
Essential elements.
Findings.
Frivolous appeal.
Hearing.
State of mind.

"Without merit" and "good faith."
Cited.

Breach of covenant of good faith by insurer.

Proof of a breach of the covenant of good faith and fair dealing by an insurer does not show the bad faith necessary for an award under this section. Canyon Country Store v. Bracey, 781 P.2d 414 (Utah 1989).

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of state of such other state to the effect that such officials have the authority to collect the taxes sought to be recovered by such action shall be conclusive proof of that authority. [1951 c 166 § 1. FORMER PART OF SECTION: 1951 c 166 § 2 now codified as RCW 4.24.141.]

Limitation of actions: Chapter 4.16 RCW.

4.24.141 Action by another state to enforce tax liability—"Taxes" defined. The term "taxes" as used in RCW 4.24.140 shall include:

(1) Any and all tax assessments lawfully made whether they be based upon a return or other disclosure of the taxpayer, upon information and belief of the taxing authority, or otherwise;

(2) Any and all penalties lawfully imposed pursuant to a tax statute;

(3) Interest charges lawfully added to the tax liability which constitutes the subject of the action. [1951 c 166 § 2. Formerly RCW 4.24.140, part.]

4.24.150 Action for fines or forfeitures. Fines and forfeitures may be recovered by an action at law in the name of the officer or person to whom they are by law given, or in the name of the officer or person who by law is authorized to prosecute for them. [Code 1881 § 657; 1869 p 153 § 597; RRS § 963.]

Limitation of actions: Chapter 4.16 RCW.

4.24.160 Action for penalty—Amount of recovery. When an action shall be commenced for a penalty, which by law is not to exceed a certain amount, the action may be commenced for that amount, and if judgment be given for the plaintiff, it may be for such amount or less, in the discretion of the court, in proportion to the offense. [Code 1881 § 658; 1869 p 153 § 598; RRS § 964.]

4.24.170 Judgment for penalty or forfeiture—Effect of collusion. A recovery of a judgment for a penalty or forfeiture by collusion between the plaintiff and defendant, with intent to save the defendant wholly or partially from the consequences contemplated by law, in case when the penalty or forfeiture is given wholly or partly to the person who prosecutes, shall not bar the recovery of the same by another person. [Code 1881 § 659; 1869 p 153 § 599; RRS § 965.]

4.24.180 Disposition of fines, fees, penalties and forfeitures—Venue. Fines and forfeitures not specially granted or otherwise appropriated by law, when recovered, shall be paid into the school fund of the proper county: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. Whenever, by the provisions of law, any property real or personal shall be forfeited to the state, or to any officer for its use, the action for the recovery of such property may be commenced in any county where the defendant may be found or where such property may be. [1987 c 202 § 115; 1969 ex.s. c 199 § 9; Code 1881 § 660; 1869 p 153 § 600; RRS § 966.]

Intent—1987 c 202: See note following RCW 2.04.190.

Disposition of fines, fees, costs, penalties and forfeitures: RCW 10.82.070.

4.24.190 Action against parent for willful injury to person or property by minor—Monetary limitation—Common law liability preserved. The parent or parents of any minor child under the age of eighteen years who is living with the parent or parents and who shall willfully or maliciously destroy property, real or personal or mixed, or who shall willfully and maliciously inflict personal injury on another person, shall be liable to the owner of such property or to the person injured in a civil action at law for damages in an amount not to exceed five thousand dollars. This section shall in no way limit the amount of recovery against the parent or parents for their own common law negligence. [1992 c 205 § 116; 1977 ex.s. c 145 § 1; 1967 ex.s. c 46 § 1; 1961 c 99 § 1.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

4.24.200 Liability of owners or others in possession of land and water areas for injuries to recreation users—Purpose. The purpose of RCW 4.24.200 and 4.24.210 is to encourage owners or others in lawful possession and control of land and water areas or channels to make them available to the public for recreational purposes by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon. [1969 ex.s. c 24 § 1; 1967 c 216 § 1.]

4.24.210 Liability of owners or others in possession of land and water areas for injuries to recreation users—Limitation. (1) Except as otherwise provided in subsection (3) of this section, any public or private landowners or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

(2) Except as otherwise provided in subsection (3) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an adminis-

trative fee of up to twenty-five dollars for the cutting, gathering, and removing of firewood from the land. Nothing in this section shall prevent the liability of such a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. Nothing in RCW 4.24.200 and 4.24.210 limits or expands in any way the doctrine of attractive nuisance. Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

(4) For purposes of this section, a license or permit issued for state-wide use under authority of chapter 43.51 RCW, Title 75, or Title 77 RCW is not a fee. [1992 c 52 § 1. Prior: 1991 c 69 § 1; 1991 c 50 § 1; 1980 c 111 § 1; 1979 c 53 § 1; 1972 ex.s. c 153 § 17; 1960 ex.s. c 24 § 2; 1967 c 216 § 2.]

Purpose—1972 ex.s. c 153: See RCW 67.31.080.

Off-road and nonhighway vehicles: Chapter 46.09 RCW.

Snowmobiles: Chapter 46.10 RCW.

4.24.220 Action for being detained on mercantile establishment premises for investigation—"Reasonable grounds" as defense. In any civil action brought by reason of any person having been detained on or in the immediate vicinity of the premises of a mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise, it shall be a defense of such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer or by the owner of the mercantile establishment, his authorized employee or agent, and that such peace officer, owner, employee or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit larceny or shoplifting on such premises of such merchandise. As used in this section, "reasonable grounds" shall include, but not be limited to, knowledge that a person has concealed possession of unpurchased merchandise of a mercantile establishment, and a "reasonable time" shall mean the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise. [1967 c 76 § 3.]

