

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8367 SENATE LABOR & COMMERCE



Westmark

HOTELS

ALASKA/YUKON

January 19, 1993

Senator Tim Kelly
Alaska State Legislature
Juneau, AK 99801

Dear Senator Kelly:

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

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

Sincerely,

William J. Dugdale
General Manager
WESTMARK ANCHORAGE HOTEL



Alaska State Legislature

Official Business

State Capitol
Juneau, AK 99801-1182

03/11/93
10:35:20

PUBLIC OPINION MESSAGE SYSTEM
MEMBER OFFICE KEL Kelly

POMS100
LSNCTMS

From: Mr. Alan Morton
Box 948

Girdwood AK 99587 Tel: NONE

Bill# SB 44 Title: CIVIL LIABILITY FOR SKIING ACCIDENTS
Subject

SUPPORTS THIS LEGISLATION

Message: ALSO HB 41. I AM CALLING TO ASK FOR YOUR SUPPORT ON LEGISLATION THAT PROTECTS SKI AREAS AND SKI OPERATORS FROM COSTLY LITIGATION DUE TO ACCIDENTS ASSOCIATED WITH THE INHERENT RISKS OF SKIING. PLEASE SUPPORT SB44 AND HB 41. THANKS.

Entered By: LIOCLYN on 3/ 5/93 PomID 5259 Distribution 7
MSG:
Enter Next Message PF4 Menu PF6 WasteBasket PF7 Previous POM PF10 BigWaste

03/11/93
10:36:05

PUBLIC OPINION MESSAGE SYSTEM
MEMBER OFFICE KEL Kelly

POMS100
LSNCTMS

From: Mr. Michael Polzin
Box 468

Girdwood

AK 99587

Tel: 783-2461

Bill# SB 44 Title: CIVIL LIABILITY FOR SKIING ACCIDENTS
Subject

SUPPORTS THIS LEGISLATION

Message: HB 41: I AM ASKING FOR YOUR SUPPORT IN THE LEGISLATION THAT PROTECTS
SKI AREAS AND OPERATORS FROM COST LITIGATION DUE TO ACCIDENTS ASSOCIATED WITH
THE INHERENT RISKS OF SKING. THANK YOU FOR YOUR SUPPORT OF SB 44 AND HB 41.

Entered By: LIOCBBN on 3/ 5/93 PomID 5269 Distribution 60
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03/11/93
10:37:39

PUBLIC OPINION MESSAGE SYSTEM
MEMBER OFFICE KEL Kelly

POMS100
LSNCTMS

From: Mr. Peter
Box 274

Thurston

Girdwood

AK 99587

Tel: 783-2854

Bill# SB 44 Title: CIVIL LIABILITY FOR SKIING ACCIDENTS
Subject

SUPPORTS THIS LEGISLATION

Message: ALSO HB41. I URGE YOU TO SUPPORT SB44/HB41. SKIING IS AN
INHERENTLY DANGEROUS ACTIVITY AND SKIERS SHOULD BE WILLING TO ACCEPT THE
LIABILITIES OF THE SPORT. BY TRYING TO SHIFT LIABILITY FOR INDIVIDUAL ACTIONS
TO THE RESORT OPERATOR, THE COST OF SKIING AND THE COSTS OF INSURANCE CONTINUE
TO RISE THEREBY MAKING SKIING BEYOND THE MEANS OF MOST OF THE PUBLIC.

Entered By: LIOCLYN on 3/ 5/93 PomID 5353 Distribution 8
MSG:

Enter Next Message PF4 Menu PF6 WasteBasket PF7 Previous POM PF10 BigWaste

03/11/93
10:37:54

PUBLIC OPINION MESSAGE SYSTEM
MEMBER OFFICE KEL Kelly

POMS100
LSNCTMS

From: Mr. Scott
PO Box 232

Robertson

Girdwood

AK 99587

Tel: 783-2887

Bill# SB 44 Title: CIVIL LIABILITY FOR SKIING ACCIDENTS
Subject

SUPPORTS THIS LEGISLATION

Message: I AM CALLING TO ASK FOR YOUR SUPPORT IN THE LEGISLATION THAT PROTECTS
SKI AREAS AND SKI OPERATORS FROM COSTLY LITIGATION DUE TO THE ACCIDENTS
ASSOCIATED WITH THE INHERENT RISKS OF SKIING. PLEASE SUPPORT SB44 AND HB41.
THANK YOU.

Entered By: LIOCACB on 3/ 5/93 PomID 5534 Distribution 7
MSG:
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03/11/93
10:38:15

PUBLIC OPINION MESSAGE SYSTEM
MEMBER OFFICE KEL Kelly

POMS100
LSNCTMS

From: Miss Brenda Roper
Box 220204

Anchorage

AK 99522

Tel: NONE

Bill# SB 44 Title: CIVIL LIABILITY FOR SKIING ACCIDENTS
Subject

SUPPORTS THIS LEGISLATION

Message: ALSO HB 41. I AM CALLING TO ASK FOR YOUR SUPPORT IN THE LEGISLATION THAT PROTECTS SKI AREAS AND SKI OPERATORS FROM COSTLY LITIGATION DUE TO ACCIDENTS ASSOCIATED WITH THE INHERENT RISKS OF SKIING. PLEASE SUPPORT SB44 AND HB41.

Entered By: LIOCLYN on 3/ 8/93 PomID 5736 Distribution 7
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03/11/93
10:39:54

PUBLIC OPINION MESSAGE SYSTEM
MEMBER OFFICE KEL Kelly

POMS100
LSNCTMS

From: Ms. Diana Woods
Box 468

Girdwood

AK 99587

Tel: 783-2461

Bill# SB 44 Title: CIVIL LIABILITY FOR SKIING ACCIDENTS
Subject

SUPPORTS THIS LEGISLATION

Message: & HB 41. I URGE YOUR SUPPORT OF SB 44 AND HB 41. SKIING IS AN
INHERENTLY RISKY SPORT. SKI AREAS SHOULD NOT HAVE TO REPEATEDLY DEFEND
THEMSELVES AGAINST PEOPLE WHO REFUSE TO ACCEPT RESPONSIBILITY FOR THEIR OWN
ACTIONS. WE NEED A LAW THAT SAYS; SKI AT YOUR RISK, YOU ARE LIABLE FOR YOU.

Entered By: LIOCLAN on 3/ 8/93 PomID 5756 Distribution 60
MSG:

Enter Next Message PF4 Menu PF6 WasteBasket PF7 Previous POM PF10 BigWaste

03/11/93
10:40:10

PUBLIC OPINION MESSAGE SYSTEM
MEMBER OFFICE KEL Kelly

POMS100
LSNCTMS

From: Mrs. Leslie Sturm
Box 931

Girdwood

AK 99587

Tel: 783-1389

Bill# SB 44 Title: CIVIL LIABILITY FOR SKIING ACCIDENTS
Subject

SUPPORTS THIS LEGISLATION

Message: I WOULD LIKE TO ASK YOU FOR YOUR SUPPORT FOR THE INHERENT RISK BILL THAT PROTECTS THE SKI AREAS AND OPERATORS FROM COSTLY LITIGATION DUE TO THE ACCIDENTS ASSOCIATED WITH THE INHERENT RISKS OF THE SPORT OF SKIING. PLEASE SUPPORT THIS BILL.

Entered By: LIOCJIM on 3/ 8/93 PomID 5848 Distribution 7
MSG:
Enter Next Message PF4 Menu PF6 WasteBasket PF7 Previous POM PF10 BigWaste

03/11/93
10:40:36

PUBLIC OPINION MESSAGE SYSTEM
MEMBER OFFICE KEL Kelly

POMS100
LSNCTMS

From: Mrs. Ellen Hellen
1319 G Street

Anchorage

AK 99501

Tel: 276-8523

Bill# SB 44 Title: CIVIL LIABILITY FOR SKIING ACCIDENTS
Subject

OPPOSES THIS LEGISLATION

Message: DO NOT LIMIT SKI AREAS LIABILITY. MY FAMILY SKIS AT ALYESKA AND I
DEPEND ON THE RESORT TO MAKE REASONABLE EFFORTS TO PROTECT OUR SAFETY.
ACCIDENTS WILL HAPPEN BUT THE FEAR OF LAW SUITS MINIMIZES THOSE ACCIDENTS. IT
IS WORTH PAYING \$30 FOR A TICKET IF I KNOW THE SLOPES ARE SAFE.

Entered By: LIOCCRI on 1/28/93 PomID 1005 Distribution 60
MSG:
Enter Next Message PF4 Menu PF6 WasteBasket PF7 Previous POM PF10 BigWaste

03/11/93
10:40:51

PUBLIC OPINION MESSAGE SYSTEM
MEMBER OFFICE KEL Kelly

POMS100
LSNCTMS

From: Mr. Olos Hellen
1319 G Street

Anchorage

AK 99501

Tel: 276-2713

Bill# SB 44 Title: CIVIL LIABILITY FOR SKIING ACCIDENTS
Subject

OPPOSES THIS LEGISLATION

Message: I OPPOSE SPECIAL LEGISLATION FOR SEIBU-ALYESKA. WHY NOT GO FURTHER
AND BAR SUITS BY FISHERMAN'S ESTATES. THE SEA IS RISKY TOO. BUT, THE SKIING
INDUSTRY JUST LIKE ALL OF THE REST OF US SHOULD USE ORDINARY CARE.

Entered By: LIOCJEN on 1/29/93 PomID 1146 Distribution 60
MSG:
Enter Next Message PF4 Menu PF6 WasteBasket PF7 Previous POM PF10 BigWaste

03/11/93
10:41:12

PUBLIC OPINION MESSAGE SYSTEM
MEMBER OFFICE KEL Kelly

POMS100
LSNCTMS

From: Mr. Clark Saunders
 Box 366

Girdwood

AK 99587

Tel: NONE

Bill# SB 44 Title: CIVIL LIABILITY FOR SKIING ACCIDENTS
 Subject

SUPPORTS THIS LEGISLATION

Message: PLEASE SUPPORT SB 44 AND HB 41 TO PROTECT SKI AREAS AND SKI OPERATORS
FROM COSTLY LITIGATION DUE TO ACCIDENTS ASSOCIATED WITH THE INHERENT RISKS OF
SKIING.

Entered By: LIOCBLK on 3/ 5/93 PomID 5208 Distribution 6
MSG:
Enter Next Message PF4 Menu PF6 WasteBasket PF7 Previous POM PF10 BigWaste

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

State of Alaska

DIVISION OF LAND
SOUTHCENTRAL REGION

TO: Ron Swanson
Director

DATE: March 26, 1993

TELEPHONE NO.: 762-2253

FROM: Richard B. Thompson
Regional Manager

SUBJECT: Alyeska Title
Transfer

The Division of Land learned of the possible transfer of title to the Alyeska Resort several years ago. The regional office started the preparation process by convening a meeting with resort officials to discuss the transfer of management responsibility and to answer their questions. A similar meeting was arranged separately with U.S. Forest Service personnel.

These initial meetings revealed a variety of concerns issued by the resort owners over the methods and practices the state would use in administering the lease. Since those days many meetings have taken place to discuss and resolve concerns.

