

H B

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HOUSE COMMITTEE REPORT

(7)

Date referred: 2/15/88

FURTHER REFERRALS: Judiciary

DATE: 3/31/88

The Labor & Commerce Committee has considered HB 517

"An Act relating to civil liability of certain volunteers."

RECOMMENDS:

- replace with CS HB 517 (L+C) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 2/15/88
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Alvin Koppen
Frank Bouley
Al Ellis
Clyde Davidson
Scott Johnson
P.A. Parker

Frank Bouley
Chairman's signature

STATE OF ALASKA
THE LEGISLATURE

POUCH Y. STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HL+C

3-31-88

2:00p.m.



Official Business

COMMITTEE:

HOUSE LABOR & COMMERCE

DATE: March 31, 1988

SIGN-IN

Subject of meeting:

- HB 15 "An Act providing certain tax benefits in business enterprise zones; and providing for an effective date." WORK SESSION
- HCR 39 "Encouraging the restriction of foreign workers on oil and gas production and exploration structures on the outer continental shelf."
- HB 517 "An Act relating to civil liability of certain volunteers."
- HB 394 "An Act relating to electric and telephone cooperatives; and providing for an effective date." WORK SESSION

PLEASE PRINT
NAME & TITLE

REPRESENTING

ADDRESS & ZIP

PHONE

DO YOU WANT TO TESTIFY?

SUBJECT: BILL #

Sally Saddle Labor Economist IV	Dept of Labor		H W 4500	Yes	HB 15
Judy Hughes	FRAN Ulmer		H W 4947	yes	HB 517
Jim Dumont	Alk. Rec + Park Assn		H W 586-5226	yes	HB 517
Bob Barrett	AARP State Legisl Committee		H W 586-2066	yes	HB 517
JAMES SANDWICK	DOZ		H W	✓	HB 542
			H W		
			H W		
			H W		
			H W		

Original sponsor: Ulmer

IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 517 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to civil liability of certain volunteers."

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

* Section 1. AS 09.65 is amended by adding a new section to read:

Sec. 09.65.098. CIVIL LIABILITY OF CERTAIN VOLUNTEERS. (a) A person working as a volunteer for the state, for a municipality, or for a nonprofit entity is not liable for civil damages as a result of an act or omission while acting in good faith and within the person's official functions and duties.

(b) This section does not preclude liability for civil damages as a result of

(1) gross negligence, recklessness, or intentional misconduct; or

(2) negligence, to the extent that the negligent person is insured against liability for the negligence.

(c) This section does not affect

(1) a civil action brought by the state, a municipality, or a nonprofit entity against, respectively, a volunteer of the state, the municipality, or the entity;

(2) the liability of the state, a municipality, or a nonprofit entity with respect to injury caused to a person.

(d) In this section,

(1) "municipality" has the meaning given in AS 01.10.060 and includes a public corporation established by a municipality;

1 (2) "nonprofit entity" means an entity

2 (A) incorporated under AS 10.20; or

3 (B) exempt from taxation under 26 U.S.C. 501(c)(3)

4 (Internal Revenue Code of 1954);

5 (3) "volunteer" means a person who receives financial
6 consideration of not more than \$500 a year, not including reimburse-
7 ment for expenses actually incurred, for services performed for the
8 state, a municipality, or a nonprofit entity.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 5, 1988

SUBJECT: Constitutionality of CSHB 517 (L&C)

TO: Representative Dave Donley, Chairman
 House Labor & Commerce Committee

FROM: Edward H. Hein *E.H.*
 Legislative Counsel

Enclosed is the committee substitute for HB 517 passed out by the House Labor & Commerce Committee last Thursday. As requested by your assistant, Ginger Baim, I have enclosed this memorandum addressing the unconstitutionality of the bill, which she anticipates will be corrected in the House Judiciary Committee, the next committee of referral.

The bill provides immunity from civil liability for damages resulting from the negligence of volunteers of the state, a municipality, or a nonprofit entity. The immunity does not extend to gross negligence, recklessness, or intentional misconduct, or as amended by the committee, to simple negligence if and to the extent that the defendant is insured. It is this last feature that makes the bill unconstitutional as a violation of equal protection and due process.

Under Article I, section 1, of the Alaska Constitution, "all persons are equal and entitled to equal rights, opportunities, and protection under the law." The test of constitutionality under this section is whether the means chosen by the legislature substantially furthers a legitimate state interest, which the court then weighs against the interest of the person or group discriminated against. State v. Erickson, 574 P.2d 1, 12 (Alaska 1978).

It is not clear that the amendment to the bill adopted by the Labor & Commerce Committee furthers any legitimate state interest. The bill amendment discriminates between similarly situated negligent volunteers on the basis of whether they are insured. If the state's interest is to encourage

Representative Dave Donley
Page 2
April 5, 1988

persons to perform volunteer work for state, municipal, or nonprofit entities, by immunizing them from some civil liability, the amendment works to defeat, rather than further, that interest. More important, predicating liability on the existence of insurance is an irrational basis for discrimination. It is not rationally related to a legitimate state interest, and therefore fails even the lowest level of constitutional scrutiny. See also Turner Construction Company, Inc. v. Scales and Clappen, file No. 5-1429. (Alaska, April 1, 1988).

Likewise, because the discrimination would deprive a defendant of property in an arbitrary, irrational manner, the bill also violates Article I, section 7, of the Alaska Constitution, which requires due process.

Finally, it is a long established rule that liability insurance is not to be considered in determining whether anyone is liable in the first instance. See Prosser, Law of Torts (1971), p. 553; McCormick on Evidence, (1972), pp. 479 - 483.

Enclosure

EHH:gc
WKG2:095

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

TURNER CONSTRUCTION COMPANY, INC.,)

Petitioner,)

v.)

ROBERT SCALES and KIP CLAPPER,)

Respondents.)

File No. S-1429

O P I N I O N

PHILLIP IVERSON d/b/a IVERSON)
CONSTRUCTION COMPANY,)

Petitioner,)

v.)

DeWAYNE B. CARSON and ROBERT J.)
KOTTRE d/b/a K W DOORS,)

Respondents.)

File No. S-1600

[No. 3290 - April 1, 1988]

Petitions for Review from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Douglas J. Serdahely, (S-1429) and Joan M. Katz (S-1600), Judges.

Appearances: Paula Williams and Dan Cadra, Law Offices of Roy W. Matthews III, Anchorage, for Petitioner Turner Construction Company. Kenneth P. Jacobus, Hughes, Thorsness, Gantz, Powell & Brundin, Anchorage, for Petitioner Philip Iverson. Joseph A. Kalamarides, Kalamarides & MacMillan, Anchorage, for Respondent Robert Scales. Jeffrey M. Feldman and Stuart A. Ollanik, Gilmore & Feldman, Anchorage, and Jeffrey D.

Jefferson, Nordstrom, Steele & Jefferson,
Kenai, for Respondent DeWayne B. Carson.

Before: Rabinowitz, Chief Justice, Burke,
Matthews, Compton and Moore, Justices.

BURKE, Justice.

The question in these consolidated cases is whether AS 09.10.055, the six-year statute of repose on suits against design professionals, violates the Alaska Constitution. The superior court ruled the statute unconstitutional. We affirm.

I. FACTS AND PROCEEDINGS

Turner Construction v. Scales, File No. S-1429. Robert Scales suffered property damage when a fire occurred in the Winterbrook Apartments in 1984.¹ Turner Construction Company built the apartments in 1978. Scales sued Turner Construction and others for his loss, alleging in part that the fire was caused by Turner Construction's negligent construction and installation of a fireplace.

Turner Construction asserted that Scales' cause of action was barred by AS 09.10.055, the six-year statute of repose²

1. Given the procedural posture of these cases, we must assume the allegations in the plaintiffs' complaints are true. Freezer Storage v. Armstrong Cork, 382 A.2d 715, 717 (Pa. 1978).

2. A statute of repose differs from a statute of limitation in that the former may bar a cause of action before it accrues, because the statute begins to run from a specific date unrelated to the date of injury. A cause of action thus

(Footnote Continued)

governing actions against design professionals such as architects, engineers and contractors, and moved for judgment on the pleadings. Scales moved to strike the defense on the ground that the statute is unconstitutional. Superior Court Judge Douglas J. Serdahely granted Scales' motion, concluding that AS 09.10.055 violates the due process³ and equal protection⁴ clauses of the Alaska Constitution.

Iverson v. Carson, File No. S-1600. DeWayne B. Carson was injured in 1985, while attempting to install an automatic garage door opener in his home. Phillip Iverson built the home in 1978; the garage door was originally installed by a subcontractor.

Seven months after his injury, Carson sued Iverson and the subcontractor. Iverson moved for summary judgment, based on the six-year statute of repose, because Carson was injured six-and-a-half years after substantial completion of the improvement. Superior Court Judge Joan M. Katz denied Iverson's motion,

(Footnote Continued)

precluded is damnum absque injuria, a loss without a remedy.

In contrast, a statute of limitation begins to run when the plaintiff's cause of action accrues or is discovered. It operates to prevent a plaintiff from sleeping on his or her rights.

3. Alaska Const. art. I, § 7.

4. Alaska Const. art. I, § 1.

concluding that AS 09.10.055 violates the equal protection clause⁵ of the Alaska Constitution.

II. THE STATUTE

The statute in question was enacted in 1967. It provides in part:

(a) No action, whether in contract . . . , in tort or otherwise, to recover damages (1) for a deficiency in the design, planning, supervision or observation of construction or construction of an improvement to real property; (2) for injury to property, real or personal, arising out of a deficiency; or (3) for injury to the person or for wrongful death arising out of such deficiency, may be brought against a person performing or furnishing the design, planning, supervision or observation of construction, or construction of an improvement more than six years after substantial completion of an improvement.

(b) Notwithstanding the provisions of (a) of this section, in the case of an injury to property or the person or an injury causing wrongful death, which injury occurred during the sixth year after substantial completion, an action in tort to recover damages for the injury may be brought within two years after the date on which the injury occurred. In no event may action be brought more than eight years after the substantial completion of construction of an improvement.

(c) Nothing in this section shall be construed as extending the period prescribed by the laws of the state for the bringing of any action.

(d) The limitation prescribed by this section shall not be asserted by way of

5. Id.

defense by a person in actual possession or control, as owner, tenant, or otherwise of an improvement at the time a deficiency in an improvement constitutes the proximate cause of the injury or death for which it is proposed to bring an action.

AS 09.10.055 (Emphasis added).

The House Judiciary Report notes that this section "places a . . . statute of limitation on lawsuits against architects, designers and builders." 1967 House Journal 261. It is clear, however, that the House intended to enact a statute of repose. An explanatory report by the Judiciary Committee stated in part:

[T]he time begins running upon 'substantial completion' of the improvement; consequently this bill limits not only the bringing of the cause of action, but in effect prevents the cause of action from arising when an injury occurs after the time limitation has expired. An action based on a defect not discovered until after the time limitation has expired would likewise be precluded.

