

HB

340



Alaska State Legislature

Representative Mike Davis

District 19

P.O. Box V
Juneau, Alaska 99811
(907) 456-4930/4941

Interim Office
P.O. Box 81435
Fairbanks, Alaska 99708
(907) 456-8181

*John
ASAP
4*

Jim
TO: Senator Tim Kelly
Chairman, Senate Labor and Commerce Committee
FROM: Rep. Mike Davis *Mike*
DATE: March 20, 1988
RE: HB 340

HB 340 passed the House unanimously last Thursday, and has been referred to the Senate Labor and Commerce Committee. This bill amends the Good Samaritan Act to protect volunteers in first aid and rescue organizations from liability.

HB 340 has been supported by the Anchorage Mountain Rescue Group, the Alaska Ski Patrol, and Civil Air Patrol, Southeast's SEADOGS, and numerous emergency volunteers. The Senate companion bill, SB 346, passed out of Senate Judiciary last week. I would appreciate HB 340 being scheduled for consideration by the Senate Labor and Commerce Committee at your earliest convenience.



Alaska State Legislature

Representative Mike Davis

District 19

PO. Box V
Juneau, Alaska 99811
(907) 456-8930/8941

Interim Office
PO. Box 81635
Fairbanks, Alaska 99708
(907) 456-8161

TO: Senate Labor and Commerce Committee
FROM: Rep. Mike Davis
DATE: March 121, 1988
RE: CSHB 340, granting immunity from civil liability for providing volunteer emergency services.

CSHB 340 amends the Good Samaritan Act to protect volunteer members of first aid and rescue organizations from civil liability.

Ordinary citizens who try to help in emergency situations are protected from liability by the Good Samaritan Act, AS 09.65.090. Paramedics and EMTs who are certified by the state are covered in liability questions by AS 18.08.086. However, members of volunteer rescue organizations such as the National Ski Patrol, Civil Air Patrol, and mountain rescue groups may not have any statutory protection.

First aid and rescue volunteers are vulnerable to litigation because they may have an obligation to help people while serving in their organizations. The Alaska Supreme Court has ruled that the Good Samaritan Act does not protect those who have a "pre-existing obligation to assist individuals in danger".

CSHB 340 would protect emergency services volunteers from liability for their good faith attempts to aid those in danger. However, they would still be liable for damages as a result of "gross negligence, recklessness, or intentional misconduct" as stated in subsection (b) of the existing Good Samaritan Act.

STATE OF ALASKA
THE LEGISLATURE

POUCH V - STATE CAPITAL
JUNEAU, ALASKA 99811
907 463-2800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 11, 1988

SUBJECT: Immunity from civil liability for volunteer
emergency services (Work Order No. 5-1495)

TO: Representative Mike Davis

FROM: Edward H. Hein *EHA*
Legislative Counsel

You have asked whether volunteer ski patrol members are in fact open to liability for negligence during rescue operations and whether, therefore, your legislation (Work Order No. 5-1495A) is needed.

Your bill amends AS 09.60.090, Alaska's "Good Samaritan" law. This law provides immunity from civil liability for negligent acts or omissions by persons rendering emergency aid to people in immediate danger of serious harm or death. The purpose of the law is to encourage people to voluntarily come to the aid of persons in need of rescue without having to fear potential civil liability for negligence. Lee v. State, 490 P.2d 1206, 1209 (Alaska 1971).

The Alaska Supreme Court in Lee ruled that the immunity under this statute does not extend to persons, such as state troopers, who are under a "pre-existing duty to rescue." It is an open question whether ski patrollers have a pre-existing duty to rescue. The Alaska courts have not decided that question. It can be argued that ski patrollers are under a pre-existing duty to rescue and are, therefore, not immune from civil liability under Alaska's Good Samaritan Act. In order that ski patrollers and other similar rescue group volunteers are assured of immunity, it would be prudent to have the provisions of your bill or similar language in the statutes.

BILL NO: HB 340

DATE: 1/20/88

TITLE: An Ac. Granting Immunity
From Civil Liability For
Providing Volunteer
Emergency Services.

CONTACT: Capt. McConnaughey

DEPARTMENT OF
PUBLIC SAFETY

Search and rescue in Alaska is 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.

Arthur English, Jr.