In the mean time I took the lead on negotiating a development lease for the proposed \$230 million development of a four-season resort at Hatcher Pass with a large Japanese trading company. I recently completed negotiations with a new developer, the Hatcher Pass Development Company, to construct and operate a destination resort at Hatcher Pass. I attended construction contract administration training; received individualized ski area management training from highly qualified U.S. Forest Service managers in Lakewood, Colorado; and have spent considerable amounts of time acquiring knowledge about the ski industry.

The southcentral region has joined a national organization of ski area managers and operators. I attended last years convention and intend to go again this year. This organization sponsors training workshops and seminars on many aspects of ski area management. They compile a wide variety of statistics which are invaluable to management and decisionmaking. They provide access to a multitude of training devices such as manuals, videos, books and object achievement kits. Through networking the membership we have direct access to actual people who are considered experts, or at the least extremely knowledgeable about virtually every aspect of ski area operation.

I have assigned Mike Sullivan the primary responsibility for administering the Alyeska Ski Area lease. Mike is a senior adjudicator with an excellent understanding of the state's interest in the management of this area. He is dependable, works well with others and has already established himself as a credible manager.

Ron Swanson
Ski Bill
March 26, 1993
Page 2

Mike has been shadowing the forest service person currently responsible for administering the Alypheska forest service permit. Mike has been brought in on all management actions and decisionmaking meetings. He has received avalanche control training which involves snow safety as well as munitions handling. Mike has accompanied forest service and resort personnel on many of the avalanche control (firing) missions over the past winter. He has become knowledgeable on the process and procedures necessary to provide a smooth transition with the military which is critical to the resort's avalanche control program.

Mike recently attended a tram and aerial lift operation training school at Keystone, Colorado. Besides being well qualified to administer this project on behalf of the state, Mike is an excellent skier. He routinely skis with members of the National Ski Patrol to learn first hand about the many kinds of management problems faced by resort owners and employees.

The southcentral region wishes to create a Ski Area Operations Unit. Mike will be the sole member of this unit initially and will concentrate on drafting the lease and implementing this management transition as smoothly as possible. Mike will also handle the initial implementation tasks associated with the Hatcher Pass ski area development lease. This unit will be expanded as needed and can operate on a program receipts basis.

Current projections appear to suggest that we can handle our ski area personnel and management costs from revenues to be generated by state leases (Alypheska, and eventually the Hatcher Pass). This revenue will also support moderate responsibilities for any management actions undertaken by the state for ski areas on private lands. If the state's role on private lands increases significantly, additional funding may be necessary.

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)
Arapahoe Basin	\$33	\$33	\$24
Arrowhead	\$23	\$28	\$23
Aspen Highlands	\$30	\$30	\$25
Aspen Mountain	\$41	\$43	\$38
Beaver Creek	\$40	\$42	\$40
Breckenridge	\$36	\$38	\$28 or \$29
Buttermilk	\$41	\$43	\$26
Copper Mountain	\$35	\$37	\$30
Crested Butte	\$36	\$39	\$28
Eldora	\$25	\$27	\$23
Keystone	\$37	\$38	\$30
Loveland	\$28	\$30	\$24
Monarch	\$25	\$26	\$24
Powderhorn	\$25	\$25	N/A
Purgatory	\$34	\$35	\$34
Silver Creek	\$24	\$26	\$21
Ski Cooper	\$18	\$22	\$20
Ski Simulgit	\$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 'n' Go's, Vendors, Bicycle Ski Rentals and Climax 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.

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, however,

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/PATII RIZER

9875455212

D. 82

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
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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 of 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

Alaska State Legislature

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




SENATE LABOR AND COMMERCE
COMMITTEE

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MEMORANDUM

TO: Debra Gravo
Alaska Trial Lawyers
FAX: 276-7185

FROM: Josh Firik, Committee Aide 

DATE: January 27, 1992

RE: CSSB 44 (L&C) - Alaska Ski Safety Act of 1993

Here is the CS as it passed the committee. It is now in the Senate Judiciary Committee.

If you have any questions, please do not hesitate to call me at 465-3819.



Official Business

Alaska State Legislature

Senator Tim Kelly

State Capitol
Juneau, AK 99801-1182

Date: January 18, 1993

To: MAX LOWE, General Manager
Regal Alaska

FAX: 293-8815

From: Josh Fink, Committee Assistant
Senate Labor & Commerce Committee
Senator Kelly, Chair

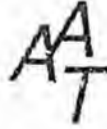
Phone: 465-3844 FAX: 465-3756

Subj: SB-44, civil liability for skiing accidents

At the request of Mitch Gravo, I am transmitting the text of SB-44, relating to civil liability for skiing accidents. (The bill is 13 pages, and I've included for your convenience a two-page "sectional analysis" prepared by the Division of Legal Services.)

This bill is scheduled to be heard Tuesday, January 19, 1993, at 1:30 p.m. before the Senate Labor & Commerce Committee. The hearing will be teleconferenced for those wishing to offer testimony from other parts of Alaska.

Please do not hesitate to contact this office if we can be of further assistance.



Alaska Action Trust

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

FAX TRANSMITTAL

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

FROM: Dennis Mestas

DATE: January 18, 1993

RE: SB 44

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Alaska State Legislature

Senator Tim Kelly, Chair
Senator Steve Rieger, Vice Chair
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MEMORANDUM

TO: Gary Mendivil
FAX: 586-5677

FROM: Josh Fink, Committee Aide *JPF*

DATE: January 25, 1993

RE: Copy of Draft CS SB 44 (L&C) - Alaska Ski Safety Act of 1993

Attached is a copy of the draft CS. You should note, however, that another draft is being prepared.

It will be identical to the one provided except language has been added on page 11, line 26, stating "the Commissioner of the Department of Natural Resources, or his or her designee, shall have authority to enforce this provision on state land." In addition, the citation process and forms utilized by DNR shall be delineated. (As Eaglecrest is not on State land, this won't affect you.)

The Senate Labor & Commerce Committee will take this committee substitute up at their 1:30 meeting tomorrow in the Beltz room. It is the second and last bill up.

If I can be of further assistance, please do not hesitate to contact me at 465-3819.

Thank you.

TO: SENATOR KELLY

FROM: DIANNE HOLMES
15140 Mesa (NOT IN OUR DISTRICT)
Anchorage, Alaska 99516
PHONE # 345-1514

REGARDING: SENATE BILL 44

Elimination of liability of ski operators absolutely irresponsible. Would the FAA not regulate flying? Can not understand and is concerned that Senator is backing the ski industry....

SASAHA HUGHES/ 562-1189

REGARDING: EDITORIAL IN ANCHORAGE DAILY NEWS, TUESDAY
Spoke with Ed Dankworth and they both demand that the Donley matter be brought to the attention of the Senate and the public. It is absolutely critical that this be taken care of immediately - if they are going to do it to Jacko .they better do it to Donley. Call her immediately.

TAPE

Debra Gravo
aka letters of support

FAX: 276-7185

PO Box 102323

Anchorage, 99515

WORKING CS

Alaska State Legislature

Senator Tim Kelly, Chair
Senator Steve Rieger, Vice Chair
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MEMORANDUM

TO: Debra Gravo

FROM: Josh Fink, Committee Aide *JF*

DATE: January 25, 1992

RE: Committee Tapes for 1/19/93 L&C Hearing
on SB 44 - Civil Liability for Skiing Accidents

Here are the tapes you requested. By the time you receive this you should have already received a copy of the committee CS, provided the committee moved one. As you know, the next committee of referral is the Senate Judiciary Committee.

If I can be of further assistance, please don't hesitate to contact me at 465-3819.

January 21, 1992

TO: Senators Kelly, Rieger, Pierce, Lincoln, and Salo

FR: Patti Rizer

RE: SB 44

Before you discuss SB 44 today, I would sincerely appreciate your reading the attached summary of the *Hiibschman v. City of Valdez*. This condensed summary of the case clearly shows that the Supreme Court has a state statute with which they can make rulings fairly for the consumer.

The second paragraph summarizes the current statute and states:

The Act precludes recovery by skiers from a ski area operator for injuries resulting from an inherent risk of skiing which is defined in the statute as including, but not limited to, in part, variations or steepness in terrain, snow or ice conditions, and surface of subsurface conditions such as bar spots, forest growth and rock, and a skier's failure to ski within the limits of the skier's ability.

The Supreme Court concluded that the statute was intended to bar recovery for those actions which only the skier could control and which are beyond the ski area operation control. The court concluded that the Act preserved the common law duty of reasonable care of ski area operators and that evidence of negligence on the part of a ski area operator takes the case out of the inherent risk of skiing context.

The court stated that the statute aids trial courts by listing those risks which are considered inherent in the sport of skiing: those risks which are obvious and necessary.

The Court defined necessary dangers as those which cannot reasonably be eliminated by the area operator.

The Court also observed that a risk not listed in the statute may still be an inherent risk of the sport if necessary and obvious, but this risk must be subjectively obvious to the skier, who must know of the risk's presence, understand its nature, and freely and voluntarily choose to encounter it.

The Court also ruled that to bar an action, "skiing beyond one's ability" means the skier must subjectively know he or she is skiing beyond his or her ability as

an inherent risk of skiing must be necessary and subjectively obvious. However, once evidence of a ski area operator's negligence exists, the operator is free to argue that the skier voluntarily and unreasonably assumed a negligently created risk.

After you have read this summary, please ask yourselves these questions:

1. Is the current statute unfair, inadequate, in need of revision, and not clear for the courts to work with? If it works, why is the ski industry trying to change it?
2. Whom does this bill protect—Alaskans or private industry?
3. How specifically does this bill help tourism? Will it bring more skiers to Alaska? How?
4. Do other industries in America have this type of protection?
5. Why should Alaska reward Alyeska with such a comprehensive protection bill when they have had four deaths that I know of on the mountain (the two that Mr. Heiser could remember, one in 1978, and one a few years ago when a man fell to his death when he couldn't get out of the chair lift)?
6. Who will be the watch dog for ski operators? We have found it is those who are closely linked with the industry and not a consumer protection type board.
7. Have you seen Alyeska's safety report? If not, shouldn't you? And remember, it is Seibu that compiles it and many injuries are not actually reported.
8. Look at Seibu's record: four deaths on the mountain plus two additional deaths when the corporation served so much alcohol to a customer in the bar that he proceeded to kill Scott and Wesley Gerrish and their dog while walking home from the ski resort. (The drunken driver was three times the legal limit and through these two tragic deaths, MADD was established in Alaska.) The Gerrish case settled in court against Seibu.

Furthermore, Seibu was found negligent for paralyzing the young boy who went off a road cut of near 90 degrees in the middle of a ski area instead of shaving off its upper edge to make a roll. An expert who is revered in the national ski industry stated this was "murderous and totally unacceptable."

And now Seibu faces a suit that is pending in court. The only reason we have chosen to go to court is after six months of trying to get information about Bart's death, Mike Grandinetti, the Risk Manager for Seibu Corporation, told us we would have to go through the court system to get any information about Bart's death.

This "extremely serious" accident, as Mr. Lamb puts it, should have been investigated. But Seibu Corporation will not share any information with us. Are they hiding something? Should they be allowed to have a bill pass that makes them nearly unaccountable or irresponsible for accidents and deaths and maintenance of the mountain?

And finally, about 26 states have inherent risk ski laws. Colorado's is the most comprehensive. I have skied in Colorado, and I can tell you Alyeska does not come close to Colorado ski resorts as far as services, amenities, state-of-the-art equipment, number of ski patrollers, etc. They have huge, wide, gentle runs—smooth as a baby's bottom—for beginners. Alyeska is one of the steepest mountains in the world with weather conditions that are extreme.