Id. at 365.⁶

III. EQUAL PROTECTION

Scales and Carson argue that AS 09.10.055 violates the equal protection clauses of the state and federal constitutions

6. AS 09.10.055 is one of many state statutes enacted as a result of a concerted national lobbying effort by design professionals sparked by an increase in their potential liability for design and construction defects. See, e.g., Collins, Limitation of Action Statutes for Architects and Builders -- An Examination of Constitutionality, 29 Fed'n of Ins. Couns. Q. 41, 44-45 (1978).

because (1) it does not protect all defendants similarly situated and (2) the two-year savings period in subsection (b) unfairly discriminates against plaintiffs injured in the seventh and eighth years after construction. The design professionals contend that the injured plaintiffs lack standing to challenge the statute on the first of these grounds, because the plaintiffs are not members of the class of unprotected defendants. The design professionals further contend that the statute is constitutional.

Standing. The injured plaintiffs' first constitutional claim is based on the rights of third parties -- potential defendants, such as owners and tenants, who are not protected by the statute.⁷ Every court which has addressed the issue has concluded that persons such as the plaintiffs are proper parties to assert this claim, because they are precluded from asserting their own rights against defendants who might otherwise be liable; the statute narrows the group against which recovery is available. McClanahan v. American Gilsonite, 494 F. Supp. 1334, 1342-44 (D. Colo. 1980); Shibuya v. Architects Hawaii, 647 P.2d 276, 282 (Haw. 1982). The injured plaintiffs' interest in invalidating the statute is as great as that of the materialman or the defendant in possession. Klein v. Catalano, 437 N.E.2d 514, 523

7. The statute expressly excludes from its protection owners, tenants and others in possession. AS 09.10.055(d). Most courts construe the statute to exclude materialmen and manufacturers of component parts as well.

(Mass. 1982). We find this reasoning persuasive, therefore, we conclude that the injured plaintiffs have standing to assert the equal protection challenge.

Equal protection. When a plaintiff challenges a statute on state and federal equal protection grounds, the first question we must consider is whether the constitutional claimant asserts a fundamental constitutional right or the statute uses a suspect classification. State v. Erickson, 574 P.2d 1, 12 (Alaska 1978). If the answer to either question is "yes," then the statute is unconstitutional under the federal standard absent a compelling state interest. Id.

This statute classifies defendants based on their occupation or the nature of the work they perform; it classifies plaintiffs based on the time of their injury. Neither is a suspect class. The right asserted is the interest in suing a particular party, which is not a fundamental constitutional right; nonetheless, the interest in redressing wrongs through the judicial process is a significant one. Wilson v. Municipality of Anchorage, 669 P.2d 569, 572 (Alaska 1983). We, therefore, conclude that the compelling state interest standard does not apply and we may analyze the significant constitutional claims asserted under the fair and substantial relationship test of the state constitution. Erickson, 574 P.2d at 12.

We next examine the statutory purpose to determine whether it is a legitimate exercise of the state's police power.

Id. The purpose of the statute is to encourage construction and avoid stale claims by shielding certain defendants from potential future liability. See Yarbro v. Hilton Hotels, 655 P.2d 822, 825-27 (Colo. 1972). We believe that these are legitimate government purposes.

The final step is to examine the means to determine whether they substantially further the statutory purpose. Erickson, 574 P.2d at 12. In doing so, we do not hypothesize facts which would sustain otherwise questionable legislation. Isakson v. Rickey, 550 P.2d 359, 362 (Alaska 1976).

Stiles argues that AS 09.10.055 is unconstitutional because it fails to protect owners, tenants, and materialmen, while protecting others who are similarly situated, such as architects, planners, engineers, and construction contractors. Turner Construction contends that there are substantial differences between these groups justifying the statutory distinction.

Many courts have suggested distinctions to justify the challenged classification. The exclusion of owners, tenants, and others in possession is most often rationalized by the fact that such persons have continuing control over access to and maintenance of the property. Klein, 437 N.E.2d at 522-25; Freezer Storage, 382 A.2d at 718. Some courts also point to the different treatment of owners and tenants at common law, such as the larger class of potential plaintiffs which may sue design professionals, the legal theories available to those plaintiffs,

and the common law defenses available only to landlords and tenants. Freezer Storage, 382 A.2d at 718-20. Others cite the possibility of defective maintenance and alterations. Yarbro, 655 P.2d at 827-28.

Various justifications are also found to support the distinction between materialmen and design professionals.⁸ One argument is that, because materialmen provide standard goods manufactured by standard processes, they may be held to higher quality control standards than the design professional, whose work is often unique and cannot be completely tested. Klein, 437 N.E.2d at 524; Freezer Storage, 382 A.2d at 719. In other words, buildings are more complex than their component parts. Freezer Storage, 382 A.2d at 719. Furthermore, design professionals have special expertise; they should be encouraged to experiment and their creativity should not be stifled. Klein, 437 N.E.2 at 524; O'Brien v. Hazelet & Erdal, 299 N.W.2d 336, 342 (Mich. 1980).

We are not persuaded by any of these diverse rationales. One effect of the statute of repose is to eliminate the statutory right of contribution among tortfeasors. In Arctic Structures v. Wedmore, 605 P.2d 426, 435 (Alaska 1979), we ruled

8. For purposes of argument, we assume without deciding that AS 09.10.055 does not protect materialmen or manufacturers.

that the Uniform Contribution Among Tortfeasors Act, AS 09.16.010-.060, did not abolish the common law rule of joint and several liability; therefore, each tortfeasor whose negligence is a proximate cause of an indivisible injury remains individually liable for all compensable damages attributable to that injury. It follows that whenever an unprotected owner is 50% at fault and a protected contractor is 50% at fault, the unprotected owner would be 100% liable for all damages, without a remedy for contribution. The statute of repose, therefore, does not entirely abrogate liability for defective design work, but shifts it. Thus, the potential interest of joint tortfeasors in obtaining contribution, in addition to the claimant's interest in suing a particular party, must be considered.

In our view, there is no substantial relationship between exempting design professionals from liability, shifting liability for defective design and construction to owners and material suppliers, and the goal of encouraging construction. The shift of liability to unprotected parties decreases their incentive to build in corresponding measure to the increased incentives of protected parties. If anything, the disincentive on the part of owners may be greater than their proportional measure of liability shift, because they may be liable for a product over which they have no control. Moreover, design defects may be catastrophic, and experimental designs shift correspondingly greater unknown risks to owners, giving them even

more reason not to finance construction. Thus, we believe that the statutory means are not substantially or rationally related to the ends. We conclude that AS 09.10.055 violates the equal protection clause of the Alaska Constitution.

The decisions of the superior court in File Nos. S-1429 and S-1600 are AFFIRMED.

3290

POSITION PAPER
HOUSE BILL NO. 517

RECEIVED
MAR 17 1988

"An Act relating to civil liability of certain volunteers."

EFFECT OF BILL

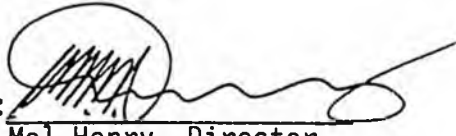
HB517 would protect volunteers working for State or local government or nonprofit entities from civil liability except in cases of gross negligence, recklessness, or intentional misconduct.

DISCUSSION

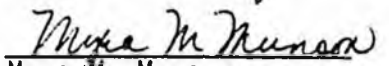
Volunteers are commonly used in human service agencies. They are a valuable adjunct to paid staff, and in many cases they provide services which are not otherwise available. It is in the State's best interest to encourage the use of volunteers at State agencies and in grantee nonprofit or local government organizations. Passage of this bill would provide a measure of security for volunteers. It assures that, as long as they perform their official duties in good faith and without gross negligence, recklessness, or intentional misconduct, they are immune from liability for civil damages. Thus, the public is afforded adequate protection while volunteers also are protected.

RECOMMENDATION

The Department of Health and Social Services supports passage of HB517.

Recommended by: 
Mel Henry, Director

Date: 24th February 1988

Approved by: 
Myra M. Munson,
Commissioner

Date: March 7, 1988

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to civil liability of certain volunteers
Sponsor: Ulmer
Requestor: _____

Agency Affected: Health & Social Services
BRU: various
Components: VARIOUS

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)


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

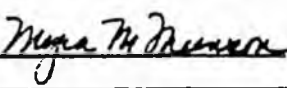
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The enactment of HB517 would have no direct fiscal impact on the Department of Health and Social Services

Prepared by: Mel Henry, Director  Phone: 465-3370
Division: Mental Health and Developmental Disabilities Date: 2-24-88

Approved by Commissioner: Myra M. Munson  Date: 3-7-88
Agency: Health and Social Services

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for the University of Alaska
Joint Committee
on Economic Recovery



P.O. BOX V
Juneau, Alaska 99801
(907) 465-4947

REPRESENTATIVE FRAN ULMER

M E M O R A N D U M

March 29, 1988

TO: Representative Dave Donley, Chair
and Members of the House Labor & Commerce Committee

FROM: Representative Fran Ulmer

SUBJECT: House Bill 517

Thank you for scheduling a committee hearing on House Bill 517, an act relating to civil liability of certain volunteers.

HB 517 would protect volunteers working for the State, local governments or nonprofits from civil liability except in cases of gross negligence, recklessness, or intentional misconduct.

Volunteers play a vital role in Alaska by donating their time to support many organizations and services. From Little League to Pioneer Homes, from ski rescues to park volunteers and museum guides..., Alaskan volunteers make a difference in the quality of life that we all enjoy. For these reasons, I have introduced House Bill 517.

This bill is modeled after federal legislation, cited as the Volunteer Protection Act, which is making its way through Congress. The bill is supported by state agencies, municipalities, recreation groups and the American Association of Retired Persons.

The Plaintiff's Bar has provided an amendment to the bill for which I have no objection.

Thank you for your favorable consideration of House Bill 517.

Pages 4 & 6

100TH CONGRESS
1ST SESSION

H. R. 911

To encourage the States to enact legislation to grant immunity from personal civil liability, under certain circumstances, to volunteers working on behalf of nonprofit organizations and governmental entities.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1987

Mr. PORTER (for himself, Mr. PURSELL, Mr. EDWARDS of Oklahoma, Mr. DENNY SMITH, Mr. LAGOMARSINO, Mr. TOWNS, Mr. MURPHY, Mr. FEIGHAN, Mr. WORTLEY, Mr. MRAZEK, Mr. PENNY, Mr. ECKART, Mr. SUNLA, Mrs. JOHNSON of Connecticut, Mr. PACKARD, Mrs. BENTLEY, Mrs. VUCANOVICH, Mr. ATKINS, Mrs. COLLINS, Mr. ESPY, Mr. ROBINSON, Mr. PASHAYAN, Mr. DARDEN, Mr. MYERS of Indiana, Mr. BEVILL, Mr. WELDON, and Mr. DANIEL) introduced the following bill; which was referred jointly to the Committees on the Judiciary and Ways and Means

MAY 27, 1987

Additional sponsors: Mr. HENRY, Mr. MARTINEZ, Mr. QUILLEN, Mr. EVANS, Mr. BILIRAKIS, Mr. GREEN, Mr. BLAGGI, Mr. DAVIS of Illinois, Mr. SAXTON, Mr. KILDEE, Mr. HILER, Mr. SHUMWAY, Mr. INHOFE, Mrs. ROUKEMA, Mr. CRANE, Mr. RICHARDSON, Mr. GOODLING, Mr. MARLENEE, Mr. DAVIS of Michigan, Mr. BARTLETT, Mr. CHANDLER, Mr. HOLLOWAY, Mr. STUMP, Mrs. MORELLA, Mr. CLINGER, Mr. GALLO, Mr. LUJAN, Mr. PEPPER, Mr. CARPER, Mr. SENSENBRENNER, Mr. KOLBE, Mr. SMITH of New Jersey, Mr. YATRON, Mr. BOEHLERT, Mr. HYDE, Mr. UPTON, Mr. SCHULZE, Mr. McCLOSKEY, Mr. LATTA, Mr. BLILEY, Mr. BADHAM, Mr. RAVENEL, Mr. MCKINNEY, Mr. STALLINGS, Mr. JACOBS, Mr. EMERSON, Mr. BOULTER, Mr. GRAY of Illinois, Mr. BURTON of Indiana, Mr. FUSTER, Mrs. MARTIN of Illinois, Mr. SUNDQUIST, Mr. HASTERT, Mr. ROE, Mr. PETRI, Mr. ROWLAND of Connecticut, Mr. HORTON, Mr. LOWERY of California, Mr. SOLARZ, Mr. GRANDY, Mr. FAWELL, Mr. CLARKE, Mr. MILLER of Washington, Mr. REGULA, Mr. BUNNING, Mr. MCCOLLUM, Mrs. MEYERS of Kansas, Mr. LIPINSKI, Mr. KOLTER, Mr. MACKAY, Mr. SCHUETTE, Mr. BUECHNER, Mr. DONNELLY, Mr. LEWIS of Georgia, Mr. YATES, and Mrs. SMITH of Nebraska

100TH CONGRESS
1ST SESSION

S. 929

Entitled the "Volunteer Protection Act of 1987".

IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, MARCH 30), 1987

Mr. MELCHER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

Entitled the "Volunteer Protection Act of 1987".

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Volunteer Protection Act
5 of 1987".

6 SEC. 2. FINDINGS AND PURPOSE.

7 (a) FINDINGS.—The Congress finds and declares that—

8 (1) within certain States, the willingness of volun-
9 teers to offer their services has been increasingly de-
10 terred by a perception that they thereby put personal
11 assets at risk in the event of liability actions against
12 the organization they serve;

1 (2) as a result of this perception, many nonprofit
2 public and private organizations and governmental en-
3 tities, including voluntary associations, social service
4 agencies, educational institutions, local governments,
5 foundations, and other civic programs, have been ad-
6 versely affected through the withdrawal of volunteers
7 from boards of directors and service in other capacities;

8 (3)-the contribution of these programs to their
9 communities is thereby diminished, resulting in fewer
10 and higher cost programs than would be obtainable if
11 volunteers were participating;

12 (4) the unpredictability of liability awards and doc-
13 trines has added to the high cost of liability insurance
14 by making it difficult for insurers and self-insurers to
15 project their liability with any degree of confidence and
16 has adversely affected the ability of nonprofit organiza-
17 tions to obtain liability insurance coverage for volun-
18 teer directors and officers with respect to their personal
19 capacities; and

20 (5) because Federal funds are expended on useful
21 and cost-effective social service programs which
22 depend heavily on volunteer participation, protection of
23 voluntarism through clarification and limitation of the
24 personal liability risks assumed by the volunteer in

1 connection with such participation is an appropriate
2 subject for Federal encouragement of State reform.

3 (b) PURPOSE.—It is the purpose of this Act to promote
4 the interests of social service program beneficiaries and tax-
5 payers and to sustain the availability of programs and non-
6 profit organizations and governmental entities which depend
7 on volunteer contributions by encouraging reasonable reform
8 of State laws to provide immunity from civil liability to vol-
9 unteers serving with nonprofit organizations and governmen-
10 tal entities for actions undertaken in good faith on behalf of
11 such organizations.

12 SEC. 3. NO PREEMPTION OF STATE TORT LAW.

13 Nothing in this Act shall be construed to preempt the
14 laws of any State governing tort liability actions.

15 SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.

16 (a) IMMUNITY FOR VOLUNTEERS.—Except as provided
17 in subsection (b), any volunteer of a nonprofit organization or
18 governmental entity shall be immune from civil liability in
19 any action brought in any court on the basis of any act or
20 omission resulting in damage or injury to any person if—

21 (1) such individual was acting in good faith and
22 within the scope of such individual's official functions
23 and duties with the organization or entity; and

24 (2) such damage or injury was not caused by will-
25 ful and wanton misconduct by such individual.

1 (b) CONCERNING RESPONSIBILITY OF VOLUNTEERS
2 WITH RESPECT TO ORGANIZATIONS.—Nothing in this sec-
3 tion shall be construed to affect any civil action brought by
4 any nonprofit organization or any governmental entity
5 against any volunteer of such organization or entity.

6 (c) NO EFFECT ON LIABILITY OF ORGANIZATION.—
7 Nothing in this section shall be construed to affect the
8 liability of any nonprofit organization or governmental entity
9 with respect to injury caused to any person.

10 SEC. 5. CERTIFICATION REQUIREMENT AND REDUCTION OF
11 SOCIAL SERVICES BLOCK GRANT ALLOTMENTS.

12 (a) CERTIFICATION.—(1) Subject to paragraph (2),
13 before the beginning of each fiscal year, commencing with
14 fiscal year 1989 each State shall certify to the Secretary of
15 Health and Human Services that it has enacted, adopted, or
16 otherwise has in effect State law which substantially com-
17 plies with section 4(a).

18 (2) In the case of a State whose legislature does not
19 meet in regular session between the date of the enactment of
20 this Act and before the beginning of fiscal year 1989, such
21 State shall provide the certification referred to in paragraph
22 (1) before the beginning of each fiscal year commencing after
23 fiscal year 1989.

24 (b) REDUCTION OF ALLOTMENT.—If a State fails to
25 provide certification as required under subsection (a), the

1 Secretary shall reduce by 1 percent the fiscal year allotment
2 which would otherwise be made to such State to carry out
3 the Social Services Block Grant Program under title XX of
4 the Social Security Act.

5 (c) REALLOTMENT TO CERTIFYING STATES.—With
6 respect to any reduction made under subsection (a), the Sec-
7 retary shall allot such funds among States which provide cer-
8 tification referred to in subsection (a) in proportion to the
9 amount otherwise allotted to such States.

10 SEC. 6. DEFINITIONS.

11 For purposes of this Act—

12 (1) the term “volunteer” means an individual per-
13 forming services for a nonprofit organization or a gov-
14 ernmental entity who does not receive compensation,
15 or any other thing of value in lieu of compensation, for
16 such services (other than reimbursement for expenses
17 actually incurred or honoraria not to exceed \$300 per-
18 year for government service), and such term includes a
19 volunteer serving as a director, officer, trustee, or
20 direct service volunteer;

21 (2) the term “nonprofit organization” means any
22 organization exempt from taxation under section 501(c)
23 of the Internal Revenue Code of 1954;

24 (3) the term “damage or injury” includes physical,
25 nonphysical, economic, and noneconomic damage; ~~and~~

1 (4) the term "State" means each of the several
2 States, the District of Columbia, the Commonwealth of
3 Puerto Rico, the Virgin Islands, Guam, American
4 Samoa, the Northern Mariana Islands, any other terri-
5 tory or possession of the United States, or any political
6 subdivision of any such State, territory, or possession.

○



ALASKA STATE LEGISLATIVE COMMITTEE

CHAIRMAN
Miss Patricia Oakes
Box 30009
Central, AK 99730
(907) 520-5227

VICE CHAIRMAN
Mr. R. W. Pavitt
130 Seward Street, #205
Juneau, AK 99801
(907) 586-2066
3/22/88

SECRETARY
Mrs. Marian R. Triggs
475 Panorama Drive
Fairbanks, AK 99712
(907) 457-4386

The Honorable Fran Ulmer, Vice Chairman
House Judiciary Committee
PO Box V
Juneau, AK 99811

Dear Representative Ulmer:

We urge that the House Judiciary Committee approve HB 517, "An Act relating to civil liability of certain volunteers."

Alaska has a strong volunteer tradition. In these days of tight economic situations, Alaska's volunteers have been especially important in keeping many vital services operating. It seems very important to recognize their services and encourage the continuation of the volunteer tradition by offering volunteers the protection of this legislation as soon as possible.

We feel this protection is important to all volunteers and urge your committee approve this proposed legislation when you receive it.

Sincerely yours,

A handwritten signature in cursive script that reads "Patricia Oakes".

Miss Patricia Oakes, Chairman
AARP/Alaska State Legislative Committee

Alaska State Legislature

Committees:

Chair-State Affairs
V. Chair-Judiciary
Telecommunications
Special Ethics
Legislative Council
Finance Subcommittee
for the University of Alaska
Joint Committee
on Economic Recovery



P.O. Box V
Juneau, Alaska 99811
(907) 465-4947

REPRESENTATIVE FRAN ULMER

M E M O R A N D U M

March 15, 1988

TO: Representative Dave Donley, Chair
House Labor and Commerce Committee

FROM: Representative Fran Ulmer

SUBJECT: House Bill 517

I sincerely would appreciate if you would hold a hearing on House Bill 517, "An Act relating to civil liability of certain volunteers," which is currently in House Labor and Commerce. I have attached a letter from the Association of Retired Persons indicating their support for this bill. In addition, it is supported by municipalities and volunteer organizations who feel strongly that this kind of protection is essential. I am hopeful that you will be able to calendar it next week so that it has an opportunity to proceed and, hopefully, be adopted this legislative session.

Thank you very much for your assistance.

Attachment



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3/22/88

The Honorable Dave Donley, Chairman
House Labor and Commerce Committee
PO Box V
Juneau, AK 99811

RECEIVED
MAR 25 1988

Dear Representative Donley:

We urge that the House Labor and Commerce Committee approve HB 517, "An Act relating to civil liability of certain volunteers."

Alaska has a strong volunteer tradition. In these days of tight economic situations, Alaska's volunteers have been especially important in keeping many vital services operating.

It seems especially important to recognize their services and encourage the continuation of the volunteer tradition by offering volunteers the protection of this legislation as soon as possible.

Alaska non-profit organizations and organizations covered by IRS 501(c)(3) status are doing great work for Alaska. In many cases, they are providing essential services to low-income and to frail elderly citizens.

We feel that protection from civil liability is important to all volunteers and urge that your committee approve this legislation as soon as possible.

Sincerely yours,

Miss Patricia Oakes, Chairman
AARP/Alaska State Legislative Committee



ALASKA STATE LEGISLATIVE COMMITTEE

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475 Panorama Drive
Fairbanks, AK 99712
(907) 457-4386

3/8/88

The Honorable Fran Ulmer
House of Representatives
PO Box V
Juneau, AK 99811

Dear Representative Ulmer:

The State Legislative Committee of AARP/Alaska is pleased to see HB 517 and hopes that it will be passed this session. We feel that HB 517 and CSHE 340 recognize the importance of granting immunity from civil liability to the many volunteers of all ages who provide countless hours of time and expertise across Alaska.

I am enclosing some materials on volunteer protection legislation from AARP's Public Policy Institute which may be of interest to you and to committees considering this legislation. If extra copies should be directed to other key legislators, please let me know and I will see that copies are sent.

Sincerely yours,

A handwritten signature in cursive script that reads "Patricia Oakes". The signature is written in dark ink and is positioned above the typed name and title.

