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HOUSE
COMMITTEE REPORT

(7)

Date referred: 3/26/86

FURTHER REFERRALS: JUDICIARY

HEALTH, EDUCATION AND
SOCIAL SERVICES

DATE: April 14, 1986

Committee has considered B 418

"An Act relating to liability for providing emergency medical care."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with _____ same title
- _____ new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Neil Kopron

Wesley Guenther NO REC

Allye Winley - if provisions
are not already included
in statute.

Lacie Hurley NO REC

Adrian Taylor Do Not Pass

[Signature] amend
no rec

David W. Kopron NO REC

Neil Kopron co-chair
Chairman
[Signature]

Introduced: 5/1/85
Referred: Labor & Commerce,
Health, Education & Social Services
and Judiciary

1 IN THE HOUSE

BY MARROU

2

HOUSE BILL NO. 418

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to liability for providing emergency
7 medical care."

8

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

9

* Section 1. AS 08.64.366 is amended to read:

10

Sec. 08.64.366. LIABILITY FOR SERVICES RENDERED BY A PHYSICIAN-

11

TRAINED MOBILE INTENSIVE CARE PARAMEDIC. An [NO] act or omission of a

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physician-trained mobile intensive care paramedic done or omitted in

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good faith while rendering emergency [LIFESAVING] service to a person

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who is in need of immediate aid in order to avoid serious harm or

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[DANGER OF] loss of life does not [SHALL] impose any liability upon

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the physician-trained mobile intensive care paramedic, the supervising

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physician, a hospital, the officers, members of the staff, nurses, or

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other employees of a hospital or upon a federal, state, borough, city

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or other local governmental unit or upon other employees of a govern-

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mental unit; however, this section does not relieve a physician or a

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hospital of a duty otherwise imposed by law upon the physician or

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hospital for the designation or training of a physician-trained mobile

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intensive care paramedic or for the provision or maintenance of equip-

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ment to be used by the physician-trained mobile intensive care para-

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medic.

26

* Sec. 2. AS 18.08.086(a) is amended to read:

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(a) A [NO] person certified under AS 18.08.082, or a person or

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public agency that [WHICH] employs, sponsors or controls the activ-

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ities of persons certified under AS 18.08.082, who administers

1 emergency medical services to an injured or sick person is not [MAY
2 BE] liable for civil damages as a result of an act or omission in
3 administering those services, if done in good faith and if the [LIFE
4 OF THE] injured or sick person is in immediate danger of serious harm
5 or death. This subsection does not preclude liability for civil
6 damages that are [WHICH IS] the proximate result of gross negligence
7 or intentional misconduct, nor preclude imposition of liability on a
8 person or public agency that [WHICH] employs, sponsors, or controls
9 the activities of persons certified under AS 18.08.082 if the act or
10 omission is a proximate result of a breach of duty to act created
11 under this chapter. For the purposes of this subsection, "gross
12 negligence" means reckless, wilful, or wanton misconduct.

MEMORANDUM

TO: HOUSE HESS COMMITTEE MEMBERS
FROM: NANCY BENNETT, COMMITTEE STAFF
RE: TODAY'S AGENDA
DATE: APRIL 14, 1986

WE HAVE THREE BILLS ON TODAY'S CALENDAR

HB 418 - relating to liability for emergency medical services

this bill provides that a person who renders emergency medical services to a person in need of immediate treatment to avoid serious harm or loss of life is not liable for an act or omission.

SB 8 - relating to a personal safety curriculum in public schools

includes "personal safety" in the Department of Education health education curriculum section (SA 14.30.360). Personal safety is to include identification and prevention of child abuse, child abduction, neglect, sexual abuse and domestic violence. The state Board of Education is to develop curriculum guidelines in cooperation with the Council on Domestic Violence and Sexual Assault. The Departments of Education and Health and Social Services are to provide technical assistance on request.

SB 80 - the number of psychiatrists or psychologists appointed for a criminal defendant

This bill was heard in the HESS Committee last week.

Alaska State Legislature

COMMITTEES:

Committee on Community and Regional Affairs
Committee on Transportation
Special Committee on Oil and Gas
Special Committee on Fisheries
Finance Sub-committee on Fish and Game

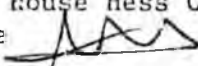


Andre Marrou
Representative

District 5

Kenai	Sterling
Soldotna	Anchor Point
Homer	Port Graham
Seldovia	English Bay
Kachemak	S. Kolavok
Kasilof	Halibut Cove
Sitichik	Clam Gulch

April 14, 1986

To: Co-Chairs and Members of the House Hess Committee
From: Andre Marrou, Representative 

Subject: HB 418, No Liability for EMTs

HB 418 would exempt emergency medical technicians from liability while performing emergency services.

This liability exemption is currently available only in lifesaving situations. EMTs are trained to help and should not be hindered by the threat of being sued. As you can readily surmise, quickly and accurately determining if a given emergency situation is a matter of life and death is a judgement call. It is an unnecessary burden upon those who help us in emergency situations.

The Department of Health and Social Services supports this bill. In fact, everybody who's contacted us supports this bill.