Colorado uses nearly all professional ski patrol and is closely monitored by the U.S. Forestry Service. Colorado adopted the extreme inherent risk of skiing law because the skiing industry is very powerful and most of the injuries/deaths occur from out-of-state skiers. The U.S. Forestry Service and Colorado state officials have many doubts within their minds about the fairness of this law.

One U.S. Forest Service employee said that in his opinion the law assumes all skiers are at an expert level and able to identify dangerous situations.

My final question is this: I would like you to consider giving me 14-21 days to obtain signatures of people throughout the state who oppose this bill. I feel like David in the story of "David and Goliath." I am opposed to this bill but did not hear about it until late Sunday night, January 17. January 18 was my first day back to work at the University, and I have not had time to tell Alaskans about this bill. If you would give me just two to three weeks, I believe I could accumulate several hundred signatures of Alaskans who oppose this bill.

Who is supporting this bill? Who is lobbying you? Is it special interest groups, or is it truly the people of this state who have no special interest?

Will you please give me a little time to prove to you Alaskans are not for this bill?

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

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

The Supreme Court concluded that the statute in question was intended to bar recovery for those actions which only the skier could control and that were beyond the ski area operator's control. The Court concluded that the Act preserved the common law duty of reasonable care of ski area operators and that evidence of negligence on the part of a ski area operator takes the case out of the inherent risk of skiing context. The Court stated that the statute aids trial courts by listing those risks which are considered inherent in the sport of skiing: those risks which are obvious and necessary. The Court defined necessary dangers as those which cannot reasonably be eliminated by the area operator. The Court also observed that a risk not listed in the statute may still be an inherent risk of the sport if necessary and obvious, but this risk must be subjectively obvious to the skier, who must know of the risk's presence, understand its nature, and freely and voluntarily choose to encounter it.

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

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

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

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

The Court next rejected the plaintiff's contention that the posted signs in the ski area were insufficient as a matter of law to comply with the statutory requirements. Although no "trail" signs were posted, the Court noted that the ski area consisted of one small open hill area that there were no real designated trails as such. The Court also noted evidence indicating that number of signs were posted at the bottom of the hill, where they were likely to be seen by skiers, and affirmed the trial court's ruling that genuine issues of material fact existed as to whether the signage at the ski area complied with the statutory requirement.

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

Ski Resort Negligence Liability

Hubschman v. City of Valdez, 653 P.2d 135 (Alaska 1991), involved issues of the interpretation of Alaska's Limitations on Claims Arising from Skiing Act (the "Act") A.S. 09.65.135, comparative negligence, and a protective order limiting the defendant's discovery and use of evidence regarding the plaintiff's prior DWI conviction and prior drinking experience. Hubschman sued the City of Valdez for injuries incurred as she went over a ski bump/jump at a city ski hill.

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

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

Municipality of Anchorage



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

TOM FINK
MAYOR

DEPARTMENT OF CULTURAL AND RECREATIONAL SERVICES

March 1, 1993

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

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

Dear Senator Taylor:

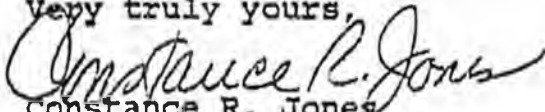
After careful review of both of the above pieces of legislation, our department supports passage of CSSB44 entitled the "Alaska Ski Safety Act of 1993".

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

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

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

Very truly yours,


Constance R. Jones
Director

cc: Anne Williams



SEIBU ALASKA, INC. dba: ALYESKA RESORT
BOX 249, GIRDWOOD, ALASKA 99587 • TEL. (907) 783-2222 • FAX (907) 783-2814

February 6, 1992

Mr. Bruce Rizer
5530 Rabbit Creek Road
Anchorage,
Alaska 99516

Dear Mr. Rizer,

It is my understanding that you have some questions concerning the incident involving your son. This has been brought to my attention by several members of the ski patrol that you have contacted.

I would like to offer my assistance in answering any questions you may have. Please feel free to contact me at your earliest convenience.

Sincerely,

John Heiser
Director of Mountain Operations



SEIBU ALASKA, INC.
d/b/a ALYESKA RESORT
P.O. Box 249
GIRDWOOD, ALASKA
99587
PHONE: (907)783-2222
FAX: (907)783-2814

DATE: Jun 22 1993
TO: _____
ATTEN: Josh Link
FROM: Valerie Demigan
mta operations

DESTINATION FAX NUMBER:
() 465-3756

PAGES IN THIS TRANSMISSION; INCLUDING THIS COVER SHEET _____

SENDER: _____

Josh - let me know if you
have any questions. John
will be back to Juneau
on Tuesday & can bring
a complete copy of the
plan.
Valerie

1

2

ALYESKA OPERATIONS PLAN

ALYESKA RESORT
GIRDWOOD, ALASKA

(Revised August 1992)

ALYESKA OPERATIONS PLAN
ALYESKA RESORT, GIRDWOOD, ALASKA

SIGNATURE PAGE

Reviewed by: _____ Date: _____
Director of Mountain Operations

Reviewed by: _____ Date: _____
Alyeska Patrol Supervisor

Reviewed by: _____ Date: _____
U.S.F.S. Snow Ranger

Recommended by: _____ Date: _____
U.S.F.S. District Ranger

Approved by: _____ Date: _____
U.S.F.S. Forest Supervisor

Approved by: _____ Date: _____
Commissioner of Department of
Public Safety
State of Alaska

Seibu-Alaska Inc., dba
Alyeska Resort
Permittee by: _____ Date: _____
General Manager

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Alaska State Legislature

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



STATE CAPITOL, SUITE 101
JUNEAU, ALASKA 99801-1182
PHONE: (907) 465-3822
FAX: (907) 465-3756

February 22, 1993

SENATE LABOR AND COMMERCE
COMMITTEE

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

Leslye H. Randall
2552 Susitna Drive
Anchorage, AK 99517

Dear Ms. Randall,

Thank you for sending me a copy of your letter to Senator Pearce regarding Senate Bill 44 (SB 44), the Alaska Ski Safety Act of 1993. I appreciate your taking the time to inform me of your support for this legislation.

I introduced SB 44 so that a balance could be struck between protecting the rights of skiers and ski resort operators. This bill would remove ski resorts from liability for injuries caused by the inherent dangers and risks of skiing. It would clearly define the responsibilities of the skiers and the inherent risks and dangers they assume. Moreover, it would define the responsibilities and duties of ski resort operators, such as adequately marking trails, hazards and closed areas, providing sufficient ski patrol, and having the necessary emergency rescue and evacuation procedures.

SB 44 passed out of the Senate Labor & Commerce Committee, which I chair, on January 26th, and has been scheduled for a hearing before the Senate Judiciary Committee on March 5th. For your information, I've enclosed my sponsor statement which provides more detail about the legislation.

Thanks again for your letter.

Sincerely,

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

TIM KELLY
State Senator

Copy to
Senator Kelly, Chair

2552 Susitna Drive
Anchorage, AK 99517
January 19, 1993

Senator Drew Pearce
Alaska State Capitol
Juneau, AK 99801-1182

Dear Senator Pearce:

After several hours attendance of today's teleconference with your committee concerning SR 44, I was quite disappointed that I and many others listening were unable to testify in favor of this bill. As a twenty-four year resident and skier, there are several reasons I favor this slightly improved status for Alaskan ski areas.

First there is the important factor of the inherent risk involved in downhill skiing. Any responsible athlete will readily admit that the nature of downhill skiing involves the chance of injury just as any sport does which uses physical skill, proper equipment and movement. Fortunately I have never been injured in my twenty-four years of skiing at Mt. Alyeska. In my husband's thirty years of skiing in the Anchorage area, he has had two injuries, neither of which were in any way caused by negligence of the local ski area. The key here is that we consider ourselves responsible skiers who always consider our own and others safety through proper physical conditioning, proper working equipment and through continual adherence to safety rules published by our ski area. We feel skiing is as safe as any other sport our two daughters have participated in and we are proud to say that they have enjoyed skiing as a safe and fun sport since they were three years old. Now as teenagers, they are presently attending downhill races at another fine Alaskan resort, Eaglecrest.

Obviously, my husband and I have watched Mt. Alyeska grow over the years to what we now consider a world class resort. Throughout these years, Alyeska Resort has consistently shown a successful effort to maintain an area for safe, public exercise. In our travels to other major ski areas in the lower 48, we have been able to compare our home resort and have found that Alyeska Resort is every bit as safety conscious as any other resort. I strongly feel that Alaska law should be no more restrictive than in other states which have ski areas.

In conclusion on the safety issue, I'd like to emphasize that I feel that downhill skiing is a wonderful sport which I've always felt was more than safe enough for my daughters'

participation. We are a responsible skiing family who is proud to claim Mt. Alyeska as our world-class ski resort.

My second major concern is about the promotion of successful business and tourism in our state. As a proud Alaskan I always try to promote our wonderful state as the greatest place to live, work and visit. Allowing unnecessary restrictions which would discourage future business development and which would hurt our major tourism income is unacceptable by our lawmakers. Therefore it appears that SR44 allows the safe and proper management of Alaska ski areas which will encourage future development, jobs and increased tourism. Please do not let the one tragic death of the boy in 1991 influence you and other lawmakers to make undue restrictions on our ski resorts. I have personally seen Siebu develop Mt. Alyeska into a safe, successful business, adding many jobs and increasing state tourism, and therefore I am in favor of SR44.

Finally, I am also appalled as a taxpayer and voter, that our lawmakers would allow an increase of jury trials to determine responsibility of risk at our ski areas. I do not want to continue to pay the rising fees of litigation when I feel that once I get off the lift I am responsible for my own actions while skiing down the slope. By allowing unnecessary and costly legal fees, all voters and taxpayers will become increasingly angered. Apparently SR44 would disallow reckless skiers their ridiculous claims.

As your constituent and supporter over the years, Senator Pearce, I really appreciate you taking time to read what has become an over-long statement in favor of SR44.

Sincerely,


Leslye H. Randall

copy to Senator Kelly, committee chairperson



ANCHORAGE
ECONOMIC
DEVELOPMENT
CORPORATION

January 18, 1992

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

Dear Senator Kelly:

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

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

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

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

Sincerely,

Scott E. Hawkins
President

Alaska State Legislature

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



STATE CAPITOL, SUITE 101
JUNEAU, ALASKA 99801-1182
PHONE: (907) 465-3822
FAX: (907) 465-3756

SENATE LABOR AND COMMERCE COMMITTEE

3111 C STREET, SUITE 550
ANCHORAGE, ALASKA 99503
(907) 551-7612

February 22, 1993

Harry Lafurney
6423 Village Pkwy
Anchorage, AK 99504

Dear Mr. Lafurney,

Thank you for your calling my office regarding Senate Bill 44 (SB 44), the Alaska Ski Safety Act of 1993. I appreciate your taking the time to inform me of your support for this legislation.

I introduced SB 44 so that a balance could be struck between protecting the rights of skiers and ski resort operators. This bill would remove ski resorts from liability for injuries caused by the inherent dangers and risks of skiing. It would clearly define the responsibilities of the skiers and the inherent risks and dangers they assume. Moreover, it would define the responsibilities and duties of ski resort operators, such as adequately marking trails, hazards and closed areas, providing sufficient ski patrol, and having the necessary emergency rescue and evacuation procedures.