Patricia Oakes
chairman

An Analysis of Volunteer Protection Legislation

Prepared
for
The American Association of Retired Persons
Office of Volunteer Coordination
and
Public Policy Institute

by
Stephen H. McCurley
VM Systems
September 1987

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An Analysis of Volunteer Protection Legislation

Introduction

This paper was produced in September 1987 to provide an overview and analysis of state and federal efforts to protect volunteers from suit through the enactment of protective legislation. The paper examines the efforts of 36 states that passed legislation in 1986 and 1987 and examines proposed legislation at the federal level. Of necessity, this work must be regarded as a preliminary effort, since activity in this area is still on-going, and some of the factual material in this paper will become swiftly out-dated as new legislation is drafted and as existing legislation is interpreted.

The content of the paper is divided into three basic parts:

1. Background regarding the movement to enact legislation
2. Analysis of enacted legislation
3. Implications of the legislation

In addition, a series of Appendices provide related factual materials and references to other sources of information on this topic.

Background/Overview

Volunteering In America

Volunteering has long been a pervasive part of American life. Studies conducted by the Gallup Poll organization for the Independent Sector during the 1980's indicate that approximately 50% of the American population regularly involves itself in volunteer activity during the year. During 1985 an estimated 90 million people volunteered almost 16.1 billion hours to non-profit groups and to governmental entities.

A significant proportion of these volunteers are seniors. Studies indicate that in 1985 43% of those between ages 65 and 74 engaged in volunteer work, and 25% of those over age 75. Seniors are increasingly becoming a prime target for volunteer recruitment efforts directed at both service and board volunteers. Seniors are sought for direct service work because of their ability as retirees to provide time during the usual working hours of the day, and are sought as board members due to their previous work experiences and contacts which are valuable to the agency.

In addition, seniors are one of the primary recipients for services delivered by voluntary agencies through volunteers. Examples of such programs include delivery of meals, congregate centers, home visitation programs, medical emergency call-in programs, etc.

The Liability Crisis

Lawsuits involving volunteers have always been extremely rare. The suits that have been filed tend to fall into 4 categories:

1. Suit against a direct service volunteer for negligence leading to injury of another (usually involving an automobile accident).

- 2. Suit against a direct service volunteer for criminal action (usually involving child abuse or molestation).
- 3. Suit against a board member for mismanagement of the agency on which the volunteer serves.
- 4. Suit against a board member related to the programs or activities of the agency on which the volunteer serves.

(Appendix 1 provides examples and citations of some of the lawsuits which have been filed regarding both direct service and board volunteers.)

Beginning in approximately 1983 the explosion of lawsuits began to significantly affect the volunteer community. At that time over 13 million lawsuits were being filed each year, primarily involving claims of negligence. Although few of these lawsuits involved the social services community, and even fewer involved personal suits against volunteers, a tremor of fear struck the volunteer community.

This reaction was based upon two factors:

First, since previous experience had been that there was no reason to worry about lawsuits, the realization of exposure to risk of suit came as a massive and unpleasant shock to the volunteers. Despite the relative improbability of suit, the perception of risk was such that even one suit in a community could serve to damage or paralyze volunteer recruitment efforts. As public attention was focused upon the liability crisis, and as volunteer groups began to be cited as a possible target, the fear grew even in communities where no lawsuit had previously been filed.

Second, volunteer organizations began to receive tangible reminder of the potential of suit from the insurance industry. Many volunteer organizations either had been covering or sought to cover board volunteers with insurance that would provide protection in the event of suit. The premiums for this coverage began to escalate tremendously, with increases of 300% annually not being uncommon.¹ In addition, many volunteer-utilizing programs were simply denied insurance coverage and were told that they were too much of a risk to receive protection. This served both to reinforce the perception of risk and at the same time to instill a feeling of hopelessness and desperation among volunteers and volunteer organizations.

The Move to Legislative Protection

Legislative relief from suit has been provided in some other areas of social services. Parks and recreation programs in some states have been granted limited immunity from suits involving negligence,² and immunity has been sought for individuals working in child welfare³. Louisiana has had a provision since 1972 that limits suits against non-profit board members by recipients of the agency's services.

The move to exempt volunteers from suit began in New Jersey and in Pennsylvania with an attempt to provide protection for volunteers working in sports programs. Volunteer coaches and workers in programs such as Little League were one of the central focuses of fear of suits arising from an injury to a child through misuse of equipment or through improper coaching techniques. During legislative consideration, the original bills were expanded to include protection for board volunteers as well.

When news of the enacted legislation in Pennsylvania and New Jersey spread, other states began to rapidly follow suit. By the end of the 1986 legislative sessions, 20 states had enacted some form of protective legislation. By mid-1987 the number of

states with some form of protection had risen to 36, and proposed national legislation had been introduced. (See Appendix 6 for an analysis of the federal legislation.)

Analysis of Protective Legislation

The scope of the legislative attempts to protect volunteers has varied widely from state to state. (See Appendix 3 for a state-by-state breakdown of enacted legislation.) There are three major areas of consideration which must be examined in determining the extent of protection provided:

Extent of Organizational Coverage

Not all volunteers of all organizations receive coverage. One must volunteer for a 'qualified' organization under each state's definitions. Originally this meant a charitable organization, but as more bills were enacted this grew to include other types of agencies. The primary options now being considered include:

1. *Non-profit organizations*, with choices as to whether the group must be have some other tax-exempt status; and whether certain organizations such as hospitals or education institutions) ought to be excluded from coverage. (To see how complex this may be, see Appendix 2 for a listing of the possible variations in selection possible just among the tax-exempt groups.)
2. *Government entities*, with choices as to the extension of coverage among state and local levels of government, and to quasi-governmental entities.
3. *Individuals*, including both the volunteer who acts totally alone as the 'Good Samaritan' or with others in an unincorporated association.
4. *For-profit corporations*, such as those companies who engage in group projects involving volunteer employees.

The movement in legislation is clearly toward providing protection for governmental volunteers and for at least some types of volunteers for non-profit agencies.

Types of Volunteers Covered

There are three basic types of volunteers who are being covered under current legislation. These are:

1. Non-profit board volunteers;
2. Volunteers on advisory boards and committees; and
3. Direct service volunteers.

Only two states who have enacted legislation have failed to cover non-profit board volunteers, and both of these states have introduced legislation to attempt to do so. Sixteen states have covered direct service volunteers. Advisory board volunteers have primarily been covered into those states which provide protection to volunteers in governmental entities.

A more complicated question regarding volunteer coverage has arisen regarding the definition of what a "volunteer" is and is not. Most states define 'volunteer' as one who does not receive compensation, or one who serves of their own free will. This definition leaves in limbo some of the current types of "quasi-volunteers", including:

1. Individuals performing work as part of a community service restitution program or alternative sentencing program.

2. Individuals who receive a stipend, such as volunteers under the Foster Grandparents program of the ACTION agency.
3. Student interns who are receiving educational credits.
4. Corporate employees who receive a salary, but who are 'loaned' to a non-profit agency.
5. Board members who serve as official delegates to a board as a part of their work duties.

The creativity of the volunteer community in obtaining unpaid workers has apparently progressed beyond the creativity of legislative drafters.

Extent of Protection

The protection being provided in the legislation does not totally render a volunteer immune from suit. The legislation is limited to civil cases (with the exception of Wisconsin), and mostly restricted to cases involving negligence. Underlying almost all of the legislation is the explicit or implicit requirement that the volunteer be operating in good faith and within the scope of their volunteer duties in order to qualify for protection.

In addition, the protection provided to the volunteer may be limited in three areas:

A. Extent of wrong-doing allowed

Most legislation does not exempt a volunteer from all and any mis-conduct. Usually a limit is set beyond which the volunteer does not receive protection. The common limits are as follows:

1. "Knowledge/participation": the volunteer is liable if they were a direct participant in the wrong-doing.
2. "Wanton/gross misconduct": the volunteer is liable if their conduct is sufficiently grievous as to be seriously flawed, or such a level of mistake as to constitute much more than an inadvertent error on the part of the volunteer.
3. "Willful/intentional misconduct": the volunteer is liable if the misconduct is of a deliberate nature.

In essence, most legislation provides protection by raising the burden of proof on the plaintiff to demonstration of a higher level of wrong-doing.

B. Exempted plaintiffs

Some potential plaintiffs are exempted from the protections granted by the new laws. Examples of those are:

1. The agency itself, which could still file suit against one of its own volunteers for misconduct. This exemption is aimed at protecting agencies from wrongful actions of members of their boards.
2. The Attorney General of the state, who is commonly charged with supervision over non-profit agencies.
3. Third parties who do not receive services from the agency, in what is essentially a variation that has existed for years in the old charitable immunity doctrine.

Under these provisions, the exempted plaintiffs would presumably only have to show simple negligence as a burden of proof.

C. Variations/Exceptions

A wide range of variations have been enacted as well. Among some of the common variations that have arisen are:

1. Either requiring insurance as a prerequisite of protection or else only
2. Eliminating protection in cases involving a vehicle.
3. Excluding volunteers who are rendering professional services.
4. Excluding coverage of suits involving contractual obligations.
5. Excluding incidents which involve alcohol or drugs.

Some of the variations could have unusual consequences. A number of states, for example, in determining the extent of organizational coverage have defined a 'qualified' organization by referring to those organizations either receiving a charter under some section of the state corporation code or receiving a tax-exempt status under some section of the state taxation code. This would presumably exclude from coverage any organization incorporated in another state but operating across state boundaries or else with sub-units that were operating within the umbrella group's tax exempt status in another state. (See Appendix 4 for a listing of state variations.)

Summary of Coverage

What began as a simple attempt to protect volunteers has emerged as an increasingly complicated task. It is likely that the original initiators of the legislation had no idea how complex the volunteer community has become. Those states which quickly enacted 'simple' versions of legislation are already beginning the amendment process, either to correct drafting errors or to widen coverage. Minnesota, for example, quickly enacted a '25-words-or-less' version of protection for non-profit board members in 1986 and in 1987 enacted a replacement bill which gave somewhat better guidance of legislative intent after no one was able to decipher the original legislation.

Implications and Impact

The implications of the this legislation must be evaluated in six major areas:

I. Impact on Lawsuits

Quantitative information on lawsuits involving volunteers has always been sparse. Kahn, in a 1984 survey of volunteer programs determined that 45 out of 343 respondents reported some previous involvement in a legal action or lawsuit,⁴ but how many of these involved suits against a volunteer is unknown. Qualitative data on the causes of action involved is equally rare, so it is impossible to accurately predict the impact of this protection legislation in any sort of numerical fashion.

In the short run, there will be an extensive period of testing and defining the new legislation in the courts. Many of the elements and situations covered by the new legislation have little or no previous legal history, and will only be established as individual cases are decided. How, for example, will the wording in Pennsylvania's legislation that volunteers operate according to "generally practiced standards" be interpreted? What determinations will be made about the coverage extended to the "quasi-volunteers" discussed above?

What is obvious is that the legislation does provide some additional protection to volunteers. While the protection is not universal, at least in the area of negligence suits it will clearly be more difficult for plaintiffs to meet the heightened burden of proof required under most of the new legislation. This should ultimately reduce the incidence of suit through discouraging potential plaintiffs.

In addition, some types of lawsuits will be more significantly affected. One type of suit, for example, which caused considerable unrest among non-profit board members, was the suit which arose over a program or activity conducted by the non-profit, during which someone was injured. In addition to suing the non-profit agency, many plaintiffs were also filing against individual board members (many of whom had considerably more assets than the non-profit agency). The requirements in the new legislation for demonstration of active participation or involvement in the actual wrong-doing should substantially reduce this type of suit.

