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STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

April 20th, 1989

The Honorable Jan Faiks
Chair, Senate Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

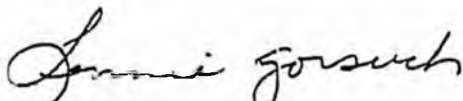
Dear Senator Faiks:

Subject: SB 228, An Act relating to civil liability of certain volunteers.

Background: The Department has an aggressive volunteer program utilizing over 60,000 hours of volunteer work each year. Volunteers are presently covered under the state's risk management program. This bill, as currently written, clarifies the liability of a person working as a volunteer. This may be an important clarification for some who are considering becoming state park volunteers. SB 228 does not limit the state's liability for personal injury to a volunteer or injury to another from a volunteer's actions.

Position: The Department supports this bill, and looks forward to working with the committee and sponsor as it progresses through the legislature.

Sincerely,



Lennie Gorsuch
Commissioner

cc bill sponsor
Bob Evans

Original sponsor: Duncan

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 228 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil liability of certain volun-
7 teers."

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

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

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

15 (b) This section does not preclude liability for civil damages
16 as a result of gross negligence, recklessness, or intentional miscon-
17 duct.

18 (c) This section does not affect

19 (1) a civil action brought by the state against a volunteer
20 to recover civil damages for injury to the state, a municipality
21 against a volunteer to recover civil damages for injury to the munic-
22 ipality, or a nonprofit entity against a volunteer to recover civil
23 damages for injury to the entity;

24 (2) the liability of the state, a municipality, or a non-
25 profit entity with respect to injury caused to a person.

26 (d) In this section,

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

29 (2) "nonprofit entity" means an entity

WITHDRAWS UP
ORIGINAL
VERSION
EXCESSIVE
MISLEADING CONTRIBUTION
DUTIES BY STATE

prevents state trying to get
contribution

1 (A) incorporated under AS 10.20; or

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

3 (Internal Revenue Code of 1954);

4 (3) "volunteer" means a person who receives financial
5 consideration of not more than \$50 per day or \$500 a year, not includ-
6 ing room and board or reimbursement for expenses actually incurred,
7 for services performed for the state, a municipality, or a nonprofit
8 entity.

CHANGES FROM SB 228 TO PROPOSED CSSB 228

Section 1, page 1, line 19, after "volunteer":

Delete "for"

Insert "to recover civil damages for injury to"

Section 1, page 1, line 21, after "volunteer":

Delete "for"

Insert "to recover civil damages for injury to"

Section 1, page 1, line 22, after "volunteer":

Delete "for"

Insert "to recover civil damages for injury to"

This language will prevent the state, a municipality, or an entity from recovering (from a volunteer) damages paid to a third party yet will allow the state, a municipality, or an entity respectively to recover damages from a volunteer.

Original sponsor: Duncan

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16 as a result of gross negligence, recklessness, or intentional miscon-
17 duct.

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19 (1) a civil action brought by the state against a volunteer
20 to recover civil damages for injury to the state, a municipality
21 against a volunteer to recover civil damages for injury to the munic-
22 ipality, or a nonprofit entity against a volunteer to recover civil
23 damages for injury to the entity;

24 (2) the liability of the state, a municipality, or a non-
25 profit entity with respect to injury caused to a person.

26 (d) In this section,

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

29 (2) "nonprofit entity" means an entity

1 (A) incorporated under AS 10.20; or

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

3 (Internal Revenue Code of 1954);

4 (3) "volunteer" means a person who receives financial
5 consideration of not more than \$500 a year, not including room and
6 board or reimbursement for expenses actually incurred, for services
7 performed for the state, a municipality, or a nonprofit entity.
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BY SENATOR DUNCAN

Senate Bill 228

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

Section 1.

Extends protection from civil liability to persons working as volunteers for the state, for municipalities, and certain nonprofit entities. The protection is for damages that may result from an act or omission by the volunteer while acting in good faith and within their official functions or duties.

However, this protection does not preclude a volunteer's liability for civil damages as a result of gross negligence, recklessness, or intentional misconduct.