SB 44 passed out of the Senate Labor & Commerce Committee, which I chair, on January 26th, and has been scheduled for a hearing before the Senate Judiciary Committee on March 5th. For your information, I've enclosed my sponsor statement which provides more detail about the legislation.

Thanks again for your phone call. Please do not hesitate to contact me with any other concerns you may have.

Sincerely,

A handwritten signature in black ink that reads "Tim".

TIM KELLY
State Senator

Alaska State Legislature

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



STATE CAPITOL, SUITE 101
JUNEAU, ALASKA 99801-1162
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February 22, 1993

SENATE LABOR AND COMMERCE COMMITTEE

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

Darryl L. Troutman
1939 Beaver Place
Anchorage, AK 99504

Dear Mr. Troutman,

Thank you for your letter regarding Senate Bill 44 (SB 44), the Alaska Ski Safety Act of 1993. I appreciate your taking the time to share your concerns with me.

I believe you may be misinformed about what exactly SB 44 would accomplish. Rather than diminish ski resort operators' responsibility to the skiing public, I believe it would enhance it. SB 44 would define ski resort operators' responsibilities and duties with regard to the marking of trails, hazards and closed areas, as well as providing sufficient ski patrol and emergency rescue and evacuation procedures. Failure to perform in any of these areas would constitute negligence for which they would be liable.

As you know, this legislation also defines the responsibilities of skiers, including the inherent dangers and risks of the sport for which ski resort operators will not be held liable.

SB 44 is an attempt to strike a reasonable balance between protecting skiers and ski area operators. Skiing is a dangerous sport, and ski resorts need protection from frivolous, but costly, suits resulting from what most skiers would consider risks and dangers they assume in choosing to ski. On the other hand, ski resort operators have an obligation to provide safe skiing conditions. I believe this legislation addresses both of these needs.

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

Sincerely,

TIM KELLY
State Senator

P.S. - I've enclosed the most recent version of the bill for your information.

DARRYL L. TROUTMAN
1939 Beaver Place
Anchorage, Alaska 99504

January 25, 1992

TO: Senator Tim Kelly
FAX 465-3756

I am against HB 44.

U.S. consumers have come to rely on the products and the services they buy to be reliable and safe for us to use. This has not always been the case. Only through watchdog government agencies, public opinion and litigation has this come to pass. Litigation is very useful in protecting the citizens when government enforcement agencies are absent and public opinion is not sufficiently motivated.

The inherent risk of skiing law sponsored by the ski resort industry is an attempt to shed any liability for acts which they may have negligently contributed to or fostered. This is done for one reason only-profit.

If this law passes, their insurance premiums could be reduced but so could lack of concern for the public safety of those using their facilities. They could further reduce their cost by not removing hazards, less lighting, hiring less-skilled managers and operations personnel. One may challenge this reasoning by saying "would a corporation like Seibu risk safety for \$200,000?" (Seibu says they spend \$200,000 a year on insurance premiums.) Perhaps not, but when there are hundreds of resorts operating throughout the U.S., it becomes a very practical move to limit liability in all states.

For years auto companies have argued against laws that would restrict their profits. First it was seat belts; then mandatory emission controls and gas economy and finally air bags because of the costs. In some cases the expense was only a few dollars a vehicle, but on the grand scale it was millions. There were government agencies involved with these issues and it still took years to achieve.

I recently visited Mexico for about the 10th time. It truly is a wonderful place to visit, except for one thing. There's a an attitude of an inherent risk of life and limb. As you walk down a sidewalk you may fall off a 2-foot curb to the street, or step into a hole, or walk into a guy wire. From any number of balconies of those charming boutique restaurants you can reach out and grab onto an electric utility line. I've seen parasailers lifted into lightning storms, dropped into palm trees and just plain dropped in sand with the passenger suffering very serious injury. People overcrowd buses and hang outside of the doors. Hazards loom everywhere you can imagine. If you are hurt,

page 2.

it is because you should have seen the danger and avoided it.

I befriended some Canadian visitors at the hotel where I stayed. They recounted this story of a personal experience in that hotel several days before I arrived. He and his wife went to their room to change out of their beach ware. They left their two daughters ages 9 and 11 in the swimming pool. There were about 10 people in the pool-mostly kids. As he was coming down the stairs from his room he saw his younger child struggling. Her head was under the water and her feet thrashing the surface. He jumped into the pool and grabbed his daughter and tried to lift her out but her long hair was caught in the filter system of the pool. The screen had been removed. He managed to get her head above water but she was unconscious and her hair still caught in the filter system. Fortunately the desk had a scissors and they cut the little girl's tangled hair free. She hadn't swallowed any water so she was revived quickly. The people at the hotel management apologized and replaced the screen on the bottom of the pool. They were also reminded that the guests swim at their own risk as the sign indicated.

I am a reasonably good risk evaluator, but I am also 55 years old. I rely on the products and services that I use aren't going to kill or hurt me. If I choose to ride a triple spiral roller coaster named "Triple Killer" at an amusement park where I paid what seemed like a lot of money for not a lot of entertainment, I have every reason in the world to believe that the ride will not leave its tracks or jettison me into thin air. If I die as a result of the ride, it's because my heart seized up from the excitement. If my heart was bad I should have evaluated the risks beforehand.

Now what about ski resorts. Do they need to anticipate hazards, guard against known hazards, keep up maintenance of their equipment and make sure their staff is well trained to protect their patrons? I believe so. They should be as accountable as another business and not be given a free ride from service and product liability.

Give the ski industry a favor like this and every other business will and, rightfully so, expect equal treatment.

I completely oppose SB 44.

Sincerely,


Darryl L. Troutman

Alaska State Legislature

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



STATE CAPITOL, SUITE 101
JUNEAU, ALASKA 99801-1182
PHONE: (907) 465-3822
FAX: (907) 465-3756

February 22, 1993

SENATE LABOR AND COMMERCE
COMMITTEE

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

Dianne Holmes
15140 Mesa Place
Anchorage, AK 99516

Dear Ms. Holmes,

Thank you for your letter regarding Senate Bill 44 (SB 44), the Alaska Ski Safety Act of 1993. I appreciate your taking the time to share with me your concerns with this legislation.

I believe you may be misinformed about what exactly SB 44 would accomplish. It would not wholly remove ski resort operators from all liability associated with skiing. In fact, it would specifically define the responsibilities and duties of ski resort operators, such as adequately marking trails, hazards and closed areas, providing sufficient ski patrol, and having the necessary emergency rescue and evacuation procedures. Failure to perform in any of these areas would constitute negligence for which they would be liable.

As you know, this legislation also defines the responsibilities of skiers, including the inherent dangers and risks of the sport for which ski resort operators will not be held liable.

SB 44 is an attempt to strike a reasonable balance between protecting skiers and ski area operators. Skiing is a dangerous sport, and ski resorts need protection from frivolous, but costly, suits resulting from what most skiers would consider risks and dangers they assume in choosing to ski. On the other hand, ski resort operators have an obligation to provide safe skiing conditions. I believe this legislation addresses both of these needs.

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

Sincerely

A handwritten signature in black ink that reads "Tim".

TIM KELLY
State Senator

P.S. - I've enclosed the most recent version of the bill for your information.

15140 Mesa Place
Anchorage, AK 99516
January 24, 1993

Senator Tim Kelly
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

VIA FACSIMILE 465-3756

Dear Senator Kelly:

This letter is a followup to my contact with your office last Tuesday morning at 8:00 am.

I wish to again express my concern with the SB 44 and specifically the language in the bill that would relieve ski resort operators of any liability. Even though ski operators can not change the terrain, I expect them to mitigate hazards dealing with the environment including avalanches, mechanical safety of the lifts, and daily changes in the weather that might cause unsafe skiing conditions. You might assume that ski operators all have a snow safety plan in place, but I know some do not, or they do not follow their plans; therefore there must be a way to ensure that the customer is assured of the safest conditions possible.

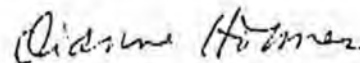
Do not be misled by the ski resort operators who say that the price of lift tickets will go up if they are aren't given immunity from liability; a similarly passed law in Colorado did not result in lower tickets or insurance.

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

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

And do you intend to vote to release them from immunity? Do not bother to reply if you can't give me a straight answer. I do not want a generic letter that is meant as a response for people on both sides of the issue.

Sincerely,



Dianne Holmes
345-1514

JAN. 19, 1992

Attn: Josh Fink

FAX - 465-5876

Dear Josh;

I just returned from the public hearing on SB 44. (Please excuse the hand written form.)

I was very disappointed that only those who opposed SB 44 were allowed to testify due to time constraints. There were 10 to 12 of us there wishing to testify in favor of SB 44.

I feel very sorry for the Riseo family but by their own testimony and that of the other two to testify against SB 44 they were looking for someone else to be responsible for their voluntary actions, in an activity where they knew there were risks.

The positives far out weigh any negatives not only for Ski Resorts but for Economic Development for all Alaskans.

Sincerely

PHIL THINGSTAD

Bus. mgr. Carpenters Local 1281

P.S. PLEASE SEE THAT THIS LETTER GETS TO THE COMMITTEE.

Alaska State Legislature

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



SENATE LABOR AND COMMERCE COMMITTEE

STATE CAPITOL, SUITE 101
JUNEAU, ALASKA 99801-1182
PHONE: (907) 465-3822
FAX: (907) 465-3756

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

February 22, 1993

Donna Jefferson
P.O. Box 393
Talkeetna, AK 99676

Dear Ms. Jefferson,

Thank you for your public opinion message regarding Senate Bill 44 (SB 44), the Alaska Ski Safety Act of 1993. I appreciate your taking the time to inform me of your support for this legislation.

I introduced SB 44 so that a balance could be struck between protecting the rights of skiers and ski resort operators. This bill would remove ski resorts from liability for injuries caused by the inherent dangers and risks of skiing. It would clearly define the responsibilities of the skiers and the inherent risks and dangers they assume. Moreover, it would define the responsibilities and duties of ski resort operators, such as adequately marking trails, hazards and closed areas, providing sufficient ski patrol, and having the necessary emergency rescue and evacuation procedures.

SB 44 passed out of the Senate Labor & Commerce Committee, which I chair, on January 26th, and has been scheduled for a hearing before the Senate Judiciary Committee on March 5th. For your information, I've enclosed my sponsor statement which provides more detail about the legislation.

Thanks again for your message.

Sincerely,

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

TIM KELLY
State Senator

FROM: Mr. Richard Sewell
Box 100347

Anchorage AK 99510 562-7837
NON-CONSTITUENT
BILL#
ETHICS NOT LEGIS

MESSAGE: I COMMEND SENATOR JACKO FOR RECOGNIZING HIS ALCOHOL PROBLEM BUT ALCOHOLISM DOES NOT EXCUSE MISCONDUCT. BLACK'S LAW DICTIONARY DEFINES THIS ISSUE: 'QUI PECCAT EBRIUS LUAT SOBRIUS.'

FROM: Ms. Donna Jefferson
Box 393

Talkeetna AK 99676 733-2732
NON-CONSTITUENT
BILL# SB 44 CIVIL LIABILITY FOR SKIING ACCIDENTS
SUPPORTS

MESSAGE: I URGE YOU TO SUPPORT SB 44 AND HB 41 TOWARDS THE GOAL OF MAKING PEOPLE RESPONSIBLE FOR THEMSELVES.