Theft and robbery: Chapter 9A.56 RCW.

4.24.230 Liability for conversion of goods or merchandise from store or mercantile establishment, leaving restaurant or hotel or motel without paying—Adults, minors—Parents, guardians. (1) An adult or emancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner or seller, and with the intention of converting such goods, wares, or merchandise to his own use without having paid the purchase price thereof shall be liable in addition to actual damages, for a penalty to the owner or seller in the amount of the retail value thereof not to exceed one thousand dollars, plus an additional penalty of not less than one hundred dollars nor more than

two hundred dollars, plus all reasonable attorney's fees and court costs expended by the owner or seller. A customer who orders a meal in a restaurant or other eating establishment, receives at least a portion thereof, and then leaves without paying, is subject to liability under this section. A person who shall receive any food, money, credit, lodging, or accommodation at any hotel, motel, boarding house, or lodging house, and then leaves without paying the proprietor, manager, or authorized employee thereof, is subject to liability under this section.

(2) The parent or legal guardian having the custody of an unemancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner or seller and with the intention of converting such goods, wares, or merchandise to his own use without having paid the purchase price thereof, shall be liable as a penalty to the owner or seller for the retail value of such goods, wares, or merchandise not to exceed five hundred dollars plus an additional penalty of not less than one hundred dollars nor more than two hundred dollars, plus all reasonable attorney's fees and court costs expended by the owner or seller. The parent or legal guardian having the custody of an unemancipated minor, who orders a meal in a restaurant or other eating establishment, receives at least a portion thereof, and then leaves without paying, is subject to liability under this section. The parent or legal guardian having the custody of an unemancipated minor, who receives any food, money, credit, lodging, or accommodation at any hotel, motel, boarding house, or lodging house, and then leaves without paying the proprietor, manager, or authorized employee thereof, is subject to liability under this section. For the purposes of this subsection, liability shall not be imposed upon any governmental entity, private agency, or foster parent assigned responsibility for the minor child pursuant to court order or action of the department of social and health services.

(3) Judgments, but not claims, arising under this section may be assigned.

(4) A conviction for violation of chapter 9A.56 RCW or *RCW 9.45.040 shall not be a condition precedent to maintenance of a civil action authorized by this section.

(5) An owner or seller demanding payment of a penalty under subsection (1) or (2) of this section shall give written notice to the person or persons from whom the penalty is sought. The notice shall state:

"IMPORTANT NOTICE: The payment of any penalty demanded of you does not prevent criminal prosecution under a related criminal provision."

This notice shall be boldly and conspicuously displayed, in at least the same size type as is used in the demand, and shall be sent with the demand for payment of a penalty described in subsection (1) of [or] (2) of this section. [1987 c 353 § 1; 1981 c 126 § 1; 1977 ex.s. c 134 § 1; 1975 1st ex.s. c 59 § 1.]

*Reviser's note: RCW 9.45.040 was repealed by 1987 c 456 § 32. *Obtaining food from restaurant without paying: RCW 19.48.110.*

4.24.235 Physicians—Immunity from liability regarding safety belts. A licensed physician shall not be liable for civil damages resulting directly or indirectly from

Thereafter, the funds shall not be used for such purposes until the money in the account satisfies the payment required to be made in the contract for sale of lands in RCW 43.51.270(2), the acquisition of the property described in RCW 43.51.270(3)(a), those amounts necessary to pay for the remaining trust assets of timber situated on the lands described in RCW 43.51.270(2), and for the acquisition of the property described in RCW 43.51.270(3) (b), (c), (d), and (e) and 43.51.270(4) on a schedule satisfactory to the board of natural resources. Payments may be delayed for property described in RCW 43.51.270(3) (b), (c), (d), and (e) until the existing contract for purchase of lands in RCW 43.51.270(2) has been paid off. Payments for the property in RCW 43.51.270(4) may be delayed until contracts for purchase of lands and timber described in RCW 43.51.270(2) and (3) have been paid off. Payments from the account for those parcels included in RCW 43.51.270(4) shall be established on a schedule which is mutually acceptable to the board of natural resources and the parks and recreation commission. [1991 sp.s. c 16 § 922; 1991 sp.s. c 13 § 4; 1987 c 466 § 2. Prior: 1985 c 16 § 2; 1985 c 57 § 34; 1981 c 271 § 2; 1980 c 4 § 2; 1971 ex.s. c 210 § 2.]

Reviser's note: This section was amended by 1991 sp.s. c 13 § 4 and by 1991 sp.s. c 16 § 922, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—1991 sp.s. c 16: See notes following RCW 9.46.100.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1985 c 57: See note following RCW 18.04.105.

43.51.285 Trust lands—Periodic review to identify parcels appropriate for transfer to commission. The parks and recreation commission and the department of natural resources may periodically conduct a joint review of trust lands managed by the department to identify those parcels which may be appropriate for transfer to the commission for public recreation purposes. [1987 c 466 § 3.]

43.51.290 Winter recreational facilities—Commission duties—Liability. In addition to its other powers, duties, and functions the state parks and recreation commission may:

(1) Plan, construct, and maintain suitable facilities for winter recreational activities on lands administered or acquired by the commission or as authorized on lands administered by other public agencies or private landowners by agreement;

(2) Provide and issue upon payment of the proper fee, with the assistance of such authorized agents as may be necessary for the convenience of the public, special permits to park in designated winter recreational area parking spaces;

(3) Administer the snow removal operations for all designated winter recreational area parking spaces; and

(4) Compile, publish, and distribute maps indicating such parking spaces, adjacent trails, and areas and facilities suitable for winter recreational activities.