An agency, municipality, or nonprofit entity can still bring a civil action against, respectively, a volunteer of an agency, a volunteer of a municipality, or a volunteer of an entity.

In addition, an agency, municipality, or nonprofit entity can still be held liable for injury caused to a person.

A "nonprofit" means a nonprofit entity incorporated under state law AS 10.20 or federal title 26 of the Internal Revenue Code section 501(c)(3).

A "volunteer" means a person who receives financial consideration of not more than \$500 a year, not including reimbursement for expenses actually incurred, for services performed for the state, a municipality, or a nonprofit entity.

FISCAL NOTE

REQUEST:

Revision Date:	Agency Affected:	Alaska Court System
Title: An Act relating to civil liability of certain volunteers	BRU:	Trial Courts
Sponsor: Dunoan	Components:	
Requestor:		

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Charges						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel
 Division: Alaska Court System
 Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Phone: 264-8228

Date: 04/10/89

Date: 04/10/89

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

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 228
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 12-Apr-89 Agency Affected: Natural Resources
 Title: An Act relating to civil liability BRU: Parks Mgmt
of certain volunteers.
 Sponsor: Senator Duncan Components: Parks Mgmt
 Requestor: Senate Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky Phone: 465-2400
 Division: Commissioner's Office Date: 12-Apr-89

Approved by Commissioner: Lennie Gorsuch Date: 12-Apr-89
 Agency: Department of Natural Resources

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

DATE: April 12, 1989

TO: Senate Judiciary Committee

FROM: James G. Dumont
Alaska Recreation and Park Association

SUBJECT: Senate Bill 228 and Senate Bill 229

I would like to introduce myself. I am James G. Dumont, a member of the Alaska Recreation and Park Association (ARPA), representing that body. ARPA represents approximately 130 members statewide who work in or volunteer their time to park and recreation departments regardless of the size of the community.

ARPA, as a member of the Alaska Municipal League, has been deeply involved in the question of tort reform and the increasing number of claims filed each year against the recreation and park operators.

As you know, recreation and leisure activities have never been more important to the American public. It is paradoxical that record numbers of citizens are visiting parks and participating in recreation, sports, and leisure activities and are also suing the providers of these services for all types of injuries. Litigation has become the nation's secular religion and it is practiced regularly against public and private park, recreation, sports, and leisure enterprises. As a result, law and liability have become synonymous terrors to the managers of these services. In the last few years, providers of recreation and leisure services have experienced a dramatic increase in the numbers and seriousness of legal liability claims against them, their directors, administrators, employees, and elected officials.

The nation-wide problem of recreation and sports litigation is a signal of changes in our society. Today's lawsuits, as described by one author is "a reflection that individuals are losing a sense of community feeling and are moving from a 'we' to a 'me' attitude". Thus, the attitude the users have taken is that if an injury occurs, it is the fault of the sponsor and staff, never the fault of the user.

The same time that people are more willing to sue, they are also more willing to participate in high-risk sports. Recreational activities with greater risk, such as hang gliding, rock climbing, and sailboarding, are increasing in popularity. While there are more risks that people are willing to "take", there are fewer risks that they are willing to "accept". As recreation and park providers, we recognize our obligation to provide safe facilities and programs for Alaskans. The passage of these bills will not deter our responsibility to the public.

ARPA wants to maintain the variety and uniqueness of recreation and park programs within the communities of Alaska. Thus, ARPA has worked with the National Recreation and Park Association on training statewide providers, has brought to Alaska nationally recognized leaders to instruct our members in the safe operation of our parks, facilities, and programs; and has taken a small part in the efforts to bring before you the bills presented today by Senator Duncan.

In your packets you will find copies of the resolutions passed by the Alaska Recreation and Park Association and the Alaska Municipal League on January 29 in support of these bills and have been working with local elected officials to generate community support for them.

ARPA is standing ready to assist you, the Legislature, in the formation and passage of recreation bills that will guarantee the continuation of inexpensive recreation and park programs in Alaska. Without the passage of these bills, or bills like these, recreation and park programs will soon be too expensive to offer because of increased insurance costs or not provided by communities at all because of the risk they pose to our limited resources. The President's Commission on "Americans Outdoors" endorses that state governments enact or improve recreational use statutes to provide greater protection to governmental entities and provide providers who allow the public to use their land for recreation.