FROM: Mrs. Jeanne Everhart
Box 81269

Fairbanks AK 99708 479-2049
NON-CONSTITUENT
BILL# SB 77 INTENSIVE MANAGEMENT OF GAME RESOURCES
SUPPORTS

MESSAGE: NEED TO ENSURE HUNTING OPPORTUNITIES FOR ALL SUPPORT SB 77 AND HB 141. REPEAL HUNTING AND FISHING LICENSE INCREASE.

FROM: Mr. Steven Colboch
823 Goldstream Road

Fairbanks AK 99712 455-6842
NON-CONSTITUENT
BILL# SB 77 INTENSIVE MANAGEMENT OF GAME RESOURCES
SUPPORTS

MESSAGE: I URGE IMMEDIATE ADOPTION OF THIS BILL IN ORDER TO PRESERVE AND INCREASE EDIBLE BIG GAME IN ALASKA.

FROM: Ms. Helen Cameron
1601 Eastridge Dr. #103

Anchorage AK 99501 274-9389
NON-CONSTITUENT
BILL#
EDUCATION NOT LEGIS

MESSAGE: I BELIEVE THE THREE R'S ARE NECESSARY. OUR SCHOOLS ARE NOT TEACHING OUR CHILDREN, THEREFORE I OBJECT TO ANY MONEY GOING TO OUR PUBLIC SCHOOLS FOR FRIVOLOUS MEANS. YOU CANNOT LEARN OR TEACH WITHOUT DISCIPLINE AND RESPECT.

ALASKA ADVENTURE CHARTERS

SPORTFISHING - INLAND PASSAGE CRUISES - MINING SUPPORT - S.E. ALASKA CRUISES

Josh

November 3, 1993

Senator Tim Kelly
716 W. 4th, Suite 400
Anchorage, AK 99501-2133

Dear Senator Kelly:

Alaskans depend more each year on tourist dollars for their basic income - I'm part of that industry.

✓ I have read both S.B. #44 and H.B. #41. This is important legislation that will help allow the survival of a viable tourist industry.

I'm writing several legislators to urge them to support these bills.
Thanks for introducing this legislation.

Sincerely,

Troy C. Erwin

Troy C. Erwin

HINCHEY & ASSOCIATES

Real Estate Appraisers & Consultants

440 W. Benson Blvd., Anchorage, Alaska 99503 (907) 561-5136 FAX: 561-5077

February 17, 1993

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

Dear Senator Kelly:

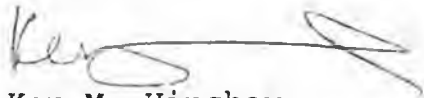
I am concerned about a recent Alaska Supreme Court ruling that came to my attention which has deprived ski area operators of the protection from the liability intended by the legislature when it adopted the existing Alaska State statute AS 09.65.135 "Limitation on Claims Arising from Skiing".

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

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

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

Sincerely,



Ken M. Hinchey

KMH/lm

April 6, 1993

Senator Robin Taylor
Alaska State Senate
State Capitol
Juneau, Alaska 99801-1182

RE: Senate Bill 44

Dear Senator Taylor:

I understand that Senate Bill 44 - an act relating to civil liability for skiing accidents - is having a tough time being passed through the Senate Judiciary Committee. I was unable to attend the committee hearing on Wednesday, March 31, 1993, when the amendments were discussed. However, I would like to discuss why Senate Bill 44 is important to the ski industry in Alaska.

There are 40 states in the Union that have ski resorts operating as viable businesses. Alaska has 10 ski areas with only Alyeska Resort in Girdwood operating as a year round destination resort. Even though some resorts have been operating in Alaska since the late 1950's, we are young in the eyes of the ski industry. But as Alaska grows, so too, will the ski industry, as seen by the Seibu development, interest in Hatcher Pass and the State interest in the Winner Creek Area in Girdwood. These developments are vital for economic growth and development in Alaska as tourism increases and oil revenues decrease.

As an example of what can happen economically in Alaska, I will use Colorado as a basis since statistics were readily available. In 1950 there were only a few hundred people earning a living from downhill skiing. In the past 43 years Colorado's ski industry has grown to encompass some 61,500 jobs and nearly \$2.3 billion in annual retail sales. The industry in Colorado supports 28 ski areas, nearly 10 million skier visits, and on an average draws 10,000 out-of-state visitors a day. Skiers in Colorado spend approximately \$1.1 billion directly in association with skiing activities. Ski area operators collected only 22% of direct skier expenditures through lift ticket and ski school sales. The lodging industry, general retail stores and the food and beverage industries are the largest recipients of visitor dollars. Direct expenditures by skiers and summer tourist support a variety of businesses and service operations in the resort communities. These businesses and their employees in turn

Senator Robin Taylor
April 6, 1993
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purchase additional goods and services. Recirculation of visitor dollars stimulates economic activity in a broad geographic area and brings in a new category of businesses, including professional services, construction trades, government and wholesale distribution centers. This statewide recirculation of dollars imported into the economy by skiing represents an additional \$930 million in Colorado business activity, beyond the direct impact of visitor spending. The Colorado ski industry is a large contributor to the State's tax coffers in the approximate amount of \$101 million.

Why do I bring these Colorado statistics to your attention? Because for Colorado to have succeeded in the ski industry and economically, they had to have a strong inherent risk law. If Alaska is to succeed in developing along these same lines, it too must have a good inherent risk law. For the past 15 years, there has been a strong movement by trial lawyers to go after ski resort operators because of inadequate inherent risk legislation and the inability of ski resort operators to defend themselves appropriately. In states with a good inherent risk law, small scale ski areas have been able to survive without going bankrupt over unnecessary litigation costs.

In May 1993, the State of Alaska, Department of Natural Resources will be taking over from the U.S. Forest Service lands that have existing ski developments as well as lands that are slated for ski area development. When this happens the State of Alaska can then be named in any lawsuits brought against ski resort operators. If a strong inherent risk law is not passed, then existing ski areas will be forced to raise ticket prices to absurd levels thereby alienating families and only allowing the wealthy to ski. This would cause a drastic decrease in skier activity which through the domino effect, causes loss of jobs, decline in economic growth, and the possibility of ski areas closing down. The possible development of new areas will also be hindered in that no one will spend money to develop a ski area if their interests are not somewhat protected.

Ski resort operators are inspected by the U.S. Forest Service, State Tramway authorities, insurance carriers, and outside engineering firms on a periodic basis to make sure the area is conforming to the standards of the industry, State and Federal regulations, insurance regulation, and ANSI B.77 requirements. The industry as a whole has made giant strides in improving the safety and reliability of lift transportation systems,

Senator Robin Taylor

April 6, 1993

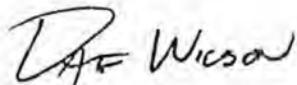
Page 3

better grooming vehicles, signs that are universally understood, and better avalanche mitigation techniques. Because of such activity, the number of accidents per capita has actually been reduced.

The ski industry is a big business recreationally and economically, one that the State of Alaska cannot afford to lose. I find it unethical and against protocol for a trial attorney to attack this Bill in such a format when the case in question is under litigation and a verdict has not been rendered.

The purpose of Senate Bill 44 is to weed out unnecessary litigation and costs associated with it and is similar in retrospect to Senate Bill 172 which you are sponsoring. With all things considered, let's get this Bill passed out of the judiciary committee so ski development in Alaska can move forward in a positive direction.

Sincerely,



Dave Wilson
Girdwood, Alaska

Copy: Governor Walter Hickel
Senator Tim Kelly

THE NEED FOR AND PROBABLE EFFECTS OF INHERENT RISKS OF SKIING LEGISLATION

House Bill 491 and Senate Bill 403



There are very few things which can be predicted with any degree of success in the litigation arena.¹ It is therefore difficult to predict with any degree of certainty the effect in an individual case of the adoption of House Bill 491 or Senate Bill 403, or if the Alaska Legislature adopted a statutory scheme similar to Colorado or New Hampshire.

Nevertheless, it is easy and appropriate to outline the basic differences between (1) the current statute, AS 09.65.135, as interpreted by the Alaska Supreme Court; (2) the statute as proposed in HB 491 and SB 403; and (3) the adoption of a comprehensive statute governing skiing responsibilities and duties, such as Colorado or New Hampshire.

I. The Need for Legislation Regarding the Inherent Risks of Skiing

Prior to 1978, it was generally assumed among ski area operators and the courts that skiers were responsible for their own injuries arising from the inherent risks of skiing. This doctrine was called "primary assumption of risk," and basically held that a ski area operator is not liable for injuries arising from the inherent risks of skiing. An operator owed his patron no duty to eliminate those risks, because they were part of the sport. Skiers assumed those dangers by their very participation in the sport. This doctrine was most eloquently set forth in *Wright v. Mt. Mansfield Lift, Inc.*, 96 F.Supp. 786, 790-91 (D.Vt. 1951). In that case, a skier claimed to have struck a stump (created by clearing the ski trail), and fallen, breaking her leg. The court held the ski area operator had no duty to protect against a danger so obvious in the sport of skiing:

Skiing is a sport; a sport that entices thousands of people; a sport that requires an ability on the part of the skier to handle himself or herself under various circumstances of grade, boundary, mid-trail obstructions, corners and varied conditions of the snow. Secondly, it requires good judgment on the part of the skier and recognition of the existing circumstances and conditions. Only the skier knows his own ability to cope with a certain piece of trail. Snow, ranging from powder to ice, can be of infinite kinds. Breakable crust may be encountered where soft snow is expected. Roots and rocks may be hidden under a thin cover. A single thin stubble of cut brush can trip a skier in the middle of a turn. Sticky snow may follow a fast running surface without warning. Skiing conditions may change quickly. What was, a short time before, a perfect surface with a soft cover on all bumps may fairly rapidly become filled with ruts, worn

¹ The most certain prediction is that the lawyers on each side will more than likely reap greater benefits from the litigation than the clients.

spots and other manner of skier created hazards.

...

In this skiing case, there is no evidence of any dangers existing which reasonable prudence on the parts of the defendants would have foreseen and corrected. It isn't as though a tractor was parked on a ski trail around a corner or bend without warning to skiers coming down. It isn't as though on a trail that was open work was in progress of which the skier was unwarned. It isn't as though a telephone wire had fallen across the ski trail of which the defendant knew or ought to have known and the plaintiff did not know.

The trail at the point of the accident was smooth and covered with snow. There were no unexpected obstructions showing. The plaintiff, in hitting the snow-covered stump as she claims to have hit, was merely accepting a danger that inheres in the sport of skiing. To hold that the terrain of a ski trail down a mighty mountain, with fluctuation in weather and snow conditions that constantly change its appearance and slipperiness, should be kept level and smooth, free from holes or depressions, equally safe for the adult or the child, would be to demand the impossible. It cannot be that there is any duty imposed on the owner and operator of a ski slope that charges it with the knowledge of these mutations of nature and requires it to warn the public against such.

A short 27 years later, the Vermont Supreme Court turned the skiing community on its head with the holding in *Sunday v. Stratton Corp.*, 390 A.2d 398 (Vt. 1978). In that case, a skier claimed that he had fallen after his ski became entangled in a small bush or piece of brush near the side of a beginner's trail. The skier became a quadriplegic as a result of the incident. The court held that the ski area operator could be liable for such an incident, and affirmed a jury verdict in favor of the skier.