2. Impact on Insurance

Impact of the legislation on insurance is much harder to predict, and depends on whether one thinks that the pricing of insurance premiums is directly related to risks. The period since enactment of the new legislation has been too short for empirical demonstration of any reduction in rates. On an inferential basis, a few more companies are now advertising the availability of Directors and Officers insurance coverage for board volunteers.

One negative result in the area of insurance has been a tendency toward over-reaction in the volunteer community in estimating the amount of protection provided in the new legislation. This has led to some agencies deciding that they could safely cancel or fail to renew insurance policies. Such an action is clearly not justifiable solely as a result of the legislation, both because of its lack of universal coverage and because of the benefit of insurance in providing assistance in defending against even frivolous suits.

3. Impact on Volunteering

Quantitative statistics are also lacking on the potential impact of the legislation on volunteering. Since no data exists on any present deterrent effect that litigation has had on volunteer involvement, it is difficult to predict to what extent this remedy may alleviate fear among potential volunteers. Inferential data exists concerning non-profit board volunteers: a study conducted in 1986 by the National Association of Corporate Directors found that only 36% of those responding said they would serve on not-for-profit boards that did not have insurance protection.⁵ A study by the Opinion Research Center for Peat, Marwick found that 6% of the survey respondents reported having a person resign from their board because of concern over potential liability and 8% reported having had a potential board member refuse to join the board.⁶

The most significant quantitative impact that the legislation may have on volunteering may well occur on a sectoral basis. Under current patterns of state legislation there is wide diversity in which organizations are covered, and within a given state large areas of the volunteer community are often outside the protection offered by the legislation. This opens a potential scenario in which those organizations that are within the protective purview of the new legislation may utilize that protection to gain a competitive advantage in recruiting both service volunteers and board members. While the actual increase in safety generated by the new legislation may be small in terms of absolute probabilities, a targeted marketing campaign could certainly make use of the new legislation to remind volunteers that they do not need to face even a

slight risk of suit. Particularly among more affluent board volunteers, this additional safeguard could make a substantial difference.

4. Impact on Volunteer Management

A final area in which the new legislation should have an immediate impact is on organizational practices regarding volunteer management. These should be significantly influenced by two requirements within the legislation.

One primary area of legal concern in the new legislation lies in the determination of when the protection given by the statutes will vest. The question to be decided here is how one determines what lies within the "scope of employment" and "duties" of each volunteer.

The second area of concern will be the establishment of indicators that in the performance of those duties a volunteer demonstrated sufficient care to avoid a labeling of "wanton" or "willful."

The combination of these two factors will make it extremely important that the organization establish a system of volunteer management and administration that ensures that these two concerns are met. Key elements of this system would include:

1. *A clear volunteer tracking system that establishes when volunteering starts and stops.* This will be especially important in those instances where collaborative programs are being undertaken (such as a joint project between a government program and a non-profit agency) in which one of the participating agencies is not covered by the protective legislation. In this instance, to whom does the volunteer "belong"? If an agency loans or refers its membership to other groups for short-time volunteer jobs, for whom is the volunteering taking place? This will be of particular significance to the new corporate volunteer programs that have been established in the 1980s. Memos of agreement and record-keeping systems will prove essential in quickly establishing organizational connection.
2. *Clear and up-to-date volunteer job descriptions.* One method for helping in the above situation and in clearly defining a volunteer's "scope of employment" will lie in maintaining job descriptions that accurately match and describe the functions that the volunteer is undertaking for the agency.
3. *Better training for volunteers and staff.* Efforts to demonstrate that the behavior of the volunteers was not too extreme to warrant protection will be enhanced by a training program that establishes 'proper procedures' and prepares volunteers for anticipated tasks.
4. *Rewards to Agencies that Practice Risk Management.* Equally important to agencies will be upgrading of risk management practices designed to identify those areas of potential danger in the provision of volunteer services and to create management and training systems to prepare volunteers for anticipated dangers.

The most long-standing impact of the new legislation may well lie in the fact that in an indirect manner it will significantly reward those groups with the best management practices. Those groups who operate volunteer programs without an organized system are the most likely to meet difficulties in defending against suit under the new legislation. Some states have attempted to encourage volunteer-utilizing agencies in a more direct fashion. Early drafts of the Arkansas liability protection legislation

contained requirements on agencies for the provision of written volunteer job descriptions, training programs, and personnel to manage and supervise volunteers. This language was removed in the legislative deliberations, but the intent of the language will certainly be re-created as court cases outline the need for good volunteer management.

5. Impact on Service Recipients

Two potential areas of impact on service recipients may be affected by the new legislation. The first involves the additional possibility that some types of volunteer work will continue to be done. The areas of volunteering most affected by fear of litigation have been those involving volunteer driving and those involving primarily physical activity (home repair, coaching, etc.). The new protective legislation may make it much easier to continue to recruit volunteers for programs in these areas. The exception, of course, will lie in those states which have exempted from protection suits involving vehicles, as 8 states have already done (see Appendix 3).

The second area of potential impact on service recipients lies in the claim voiced during legislative deliberation of the legislation that removal of the fear of lawsuit will diminish the quality of service provided to clients because it removes an incentive for the volunteers to perform at high standards. Several states have attempted to deal with this problem by enacting legislation that still allows for the volunteer-utilizing organization itself to bring suit against the volunteer, an act which presumably could be initiated in the event that the volunteer was involved in unsatisfactory performance of his duties.

6. Impact on Social Service Agencies

Overall, given the factors discussed above, the liability protection legislation should have a small, but significant, impact on social service agencies. If nothing else, the legislation counter-balances the hysteria over lawsuits that has stifled the development of volunteer programs in some agencies. It removes a disincentive for volunteering that has been growing steadily, particularly among board volunteers. And it opens the door for re-negotiation over insurance rates and coverage. The only 'negative' impacts of the legislation lie in the imposition of requirements of better management of volunteers, something which the agencies probably should have been doing already and which the agencies will certainly benefit from in more ways than simply acquiring liability protection.

Conclusion

Three final conclusions can be made about the new protective legislation:

1. It is probably here to stay and will probably spread to all states within a short period of time. The degree of legislative enthusiasm which resulted in 36 states enacting legislation in 16 months without any coordinated national campaign (and occasionally no organized local campaign) is not likely to quickly diminish.
2. It cannot be ignored. Ultimately the legislation could have a major impact on the volunteer management practices of almost all organizations.
3. Its final impact will probably be positive. The legislation will probably result in benefits to volunteer-utilizing organizations in the areas of insurance, volunteer recruitment, improved retention of volunteers, and ability to better provide assistance to service recipients.

What is equally clear, however, is that in the next five years the overall situation created by the new legislation will be extremely confusing as each state faces a period of legislative amendment and interpretation of the legislation within the courts, and as each organization faces a re-consideration of its volunteer management techniques. In a very real way, despite the fact that 36 states have already acted, the true effort for gaining protection from suit for volunteers is just beginning.

Footnotes

1. Opinion Research Corporation, Directors and Officers Liability: A Crisis in the Making (Washington: Peat Marwick) 1987, p. 6.
2. See Kozlowski, "No Ordinary Negligence Liability Under Recreational Immunity Statutes," 21 Parks and Recreation 20 (January 1986).
3. See Besharov, "Child Welfare Liability: The Need for Immunity Legislation," Child Today (September/October 1986).
4. Kahn, "Legal Issues in Volunteerism: Preliminary Survey Results," Journal of Volunteer Administration (Winter 1984-85).
5. Opinion Research Corporation, p. 12.
6. Opinion Research Corporation, p. 7.

Appendix 1 Case Citations

Direct Service Volunteers

1. *Scottsdale Jaycees v. Superior Court* 17 Ariz. App. 571, 499 P.2d 185 (1972)
(volunteer involved in automobile accident en route to convention)
2. *Sokolow v. City of Hope* 41 Cal. 2d 668, 262 P. 2d 841 (1953)
(hospital auxiliary in accident at fundraiser)
3. *Malloy v. Fong* 37 Cal. 2d 356, 231 P. 2d 241 (1951)
(volunteer divinity student causes automobile accident)
4. *Leno v. YMCA* 17 Cal. App. 3d 651, 95 Cal. Rptr 96 (1971)
(volunteer scuba instructor involved in drowning of student)
5. *Trinity Lutheran Church v. Miller* 451 NE 2d 1099 (1983)
(volunteer driver injures motorcyclist while delivering holiday gifts)
6. *Garcia v. Herald Tribune Fresh Air Fund* 51 A.D. 2d 897, 380 N.Y.S. 2d 676 (1976)
(volunteer host family involved in drowning of child)
7. *Davis v. Shelton* 33 A.D. 2d 707, 304 N.Y.S. 2d 722 (1969), appeal dismissed 26 N.Y. 2d 829, 257 N.E. 2d 902 (1970)
(Boy Scout volunteer involved in accident where scout falls out of tree)
8. *Ricker v. Boy Scouts of America* 8 A.D. 2d 565, 183 N.Y.S. 2d 484 (1959)
(injury caused by volunteer scout master at scouting event)
9. *Daxter v. Morningside* 10 Wash. App. 893, 521 P. 2d 946 (1974)
(volunteer driver involved in accident while delivering package)
10. *Manor v. Hanson* 120 Wis. 2d 582, 356 N.W. 2d 925, (Ct. App. 1984)
(volunteer driver for senior transportation program involved in accident)

Board Volunteers

1. *Mountain Top Youth Camp Inc v. Lyon* 20 N.C. App. 694, 202 S.E. 2d 498 (1974)
(corporate director sued for self-dealing and waste)
2. *Stern v. Lucy Webb Hayes National Training School for Deaconesses and Missionaries*, 381 F. Supp. 1003 (1974)
(hospital board sued for breach of fiduciary duty - "Sibley" hospital case)
3. *Jackson v. Statler Foundation* 496 F. 2d 623 (1974), cert. denied, 420 U.S. 927 (1975)
(foundation board charged with discrimination in granting of funding)
4. *Goicing v. Satter* 107 So. 2d 348 (1958)
(hospital board sued for failure to protect property by not having adequate insurance and not collecting debts to organization)
5. *Warren v. Reid* 331 S.W. 2d 847 (1960)
(board sued regarding conflict of interest in granting of laundry services contract)
6. *Franzblau v. Monardo* 166 Cal. Retr. 610 (1980)
(board member sued for conflict of interest through service on multiple hospital boards)

7. *Harris et al v. Attorney General* 31 Conn. Supp. 93, 324 A 2d 279 (1974)
(board sued regarding maintenance of prudent level of insurance)
8. *Newman v. Forward Lands, Inc* 430 F. Supp. 1320 (1977)
(board sued for improper placement of funds)
9. *Tiliman v. Wheaton-Haven Recreation Association, Inc* 517 F. 2d 1141 (1975)
(directors held liable for violation of Civil Rights Act)
10. *Lafkowitz v. Museum of the American Indian (Heye Foundation)* No. 41461 - 75 (Sup. Ct., N.Y. Co. 1975)
(board sued for mismanagement, granting false tax evaluations of donations)