The commission may contract with any public or private agency for the actual conduct of such duties, but shall remain responsible for the proper administration thereof. The commission is not liable for unintentional injuries to

users of lands administered for winter recreation purposes under this section or under RCW 46.10.210, whether the lands are administered by the commission, by other public agencies, or by private landowners through agreement with the commission. Nothing in this section prevents the liability of the commission for injuries sustained by a user by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. A road covered with snow and groomed for the purposes of winter recreation consistent with this chapter and chapter 46.10 RCW shall not be presumed to be a known dangerous artificial latent condition for the purposes of this chapter. [1990 c 136 § 2; 1990 c 49 § 2; 1982 c 11 § 1; 1975 1st ex.s. c 209 § 1.]

Reviser's note: This section was amended by 1990 c 49 § 2 and by 1990 c 136 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1975 1st ex.s. c 209: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 209 § 9.]

43.51.300 Winter recreational area parking permits—Fee—Expiration. The fee for the issuance of special winter recreational area parking permits shall be determined by the commission after consultation with the winter recreation advisory committee. If the person making application therefor is also the owner of a snowmobile registered pursuant to chapter 46.10 RCW, there shall be no fee for the issuance of an annual permit. All special winter recreational area parking permits shall commence and expire on the dates established by the commission. [1990 c 49 § 3; 1986 c 47 § 1; 1982 c 11 § 2; 1975 1st ex.s. c 209 § 2.]

Severability—1975 1st ex.s. c 209: See note following RCW 43.51.290.

43.51.310 Winter recreational program account—Deposit of parking permit fees—Winter recreation programs by public and private agencies. There is hereby created the winter recreational program account in the state treasury. Special winter recreational area parking permit fees collected under this chapter shall be remitted to the state treasurer to be deposited in the winter recreational program account and shall be appropriated only to the commission for nonsnowmobile winter recreation purposes including the administration, acquisition, development, operation, planning, and maintenance of winter recreation facilities and the development and implementation of winter recreation, safety, enforcement, and education programs. The commission may accept gifts, grants, donations, or moneys from any source for deposit in the winter recreational program account.

Any public agency in this state may develop and implement winter recreation programs. The commission may make grants to public agencies and contract with any public or private agency or person to develop and implement winter recreation programs. [1991 sp.s. c 13 § 6; 1985 c 57 § 35; 1982 c 11 § 3; 1975 1st ex.s. c 209 § 3.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1985 c 57: See note following RCW 18.04.105.

Severability—1975 1st ex.s. c 209: See note following RCW 43.51.290.

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the third arbitrator, the presiding judge of the Thurston county superior court, or his or her designee, shall appoint the third arbitrator.

(3) The arbitration shall be held pursuant to the procedures in chapter 7.04 RCW, except that RCW 7.04.220 shall not apply. The decision of the arbitrators is final and binding on the parties. Neither party may appeal a decision to any court.

(4) A party may petition the Thurston county superior court to enforce a decision of the arbitrators. [1983 c 123 § 23.]

70.87.210 Disposition of revenue. All moneys received or collected under the terms of this chapter shall be deposited in the general fund. [1963 c 26 § 21.]

70.87.900 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances, is not affected. [1983 c 123 § 24; 1963 c 26 § 22.]

Chapter 70.88

CONVEYANCES FOR PERSONS IN RECREATIONAL ACTIVITIES

Sections

70.88.010	Safe and adequate facilities and equipment required of owner and operator—Operator not common carrier.
70.88.020	Plans, specifications to be submitted to state parks and recreation commission—Approval—Penalty.
70.88.030	Orders directing repairs, improvements, changes, etc.—Notice—Forbidding operation.
70.88.040	Penalty for violation of chapter or rules, etc., of parks and recreation commission.
70.88.050	Inspector of recreational devices—Employees.
70.88.060	Powers and duties of inspector—Condemnation of equipment—Annual inspection.
70.88.070	Costs of inspection and plan review—Lien—Disposition of funds.
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70.88.090	Rules and codes.
70.88.100	Judicial review.

70.88.010 Safe and adequate facilities and equipment required of owner and operator—Operator not common carrier. Every owner or operator of any recreational device designed and operated for the conveyance of persons which aids in promoting entertainment, pleasure, play, relaxation, or instruction, specifically including devices generally associated with winter sports activities such as ski lifts, ski tows, j-bars, t-bars, ski mobiles, chair lifts, and similar devices and equipment, shall construct, furnish, maintain, and provide safe and adequate facilities and equipment with which safely and properly to receive and transport all persons offered to and received by the owner or operator of such devices, and to promote the safety of such owner's or operator's patrons, employees and the public. The owner or operator of the devices and equipment covered by this section shall be deemed not to be a common carrier. [1965 ex.s. c 85 § 1; 1961 c 253 § 1; 1959 c 327 § 1.]

70.88.020 Plans, specifications to be submitted to state parks and recreation commission—Approval—Penalty. It shall be unlawful after June 10, 1959, to construct or install any such recreational device as set forth in RCW 70.88.010 without first submitting plans and specifications for such device to the state parks and recreation commission and receiving the approval of the commission for such construction or installation. Violation of this section shall be a misdemeanor. [1959 c 327 § 2.]

70.88.030 Orders directing repairs, improvements, changes, etc.—Notice—Forbidding operation. The state parks and recreation commission shall have the authority and the responsibility for the inspection of the devices set forth in RCW 70.88.010 and in addition shall have the following powers and duties:

(1) Whenever the commission, after hearing called upon its own motion or upon complaint, finds that additional apparatus, equipment, facilities or devices for use or in connection with the transportation or conveyance of persons upon the devices set forth in RCW 70.88.010, ought reasonably to be provided, or any repairs or improvements to, or changes in, any theretofore in use ought reasonably to be made, or any additions or changes in construction should reasonably be made thereto, in order to promote the security and safety of the public or employees, it may make and serve an order directing such repairs, improvements, changes, or additions to be made.