Within five years, over 20 states with commercial ski operations adopted one form of a statute imposing responsibility for injuries arising from the inherent risks of skiing on the skier. There are several reasons why such statutes are necessary and desirable, and why the legislature must use very specific language in expressing its intentions.

The first point is that ski area operators require certainty. It is very important that ski area operators know exactly those things for which they are responsible, and those things for which the skier is responsible. If area operators know what their duties are (provided they are not so onerous as to require more expenditures than can be recouped through revenues, i.e., ticket prices), and they know how to comply, skiing as a sport will be greatly enhanced. Insurance rates will go down for those who comply with the known requirements, especially after it is well-established that claims arising from inherent risk incidents can be resolved by summary motion. Cases like *Sunday v. Stratton*, which impose liability in unpredictable

circumstances, deprive operators and their insurers with the certainty necessary to develop an effective risk management program.

The second point is that courts resist change, especially when the legislature alters the common law as established by the court. It is imperative that the legislation show a clear intent to alter the common law with respect to the rights and duties of skiers and ski area operators. Section 1 of both bills does this, and is a critical component of the legislation. The best solution, of course, is for the legislature to adopt a comprehensive statute regulating the operation of ski areas, setting forth the specific duties of an operator to his patrons, and the specific responsibilities of ski areas. In addition to the reluctance with which courts greet changes in the laws they have "written," courts eagerly entertain the application of constitutional test to legislative acts which deviate from the common law. While most challenges to inherent risk statutes have been unsuccessful,² the Montana Supreme Court found the Montana act unconstitutional.³

The third point, and perhaps the most important, is that skiing is unlike any other commercial enterprise. Ski area operators offer skiers access to large areas of mountainous alpine terrain. This terrain contains all manner of variations in terrain, hills, gullies, ridges, holes, streams, forests, brush, grass, rocks, etc. Skiing takes place in the winter time, with all of the winter weather conditions. The patrons of a ski area engage in a highly athletic sport which requires good physical conditioning and quick reflexes. By the nature of the sport, the patrons slide on a steep, slippery surface at speeds which, even for the beginner or intermediate, easily exceed even the speed of the fastest runner. Unlike the operator of a skating rink or bowling alley or golf course, there is no physical way a ski area operator can modify, control, or even monitor each rock, tree, ridge, icy spot, or other single point condition so as to protect all patrons from injury. Yet a ski liability case is tried as if the area operator should focus all of his attentions and resources on the one tiny spot on the hill where the accident occurred.

Alyeska Resort has an enviable safety record when compared to other ski areas in the United States. Ski accident safety is traditionally measured in terms of the number of accidents

² The following cases upheld inherent risk of skiing statutes as constitutional: *Pizza v. Wolf Creek Ski Development Corp.*, 711 P.2d 671 (Colo. 1985); *Grieb v. Alpine Valley Ski Area, Inc.*, 400 N.W.2d 653 (Mich.App. 1986); *Scmitz v. Cannonsburg Skiing Corporation*, 428 N.W.2d 742 (Mich.App. 1988); *Lewis v. Canaan Valley Resorts, Inc.*, 408 S.E. 2d 1128 (W.Va. 1991); *Northcutt v. Sun Valley Co.*, 787 P.2d 1159 (Idaho 1990); *Collins v. Schweizer, Inc.*, -- F.Supp. --, 1991 WestLaw 196753 (D.Idaho 1991); *Glebitnik v. Fischer*, 709 F.Supp. 1012 (D.Colo. 1989); *Wetnrauch v. Park City*, 635 F.Supp. 91 (D.Utah 1986).

³ *Brewer v. Ski-Lift, Inc.*, 762 P.2d 226 (Mont. 1988). The Montana statute has since been amended to respond to the concerns expressed by the Montana Supreme Court. See Montana Code §§ 23-2-701 *et seq.*

incurred per thousand skier visits. A "skier visit" is one skier visiting the ski area on a single day. The number of accidents is the number of skiers who report injuries to the ski patrol. Over the last several years, the number of accidents at Alyeska has consistently remained well below the national average:

COMPARISON OF NUMBER OF SKI ACCIDENTS			
Year	Skier Visits	United States	Alyeska Resort
89-90	133,466	3.4	2.7
90-91	138,762	3.4	1.8
91-92 (as of 02/29/92)	132,280	3.3	1.1

Despite this positive safety record, Alyeska Resort spends a substantial amount of money each year defending claims made by injured patrons. The resort changed insurers effective December 1, 1989. Since that date, Alyeska Resort has paid over \$100,000 in legal fees related to claims made by skiers, and currently has 6 open claims files. The net claim amounts and/or reserves for claims exceeds \$200,000.

Why is a relatively safe ski resort stuck with very high legal fees and insurance premiums? Largely because Alyeska, like all Alaska ski areas, is without effective protection from claims arising from the inherent risks of skiing.

The fact is that despite the best efforts of any ski area operator, a very few skiers are going to get hurt while engaging in the sport. Some will sustain minor injuries, some will suffer permanent and/or serious injuries, and a very, very few will die. This is not because the skiers or the operators are bad people, or are foolish, or do not take care of themselves or the ski area. It is a result of a sport which combines high speed, mountainous steep terrain, varying snow and weather conditions, and rocks, trees, bushes, stumps, etc.

Currently, Alyeska is forced to consider any skier who suffers a substantial injury as a potential claimant. The rules are not clear, the chances of liability uncertain, and the amounts awarded potentially very large.

II. Current Status of Ski Law in the United States

Since there is no uniform law proposed by the American Law Institute, the statutes vary substantially. There are essentially three legal positions taken by the states within which skiing occurs. These are: (1) the common law as recently reinterpreted and established by the supreme courts in the various states; (2) statutes which tend to preserve the common law, but list the

Inherent risks of skiing and limiting the liability of ski area operators; and (3) statutes which replace the common law with a specific list of duties for ski area operators and skiers.

A. Common Law

The first position is the common law duties established by the court: A landowner or possessor of land is required to act as a reasonable person in maintaining his property in a reasonably safe condition in view of all the circumstances including the likelihood of injury to others, the seriousness of the injury, and the burden on the respective parties of avoiding the risk. *Webb v. City and Borough of Sitka*, 561 P.2d 731, 733 (Alaska 1977). This makes sense when the size and nature of the parcel, when combined with the activities of the patrons in various weather conditions, allows the owner or possessor to generally monitor each area of his land. In the world of skiing, it imposes a theoretical desirable norm which is absolutely impractical in the real world. Each assertion of liability focuses on a mere snapshot of time and space, and totally ignores all of the other conditions of the land and patrons, and the efforts of the ski area operator to improve skier safety. Ski area operators need more certainty with respect to their duties than a jury trial from hind sight on every ski accident involving more than minor injuries.

B. List of Inherent Risks

The second position is the option selected by Alaska in 1980, and by a few other states, including Utah. This involves three parts. First, the legislature adopts a descriptive, non-comprehensive list of the inherent risks of skiing. Then, the legislature requires the ski area operator to post a notice informing skiers of the inherent risks of skiing and the limitation of liability. Finally, in exchange for correctly posting the notice, the ski area operator is relieved of liability for injuries arising from the inherent risks of skiing. The effectiveness of these statutes depends largely on their interpretation by the supreme court in the state of adoption. In both Alaska and Utah, the state supreme courts have restrictively interpreted these statutes. *Hibschmann v. City of Valdez*, 821 P.2d 1354 (Alaska 1991); and *Clover v. Snowbird Ski Resort*, 808 P.2d 1037 (Utah 1991). Both courts held that this kind of statute merely codifies the common law, and does not prevent a patron from claiming the operator was negligent, even when the injury is caused by an inherent risk of the sport. The uncertainty created by this interpretation largely renders the statute meaningless. As the Utah Supreme Court stated, "While the general parameters of the act are clear, application of the statute to specific circumstances is less certain. ... The statute, therefore, contemplates that the determination of whether a risk is inherent be made on a case-by-case basis ..." 808 P.2d at 1044 and 1045.

C. Substitution of Duties for Ski Area Operators and Skiers

The third position is the adoption of a comprehensive statute regulating the operation of ski areas, which is the position taken by Colorado and New Hampshire, among others. In its adoption of the statute, the legislature makes it clear that it is not merely codifying the common

law, but is comprehensively rewriting the law with respect to the operation of ski areas. First, the legislation sets forth with some particularity the duties of ski area operators to their skiing patrons, including generally very specific requirements regarding signs informing skiers of the relative difficulty of runs, and warning about the inherent risks. These statutes include regulation of the operation of tramways, much as Alaska has done in AS 05.20. The statutes also contain a list of prohibited activities by skiers who ride tramways. These statutes then set forth the duties of skiers with respect to their own safety and the safety of other skiers. Finally, the statutes generally state that so long as the operator fulfills his duties, or so long as a failure to fulfill a particular duty is not the cause of an injury, the ski area operator can not be held liable to the injured patron. These statutes provide the necessary certainty for ski area operators, thus encouraging the development and operation of ski areas. These statutes are also more likely to survive a constitutional challenge, because they impose specific duties on ski area operators in exchange for the limitation of liability. Colorado State: CRS §§ 33-44-101 to -114, interpreted in *Phillips v. Monarch Recreation Corp.*, 668 P.2d 982 (Colo.App. 1983), and *Pizza v. Wolf Creek Ski Development Corp.*, 711 P.2d 671 (Colo. 1985). New Hampshire Statute: NHS §§ 225-A:1 to A:26, interpreted in *Adie v. Temple Mountain Ski Area, Inc.*, 238 A.2d 738 (N.H. 1968), and *Berniger v. Meadow Green-Wildcat Corp.*, 945 F.2d 4 (1st Cir. 1991).

III. The *Hiibschman* Case, and the Legal Implications of the Decision on Incidents occurring at Alyeska Resort

The *Hiibschman* case arose at Salmonberry Ridge, a small ski area operated by the City of Valdez. Heather Hiibschman, 15 years old at the time, went skiing with friends at Salmonberry Ridge on March 13, 1986, the first year the area was open. Prior to going skiing, the group stopped by a liquor store and purchased beer, which they consumed during the day. Hiibschman watched several people jump over a bump on the hill estimated to be between two and four feet high. She waited in line to take her turn to go over the jump. When she went over the bump, she leaned backward and fell, resulting in paraplegia.

Based on the inherent risk of skiing statute, the Superior Court granted summary judgment to the City on all issues except the question of whether the City had complied with the signage requirement. The lower court held that Hiibschman had failed to ski within the limits of her ability. A jury later determined that the City had complied with the signage requirements.

The Supreme Court reversed the summary judgment, and sent the case back to the Superior Court for trial. There are several rulings in the *Hiibschman* decision which render the inherent risk of skiing statute largely ineffective. The following discussion illustrates a number of the problems created by the *Hiibschman* case, provides examples of recent incidents at Alyeska Resort which are affected by the rulings, and explains the application of the *Hiibschman* case, the proposed legislation and the more comprehensive ski statutes, to the example:

- A. The statute preserved the common law duties of ski area operators. Thus, the ski area operator is required to act as a reasonable person in maintaining all skiing terrain under

his control in a "reasonably safe" condition.