Appendix 2
IRC Classification of Tax Exempt Organizations

IRC Section	Type of Organization
401(a)	Qualified pension and/or profit sharing plans
501(c)(1)	Corporations organized under Act of Congress
501(c)(2)	Title holding corporation for exempt organizations
501(c)(3)	Religious, educational, charitable, scientific, literary, testing for public safety, or prevention of cruelty to children or animals organization
501(c)(4)	Civic leagues, social welfare organizations, local associations of employees
501(c)(5)	Labor, agricultural and horticultural organizations
501(c)(6)	Business leagues, Chambers of Commerce, real estate boards
501(c)(7)	Social and recreation clubs
501(c)(8)	Fraternal beneficiary societies and associations
501(c)(9)	Voluntary Employee's Beneficiary Associations
501(c)(10)	Domestic fraternal societies and associations
501(c)(11)	Teachers' retirement fund associations
501(c)(12)	Benevolent life insurance associations, mutual ditch or irrigation companies, mutual or cooperative telephone companies
501(c)(13)	Cemetery companies
501(c)(14)	State chartered credit unions, mutual reserve funds
501(c)(15)	Mutual insurance companies or associations
501(c)(16)	Cooperative organizations to finance crop operations
501(c)(17)	Supplemental employment benefit trusts
501(c)(18)	Employee funded pension trust
501(c)(19)	Post or organization of war veterans
501(c)(20)	Group legal services plan organization
501(c)(21)	Black lung benefits trust
501(c)(22)	Withdrawal liability payment fund
501(c)(23)	Veterans Organization
501(c)	Religious and apostolic associations
501(e)	Cooperative hospital service organizations
501(f)	Cooperative service organizations of educational organizations
521(a)	Farmer's cooperative associations

Appendix 3
State Legislation: Breakdown By State

	Organizational Coverage					Volunteer Coverage				Extent of Protection										
	Unincorporated Volunteer Groups	Non-Profit Corporation	State Government	Local Government	For Profit Corporation	Board of Directors	Advisory Committee	Direct Service	Sports Volunteers	Approves, Participates	Grass. Wagon	Withd. International	X to Corporation	X to 3rd Parties	X to All General	Health, Hospital Exclusion	Professional Services Exclusion	Vehicles Exclusion	Insurance Limitations	Criminal Violation Exclusion
Alaska		X		X		X	X				X		X							
Alabama		X	X			X					X	X	X				X	X	X	
Arkansas	X	X	X					X		X			X							
Colorado	X	X			X	X		X												
Connecticut		X				X					X	X								
Delaware		X				X		X	X											
Florida		X				X														
Hawaii		X				X					X									
Illinois		X		X		X	X	X			X	X								
Indiana		X	X	X		X	X												X	
Kansas		X				X		X		X	X					X			X	
Louisiana		X				X							X							
Maryland		X				X		X			X	X			X	X	X		X	
Mass		X				X					X									
Michigan			X	X		X	X	X			X					X				
Minnesota		X				X		X			X	X	X		X					
Nebraska		X				X						X	X					X		
Nevada	X	X				X						X								
N Hampshire	X	X				X														
New Jersey		X				X		X	X											
New York		X				X					X	X	X							
No Carolina		X						X			X	X					X	X		
North Dakota		X				X		X			X							X		
Ohio		X				X		X		X	X	X				X				
Oklahoma		X				X				X			X							
Pennsylvania	X	X				X			X									X		
South Dakota		X	X	X		X	X	X			X	X						X	X	
Tennessee		X	X	X		X					X	X								
Texas		X				X		X			X	X	X			X		X	X	
Vermont		X				X					X	X								
Virginia		X				X						X								
Washington		X				X					X		X							
Wisconsin		X				X		X									X	X		X
Wyoming		X	X	X		X	X													

This table is only to provide a quick reference summary. For any serious analysis, please refer directly to the legislation in each individual state.

Appendix 4
State Legislation: Variations In Coverage

1. **Must carry insurance to qualify**
Kansas, Maryland
2. **Liable only to extent of insurance**
Arkansas, Indiana, Kansas, South Dakota, North Dakota, Texas
3. **Liable if incident involves motor vehicle**
Arkansas, Nebraska, North Carolina, North Dakota, South Dakota, Texas, Wisconsin
4. **Liable if professional services**
Arkansas, Maryland, North Carolina, Wisconsin
5. **Liable if healthcare or hospital related**
Kansas, Maryland, Michigan, Ohio, Texas
6. **Liable if based on contractual obligations**
Minnesota
7. **Liable if alcohol related**
Nebraska
8. **Liable if based on federal cause of action**
Minnesota
9. **Limit placed on amount permissible for reimbursement of expenses**
North Dakota
10. **Recovery limited to amount of compensation**
Virginia
11. **Liability remains to 3rd parties**
Arkansas, Louisiana
12. **Liable in action brought by governmental entity**
Minnesota
13. **Liable if trustee in action brought by beneficiary of trust**
New York
14. **Immunity granted for some criminal violations**
Wisconsin
15. **Liable if below generally practiced standards**
Pennsylvania
16. **Must participate in training program**
North Dakota, New Jersey
17. **Coverage if "Nonprofit Corporation"**
Arizona, California, Colorado, Florida, Hawaii, Indiana, Louisiana, Minnesota, Nevada, Ohio, Washington, Wyoming
18. **Coverage if 501(c)**
Connecticut, Delaware, Illinois, Kansas, South Dakota, Tennessee, Virginia
19. **Coverage if 501(c)(3)**
Alaska, Arizona, Arkansas, Maryland, New York, North Carolina, Pennsylvania, Texas, Vermont
20. **Coverage if 501(c)(4)**
Alaska, Texas
21. **Coverage if 501(c)(6)**
Indiana, Tennessee
22. **Coverage if 501(c)(assorted other categories)**
Missouri, North Dakota, Oklahoma
23. **Coverage if "Member"**
Louisiana, Minnesota

Appendix 5
State Legislation Citations

Alaska	09.17.050	1986
Arizona	Ch 129 §10-1017	1987
Arkansas	Act 390	1987
Colorado	CRS 13-21-116	1986
Connecticut	PL86-338(10)	1986
Delaware	Ch 81, Title 10, §8133	1986
Florida	FS 607.1645	1987
Georgia	14-3-113.1	1987
Hawaii	HRS 416	1986
Illinois	PL84-1431 Arts 1 & 7	1986
Indiana	IC 34-4-11.5-1	1986
Iowa	25A.24	1987
	613A.2	1987
	613.19	1987
Kansas	SB 28	1987
Louisiana	LRS 9.2792	1972
Maryland	Ch 643 §5-312	1986
Massachusetts	Ch 156B §13	1986
Michigan	MCL 691.1401	1986
Minnesota	Ch 455 §317.201	1987
Nebraska	LB 67	1987
Nevada	NRS 411.480	1987
New Hampshire	RSA 508.16	1986
New Jersey	SB 678	1986
New York	NYL 375 §11-13	1986
North Carolina	Art 43-B §1-539.10	1987
North Dakota	§10-24-05	1987
	HB 1080	1987
Ohio	ORC 2305.38	1986
Oklahoma	Title 18 §865	1986
Pennsylvania	Title 42 §832.2	1986
South Dakota	SB 1317	1987
Tennessee	28-3-301	1986
	29-20-201	1986
Texas	Title 4, Ch 84, §84.001	1987
Vermont	S 37	1987
Virginia	§13.2-870.1	1987
Washington	RCW 4.24	1986
Wisconsin	Act 13	1987
Wyoming	WS 1-23-107	1986

Appendix B
Federal Legislation: Analysis of HR911

Background:

HR911, the Volunteer Protection Act of 1987, was introduced on Feb. 2, 1987 by Rep. John Porter (R - IL). Identical legislation has been introduced in the Senate (S.929, Melcher, D - MT). An earlier version of the legislation had been introduced by Rep Porter during the 99th Congress.

In the House the legislation has been referred to the Judiciary Committee, and has approximately 145 co-sponsors.

Coverage:

The essential elements of the Porter bill are as follows:

1. *Organizational Coverage:* Protection is extended to non-profit organizations and governmental entities. A non-profit is described as a 501(c) tax exempt organization.
2. *Volunteer Coverage:* Board and direct service volunteers, with a \$300 limit on compensation received.
3. *Limits on Protection:* The volunteer must act in good faith and within the scope of duty, and must not have demonstrated wilful or wanton misconduct. The volunteer is still liable to the volunteer organization and to any governmental entity. Protection is extended as immunity in civil liability for "damage or injury".

Overall, the Porter bill is a quite standard version of much of the current state legislation.

Legislative Prospects:

The Porter bill is intended to provide a 'model' for state legislation and to encourage states to enact some type of legislation. To encourage states, the bill has an 'incentive' clause through which states which fail to enact legislation would lose 1% of their Title XX Social Services Block Grant allotment during each year in which they lacked legislation. To meet the requirements of the bill, a state must certify to the Secretary of Health and Human Services that it has enacted legislation which "substantially complies" with the types of protection in the Porter bill. The bill is being supported by a variety of national voluntary organizations and coalitions.

Resistance to the bill comes on two grounds:

1. *Deference to state legislative prerogative.* Few Congressmen are enthusiastic about pressuring their State legislatures to enact legislation. They are particularly not enthusiastic regarding legislation which would force their state legislatures to re-draft bills which they have already passed. On balance, although 34 states have passed some type of volunteer legislation, the vast majority probably could not demonstrate "substantial compliance" with the Porter bill. The major areas of obvious differences would lie in extension of protection to direct service volunteers (which only 15 states currently do) and extension of protection to governmental entities (done in only 7 states).
2. *Resistance to the enforcement mechanism.* Those states not complying with the Porter bill are penalized by loss of Social Service Block Grant funding. There is opposition both among the Congress and among many social service voluntary organizations to this approach. The opposition finds it quite inappropriate to encourage protection by threatening funding to the very programs for which the volunteers are serving.

It is in fact likely that the Porter bill could pass much more quickly if it were simply introduced as an optional model for protective legislation that was receiving the endorsement and support of the U.S. Congress. Such an alteration in approach would still be of assistance to state efforts to craft sensible legislation and would avoid both areas of opposition cited above.