(2) If the commission finds that the equipment, or appliances in connection therewith, or the apparatus, or other structures of the recreational device set forth in RCW 70.88.010 are defective, and that the operation thereof is dangerous to the employees of the owner or operator of such device or to the public, it shall immediately give notice to the owner or operator of such device of the repairs or reconstruction necessary to place the same in a safe condition, and may prescribe the time within which they shall be made. If, in its opinion, it is needful or proper, the commission may forbid the operation of the device until it is repaired and placed in a safe condition. [1959 c 327 § 3.]

70.88.040 Penalty for violation of chapter or rules, etc., of parks and recreation commission. Any violation of this chapter or the rules, regulations and codes of the state parks and recreation commission relating to public safety in the construction, operation and maintenance of the recreational devices provided for in this chapter shall be a misdemeanor. [1965 ex.s. c 85 § 2; 1959 c 327 § 4.]

70.88.050 Inspector of recreational devices—Employees. The state parks and recreation commission shall employ or retain a person qualified in engineering experience and training who shall be designated as the inspector of recreational devices, and may employ such additional employees as are necessary to properly administer this chapter. The inspector and such additional employees may be hired on a temporary basis or borrowed from other state departments, or the commission may contract with individuals or firms for such inspecting service on an independent basis. The commission shall prescribe the salary or other remuneration for such service. [1959 c 327 § 5.]

70.88.060 Powers and duties of inspector—Condemnation of equipment—Annual inspection. The inspector of recreational devices and his assistants shall inspect all equipment and appliances connected with the recreational devices set forth in RCW 70.88.010 and make such reports of his inspection to the commission as may be required. He shall, on discovering any defective equipment, or appliances connected therewith, rendering the use of the equipment dangerous, immediately report the same to the owner or operator of the device on which it is found, and in addition report it to the commission. If in the opinion of the inspector the continued operation of the defective equipment constitutes an immediate danger to the safety of the persons operating or being conveyed by such equipment, the inspector may condemn such equipment and shall immediately notify the commission of his action in this respect: PROVIDED, That inspection required by this chapter must be conducted at least once each year. [1959 c 327 § 6.]

70.88.070 Costs of inspection and plan review—Lien—Disposition of funds. The expenses incurred in connection with making inspections under this chapter shall be paid by the owner or operator of such recreational devices either by reimbursing the commission for the costs incurred or by paying directly such individuals or firms that may be engaged by the commission to accomplish the inspection service. Payment shall be made only upon notification by the commission of the amount due. The commission shall maintain accurate and complete records of the costs incurred for each inspection and plan review for construction approval and shall assess the respective owners or operators of said recreational devices only for the actual costs incurred by the commission for such safety inspections and plan review for construction approval. The costs as assessed by the commission shall be a lien on the equipment of the owner or operator of the recreational devices so inspected. Such moneys collected by the commission hereunder shall be paid into the parks and parkways account of the general fund. [1990 c 136 § 1; 1975 1st ex.s. c 74 § 1; 1961 c 253 § 2; 1959 c 327 § 7.]

Parks and parkways account abolished: RCW 43.79.405.

70.88.080 State immunity from liability—Actions deemed exercise of police power. Inspections, rules, and orders of the state parks and recreation commission resulting from the exercise of the provisions of this chapter and chapter 70.117 RCW shall not in any manner be deemed to impose liability upon the state for any injury or damage resulting from the operation or signing of the facilities regulated by this chapter, and all actions of the state parks and recreation commission and its personnel shall be deemed to be an exercise of the police power of the state. [1991 c 75 § 2; 1990 c 136 § 3; 1959 c 327 § 8.]

70.88.090 Rules and codes. The state parks and recreation commission is empowered to adopt reasonable rules and codes relating to public safety in the construction, operation, signing, and maintenance of the recreational devices provided for in this chapter. The rules and codes authorized hereunder shall be in accordance with established

standards, if any, and shall not be discriminatory in their application. [1991 c 75 § 3; 1959 c 327 § 9.]

70.88.100 Judicial review. The procedure for review of the orders or actions of the state parks and recreation commission, its agents or employees, shall be the same as that contained in RCW 81.04.170, 81.04.180, and 81.04.190. [1959 c 327 § 10.]

Chapter 70.89

SAFETY GLASS

(Formerly: Safety glazing material)

Sections

70.89.005	Purpose.
70.89.010	Safety glazing material defined—Types—Tests—Definitions.
70.89.021	Safety glazing material for use in hazardous locations—Labeling requirements.
70.89.031	Sale, fabrication, assembly, installation of other than safety glazing materials in hazardous locations unlawful.
70.89.040	Penalty.
70.89.050	Employees not liable.
70.89.060	Local ordinances superseded.
70.89.070	Enforcement of chapter.
70.89.900	Severability—1963 c 128.
70.89.910	Construction, effective date, prospective application—1973 1st ex.s. c 2.