Arthur English, Commissioner

POSITION NUMBER

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST
Revision Date: _____
Title: "An Act Granting immunity ... for providing ... emergency services."
Sponsor: Rep. Davis, etc.
Requestor: _____

Bill Version: HB340
Publish Date: _____
Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Detachments

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY88	FY89	FY90	FY91	FY92	FY93
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	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
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: Francis C. Allan
Division: Alaska State Troopers
Arthur E. English / jc
Approved by Commissioner: Arthur E. English
Agency: Public Safety
Distribution: (by preparer):

Phone: 269-5691
Date: 1/20/88
Date: 1/20/88

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

Position Paper

CSHB 340 (L&C)

For an Act entitled: "An Act granting immunity from civil liability for providing volunteer emergency services."

This Act amends AS 09.65.090 (civil liability for emergency aid) to expand the coverage to a person who provides emergency services (e.g., first aid and search and rescue), while acting as a volunteer for an organization that exists for the purpose of providing the service rendered, regardless of whether the organization or members are under a preexisting duty to render assistance. Currently, AS 09.65.090 only provides immunity from liability to persons who do not have a preexisting duty to act. Many individuals and organizations providing emergency services, such as volunteer ski patrollers and search and rescue teams, do not currently have protections from liability afforded by statute.

The department assumes that the term "other emergency services," on line 13, does not include advanced life support services such as defibrillation, drug therapy, intravenous therapy, and advanced airway treatment, as these emergency services should be provided only by trained and licensed professionals.

Position

The department supports the intent of this legislation because it increases immunity from liability for volunteer emergency service workers, many of whom are under a preexisting duty to act and, consequently, are not covered by AS 09.65.090. It is likely that passage of this legislation would increase the number of individuals willing to provide emergency services and would decrease the rate of attrition among emergency service volunteers.

However, the department recommends that the term "other emergency services" be defined to exclude advanced life support procedures as defined in AS 18.08.090.

POSITION PAPER/Department of Health & Social Services

Position Paper, CSHB 340 (L&C), pg. 2

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

Date: February 7, 1988

Approved by: Myra M. Munson
Myra M. Munson
Commissioner
Department of Health and
Social Services

Date: February 9, 1988

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act granting immunity
from civil liability for...
Sponsor: Davis et al.
Requestor: _____

Agency Affected: Health & Social Services
BRU: State Health Services
Components: EMS Certification and
Licensing

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						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The enactment of HB 340 would have no direct fiscal impact on the Department of Health and Social Services.

Prepared by: Elizabeth Ward, Director *Elizabeth Ward* Phone: 465-3090
Division: Public Health Date: 1-20-88

Approved by Commissioner: *Maria M. Munn* Date: 1-20-88
Agency: Department of Health & Social Services

Distribution (by preparer):

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



NATIONAL SKI PATROL SYSTEM, INC.
ALASKA DIVISION

DIVISION

TITLE

101 College Road
Fairbanks, Alaska
January 18, 1988

Representative Mike Davis
Fairbanks Legislative Delegation
Fairbanks, Alaska

Dear Representative Davis:

Re: House Bill # 340

Thank you for your interest in amending the "Good Samaritan" act in the State of Alaska.

The Ski Patrol is a volunteer organization dedicated to public service by promoting safe skiing and providing rescue services. All members are trained in emergency first aid care to the level of American Red Cross Advanced First Aid, or beyond. This bill will directly and immediately affect our position as volunteers.

As the Director of the Ski Patrol in Alaska, representing three hundred and fifty members, I strongly urge your support of Senate Bill #346, and request immediate action on said bill.

Thank you.

Sincerely,

Harley Jamson
DIVISION DIRECTOR
ALASKA DIVISION
NATIONAL SKI PATROL SYSTEM

SEADOGS

SOUTHEAST ALASKA DOGS
ORGANIZED FOR GROUND SEARCH

PO BOX 244

JUNEAU, ALASKA 99802

1/15/88

REPRESENTATIVE MIKE DAVIS
ALASKA STATE LEGISLATURE
PO BOX V
JUNEAU, AK. 99811

REPRESENTATIVE DAVIS:

I AM WRITING YOU IN SUPPORT OF HOUSE BILL 340, "AN ACT GRANTING IMMUNITY FOR VOLUNTEER EMERGENCY SERVICES". "SEADOGS" IS A STATEWIDE SEARCH AND RESCUE DOG ORGANIZATION WHICH PROVIDES TRAINED SEARCH DOGS AND HANDLERS TO THE STATE TROOPERS, COAST GUARD, AND AIRFORCE RESCUE CENTERS, AS WELL AS LOCAL LAW ENFORCEMENT AGENCIES ON A VOLUNTEER BASIS. OUR HANDLERS DEVOTE MANY HOURS OF THEIR PERSONAL TIME EVERY WEEK TRAINING FOR SEARCHES, AND THE TIME THEY SPEND IN THE FIELD SEARCHING FOR SOMEONE'S CHILD, A LOST HIKER OR HUNTER, OR SOMEONE TRAPPED IN AN AVALANCHE OR EARTHQUAKE RUBBLE IS PAID FOR OUT OF OUR OWN POCKETS. THIS BILL WOULD ALLOW TEAM MEMBERS TO OPERATE CONFIDENT IN THE KNOWLEDGE THAT ANY FIRST AID ADMINISTERED BY THEM, OR ANY ATTEMPTS TO ASSIST A LOST OR INJURED INDIVIDUAL WITHIN THE SCOPE OF OUR TRAINING, WOULD NOT BE MET BY CIVIL LIABILITY.

WE WHOLEHEARTEDLY SUPPORT THE BILL, AND REQUEST THAT YOU GIVE IT YOUR BEST EFFORTS.

SINCERELY,



L. BRUCE BOWLER
PRESIDENT
SEADOGS



NATIONAL SKI PATROL SYSTEM, INC.

Affiliations
UNITED STATES SKI ASSOCIATION
NATIONAL SAFETY COUNCIL
ADVISORY COMMITTEE (U.S.
ARMY) ON MOUNTAIN AND
ARCTIC WARFARE

ALASKAN DIVISION •

January 14, 1988

The Honorable Mike Davis
Alaska House of Representatives
542 4th Ave., Suite c
Fairbanks, Alaska 99701

Dear Representative Davis,

We the undersigned, are members of Denali Ski Patrol registered with the National Ski Patrol System. We are writing in support of your efforts to amend the Good Samaritan Act (AS 09.65.090) to include trained first aid volunteers.

Denali Ski Patrol provides countless hours of community service each year. Our training is extensive and in addition we are required to complete 35-40 hours of refresher work yearly. We are obligated to provide first aid care at our ski area although we do this strictly on a volunteer basis.

We have recently become aware that we are probably, in fact, not covered by either the Good Samaritan Act or AS 18.08.086 which protects state certified first aid personnel.

We would greatly appreciate any assistance you can give us in remedying this unfortunate situation so that we have the protection that we are due.

Sincerely,

Patricia K. Evans

Patricia K. Evans, Director
Denali Ski Patrol
10023 Preuss Lane
Eagle River, Alaska 99577
And
Denali Ski Patrol Members

Michael A. Ruedergist
Mike Albee

David A. Kaulinckson

Fodd E. Nyback

Michael J. ...

Haren Nelson

Loren Nelson

ART T. ANDERSON

James A. Jones

Thomas E. Maudslayi

CRAIG WALLING

Joe ...

Sandy Long

Mossman M. York

Velva A. Krieger

Annabeth Jones

Roy Hansen

Walter R. ...

Edward C. ...



A NON-PROFIT CORPORATION
AFFILIATED WITH
MOUNTAIN RESCUE ASSOCIATION

8101 White Drive
Anchorage, Alaska 99516

EMPLOYER I.D. #92-0084973

February 22, 1988

Representative Mike Davis
P.O. Box V
Juneau, Alaska 99811

Re: House Bill No. 340

Dear Representative Davis:

I am writing on behalf of the Alaska Mountain Rescue Group to urge passage of House Bill 340, an amendment to Alaska's Good Samaritan Statute.

The Alaska Mountain Rescue Group is a volunteer organization which performs search and rescue work in the mountains and other difficult terrain. The Group is funded entirely by private contributions. All of its members are volunteers, and all of its members supply their own equipment. The Group was founded more than 20 years ago and has performed hundreds of rescues, often under very dangerous conditions. Many lives have been saved.