Problem: Ski area operators are unlike any other business which invites patrons to enjoy land. Skiers seek an outdoor athletic experience in a winter alpine setting on very large tracts of land. Many skiers who get hurt were seeking higher physical challenges in steeper terrain, deeper snow, or using terrain variations to jump. Given the weather, slope, vegetation, etc., it is impossible for a ski area operator to keep the entire ski area "reasonably safe" under all conditions.

Example: Skier skied down Von Imhoff Trail at a high rate of speed, turn right off the main trail and attempted to jump from a small ridge. Skier fell before reaching the top of the ridge, struck some ice or rocks, and broke his back. Skier claims Alyeska liable because of negligent failure to provide sufficient snow cover or because the ski run was icy or because there were rocks where the skier fell.

1. Under the *Hiltschman* ruling, this case must go to a jury trial on whether Alyeska should have opened at all, whether there was sufficient warning of the off trail conditions, and whether Alyeska could have provided sufficient snow coverage or removed the rocks off the trail.
 2. Under HB 491 and SB 403, this case probably would be resolved under summary judgment, provided the operator had posted the required warning signs. Section 1 makes clear the legislative intent to alter the common law, and the amendments in section 3 make it clear that whether the accident was caused by ice or rocks, it is the skier's responsibility. The statute and the required warning sign notify skiers of the dangers, and their responsibility.
 3. Under Colorado or New Hampshire inherent risk statutes, the case certainly would be resolved under summary judgment, provided the operator had posted the required warning signs and fulfilled the other requirements under those statutes. Those statutes substitute an entire new set of responsibilities and obligations for area operators and skiers in the place of the general common law duty of landowners. These statutes recognize the unique nature of skiing.
- B. An inherent risk is one which is obvious and necessary to it. A risk is not necessary if it could be eliminated or mitigated through the exercise of reasonable care. The listing of a risk in the statute makes the risk obvious, but does not make it necessary - necessary risks are those which cannot reasonably be eliminated by the area operator.

Problem: The purpose of the statute was to require the skier to accept the risk of all inherent risks, not just those listed. It is irrelevant whether the risk is necessary, since the risk and the enjoyment factor often coincide. An example is a skier skiing down steep terrain on hardpack snow. Speed and descent are exhilarating, but also increase

the risk of injury. It does not matter whether the steep terrain or snow conditions are necessary, because the skier intended to encounter them.

Example: Skier fell while skiing on South Face, a steep run, after ski binding released. Skier slid down South Face, and tried to stop his descent by putting foot in snow. One foot caught in the snow, and he broke his femur. Skier claimed Alyeska liable because South Face was too icy to be opened that day. Skier's friend testified in deposition that they had skied the South Face the previous day, and at least once before that day without any problems. He also testified that they were expert skiers and had actively sought challenging runs.

1. Under the *Hiibschman* ruling, this case probably would have been tried before a jury. The court's ruling would have required a trial on the issue of whether Alyeska was negligent in opening the South Face that day, because the snow was "too hard" or "icy," and whether the snow conditions were a "necessary" part of the sport, thus an inherent risk.
 2. Under HB 491 and SB 403, this case would be resolved under summary judgment, provided the operator had posted the required warning signs. Section 3 amends the list of inherent risks to clearly specify that all snow conditions are inherent risks, even as they change during the day or from day to day.
 3. Under Colorado or New Hampshire inherent risk statutes, the case certainly would be resolved under summary judgment, provided the operator had posted the required warning signs and fulfilled the other requirements under those statutes.
- C. Evidence of negligence, even where the injury resulted from an inherent risk, takes the case out of the protection afforded by the statute, and the case must be tried before a jury.

Problem: Only an incompetent plaintiff's attorney would be wholly unable to theorize an allegation of negligence and find an expert who will confirm the theory in virtually any skiing accident. The whole point of an inherent risk statute is that the burden of avoiding injury from such a risk is wholly on the skier. This single holding means that almost every case must go to a jury trial, because it is the rare negligence case that can be resolved by summary judgment. *Braham v. Fuller*, 728 P.2d 641, 646 (Alaska 1986); *Webb v. City and Borough of Sitka*, 561 P.2d 731, 735 (Alaska 1977).

Example: Skier skied down Sourdough Trail. His binding came loose, he lost a ski, and fell. Skier slid feet first to the edge of the main trail and struck a rock, breaking his back. Skier claims Alyeska liable because of negligent failure to provide sufficient snow cover, failure to remove the rock, and failure to mark the rock.

1. Under the *Hiibschman* ruling, this case would have been tried before a jury. The court's ruling requires a trial on the issue of whether the rock was in the main run or off the main trail, whether there was sufficient snow, and whether Alyeska should have removed the rock.
 2. Under HB 491 and SB 403, this case might be resolved under summary judgment, provided the operator had posted the required warning signs. Section 3 amends the list of inherent risks to clearly specify collisions with natural objects, on or off the trail, are an inherent risk of the sport. There has been some earth work in the vicinity of the rock, however, and there is some question whether this fact would take the rock out of the status of "natural object."
 3. Under Colorado or New Hampshire inherent risk statutes, the case certainly would be resolved under summary judgment, provided the operator had posted the required warning signs and fulfilled the other requirements under those statutes. Non-moving objects on the ski hill are the responsibility of the skier, whether on the main trails or off in the woods.
- D. Artificial conditions are not inherent risks. Any alteration to natural conditions -- earth work to create a ski run, cutting a tree, grooming a ski slope -- removes those conditions from inherent risks of skiing within the list in the current statute.

Problem: This means that a ski area operator's efforts to improve safety by, for example, grading ski trails in the summer time increase the operator's risk of liability. This creates an incentive to leave dangerous -- but natural -- conditions in place. The legislature should encourage a ski operator to take steps to reduce naturally created hazards.

Example: A skier fell on the back of her skis on the Von Imhoff Trail, and slid through a transition onto Upper Sourdough, breaking her hip. Both runs were cut and graded out of the forest by Alyeska, and both provide substantially easier routes down the mountain than the natural conditions which existed before the work was performed. No claim has yet been made.

1. Under the *Hiibschman* ruling, any claim made would have to proceed to a jury trial. The slopes are artificial, and therefore, by Alaska Supreme Court definition, can not be considered an inherent risk of skiing. Any claim that asserted the injuries were a result of trail design, construction or maintenance would be impervious to a motion for summary judgment.
2. Under HB 491 and SB 403, this case would almost certainly be resolved under summary judgment, provided the operator had posted the required warning signs. Section 3 amends the list of inherent risks to clearly specify that variations in

terrain, whether natural or a result of slope design and terrain modification, are an inherent risk of the sport.

3. Under Colorado or New Hampshire inherent risk statutes, the case certainly would be resolved under summary judgment, provided the operator had posted the required warning signs and fulfilled the other requirements under those statutes. In particular, Colorado's statute specifically lists "variations or steepness in terrain, whether natural or a result of slope design, snowmaking or grooming operations, including but not limited to roads, catwalks, or other terrain modifications" are inherent risks of skiing. See Colorado Revised Statutes § 33-44-103(10).

- E. Where warning signs must be placed and what they must say is an issue for the jury to resolve.

Problem: The best place to put the signs is where people who use the ski area are most likely to see them. The present statute, which requires "trail signs at prominent locations within a ski area" is open to vast interpretation, thus requiring a jury trial in every case on whether the signs were "trail signs" and whether they were placed in "prominent locations." Ski area operators need to know precisely what to post and where they have to post it.

Example: Skier (29-year old) was apparently skiing fast down the Waterfall and lost control, flying into the woods and striking two trees. Skier suffered severe multiple trauma. (The patrollers who attended his injuries were awarded the National Ski Patrol Purple Heart for a life-saving effort.) Skier's father has made repeated inquiries regarding the incident, but has not yet made a claim.

1. Under the *Hubschman* ruling, this case would have been tried before a jury. Although it appears that the cause of the injuries was one or more inherent risks: trees, snow conditions or failure to ski within the limits of the skier's ability, the court's ruling requires a trial on the issue of whether Alyeska's signage was sufficient to comply with the warning sign requirements in the current inherent risk statute.
2. Under HB 491 and SB 403, this case would almost certainly be resolved under summary judgment, provided the operator had posted the required warning signs. Section 2 imposes firm and certain signage requirements both with respect to content and location. Alyeska can KNOW without a doubt what has to be done to comply, and can in fact comply. Section 3 amends the list of inherent risks to clearly specify collisions with natural objects, on or off the trail, are an inherent risk of the sport.

3. Under Colorado or New Hampshire inherent risk statutes, the case certainly would be resolved under summary judgment, provided the operator had posted the required warning signs and fulfilled the other requirements under those statutes. Non-moving objects on the ski hill are the responsibility of the skier, whether on the main trails or off in the woods.

IV. Conclusion

The need for legislation is apparent. In order for skiing to be available for Alaskan residents in any form and at reasonable ticket prices, the operators must know and be able to comply with the duties required by the state. This can best be effected by the adoption of an effective inherent risk statute.

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BS

SPONSOR STATEMENT

SSSB-47 (by Kelly)

An Act relating to equipment, registration, and identification
of custom collector vehicles; effective date: 1/1/94

This bill is in response to the requests of custom collector (more commonly referred to as "street rods") vehicle owners who want the opportunity to display their classic vehicles at fairs, car shows, parades and pleasure driving. Passage of this measure permits custom car collectors, registered and licensed by the state DMV, to drive their classic vehicles without being ticketed by law enforcement agencies. The bill specifies equipment requirements, vehicle registration and identification numbers, and permits specialized plates for vehicles meeting the requirements and definition of a custom collector vehicle.

There are custom collector organizations throughout the U.S. representing more than 150,000 individuals. In Alaska, the Midnight Sun Street Rod Association of Anchorage, the Arctic Wheels of Fairbanks, and the state's largest group, the Peninsula Cruisers of the Kenai/Soldotna area together represent about 300 custom vehicle enthusiasts whose hobby is the restoration and display of custom classic vehicles.

Custom classic vehicles are cars manufactured before 1949, or a replica of a vehicle whose body and frame were manufactured before 1949, and modified for safe road use, (Sec. 5). Often times hundreds of hours and thousands of dollars are expended to restore these classic vehicles. Special insurance is needed and is available in Alaska.

The bill mandates specific vehicle equipment such as hydraulic brakes, safety belts, parking brakes, etc. (Sec. 1) before a custom classic vehicle can be registered, licensed, and driven. It provides for registration and identification with the Department of Motor Vehicles (Sec. 2). and, also provides for the issuance of "special plates" for vehicles registered with DMV as a custom collector, (Sec. 4), for a one-time plate fee of \$50.

FISCAL NOTE: (\$900) The Department of Motor Vehicles / Public Safety estimates income of about \$10,000, based on 200 first year (FY94) registration and licensing requests. The number of registrants could be as high as 250, raising income to about \$12,500. DMV projects expenses of about \$10,900.

Department Position: Public Safety/DMV does not object to this bill.

Sponsor Statement

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 1/22/93-SS
1/15/93-182SB

FURTHER: FINANCE

Date of 5-Day Notice: 1/15/93
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 1/26/93

L&C Committee considered SSSB 47

"An Act relating to equipment, registration, and identification of custom collector vehicles; and providing for an effective date."

and recommends:

replace with _____ CS _____ ()

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
PUBLIC SAFETY	1/25/93		10.9

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

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

DO PASS:

Steve Train
D. E. Salo
George ...