70.89.005 Purpose. The purpose of this chapter is to protect the consumer by reducing the high incidence of accidental injuries and deaths resulting from the use of ordinary annealed glass or substitutes therefor in hazardous locations. The legislature intends to provide to the homeowner, his family and guests, and to the general public, greater safety by prescribing the labeling and use of safety glazing material in hazardous locations in residential, commercial, industrial, and public buildings. [1973 1st ex.s. c 2 § 1.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.010 Safety glazing material defined—Types—Tests—Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Safety glazing material" means glazing materials, such as tempered glass, laminated glass, or wire glass which meet the test requirements of the American national standards institute standard ANSI-97.1-1972 and such additional requirements as may be prescribed by the director of the department of labor and industries after notice and hearing as required by chapter 34.05 RCW (the administrative procedure act), and which are so constructed, treated or combined with other materials as to minimize the likelihood of injury to persons by these safety glazing materials when they may be cracked or broken.

Materials other than glass which have properties supported by performance data may be approved by the director for use as glazing material.

(2) "Hazardous locations" means those structural elements, glazed or to be glazed in industrial, commercial and public buildings, known as framed or unframed glass entrance doors; and those structural elements, glazed or to be glazed in residential buildings and other structures used as dwellings, industrial buildings, commercial buildings, and

RCW establishing criteria for designating individuals or water purveyors as qualified satellite system management agencies. The criteria shall set forth minimum standards for designation as a satellite system management agency qualified to assume ownership, operation, or both, of an existing or proposed public water system. The criteria shall include demonstration of financial integrity and operational capability, and may require demonstration of previous experience in successful operation and management of a public water system.

(2) Each county shall identify potential satellite system management agencies to the secretary for areas where: (a) No purveyor has been designated a future service area pursuant to this chapter, or (b) an existing purveyor is unable or unwilling to provide service. Preference shall be given to public utilities or utility districts or to investor-owned utilities under the jurisdiction of the utilities and transportation commission.

(3) The secretary shall approve satellite system management agencies meeting the established criteria and shall maintain and make available to counties a list of approved agencies. Prior to the construction of a new public water system, the individual(s) proposing the new system or requesting service shall first be directed by the local agency responsible for issuing the construction or building permit to one or more qualified satellite system management agencies designated for the service area where the new system is proposed for the purpose of exploring the possibility of a satellite agency either owning or operating the proposed new water system.

(4) Approved satellite system management agencies shall be reviewed periodically by the secretary for continued compliance with established criteria. The secretary may require status reports and other information necessary for such review. Satellite system management agencies shall be subject to reapproval at the discretion of the secretary but not less than once every five years.

(5) The secretary may assess reasonable fees to process applications for initial approval and for periodic review of satellite system management agencies. A satellite system management account is hereby created in the custody of the state treasurer. All receipts from satellite system management agencies or applicants under subsection (4) of this section shall be deposited into the account. Funds in this account may be used only for administration of the satellite system management program. Expenditures from the account shall be authorized by the secretary or the secretary's designee. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(6) For purposes of this section, "satellite system management agency" and "satellite agency" shall mean a person or entity that is certified by the secretary to own or operate more than one public water system on a regional or county-wide basis, without the necessity for a physical connection between such systems. [1991 c 18 § 1.]

70.116.900 Severability—1977 ex.s. c 142. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or

the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 142 § 13.]

Chapter 70.117

SKIING AND COMMERCIAL SKI ACTIVITY

Sections

70.117.010	Ski area sign requirements.
70.117.015	"Trails" or "runs" defined.
70.117.020	Standard of conduct—Prohibited acts—Responsibility.
70.117.025	Skiing outside of trails or boundaries—Notice of skier responsibility.
70.117.030	Leaving scene of skiing accident—Penalty—Notice.
70.117.040	Insurance requirements for operators.

Ski lifts, tows, etc.: Chapter 70.88 RCW.

70.117.010 Ski area sign requirements. (1) The operator of any ski area shall maintain a sign system based on international or national standards and as may be required by the state parks and recreation commission.

All signs for instruction of the public shall be bold in design with wording short, simple, and to the point. All such signs shall be prominently placed.

Entrances to all machinery, operators', and attendants' rooms shall be posted to the effect that unauthorized persons are not permitted therein.

The sign "Working on Lift" or a similar warning sign shall be hung on the main disconnect switch and at control points for starting the auxiliary or prime mover when a person is working on the passenger tramway.

(2) All signs required for normal daytime operation shall be in place, and those pertaining to the tramway, lift, or tow operations shall be adequately lighted for night skiing.

(3) If a particular trail or run has been closed to the public by an operator, the operator shall place a notice thereof at the top of the trail or run involved, and no person shall ski on a run or trail which has been designated "Closed".

(4) An operator shall place a notice at the embarking terminal or terminals of a lift or tow which has been closed that the lift or tow has been closed and that a person embarking on such a lift or tow shall be considered to be a trespasser.

(5) Any snow making machines or equipment shall be clearly visible and clearly marked. Snow grooming equipment or any other vehicles shall be equipped with a yellow flashing light at any time the vehicle is moving on or in the vicinity of a ski run; however, low profile vehicles, such as snowmobiles, may be identified in the alternative with a flag on a mast of not less than six feet in height.

(6) The operator of any ski area shall maintain a readily visible sign on each rope tow, wire rope tow, j-bar, t-bar, ski lift, or other similar device, advising the users of the device that:

(a) Any person not familiar with the operation of the lift shall ask the operator thereof for assistance and/or instruction; and

(b) The skiing-ability level recommended for users of the lift and the runs served by the device shall be classified "easiest", "more difficult", and "most difficult". [1991 c 75 § 1; 1989 c 81 § 2; 1977 ex.s. c 139 § 1.]

Severability—1989 c 81: See note following RCW 70.117.015.

70.117.015 "Trails" or "runs" defined. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

"Trails" or "runs" means those trails or runs that have been marked, signed, or designated by the ski area operator as ski trails or ski runs within the ski area boundary. [1989 c 81 § 1.]

Severability—1989 c 81: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 81 § 6.]

