

H B

4 1 8

COMMITTEE REPORT
HOUSE

3/26

HEALTH, EDUCATION AND
SOCIAL SERVICES

JUDICIARY

(7)

FURTHER:

5/1/85

Date: Mar 24 1985

The Committee on LABOR & COMMERCE has had HB 410

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

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
- new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

CHAIRMAN

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 Ward
Elizabeth Ward, M.N.
Director
Division of Public Health

Date:

2/5/86

Approved by:

John R. Pugh
John R. 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, CLA'MS						
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 *JCU*

Approved by Commissioner: *J. R. P.* 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)

Fish Review
(annulling
regulation)

vision to submit certain information to the Department of Environmental Conservation. See Senate Bill 299, page 687, identical.

Introduced May 1 and referred to Resources.

Emergency
Medical Care
(liability)

HOUSE BILL NO. 418, by Rep. Marrou. Amends AS 08.64.366, Liability for Services Rendered by a Physician-Trained Mobile Intensive Care Paramedic. Under the Marrou amendment, an act or omission of the paramedic done or omitted in good faith while rendering emergency service to a person who is in need of immediate aid in order to avoid serious harm or loss of life does not impose any liability upon the paramedic, 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 governmental unit or upon other employees of a governmental unit (currently an act or omission of the paramedic done or omitted in good faith while rendering emergency lifesaving

page 780

INTRODUCTION OF BILLS (House)(cont'd)

HB 418 (cont'd)

service to a person who is in immediate danger of loss of life shall not impose any liability upon the paramedic, etc.).

Amends AS 18.08.086(a) (Emergency Medical Services, Immunity from Liability). A person certified under state law, or public agency that employs certified persons, who administers emergency medical services to injured or sick person is not liable for civil damages as a result of an act or omission if the services are given in good faith, and if the injured or sick person is in immediate danger of serious harm or death (currently if the "life of the injured or sick person is in danger.") Does not provide effective date.

Introduced May 1 and referred to Labor & Commerce, Health, Education & Social Services, Judiciary.

Postsecondary
Education
(transfer to
Revenue)

HOUSE BILL NO. 419, by Rep. Ringstad. Would terminate the Alaska Commission on Postsecondary Education and transfer the Commission's power to administer student loans to the Dept. of Revenue. Would transfer the Commission's power to regulate private postsecondary education in the state to the Board of Education. The Commissioner of Revenue would be responsible for appointing a student financial aid committee to administer loan and scholarship programs. Does not provide effective date (takes effect 90 days after Governor signs bill).

Introduced May 2 and referred to Health, Education & Social Services, Finance.

Regulations
(submission of
proposed)

HOUSE BILL NO. 420, by Rep. Pignalberi. Amends AS 24.30 (Legislature. Enactment of Statutes) by adding a new section: "If a bill that authorizes adoption of regulations is presented by the governor for introduction under AS 24.30.060(b) and the uniform rules of the legislature, the governor shall submit with the bill a draft of proposed regulations suggested to implement the bill." Does not provide effective date (takes effect 90 days after Governor signs bill).

Introduced May 2 and referred to Judiciary.

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 a 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.

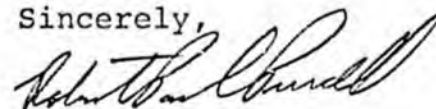
One of two things is needed to correct this situation:

- 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

TO: 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



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date