Please support this bill.

health association of alaska

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790
REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

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Dennis DeWitt
Juneau

FORMERLY

alaska
state
hospital
association

April 11, 1986

APR 11 RECD

Honorable Andre Harrod
State House of Representatives
Pouch #118 5100)
Juneau, Alaska 99801

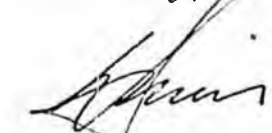
Dear Representative Harrod,

The Health Association of Alaska has reviewed your House
Bill 418 and wishes to indicate our support.

An additional problem in this area has been brought to our
attention which you may wish to address in this bill. We
are informed that a great concern of the paramedics is the
burden of carrying a defense to establish that the immunity
indeed applies. Thus, if the Attorney General or some other
appropriate entity could be assigned to provide the
necessary legal defense, we believe that they would be relieved
of a great concern.

Thank you for your consideration of this issue.

Sincerely,



Dennis L. DeWitt
Executive Director

cc: C. Keith Campbell
Representative Max Gruenberg
Representative Niilo Koponen

FEB 7 1986

Position Paper

House Bill No. 418

For An Act entitled: "An Act relating to liability for providing emergency medical care."

This act amends AS 08.64.366. (Liability for Services Rendered by a Physician Trained Mobile Intensive Care Paramedic), and AS 18.08.086 (a) (immunity from liability for state certified emergency medical technicians) to expand the immunity from liability provisions, from covering only care given to persons in life threatening situations, to include rendering emergency care to any person "who is in need of immediate aid in order to avoid serious harm or loss of life."

The Department of Health and Social Services supports passage of this bill because currently state licensed Mobile Intensive Care Paramedics and State certified Emergency Medical Technicians (EMT's) are only immune from liability (except in cases of gross negligence or intentional misconduct) when rendering care to persons in serious, life threatening situations. In actual fact, these cases constitute only a small percentage of the total cases treated by emergency medical responders. By broadening this immunity from liability, the paramedics and EMT's will have some immunity from liability when rendering care to nearly all cases, whether or not they are judged to be life threatening.

POSITION

The Department of Health and Social Services supports passage of this bill.

Recommended by: Elizabeth A. Ward
Elizabeth Ward, M.N.
Director
Division of Public Health

Date: 2/5/86

Approved by: John F. Pugh
John F. Pugh, Commissioner
Department of Health and
Social Services

Date: 2/7/86

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: Jan. 31, 1986

REQUEST

Bill/Resolution No.: House Bill No. 418
 Title: "An act relating to liability for providing emergency medical care."
 Sponsor: Representative Marrou
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Health & Social Services
 BRU: Public Health
 Components: Public Health,
Health Services Administration BRU

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by: Elizabeth Ward, M.N., Director *E. Ward* Phone: 465-3090
 Division: Division of Public Health Date: Jan. 31, 1986 *JCC*

Approved by Commissioner: *J. R. Poy* Date: 2/7/86
 Agency: Health & Social Services

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Homer Volunteer Fire Dept., Inc.

604 EAST PIONEER AVENUE • HOMER, ALASKA 99603

PHONE (907) 235-6108

April 4, 1985

Representative Andre Marrou
Pouch V
Juneau, Alaska 99811

Dear Andre,

I appreciate that you are taking the time to look into the situation concerning the "Good Samaritan Act" for volunteers.

I have enclosed a copy of a 1981 memorandum from Wilson Condon, Attorney General to Helen Beirne, H.S.S. Commissioner concerning this subject. I am not aware of any changes in the law since that date that would affect the opinion presented.

My concern is based on two premises:

- 1) That volunteers when performing as part of an organized ambulance or rescue service have a pre-existing duty to respond to emergency calls and therefore do not fall under the "Good Samaritan Act".
- 2) The immunity provided by the Alaska Statutes for certified EMT's applies only in cases when "rendering emergency life saving service to a person who is in immediate danger of loss of life" and therefore excludes protection for EMT's when rendering aid to people who are not in danger of losing their lives.

Basically, volunteers are caught in a sort of Catch 22 situation. Because they are part of a formal service, they have a duty to respond; because they have a duty to respond, they are not protected by the "Good Samaritan Act"; because the "Good Samaritan Act" does not apply, the State passed an immunity law. However, the immunity law is limited to true life threatening situations (only a small part of our calls and service). Therefore, the volunteers have little protection. Furthermore, most volunteers do not fall under

the sovereign immunity afforded to government employees.

One of two things is needed to correct this situation:

- 1) Specifically identify in the law that volunteers who are part of an organized service are covered by the "Good Samaritan Act", or
- 2) Expand the immunity law for EMT's from "rendering emergency life saving service to a person who is in immediate danger of loss of life" to "rendering emergency service to a person who is in immediate need of aid in order to avoid serious harm or death".

In fact both alternatives could be implemented. The first would protect all volunteers who provide medical aid. The second would specifically protect EMT's. By doing both, the laws would be more consistent with each other.

If there is anything I can do, please don't hesitate to contact me.