70.117.020 Standard of conduct—Prohibited acts—Responsibility. (1) In addition to the specific requirements of this section, all skiers shall conduct themselves within the limits of their individual ability and shall not act in a manner that may contribute to the injury of themselves or any other person.

(2) No person shall:

(a) Embark or disembark upon a ski lift except at a designated area;

(b) Throw or expel any object from any tramway, ski lift, commercial skimobile, or other similar device while riding on the device;

(c) Act in any manner while riding on a rope tow, wire rope tow, j-bar, t-bar, ski lift, or similar device that may interfere with the proper or safe operation of the lift or tow;

(d) Wilfully engage in any type of conduct which may injure any person, or place any object in the uphill ski track which may cause another to fall, while traveling uphill on a ski lift; or

(e) Cross the uphill track of a j-bar, t-bar, rope tow, wire rope tow, or other similar device except at designated locations.

(3) Every person shall maintain control of his or her speed and course at all times, and shall stay clear of any snowgrooming equipment, any vehicle, any lift tower, and any other equipment on the mountain.

(4) A person shall be the sole judge of his or her ability to negotiate any trail, run, or uphill track and no action shall be maintained against any operator by reason of the condition of the track, trail, or run unless the condition results from the negligence of the operator.

(5) Any person who boards a rope tow, wire rope tow, j-bar, t-bar, ski lift, or other similar device shall be presumed to have sufficient abilities to use the device. No liability shall attach to any operator or attendant for failure to instruct the person on the use of the device, but a person shall follow any written or verbal instructions that are given regarding the use.

(6) Because of the inherent risks in the sport of skiing all persons using the ski hill shall exercise reasonable care for their own safety. However, the primary duty shall be on the person skiing downhill to avoid any collision with any person or object below him or her.

(7) Any person skiing outside the confines of trails open for skiing or runs open for skiing within the ski area boundary shall be responsible for any injuries or losses resulting from his or her action.

(8) Any person on foot or on any type of sliding device shall be responsible for any collision whether the collision is with another person or with an object.

(9) A person embarking on a lift or tow without authority shall be considered to be a trespasser. [1989 c 81 § 3; 1977 ex.s. c 139 § 2.]

Severability—1989 c 81: See note following RCW 70.117.015.

70.117.025 Skiing outside of trails or boundaries—Notice of skier responsibility. Ski area operators shall place a notice of the provisions of RCW 70.117.020(7) on their trail maps, at or near the ticket booth, and at the bottom of each ski lift or similar device. [1989 c 81 § 5.]

Severability—1989 c 81: See note following RCW 70.117.015.

70.117.030 Leaving scene of skiing accident—Penalty—Notice. (1) Any person who is involved in a skiing accident and who departs from the scene of the accident without leaving personal identification or otherwise clearly identifying himself or herself before notifying the proper authorities or obtaining assistance, knowing that any other person involved in the accident is in need of medical or other assistance, shall be guilty of a misdemeanor.

(2) An operator shall place a prominent notice containing the substance of this section in such places as are necessary to notify the public. [1989 c 81 § 4; 1977 ex.s. c 139 § 3.]

Severability—1989 c 81: See note following RCW 70.117.015.

70.117.040 Insurance requirements for operators. (1) Every tramway, ski lift, or commercial skimobile operator shall maintain liability insurance of not less than one hundred thousand dollars per person per accident and of not less than two hundred thousand dollars per accident.

(2) Every operator of a rope tow, wire rope tow, j-bar, t-bar, or similar device shall maintain liability insurance of not less than twenty-five thousand dollars per person per accident and of not less than fifty thousand dollars per accident.

(3) This section shall not apply to operators of tramways that are not open to the general public and that are operated without charge, except that this section shall apply to operators of tramways that are operated by schools, ski clubs, or similar organizations. [1977 ex.s. c 139 § 4.]

Chapter 70.118

ON-SITE SEWAGE DISPOSAL SYSTEMS

Sections

70.118.010	Legislative declaration.
70.118.020	Definitions.
70.118.030	Local boards of health—Duties.
70.118.040	Local boards of health—Authority to waive sections of local plumbing and/or building codes.
70.118.050	Adoption of more restrictive standards.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.118.010 Legislative declaration. The legislature finds that over one million, two hundred thousand persons in the state are not served by sanitary sewers and that they must rely on septic tank systems. The failure of large numbers of such systems has resulted in significant health

WYOMING STATUTES 1977

Title 34

**Property, Conveyances and
Security Transactions**

July 1990

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d as §§ 2-3-245 and 142, Laws 1979) were 4, Laws 1980, effective

CHAPTER 19

Liability of Owners of Land Used for Recreation Purposes

Sec.

34-19-101. Definitions.

34-19-102. Landowner's duty of care or duty to give warnings.

34-19-103. Limitations on landowner's liability.

34-19-104. Application to land leased to state

Sec.

34-19-105. When landowner's liability not limited.

34-19-106. Duty of care, not created; duty of care of persons using land.

Chapter inapplicable to industrial subdivision. — Where child and a friend decided to play on a hill near their residence, but the hill was actually an abandoned pile of coal tailings in which subsurface fires smoldered, and the child was seriously burned when he broke through the surface of the slag heap, which was located in an industrial subdivision, not on recreational land, this chapter was not applicable. *Holland v. Weyher-Livsey Constructors, Inc.*, 651 F. Supp. 409 (D. Wyo. 1987).

Law reviews. — See comment, "The Status of Visitors in the National Parks Located in Wyoming — Federal Liability Under Current Applicable Wyoming Law," 2 *Land & Water L. Rev.* 447 (1967).