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STATE VOLUNTEER LIABILITY LEGISLATION

Stephen McCurley
Draft #20 11/21/87

DRAFT

STATE	REFERENCE Bold = Enacted	ORG COVERAGE	VOL COVERAGE	PROTECTION X = Exception
AK	§09.17.050 86	NP corp; public or NP hospital; school Bd; municipal Bds (NP corp = 501c3 or c4)	Board, commission	Xgross negligence Xto corporation
AZ	ARS 10-005 86	Profit & NP Corp	Board	None, can indemnify, self-insure
	§36-919 86	Ch & NP Corp involved in food distribution	Officer; Volunteer; Organization	Xgross, reckless, intent
	Ch129 §10-1017 87	NP Corp	Board	Xwillful, gross: Org must amend Articles of Incorporation to qualify; Xto corporation and members
AR	Act 390 of 87	SV/local govt; com vol org, or 501(c)(3)	"any person who provides goods or services w/o finan- cial compensation"	Not vicariously liable; Not liable acts/omission Xto extent of insurance for ordinary neg; Xbad faith, gross negligence; Xoperation of motor vehicle, boat, etc; Xprof licensed services; Protection limited to beneficiary of vol's services
	HB1077 87	Govt entity; NP corp w/IRS tax exemption	Board, commission	Xordinary, gross negligence; intent
CA	Ch 720, §5231.5 86	NP public benefit corp	Board	Act in good faith, best interests, prudent care
CO	CRS13-21-116 86	NP corp	Board	Xwanton or willful act
	CRS13-21-116 (2)(a) 86	Ind; corp; assoc; partnership	All acting for benefit of another or to pro- tect health or safety	Act in good faith
CT	PL86-338(10) 86	501(c)	Board	Act in good faith, within scope; Xwillful, wanton
DE	Ch81, title 10 §8133 86	501(c)	"trustee, director, officer, agent, worker"	No civil damages for any negligence Xmotor vehicle to extent of insurance

	H411 86	NP	Sports vols	?
	Ch68, title 16 part IV, subchap VI 87	501(c)	Org, staff, Board	No liability in construction or maintenance of parkland
FL	HB1096 87 FS607.1645	501(c) (3,4,5,6)	Board	Xbreach of duties; Xviolation of criminal law; Xderive improper benefit; Xrecklessness, bad faith, willful, wanton
GA	H209 87 14-3-113.1	NP corp	Board	Act in good faith, like ordinarily prudent person (No additional liability protection)
HA	HRS416 86	NP corp	Board	Xgross negligence
IA	25A.24 87	State Govt	Commission, volunteer	Xintentional misconduct, knowing violation of law, or transaction in which derives improper benefit
	613A.2 87	Municipality	Commission, volunteer	Xintentional misconduct, knowing violation of law, or transaction in which derives improper benefit
	SF471 87 §613.19	NP Corp; unincorporated association	Board, Volunteer	Xintentional misconduct, knowing violation of law, or transaction in which derives improper benefit
	HF630 87 232.13	State govt	Com Service Vol	State accepts liability for child given community work assignment
IL	PL84-1431 Art 1 86	Local public entity	Bd, commission, volunteer	Xwillful, wanton
	PL84-1431 Art 7 86	501(c)	Board	Xwillful, wanton
	Ch 32 §108.70 87	501(c)(3)	Board, Vols	Xwillful, wanton; Xto corporation
IN	IC34-4-11.5-1 86	St/local Govt; NP corp; Business trade assoc	Board, commission	Liability limited to ins coverage; if no coverage, then immune
KS	SB29 87	501(c)	Bo; other person	Xauthorizes approves

	HF141 87	NP org exempt under MS240.05	"Director, officer, trustee, member or agent"	Good faith, within scope, Xwilfull, reckless, Xto govt entity, Xto org, Xcause based on federal law, Xbased on contractual obligation (amends §317.201)
	87bill HF278/SF230	NP org	Sports vols; corp	?
	HF467/SF404 87 (in HF141)	NP corp	Vol fire chief	Not liable to firefighters or others for performance of firefighting or related activities
MO	RSMo537.037 86	Any person	Emergency care	If trained in first aid, Xgross negligence, wilful, wanton acts
NB	LB 67 of 87	501 (c)(2,3,4,5,7,8,11 or 19)	Board	Act within scope; Xwilful, wanton; Xto corporation; Xvehicle or alcohol related
	87bill LB123	NP sports program	Sports vol	Xreckless
NC	HB152 87 Art43-B §1-539.10	501(c)(3)	Direct service vol	good faith & reasonable; Xgross, wanton, intent; Xmotor vehicle; Xprof services above extent of insurance
	87 bill, HB713	?	Clean-up vols	?
ND	§10-24-05 subsection 87	501(c) (3,4,5,6,7,10,19)	Board	Act in good faith, scope; Xwilful, gross; Xreimbursement of expenses above \$2000; Xreceipt of compensation
	HB1080 87	NP orgs	Volunteer	Act in scope; Xwilful, gross; Xvehicle
		NP orgs	Sports vols	Act within scope; participated in training and safety program; Xwilful, gross; Xvehicle; Xexercising supervision; Xpart of educational institution
NH	RSA216-A: 3-h 86	Govt	Parks volunteers under supervision	Covered by state tort claims protection
	RSA 508.16 86	Ch orgs & societies	Board	Good faith, Xwilful, wanton

			who performs services"; Xvolunteer who delivers health care services in medical facility	actively participates + willful, wanton, intent; Xonly to extent of insurance
LA	RS9:2792 72	Public, charitable or NP hospital, or organization	Board; 'member'	Not liable to any who receive benefits
MA	Ch156B §13 86	NP Corporation	Director, officer	Articles of organization may eliminate or limit liability to corp or membership Xbreach of loyalty, bad faith, intent, conflict of int. Xonly to shareholders or members
	? 87	NP	Board	Xgross negligence, intent; Xrelated to commercial activities, including FR; Xvehicle
ME	87 bill, Subst HB6134	501(c)(3)	Board	Xgross negligence, recklessness, intent
MD	Ch643 §5-312 86	501(c)(3)	Board; vol employee	Org must carry ins; Xmalice, gross negligence, Xto Att Gen Xhealth care malpractice
	87 bill HB1178	501(c)(3)	"Officer, trustee, or other person"	Xauthorizes, approves or actively participates; Xratifies; Xwillful, wanton; Xto Att Gen
	87 bill HB1425	501(c)(3), Xhospitals	Vols who render health care services	Xwillful, wanton, gross, intentional
	87 bill SB165	501(c)(3)	Dup of HB1178	
MI	MCL691.1401 86	St/local agency, pol. sub-division	Bd; commission, volunteer - must be "specifically designated"	Xgross negligence Xhospital or med care facilities
	MCL450.1561 86	Corporation, including NP	Board	Right to indemnification; Corp can eliminate liability to Corp or to shareholders Xbreach of duty, Xbad faith or intent or conflict of interest
MN	Ch455 §317. 001 86	NP corp	Board	"occasional sole by reason of membership or participation"

	87bill 7100	NP corp; town Corporation	Board; commission Officers, agents, employees	if "occasioned by membership or participation" Not liable to those in sponsored sports event; if minor, must have parental waiver
SD	§23A-28-11 86	Any recipient of community service defendants	Organizations	Xgross negligence, willful, wanton; and only to extent of insurance
	§47-22-65 86	NP corp	Board	None, can indemnify
	Ch 47-23 87	501(c); hosp	Board	Xwillful, wanton
	HB1317 87	501(a), 501(c), hospital, govt entity	Board, service vc!, Commission	Act in good faith & within scope. Xwillful, wanton, Xmotor vehicle, Xto extent of insurance (Xfor Board)
TN	28-3-301 86	501(c)(3), (c)(6), electric cooperatives	Board	Xwillful, wanton, gross
	29-20-201 86	Govt boards, commissions	Board	Xwillful, wanton, gross
TX	87bill HB24	NP corp	Board	Xgross negligence; Xcorporation, shareholders
	87bill HB104	NP corp	Volunteer	Must be under supervision of director or paid employee
	87bill HB201	Any person	Court-adp'd volunteer	Xwillful, gross
	87bill HB202	501 (a),(c)(3) Nonhosp NP	Bd; volunteer Organization	Must act in good faith and within scope of duties; Xwillful, wanton intentional; Xto corp Limit placed on monetary damages
	87bill S3201	State govt; Bd of higher education institution	Bd; volunteer; court-ord'd service	Not personally liable if within scope of duties
	87bill SB287/ HB564	NP Corps	Board	Xintent; Xto Corp.
	Title 4 Ch 84 §84.001 87	501(c)(3,4), except health-care provider	Board; volunteer	Act in good faith & within scope of duties; Xmotor vehicle to extent of insurance

	RSA508:15	Person, corp, org in food distribution	Volunteer, Org	Xgross, reckless
	87bill HB237	501(c)	"Any Volunteer"	Good faith, acting in scope; Xwillful, wanton, gross; Xto corp
NJ	NJSA 2A: 62A-6 86	NP org	Sports volunteer	Not liable to player or participant if trained, acting w/supervision; Xin educational inst; Xmotor vehicle; Xwillful wanton
	2A:53A-7 87	NP corp, society, association; NP federation	Board, volunteer	Xreckless disregard; Xwillful, wanton; Xmotor vehicle
NY	NY Laws 375 §§11-13 86	501(c)	Board	Xgross negligence, intent; Xto corporation
NV	NRS411.480 87	NP corp, assoc, org formed under laws of state	Board	Xintent, fraud or knowing violation of law
OH	ORC2305.38 86	Non-hospital, charitable NP corporation under ORC1702	Bd; volunteer	Xprior knowledge and approval, or ratification Xwillful, wanton, or intentional
OK	Title 18, §865 86	501(c)	Board	Not responsible for acts of employees or other directors Xown negligence or intent
	Title 18, §867 87	501(c)	Board	Xbreach of duty to Corp; Xbad faith, intent; Ximproper personal benefit
PA	Title 42 §8332.1 86	NP assoc	Sports volunteer	Xbelow generally practiced standards; Xtransportation; Xrelate to care of playing area
	Title 42, §8332.2 86	501(c)(3)	Board	Xbelow generally practiced standards
RI	87bill Leg init #6A	NP Org	Board	Xbad faith, intent, derive improper benefit
	87bill S85	501(c); govt entity	Board; Direct service volunteer	Act in good faith and within scope; Xwillful, wanton; Xto agency
	87bill S40	501(c)	Board	Act in good faith and in scope; Xwillful, wanton

				Xintent, willful, wanton XBd member liability to organization and its members
UT	SB214 86 (Gov veto)	NP corp	Board	
VA	§13.2-870.1 87	Corp	Board	Liabe only to amount of compensation: Xwill- ful, knowing violation
VT	S37 87	501(c)(3)	Board	Good faith, Xwillful, wanton
WA	RCW4.24 sec 86	NP corp	Board	Xgross negligence, Xto corporatio.
	RCW7.70 86	Public or private hospital	Board	Not responsible for care by health care provider Xgross negligence in granting privilege
WI	Act 13 of 87	NP corp; credit union; fraternal benefit insurance	Board; vols	Bd: Xconflict of interest; criminal viola- tion Xreason to believe conduct unlawful; Willful misconduct. Vol: criminal violation Xreason to believe conduct unlawful; Xvehicle related; Xprofessional services
	87bill SB65	NP org	Organization	Limits liability of org assigned children under sup'vised work program to \$25,000
WV	87bill #?	State +local govt; NP corp; other similar corps; business trade assoc	Board	Xto extent of insurance; if no insurance, then immune
WY	WS1-23-107 86	NP corp; government	Boa.d, commission	Xintentional tort or illegal acts

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100TH CONGRESS
1ST SESSION

H. R. 911

To encourage the States to enact legislation to grant immunity from personal civil liability, under certain circumstances, to volunteers working on behalf of nonprofit organizations and governmental entities.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1987

Mr. PORTER (for himself, Mr. PURSELL, Mr. EDWARDS of Oklahoma, Mr. DENNY SMITH, Mr. LAGOMARSINO, Mr. TOWNS, Mr. MURPHY, Mr. FEIGHAN, Mr. WORTLEY, Mr. BRAZER, Mr. PENNY, Mr. ECKART, Mr. SUNIA, Mrs. JOHNSON of Connecticut, Mr. PACKARD, Mrs. BENTLEY, Mrs. VUCANOVICH, Mr. ATKINS, Mrs. COLLINS, Mr. ESPY, Mr. ROBINSON, Mr. PASHAYAN, Mr. DARDEN, Mr. MYERS of Indiana, Mr. BEVILL, Mr. WELDON, and Mr. DANIEL) introduced the following bill; which was referred jointly to the Committees on the Judiciary and Ways and Means