Sincerely,



Robert Purcell
Administrator

MEMORANDUM

State of Alaska

10 Helen D. Beirne
Commissioner
Department of Health and
Social Services

DATE: April 20, 1981


FILE NO: J-66-642-81

JUL 29 1981

TELEPHONE NO: 465-3603

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Immunity/Liability -
Emergency Medical
Technicians and Para-
medics

By: Elizabeth Shaw 
Assistant Attorney General

You have asked this office to review statutes dealing with the liability to be imposed on emergency medical technicians (EMT's) and paramedics when they perform their services in a negligent manner. Although the statutes do provide a shield to liability in certain circumstances, there is no total immunity from liability.

Neither the EMT nor the paramedic may be held liable for negligently performing life-saving emergency service to a person who is in immediate danger of loss of life. The standard is objective . . . the person actually must be in a life threatening emergency. 1/

1/ Sec. 08.64.366. LIABILITY FOR SERVICES RENDERED BY A PHYSICIAN-TRAINED MOBILE INTENSIVE CARE PARAMEDIC. No act or omission of a physician-trained mobile intensive care paramedic done or omitted in good faith while rendering emergency life-saving service to a person who is in immediate danger of loss of life shall impose any liability upon the physician-trained mobile intensive care paramedic, the supervising physician, a hospital, the officers, members of the staff, nurses, or other employees of a hospital or upon a federal, state, borough, city or other local government unit or upon other employees of a governmental unit; however, this section does not relieve a physician or a hospital of a duty otherwise imposed by law upon the physician or hospital for the designation or training of a physician-trained mobile intensive care paramedic or for the provision or maintenance of equipment to be used by the physician-trained mobile intensive care paramedic.

There may, however, be liability for negligent training or negligently maintained equipment.

Footnote continued on page 2.

The Good Samaritan statute 2/ does not require that the person receiving emergency care be in danger of losing his ^{next page}

1/ Continued

SEC. 18.08.086. IMMUNITY FROM LIABILITY.
(a) No person certified under AS 18.08.082, or person or public agency which employs, sponsors, or controls the activities of persons certified under AS 18.08.082, who administers emergency medical services to an injured or sick person, may be liable for civil damages as a result of an act or omission in administering those services, if done in good faith and if the life of the injured or sick person is in danger. This subsection does not preclude liability for civil damages which is the proximate result of gross negligence or intentional misconduct, nor preclude imposition of liability on a person or public agency which employs, sponsors, or controls the activities of persons certified under AS 18.08.082 if the act or omission is a proximate result of a breach of duty to act created under this chapter. For the purposes of this subsection, "gross negligence" means reckless, wilful, or wanton misconduct.

Sec. 18.08.090(9) "emergency medical care" means the services utilized in responding to the perceived individual needs for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury;

The definition of "emergency medical care" includes non-life saving services. The immunity from liability provision limits the definition by adding the 'life-saving' condition.

2/ Sec. 09.65.090. CIVIL LIABILITY FOR EMERGENCY AID. (a) A person at a hospital or any other location who renders emergency care or emergency counseling to an injured, ill, or emotionally distraught person who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid.

or her life. 'The standard is subjective . . . the person offering service must reasonably believe that the person is in need of emergency aid. The intent of such statutes is to encourage passersby to assist at scenes of accidents. 3/

It appears that the statutory scheme addresses three situations. The Good Samaritan statute shields those persons who have no duty to come to the aid of the injured or ill person in need of emergency medical care. The paramedic and the EMT, however, does not fall within the category of persons who have no duty to aid. 4/ They are shielded from liability for ordinary negligence in life threatening situations but even in life saving situations the EMT will be held liable for gross negligence or intentional misconduct.

2/ Continued

(b) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

3/ Interestingly our statute provides that a Good Samaritan may be located at a hospital - presumably not the scene of an accident. It is unlikely, however, that a helping person located at a hospital will not have a pre-existing duty to perform emergency service.

4/ In *Lee v. State*, 490 P.2d 1206 (Alaska 1971) the court held that a State Trooper defendant who had shot the plaintiff while trying to extricate the plaintiff's arm from the jaws of a lioness, was not shielded from liability for ordinary negligence. The court stated that "A rescuer under a pre-existing duty to rescue would not need the added inducement of immunity from civil liability for his ordinary negligence." *Id.* at 1209, footnote 7. The court held that the Trooper had a pre-existing duty to come to the aid of the endangered plaintiff therefore the Good Samaritan shield did not apply. Although AS 09.65.-090 was amended in 1976, it does not appear to change general tort principles regarding duty.

Rather than attempting to include EMT and paramedics under a Good Samaritan statute which would distort the purpose of that statute, legislative amendment of the statutes which specifically deal with EMT's and paramedics would be the more appropriate action. It would be for the legislature to decide whether there is a need to shield EMT's and paramedics more extensively than is now provided. 5/

5/ AS 08.64.366 shields an EMT or paramedic from liability for ordinary negligence in a life saving situation. In non-life saving situations they may be held liable for ordinary negligence.

ES/jf