In closing, ARPA would like to thank Senator Duncan for his efforts with these bills and for you, the members of this committee, for considering them. We again offer our assistance to you if you so require.

Alaska Recreation and Park Association

P.O. Box 102664
Anchorage, Alaska 99510-2664



A RESOLUTION RECOMMENDING ADOPTION OF SENATE BILL 228
AN ACT RELATING TO CIVIL LIABILITY OF CERTAIN VOLUNTEERS

WHEREAS, the Alaska Recreation and Park Association urges the State to exercise its responsibility to provide a broad spectrum of recreation opportunities for all Alaskans, and

WHEREAS, volunteerism is a deeply rooted American tradition; and

WHEREAS, co-sponsoring recreational activities with volunteer organizations enables states and municipalities to provide recreational services which they would not ordinarily be able to provide in view of shrinking tax dollars; and

WHEREAS, volunteers lacking protections under the law for acts or omissions while acting in good faith within that voluntary function and duty put personal assets at risk due to that lack of protection; and

WHEREAS, the report of the President's Commission on Americans Outdoors recommends that "local officials, mayors, governors, and private sector managers support volunteering, develop incentives and remove barriers to encourage Americans to volunteer in outdoor recreation."

NOW, THEREFORE, BE IT RESOLVED that the Alaska Recreation and Park Association urges the Alaska State Legislature to adopt an act relating to the civil liability of certain volunteers for the purposes of protecting volunteers from undue liability.

Resolution of the Alaska Municipal League

Resolution No. 89-56

**A RESOLUTION RECOMMENDING ADOPTION OF AN ACT
RELATING TO CIVIL LIABILITY OF CERTAIN VOLUNTEERS**

WHEREAS, the Alaska Municipal League urges the State to exercise its responsibility to provide a broad spectrum of recreational opportunities for all Alaskans, and

WHEREAS, volunteerism is a deeply rooted American tradition, and

WHEREAS, co-sponsoring recreational activities with volunteer organizations enables states and municipalities to provide recreational services which they would not ordinarily be able to provide in view of shrinking tax dollars, and

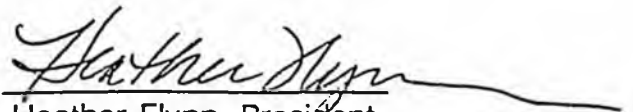
WHEREAS, volunteers lacking protections under the law for acts or omissions while acting in good faith within that voluntary function and duty put personal assets at risk due to that lack of protection, and

WHEREAS, certain recreational activities have an inherent risk, putting volunteers in a position of being liable for injuries that occur as a result of the nature of the risk, and


WHEREAS, the report of the President's Commission on Americans Outdoors recommends that "local officials, mayors, governors, and private sector managers support volunteering, develop incentives and remove barriers to encourage Americans to volunteer in outdoor recreation";

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the Alaska State Legislature to adopt an act relating to the civil liability of certain volunteers for the purposes of protecting volunteers from undue liability.

Adopted this 18th day of November 1988 in Fairbanks, Alaska.


Heather Flynn, President

ATTEST:


Scott A. Burgess, Executive Director

Section

- 101. Vacancies
- 106. Quorum of directors
- 111. Executive committee
- 116. Place and notice of directors' meetings
- 121. Officers

Section

- 126. Removal of officers
- 131. Books and records
- 136. Shares of stock and dividends prohibited
- 141. Loans to directors and officers prohibited



Sec. 10.20.005. Purposes. Corporations may be organized under this chapter for any lawful purpose, including, but not limited to, one or more of the following: charitable; religious; benevolent; eleemosynary; educational; civic; cemetery; patriotic; political; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial, or trade association purposes. Trade unions and other labor organizations may also be organized under this chapter, but cooperative corporations, electric and telephone cooperatives, and organizations subject to state insurance or banking laws may not be organized under this chapter. (§ 1 ch 99 SLA 1968)

Opinions of attorney general. — There is nothing in this chapter which would prevent a nonprofit corporation organized thereunder from owning a public utility which was not operated or managed as a cooperative. June 7, 1976, Op. Att'y Gen.