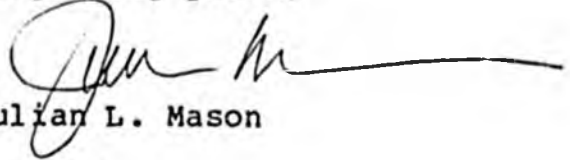
Under present law, Rescue Group members may be exposed to substantial personal liability when they in good faith and to the best of their ability attempt to help victims of unfortunate accidents. This liability exposure is unfair and a deterrent to the spirit of volunteerism which is so important in Alaska. Although the Group was formed to help mountaineers, most of its work has been on behalf of hunters, hikers, lost children, and the victims of plane crashes. Your neighbor, or a member of your family, could well be the next person helped by the Alaska Mountain Rescue Group.

I do not know the names of other sponsors of the Bill in the House or in the Senate. I would appreciate your making this letter available to the other sponsors. The Group

Representative Mike Davis
February 22, 1988
Page Two

thanks you for your help in sponsoring this important
legislation.

Very truly yours,



Julian L. Mason

JLM/mcm

Valdez, Sup. Ct. Op. No. 2243 (File No. 4451), 620 P.2d 683 (1980).

When there was no evidence before the superior court suggesting that a city's warning of safety hazards was issued with a knowing or reckless disregard for the truth of the statements if contained that communication was protected by a privilege extended to administrative officers making defamatory communications required or permitted in the performance of official duties even though there was no immunity under this section. *Urethane Specialties, Inc. v. City of Valdez*, Sup. Ct. Op. No. 2243 (File No. 4451), 620 P.2d 683 (1980).

City's failure to follow own rules governing relations with employees. — This section does not immunize city from liability for damages resulting from its failure to follow its own rules governing its relations with its employees. *Stanfill v. City of Fairbanks*, Sup. Ct. Op. No. 2624 (File No. 6321), P.2d 1983.

Negligence in operation of ambulance. — The object to be accomplished by ambulance service operated and main-

tained by a city, that of service to the infirm, was so closely related to hospitalization benefits that it could be said to come within the scope of the opinion in *Tuengel v. City of Sitka*, 118 F. Supp. 399 (D. Alas. 1954), aff'd, 245 F.2d 61 (9th Cir. 1957), and the city could be held liable for any negligence in the operation of the ambulance. *Lucas v. City of Juneau*, 168 F. Supp. 195 (D. Alas. 1958).

Negligence of fire department. For case decided prior to second 1975 amendment holding that a city which maintained a fire department could be held liable for injuries resulting from negligence connected with the department's firefighting activities, see *City of Fairbanks v. Shaible*, Sup. Ct. Op. No. 97 (File Nos. 112, 113), 375 P.2d 201 (1962). See contra: *City of Fairbanks v. Gilbertson*, 16 Alaska 590 (1957), aff'd, 262 F.2d 734 (9th Cir. 1959), where § 56-2-2 ACLA 1949 (predecessor to this section) was ignored by both the district court and the court of appeals.

Quoted in *Atkinson v. Haldane*, Sup. Ct. Op. No. 1495 (File No. 2981), 569 P.2d 151 (1977).

Collateral references. — Fire departments as pertaining to the governmental or to the proprietary branch of municipality, 9 ALR 143; 33 ALR 688; 84 ALR 514.

Necessity of consent to suit against state, 42 ALR 1464; 50 ALR 1408.

Municipal immunity from liability for torts, 120 ALR 1376; 60 ALR2d 1198.

Sec. 09.65.080. Suits by incorporated units of local government. An action may be maintained by an incorporated borough, city, or other public corporation of like character in its corporate name, and upon a cause of action accruing to it in its corporate character

- (1) upon a contract made with the public corporation;
- (2) upon a liability prescribed by law in favor of the public corporation;
- to recover a penalty or forfeiture given to the public corporation;
- (4) to recover damages for an injury to the corporate rights or property of the public corporation. (§ 2 ch 23 SLA 1964)

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

(b) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct. (§ 1 ch 32 SLA 1967; am § 1 ch 119 SLA 1971; am § 38 ch 102 SLA 1976)

NOTES TO DECISIONS

Common law. — At common law there is no duty to rescue. *Lee v. State*, Sup. Ct. Op. No. 749 (File No. 1395), 490 P.2d 1206 (1971), overruled on other grounds, *Munroe v. City Council*, Sup. Ct. Op. No. 1236 (File No. 2382), 545 P.2d 165, 547 P.2d 839 (1976).