Am. Jur. 2d, ALR and C.J.S. references. — Liability of swimming facility operator for injury to or death of trespassing child, 88 ALR3d 1197.

Liability of youth camp, to its agents or employees, or of scouting leader or organization, for injury to child participant in program, 88 ALR3d 1236.

Liability of swimming facility operator for injury or death inflicted by third person, 90 ALR3d 533.

Liability to spectator at baseball game who is hit by ball or injured as result of other hazards of game, 91 ALR3d 24.

Liability of owner or operator of boat livery for injury to patron, 94 ALR3d 876.

Liability for injuries in connection with ice or snow on nonresidential premises, 95 ALR3d 15.

Liability for injury or death from ski lift, ski tow or similar device, 95 ALR3d 203.

Liability of theater owner or operator for injury to or death of patron resulting from lighting conditions on premises, 19 ALR4th 1110.

Liability of owner or occupant of premises to police officer coming thereon in discharge of officer's duty, 30 ALR4th 81.

Liability of wharf owner or operator for personal injuries to invitees or licensees resulting from condition of premises or operation of equipment, 34 ALR4th 572.

Liability of owner or operator of pleasure boat for injury or death of guest passenger, 35 ALR4th 104.

Effect of statute limiting landowner's liability for personal injury to recreational user, 47 ALR4th 262.

Strict liability of landlord for injury or death of tenant or third person caused by defect in premises leased for residential use, 48 ALR4th 638.

Parking facility proprietor's liability for criminal attack on patron, 49 ALR4th 1257.

Tennis club's liability for tennis player's injuries, 52 ALR4th 1253.

Liability to one struck by golf ball, 53 ALR4th 282.

Tree or limb falls onto adjoining private property: personal injury and property damage liability, 54 ALR4th 530.

Ski resort's liability for skier's injuries resulting from condition of ski run or slope, 55 ALR4th 632.

Baseball player's right to recover from baseball-related personal injuries from nonplayer, 55 ALR4th 664.

§ 34-19-101. Definitions.

(a) As used in this act:

(i) "Land" means land, including state land, roads, water, water-courses, private ways and buildings, structures, and machinery or equipment when attached to the realty;

(ii) "Owner" means the possessor of a fee interest, a tenant, lessee, including a lessee of state lands, occupant or person in control of the premises;

(iii) "Recreational purpose" includes, but is not limited to, any one (1) or more of the following: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports and viewing or enjoying historical, archaeological, scenic or scientific sites;

(iv) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land;

(v) "This act" means W.S. 34-19-101 through 34-19-106. (Laws 1965, ch. 9, § 1; W.S. 1957, § 34-389.1; Laws 1989, ch. 27, § 2.)

The 1989 amendment, effective June 8, 1989, in subsection (a), inserted "including state land" in paragraph (i) and "including a lessee of state lands" in paragraph (ii), added paragraph (v) and, in paragraph (iii), substituted "one (1) or more of the following" for "of the following, or any combination thereof" and made a series of minor punctuation changes.

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

Stated in *Yalowizer v. Husky Oil Co.*, 629 P.2d 465 (Wyo. 1981).

Law reviews. — For comment, "Landowner Liability Under the Wyoming Recreational Use Statute," see XV Land & Water L. Rev. 649 (1980).

§ 34-19-102. Landowner's duty of care or duty to give warnings.

Except as specifically recognized by or provided in W.S. 34-19-105, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure or activity on such premises to persons entering for recreational purposes. (Laws 1965, ch. 9, § 2; W.S. 1957, § 34-389.2; Laws 1989, ch. 27, § 2.)

The 1989 amendment, effective June 8, 1989, substituted "W.S. 34-19-105" for "section 5 of this act" and "entering for recreational purposes" for "entering for such purposes" and made a minor punctuation change.

The duty of care owed by the owner of land to an invitee is to use ordinary and reasonable care to keep the premises reasonably safe for his visit and to warn him of any hidden danger. *Smith v. United States*, 383 F. Supp. 1076 (D. Wyo. 1974), aff'd, 546 F.2d 872 (1976).

Duty of invitee. — Even though a person is an invitee this does not relieve him of the duty to exercise ordinary care for his own safety under all the attendant facts and circum-

stances. *Smith v. United States*, 383 F. Supp. 1076 (D. Wyo. 1974), aff'd, 546 F.2d 872 (1976).

Duty of care of national park service. — Where the national park service of the department of the interior of the United States of America was foreclosed by its own regulation from charging any fee to plaintiff, it owed no duty of care to plaintiff to keep the premises, a national park, safe for his entry or his use for recreational purposes, nor did it owe any duty to give him any warning of any dangerous condition, use, structure, or activity on the premises because he was entering for recreational purposes. *Smith v. United States*, 383 F. Supp. 1076 (D. Wyo. 1974), aff'd, 546 F.2d 872 (1976)

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§ 34-19-102

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34-19-106. (Laws 1965,
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For comment, "Landowner
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§ 34-19-103

LIABILITY OF OWNERS OF LAND

§ 34-19-104

Law reviews. — For comment, "Landowner
Liability Under the Wyoming Recreational
Use Statute," see XV Land & Water L. Rev.
649 (1980).

Am. Jur. 2d, ALR and C.J.S. references.
— Public rights of recreational boating, fish-
ing, wading, or the like in inland stream the
bed of which is privately owned, 6 ALR4th
1030.

Liability of owner of store, office, or similar
place of business to invitee falling on tracked-
in water or snow, 20 ALR4th 438.

Contributory negligence and assumption of
risk in action against owner of store, office, or
similar place of business by invitee falling on
tracked-in water or snow, 20 ALR4th 517.