MAY 27, 1987

Additional sponsors: Mr. HENRY, Mr. MARTINEZ, Mr. QUILLEN, Mr. EVANS, Mr. BILIRAKIS, Mr. GREEN, Mr. BLAGGI, Mr. DAVIS of Illinois, Mr. SAXTON, Mr. KILDEE, Mr. HILEB, Mr. SHUMWAY, Mr. INHOFE, Mrs. ROUKEMA, Mr. CRANE, Mr. RICHARDSON, Mr. GOODLING, Mr. MARLENEE, Mr. DAVIS of Michigan, Mr. BARTLETT, Mr. CHANDLER, Mr. HOLLOWAY, Mr. STUMP, Mrs. MORELLA, Mr. CLINGER, Mr. GALLO, Mr. LUJAN, Mr. PEPPER, Mr. CARPER, Mr. SENSENBENNER, Mr. KOLBE, Mr. SMITH of New Jersey, Mr. YATRON, Mr. BOEHLERT, Mr. HYDE, Mr. UPTON, Mr. SCHULZE, Mr. MCCLOSKEY, Mr. LATTA, Mr. BLILEY, Mr. BADHAM, Mr. RAVENEL, Mr. MCKINNEY, Mr. STALLINGS, Mr. JACOBS, Mr. EMERSON, Mr. BOULTEB, Mr. GRAY of Illinois, Mr. BURTON of Indiana, Mr. FUSTER, Mrs. MARTIN of Illinois, Mr. SUNDQUIST, Mr. HASTERT, Mr. ROE, Mr. PETBI, Mr. ROWLAND of Connecticut, Mr. HORTON, Mr. LOWERY of California, Mr. SOLARZ, Mr. GRANDY, Mr. FAWELL, Mr. CLARKE, Mr. MILLER of Washington, Mr. REGULA, Mr. BUNNING, Mr. MCCOLLUM, Mrs. MEYERS of Kansas, Mr. LIPINSKI, Mr. KOLTER, Mr. MACKAY, Mr. SCHUETTE, Mr. BUECHNER, Mr. DONNELLY, Mr. LEWIS of Georgia, Mr. YATES, and Mrs. SMITH of Nebraska

A BILL

To encourage the States to enact legislation to grant immunity from personal civil liability, under certain circumstances, to volunteers working on behalf of nonprofit organizations and governmental entities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Volunteer Protection Act
5 of 1987".

6 SEC. 2. FINDINGS AND PURPOSE.

7 (a) FINDINGS.—The Congress finds and declares that—

8 (1) within certain States, the willingness of volun-
9 teers to offer their services has been increasingly de-
10 terred by a perception that they thereby put personal
11 assets at risk in the event of liability actions against
12 the organization they serve;

13 (2) as a result of this perception, many nonprofit
14 public and private organizations and governmental en-
15 tities, including voluntary associations, social service
16 agencies, educational institutions, local governments,
17 foundations, and other civic programs, have been ad-
18 versely affected through the withdrawal of volunteers
19 from boards of directors and service in other capacities;

20 (3) the contribution of these programs to their
21 communities is thereby diminished, resulting in fewer

1 and higher cost programs than would be obtainable if
2 volunteers were participating;

3 (4) the unpredictability of ^{liability} awards and doc-
4 trines has added to the high cost of liability insurance
5 by making it difficult for insurers and self-insurers to
6 project their liability with any degree of confidence and
7 has adversely affected the ability of nonprofit organiza-
8 tions to obtain liability insurance coverage for volun-
9 teer directors and officers with respect to their personal
10 capacities; and

11 (5) because Federal funds are expended on useful
12 and cost-effective social service programs which
13 depend heavily on volunteer participation, protection of
14 voluntarism through clarification and limitation of the
15 personal liability risks assumed by the volunteer in
16 connection with such participation is an appropriate
17 subject for Federal encouragement of State reform.

18 (b) PURPOSE.—It is the purpose of this Act to promote
19 the interests of social service program beneficiaries and tax-
20 payers and to sustain the availability of programs and non-
21 profit organizations and governmental entities which depend
22 on volunteer contributions by encouraging reasonable reform
23 of State laws to provide immunity from civil liability to vol-
24 unteers serving with nonprofit organizations and governmen-

1 tal entities for actions undertaken in good faith on behalf of
2 such organizations.

3 SEC. 3 NO PREEMPTION OF STATE TORT LAW.

4 Nothing in this Act shall be construed to preempt the
5 laws of any State governing tort liability actions.

6 SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.

7 (a) IMMUNITY FOR VOLUNTEERS.—Except as provided
8 in subsection (b), any volunteer of a nonprofit organization or
9 governmental entity shall be immune from civil liability in
10 any action brought in any court on the basis of any act or
11 omission resulting in damage or injury to any person if—

12 (1) such individual was acting in good faith and
13 within the scope of such individual's official functions
14 and duties with the organization or entity; and

15 (2) such damage or injury was not caused by will-
16 ful and wanton misconduct by such individual.

17 (b) CONCERNING RESPONSIBILITY OF VOLUNTEERS
18 WITH RESPECT TO ORGANIZATIONS.—Nothing in this sec-
19 tion shall be construed to affect any civil action brought by
20 any nonprofit organization or any governmental entity
21 against any volunteer of such organization or entity.

22 (c) NO EFFECT ON LIABILITY OF ORGANIZATION.—
23 Nothing in this section shall be construed to affect the liabil-
24 ity of any nonprofit organization or governmental entity with
25 respect to injury caused to any person.

1 SEC. 5. CERTIFICATION REQUIREMENT AND REDUCTION OF
2 SOCIAL SERVICES BLOCK GRANT ALLOTMENTS.

3 (a) CERTIFICATION.—(1) Subject to paragraph (2),
4 before the beginning of each fiscal year, commencing with
5 fiscal year 1989, each State shall certify to the Secretary of
6 Health and Human Services that it has enacted, adopted, or
7 otherwise has in effect State law which substantially com-
8 plies with section 4(a).

9 (2) In the case of a State whose legislature does not
10 meet in regular session between the date of the enactment of
11 this Act and before the beginning of fiscal year 1989, such
12 State shall provide the certification referred to in paragraph
13 (1) before the beginning of each fiscal year commencing after
14 fiscal year 1989.

15 (b) REDUCTION OF ALLOTMENT.—If a State fails to
16 provide certification as required under subsection (a), the
17 Secretary shall reduce by 1 percent the fiscal year allotment
18 which would otherwise be made to such State to carry out
19 the Social Services Block Grant Program under title XX of
20 the Social Security Act.

21 (c) REALLOTMENT TO CERTIFYING STATES.—With
22 respect to any reduction made under subsection (a), the Sec-
23 retary shall allot such funds among States which provide cer-
24 tification referred to in subsection (a) in proportion to the
25 amount otherwise allotted to such States.

1 SEC. 6. DEFINITIONS.

2 For purposes of this Act—

3 (1) the term "volunteer" means an individual per-
4 forming services for a nonprofit organization or a gov-
5 ernmental entity who does not receive compensation,
6 or any other thing of value in lieu of compensation, for
7 such services (other than reimbursement for expenses
8 actually incurred or honoraria not to exceed \$300 per
9 year for government service), and such term includes a
10 volunteer serving as a director, officer, trustee, or
11 direct service volunteer;

12 (2) the term "nonprofit organization" means any
13 organization exempt from taxation under section 501(c)
14 of the Internal Revenue Code of 1954;

15 (3) the term "damage or injury" includes physical,
16 nonphysical, economic, and noneconomic damage; and

17 (4) the term "State" means each of the several
18 States, the District of Columbia, the Commonwealth of
19 Puerto Rico, the Virgin Islands, Guam, American
20 Samoa, the Northern Mariana Islands, any other terri-
21 tory or possession of the United States, or any political
22 subdivision of any such State, territory, or possession.

○

Alaska State Legislature

Committees:

Chair-State Affairs
V. Chair-Judiciary
Telecommunications
Special Ethics
Legislative Council
Finance Subcommittee
for the University of Alaska
Joint Committee
on Economic Recovery



PO. Box V
Juneau, Alaska 99811
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REPRESENTATIVE FRAN ULMER

M E M O R A N D U M

February 22, 1988

TO: Representative Dave Donley, Chair
House Labor & Commerce Committee

FROM: Representative Fran Ulmer

SUBJECT: House Bill 517, "An Act relating to civil liability of
certain volunteers"

I would very much appreciate if you would review HB 517 and consider either waiving or holding a prompt hearing on the bill. It has support from municipalities, recreation groups, and the legislative committee of the American Association of Retired Persons.

If you would like additional information, please let me know.

RECEIVED
FEB 22 1987

BILL NO: HB 517

DATE: 3/2/88

TITLE: "An Act relating to civil liability of certain volunteers."

CONTACT: Col Robert E. Jent
269-5641

DEPARTMENT OF
PUBLIC SAFETY
POSTAL PERMIT

Search and rescue missions in Alaska are the responsibility of the Alaska State Troopers, U.S. Air Force, and U.S. Coast Guard. All three agencies use volunteers to aid in the search activities. Probably 70% of all Trooper searches are conducted by volunteers acting under the direction of the Troopers. The organized volunteers are trained, equipped, and ready on a moment's notice. All search and rescue agencies depend on the volunteers. Without volunteers our job would be more difficult and time consuming. This bill provides the volunteers with a degree of civil protection if someone is inadvertently injured during the rescue.

Uncompensated volunteers are often reluctant to assist state agencies dealing with emergency services because of a fear of civil liability. Others are unwilling to become volunteers for the same reason.

The Department of Public Safety supports this legislation.


for Arthur English
Commissioner

FISCAL NOTE

REQUEST

Revision Date: _____ Agency Affected: Public Safety
 Title: "An Act relating to civil liability of certain volunteers." BRU: Alaska State Troopers
 Sponsor: Representative Ulmer Components: Detachments
 Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS						
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)

No increase or decrease in the level of expenditures is anticipated as a result of the passage of this legislation.

Prepared by: Diana Page, Administrative Assistant Phone: 465-4322
 Division: Commissioner's Office Date: 3/2/88

Approved by Commissioner: *D. Anthes, Dep. Comm.* Date: 3-2-88
 Agency: Public Safety

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Alaska Recreation and Park Association

P.O. Box 102664
Anchorage, Alaska 99510-2064



February 26, 1988

Representative Dave Donley
House Labor & Commerce Committee
Capitol Room 13
Juneau, AK 99801

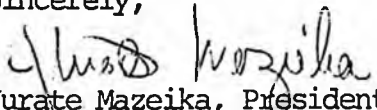
Dear Representative Donley:

The Alaska Recreation and Park Association (ARPA) was formed in 1975. It was the fiftieth State Recreation and Park Association to be formed as a branch of the National Recreation and Park Association. A.R.P.A. is a member of the Alaska Municipal League. The purpose of our association is to assist in organizing all levels of park and recreation personnel for the purpose of promoting, broadening and improving park and recreation services in our state.

We are sending you this Resolution to urge you to support House Bill No. 448 entitled "An Act Relating to Civil Liability of Certain Volunteers".

While volunteerism is a deeply rooted American tradition, current Alaska State Statutes discourage volunteerism through a lack of protection under the law. Volunteers who are acting in an official capacity in good faith, while helping to oversee recreational programs which have certain inherent risk - such as playground activities are currently putting their assets at risk by doing so. Passage of this bill would do a great deal to alleviate some of the liability burden from our volunteers.

Sincerely,


Jurate Mazeika, President
Alaska Recreation and Park Assoc.

HB 517

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1037