The law has persistently refused to recognize the moral obligation of common decency and common humanity, to come to the aid of another human being who is in danger. Only in certain limited situations, as for example where the actor was responsible for placing the imperiled person in his endangered position, has a duty been recognized. However, once rescue operations have begun, the rescuer is held to a duty of due care. *Lee v. State*, Sup. Ct. Op. No. 749 (File No. 1395), 490 P.2d 1206 (1971), overruled on other grounds, *Munroe v. City Council*, Sup. Ct. Op. No. 1236 (File No. 2382), 545 P.2d 165, 547 P.2d 839 (1976).

The purpose of this section is to induce voluntary rescue by removing the fear of potential liability which acts as an impediment to such rescue. *Lee v. State*, Sup. Ct. Op. No. 749 (File No. 1395), 490 P.2d 1206 (1971), overruled on other grounds, *Munroe v. City Council*, Sup. Ct. Op. No. 1236 (File No. 2382), 545 P.2d 165, 547 P.2d 839 (1976).

This section is directed at persons who are not under some preexisting

duty to rescue. *Lee v. State*, Sup. Ct. Op. No. 749 (File No. 1395), 490 P.2d 1206 (1971), overruled on other grounds, *Munroe v. City Council*, Sup. Ct. Op. No. 1236 (File No. 2382), 545 P.2d 165, 547 P.2d 839 (1976).

A rescuer under a preexisting duty to rescue would not need the added inducement of immunity from civil liability for his ordinary negligence. *Lee v. State*, Sup. Ct. Op. No. 749 (File No. 1395), 490 P.2d 1206 (1971), overruled on other grounds, *Munroe v. City Council*, Sup. Ct. Op. No. 1236 (File No. 2382), 545 P.2d 165, 547 P.2d 839 (1976).

Such as a police officer. — A holding that police officers have no duty to rescue would not comport with public conceptions of their role. *Lee v. State*, Sup. Ct. Op. No. 749 (File No. 1395), 490 P.2d 1206 (1971), overruled on other grounds, *Munroe v. City Council*, Sup. Ct. Op. No. 1236 (File No. 2382), 545 P.2d 165, 547 P.2d 839 (1976).

This section, the Alaska Good Samaritan statute, does not shield a police officer from liability for ordinary negligence. *Lee v. State*, Sup. Ct. Op. No. 749 (File No. 1395), 490 P.2d 1206 (1971), overruled on other grounds, *Munroe v. City Council*, Sup. Ct. Op. No. 1236 (File No. 2382), 545 P.2d 165, 547 P.2d 839 (1976).

Sec. 09.65.092. Civil liability for voluntary aircraft safety inspection. An aircraft or power plant technician or mechanic certified by the Federal Aviation Administration who participates without compensation in a voluntary aircraft safety inspection program is not liable for civil damage resulting from an act or omission arising out of an aircraft safety inspection in that program unless the act or omission constitutes gross negligence or reckless or intentional misconduct. (§ 1 ch 3 SLA 1982)

Sec. 09.65.095. Liability for administration of blood test. (a) No civil or criminal action arising out of battery may be brought against a health care provider for the act of taking a blood sample if the sample

MAR 18 1988



CITY OF MCGRATH

P.O. BOX 57 MCGRATH, ALASKA 99627
PHONE (907) 524-3825

March 15, 1988

Representative Kay Wallis
Alaska State Legislature
P.O. Box V
Juneau, Ak. 99811

Subject: Civil Liability Immunity for Emergency Services

Dear Representative Wallis:

At the regular City Council meeting on February 16th, 1988 the City Council discussed HB #340 and Senate Bill #346. It was decided by consensus that the City of McGrath go on record as supporting passage of these Legislative Bills.

The Kuskokwim Valley Rescue Squad is a very strong and viable organization of certified volunteers that responds to emergencies in the area. This legislation is necessary to protect the organization and to help facilitate the emergency services needed by the general population.

Thank you.

Respectfully,

B.R. "Walt" Walton
Mayor