Modern status of rules conditioning land-
owner's liability upon status of injured party as
invitee, licensee, or trespasser, 22 ALR4th 294.

Liability to adult social guest injured other-
wise than by condition of premises, 38 ALR4th
200.

§ 34-19-103. Limitations on landowner's liability.

(a) Except as specifically recognized by or provided in W.S. 34-19-105, an
owner of land who either directly or indirectly invites or permits without
charge any person to use the land for recreational purposes or a lessee of state
lands does not thereby:

(i) Extend any assurance that the premises are safe for any purpose,

(ii) Confer upon the person using the land the legal status of an
invitee or licensee to whom a duty of care is owed;

(iii) Assume responsibility for or incur liability for any injury to
person or property caused by an act of omission of the person using the
land. (Laws 1965, ch. 9, § 3; W.S. 1957, § 34-389.3; Laws 1989, ch. 27,
§ 2.)

The 1989 amendment, effective June 8,
1989, in subsection (a), substituted "W.S.
34-19-105" for "section 5 of this act" and "the
land for recreational purposes or a lessee of
state land" for "such property for recreational
purposes" in the introductory language, "the
person using the land" for "such person" in
paragraph (ii) and "the person using the land"
for "such persons" in paragraph (iii).

Editor's notes. — There is no subsection (b)
in this section as it appears in the printed acts.

Law reviews. — For comment, "Landowner

Liability Under the Wyoming Recreational
Use Statute," see XV Land & Water L. Rev.
649 (1980).

Am. Jur. 2d, ALR and C.J.S. references.
— Public rights of recreational boating, fish-
ing, wading, or the like in inland stream the
bed of which is privately owned, 6 ALR4th
1030.

Modern status of rules conditioning land-
owner's liability upon status of injured party as
invitee, licensee, or trespasser, 22 ALR4th 294.

§ 34-19-104. Application to land leased to state or political
subdivision thereof.

Unless otherwise agreed in writing W.S. 34-19-102 and 34-19-103 shall be
deemed applicable to the duties and liability of an owner of land leased to the
state or any subdivision of this state for recreational purposes. (Laws 1965, ch.
9, § 4; W.S. 1957, § 34-389.4; Laws 1989, ch. 27, § 2.)

The 1989 amendment, effective June 8,
1989, rewrote this section, which read "Unless
otherwise agreed in writing, the provisions of
sections 2 and 3 of this act shall be deemed
applicable to the duties and liability of an
owner of land leased to the state or any

subdivision thereof for recreational purposes."

Law reviews. — For comment, "Landowner
Liability Under the Wyoming Recreational
Use Statute," see XV Land & Water L. Rev.
649 (1980).

§ 34-19-105. When landowner's liability not limited.

(a) Nothing in this act limits in any way any liability which otherwise exists:

(i) For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity;

(ii) For injury suffered in any case where the owner of land charges the persons who enter or go on the land for recreational purposes, except that in the case of land leased to the state or a subdivision of this state, any consideration received by the owner for the lease shall not be deemed a charge within the meaning of this section. (Laws 1965, ch. 9, § 5; W.S. 1957, § 34-389.5; Laws 1989, ch. 27, § 2.)

The 1989 amendment, effective June 8, 1989, made a series of minor stylistic changes throughout subsection (a)(ii).

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

Meaning of "this act". — For the definition of "this act," referred to in this section, see § 34-19-101(a)(v).

Duty of care of national park service. — Where the national park service of the department of the interior of the United States of America was foreclosed by its own regulation from charging any fee to plaintiff, it owed no duty of care to plaintiff to keep the premises, a national park, safe for his entry or his use for recreational purposes, nor did it owe any duty to give him any warning of any dangerous condition, use, structure, or activity on the premises because he was entering for recreational purposes. *Smith v. United States*, 383 F.

Supp. 1076 (D. Wyo. 1974), aff'd, 546 F.2d 872 (1976).

Law reviews. — For comment, "Landowner Liability Under the Wyoming Recreational Use Statute," see XV Land & Water L. Rev. 649 (1980).

Am. Jur. 2d, ALR and C.J.S. references. — Public rights of recreational boating, fishing, wading, or the like in inland stream the bed of which is privately owned, 6 ALR4th 1030.

Liability of owner of store, office, or similar place of business to invitee falling on tracked-in water or snow, 20 ALR4th 438.

Contributory negligence and assumption of risk in action against owner of store, office, or similar place of business by invitee falling on tracked-in water or snow, 20 ALR4th 517.

Modern status of rules conditioning landowner's liability upon status of injured party as invitee, licensee, or trespasser, 22 ALR4th 294.

§ 34-19-106. Duty of care, not created; duty of care of persons using land.

(a) Nothing in this act shall be construed to:

(i) Create a duty of care or ground of liability for injury to persons or property;

(ii) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this act to exercise care in his use of the land and in his activities on the land, or from the legal consequences of failure to employ such care. (Laws 1965, ch. 9, § 6; W.S. 1957, § 324-389.6; Laws 1989, ch. 27, § 2.)

The 1989 amendment, effective June 8, 1989, substituted "the land and in his activity on the land" for "such land and in his activities thereon" in subsection (a)(ii).

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

Meaning of "this act". — For the definition of "this act," referred to in this section, see § 34-19-101(a)(v).

Even as invitee, 14-year-old visitor to Yellowstone National Park owed reciprocal duty to park service to exercise ordinary

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Stated in *Yalowizer v. Husky Oil Co.*, 629 P.2d 465 (Wyo. 1981).

Law reviews. — For comment, "Landowner Liability Under the Wyoming Recreational Use Statute," see XV Land & Water L. Rev. 649 (1980).

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scope of annotations
see the Preface.

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