OTHER RECOMMENDATIONS:

Peace - No Rec

Tim Kelly - Do Pass
Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: SB 47

Revision Date: _____ Dept. Affected: Public Safety
 Title: An Act relating to equipment registration BRU: Motor Vehicles
and identification of custom collector vehicles. Component: Field Services
 Sponsor: Senator Kelly
 Requestor: Senator Kelly COMPONENT SERIAL NO. 502

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

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	3.0					
TRAVEL						
CONTRACTUAL	7.9					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	10.9					

CAPITAL						
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REVENUE FUND	10.0	.5	.5	.5	.5	.5
SOURCE: GF 1004						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	10.9					
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	10.9					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

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

Prepared By: Charles B. Hosack Phone: 269-5559
 Division: Motor Vehicles Date: 1-19-93
 Approved by Commissioner: Richard J. Burton Date: 1/19/93
 Agency: Richard J. Burton, Dept. of Public Safety

PREPARER TO PRO
For fu

FISCAL Note
DMV ANALYSIS

LEGISLATIVE OFFICE
Office

SECTIONAL ANALYSIS
SSSB-47
(Kelly and Halford)

An Act relating to equipment, registration, and identification of custom collector vehicles; effective date.

Section 1. (a) Amends AS 28.05 by adding new section mandating specific vehicle equipment largely related to motoring safety.

(b) provides that the department may not require bumpers, hood, or fenders on custom vehicles.

(c) mandates no portion of suspension, steering, or chassis is to touch road surface while vehicle is being driven, even if driven on just four rims.

Section 2. Amends AS 28.10, adding new section providing for registration and vehicle identification number of custom collector vehicles by DMV.

Section 3. Amends AS 28.10.181 (Registration of unique and special vehicles) by adding new subsection permitting DMV to issue special plates for custom collector vehicles.

Section 4. Amends AS 28.10.421 (d) (2) by adding new annual registration fee for special plates for custom collector vehicles, \$50

Section 5. Amends AS 28.40.100 (a) by adding new paragraph defining custom collector vehicle, recognized as manufactured before 1949.

Section 6. Effective date: January 1, 1994.

Sectional

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: SB 47

Revision Date: _____ Dept. Affected: Public Safety
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 Sponsor: Senator Kelly
 Requestor: Senator Kelly COMPONENT SERIAL NO. 502

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PREPARER TO PRO
For fu

FISCAL NOTE
DMV ANALYSIS

LEGISLATIVE OFFICE
Office

ANALYSIS

This bill will establish a small number of special plates for a very small group of vehicle restorers. Since this is essentially a private club rather than a normal registration category, the division has no accurate numbers to estimate the number of vehicles that would qualify for this special registration. We believe that the number will be very small. For purposes of this analysis we will estimate that 200 existing vehicles will qualify for the special plates during the first year. Each year thereafter, 10 additional vehicles will be added. Due to this extremely low number, the plates will be maintained centrally in Anchorage where it is assumed that most of the registrations will exist, and the plates will be mailed to applicants residing in other areas of the state. This is much more efficient than trying to stock and account for such a low number of plates at all offices.

The Personal Services costs are for one month's salary and benefits for a MVR III position. This will provide overtime for an existing position to do the administrative work associated with design, ordering, and issuing these registrations the first year. This will avoid having other essential services impacted by the additional duties. The contractual costs are for ordering 900 sets of special request plates at \$8.50 each and for mailing 100 plates at \$2.50 each. Even though the actual usage will be much less than 900 over the life of the program, 900 is usually the minimum order for special design plates without raising the cost per plate to an even higher level.

The revenue is based on 200 registrations at \$50.00 each the first year and 10 registrations at \$50.00 each year thereafter.

SECTIONAL ANALYSIS

SSSB-47

(Kelly and Halford)

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Section 6. Effective date: January 1, 1994.

Sectional



ANCHORAGE POLICE DEPARTMENT



4501 SOUTH BRAGAW STREET • ANCHORAGE, ALASKA 99507-1599
TELEPHONE (907) 786-8500

TOM FINK
MAYOR

May 15, 1991

Wally Graham, President
Midnight Sun Street Rod Association
P.O. Box 92061
Anchorage, Alaska 99509

Re: Summer "Street Rod" Schedule

Dear Mr. Graham,

Thank you for your recent letter regarding the Midnight Sun Street Rod Association's summer activity schedule. In your letter you also indicated any one of the Association's cars could be enroute to or from an event on public streets.

The issue your Association has presented to Mr. Dyson regarding the operation of street rods on public streets without fenders is still in the preliminary stages of recommendation and review. Until the "fender" issue is completely and legally resolved, your Street Rod Association should be aware that any of your members' vehicles observed operating on public streets, and not properly equipped in compliance with current State and local Ordinances, may be stopped and cited accordingly. In order to provide equal and fair traffic enforcement throughout the Municipality of Anchorage, we cannot lawfully permit your members' vehicles to operate on public streets outside the provisions of the current laws.

The Anchorage Police Department and the Alaska State Troopers recommend that any vehicle not properly equipped be transported in or on a trailer to and from any events or activities.

I have attached a recent letter from the Alaska State Troopers regarding your Associations question concerning the operation of fenderless street rods for your review.

Hopefully this matter will be resolved equably. Until then, thank you for your Association's cooperation and understanding.

Sincerely,

Kevin M. O'Leary
Chief of Police

KMO:vka

cc: Assemblyman Fred Dyson
Colonel John R. Murphy, Alaska State Troopers

Correspondence



May 10, 1991

Chief Kevin O'Leary
Anchorage Police Dept.
P.O. Box 196650
Anchorage, Alaska 99519-6650

Dear Chief O'Leary,

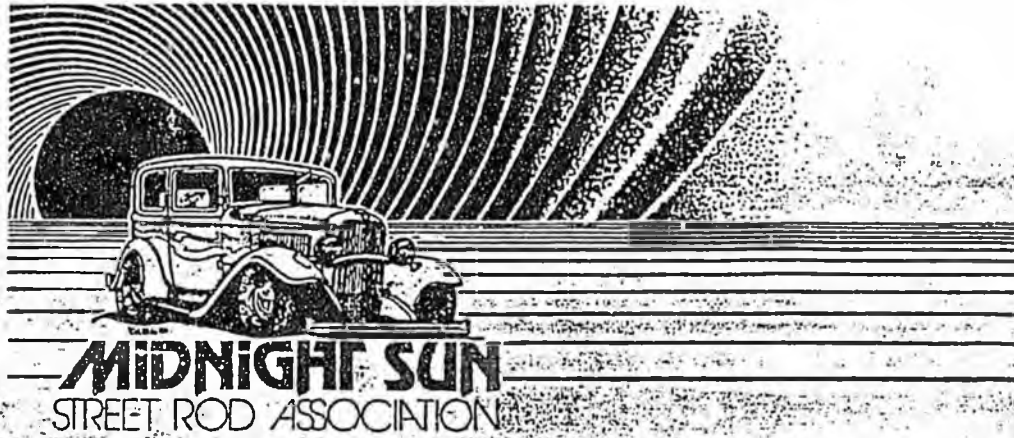
In reference to Fred Dyson's letter to you dated March 20, 1991 concerning our modified automobiles, I am enclosing a list of summer activities that any one of the cars could be in route to or returning from. Although some of the activities are pre-planned, we do have many impromptu events in the evenings and weekends.

Our organization greatly appreciates the positive communication that has transpired between you and Mr. Dyson.

If you have any further questions please feel free to contact me anytime at (HM) 694-2023 or (WK) 561-1188.

Sincerely,
MSSRA

Wally Graham
President



May 24th	Soldiers Appreciation Day (Fort Richardson)
May 28th	Club Meeting
June 25th	Club Meeting
July 4th	Anch Parade Eagle River-Chugiak Parade
July 23rd	Club Meeting
July 27-28th	Progress Days (Soldotna)
August 3rd	National Street Rod Association Appreciation (Anch) Location unknown at this date
August 4th	13th Annual Jay Ofstun Memorial Show and Shine Park Strip - Anch
August 24-25th	Peninsula Auto Fair (Soldotna)
August 27th	Club Meeting
Sept 24th	Club Meeting

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF STATE TROOPERS

WALTER J. HICKEL, GOVERNOR

RICHARD L. BURTON, COMMISSIONER

5700 EAST TUDOR ROAD
ANCHORAGE, ALASKA 99507
PHONE: (907)

April 24, 1991

Chief Kevin O'Leary
Anchorage Police Department
P.O. Box 196650
Anchorage, Alaska 99519-6650

Dear Chief ^{Kevin} ~~O'Leary~~:

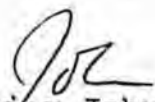
We received your correspondence in reference to the highway operation of "Hot Rods", and researched the appropriate administrative codes and statutes which apply to fenders.

13AAC 04.227(a)(b) applies to steering assembly, wheel alignment and body condition of motor vehicles. The administrative code includes removal of fenders and the vehicle in question was originally manufactured with fenders, therefore fenders would be required regardless of how it has been modified. In addition, 13AAC 04.265 addresses antispray device which implies a motor vehicle must have a device which effectively reduces the wheel spray of water or other substance to the rear of the vehicle. Alaska Statute, (AS)28.35.253 states "a person may not drive a motor vehicle on a highway unless the vehicle is equipped with fenders, mud flaps, or other anti-spray devices adequate to prevent the vehicle from being a hazard to other users of the highway."

With the current administrative codes, Alaska Statutes, and laws per the Federal Standards which apply to motor vehicles, we oppose any changes to allow the operation of a "Hot Rod" without the appropriate equipment.

I have attached a copy of our administrative codes and statutes which apply to the issue. If you need any further assistance or comments you may contact myself or Corporal Brad Brown.

Sincerely,


Major John R. Murphy
Acting Director

Attachment.

cc: Richard L. Burton, Commissioner, DPS
Corporal Brad Brown, AST

13 AAC 04.227. STEERING ASSEMBLY, WHEEL ALIGNMENT AND BODY CONDITION. (a) No vehicle may be driven upon a highway or a vehicular way or area with loose or defective wheels or steering assembly which constitutes a hazard.

(b) No vehicle may be driven upon a highway or vehicular way or area with sharp protuberances, or with fenders, bumpers or other equipment removed, and which may endanger persons or other objects. (Eff. 6/28/79, Register 70)

Authority: AS 28.05.011

13 AAC 04.265. ANTISPRAY DEVICE. (a) No person may drive a motor vehicle unless it has a device which effectively reduces the wheel spray or splash of water or other substance to the rear of the vehicle.

(b) The device required in (a) of this section must be installed and maintained so that the device placed behind a wheel extends downward to a distance of 14 inches from the surface of the ground when the vehicle is standing on level ground. (In effect before 7/28/59; am 12/15/61, Register 3; am 8/10/66, Register 22; am 12/31/69, Register 31; am 6/28/79, Register 70)

Authority: AS 28.05.011

§ 28.35.253

ALASKA STATUTES

§ 28.37.030

Sec. 28.35.253. Anti-spray devices required. A person may not drive a motor vehicle on a highway unless the vehicle is equipped with fenders, mud flaps, or other anti-spray devices adequate to prevent the vehicle from being a hazard to other users of the highway. (§ 1 ch 62 SLA 1986)

Sec. 28.35.255. Penalty. A person convicted of violating AS 28.35.251 or 28.35.253 is guilty of an infraction. (§ 1 ch 62 SLA 1986)