An electrical utility owned and operated by a regional electrical authority would continue to qualify for the broad exemption from the Alaska Public Utilities Commission Act, AS 42.05.010 — 42.05.721, available to political subdivisions under AS 42.05.711(b) once the regional electrical authority had completed its proposed organization as a non-

profit corporation pursuant to this chapter. June 7, 1976, Op. Att'y Gen.

Although there is no other express language in the Electric and Telephone Cooperative Act, AS 10.25.010 et seq., which purports to make it the exclusive means of organizing nonprofit cooperative associations for the development of utility services, this would certainly be a reasonable inference based upon AS 10.25.620 and upon the exclusionary language of this section which eliminates the nonprofit corporation as an alternative. June 7, 1976, Op. Att'y Gen.

Collateral references. — 18 Am. Jur. 2d, Corporations, § 32.



Sec. 10.20.007. Corporations organized under Alaska Native Claims Settlement Act. A village corporation organized under 43 U.S.C. 1601 — 1628 (Alaska Native Claims Settlement Act) may be incorporated under and subject to this chapter except the name of the corporation may not contain the word "village" or otherwise imply that the corporation is a municipal corporation; however, the name of a village may be used in the corporate name. (§ 3 ch 193 SLA 1972)

TITLE 26
INTERNAL REVENUE CODE
SUBTITLE A—INCOME TAXES—Continued
CHAPTER 1—NORMAL TAXES AND SURTAXES—Continued
SUBCHAPTER F—EXEMPT ORGANIZATIONS

<p>Part</p> <p>I. General rule.</p> <p>II. Private foundations.</p> <p>III. Taxation of business income of certain exempt organizations.</p>	<p>Part</p> <p>IV. Farmers' cooperatives.</p> <p>V. Shipowners' protection and indemnity associations.</p> <p>VI. Political organizations.</p> <p>VII. Certain homeowners associations.</p>
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1976 Amendment. Pub.L. 94-455, Title XXI, § 2101(d), Oct. 4, 1976, 90 Stat. 1899, added part VII heading.

1975 Amendment. Pub.L. 93-625, § 10(d), Jan. 3, 1975, 88 Stat. 2119, added part VI heading.

1969 Amendment. Pub.L. 91-172, Title I, § 101(j) (58), Dec. 30, 1969, 83 Stat. 532, added part II heading, and redesignated former parts II, III and IV as parts III, IV and V, respectively.

PART I—GENERAL RULE

<p>Sec.</p> <p>501. Exemption from tax on corporations, certain trusts, etc.</p> <p>502. Feeder organizations.</p> <p>503. Requirements for exemption.</p> <p>504. Status after organization ceases to qualify for exemption under sec-</p>	<p>Sec.</p> <p>tion 501(c) (3) because of substantial lobbying.</p> <p>505. Additional requirements for organizations described in paragraph (9), (17), or (20) of section 501(c).</p>
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1984 Amendment. Pub.L. 98-369, Title V, § 513(b), July 18, 1984, 98 Stat. 865, added item 505, applicable to years beginning after Dec. 31, 1984.

1976 Amendment. Pub.L. 94-455, Title XIII, § 1307(d) (3) (B), Oct. 4, 1976, 90 Stat. 1728, added item 504.

1969 Amendment. Pub.L. 91-172, Title I, § 101(j) (61), Dec. 30, 1969, 83 Stat. 532, struck out item relating to section 504.

§ 501. Exemption from tax on corporations, certain trusts, etc.

(a) **Exemption from taxation.**—An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(b) **Tax on unrelated business income and certain other activities.**—An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III, and VI of this subchapter, but (notwithstanding parts II, I, and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) **List of exempt organizations.**—The following organizations are referred to in subsection (a):

(1) any¹ corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation—

(A) is exempt from Federal income taxes—

(i) under such Act as amended and supplemented before July 18, 1984, or

(ii) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or

(B) is described in subsection (f).

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(7) Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

(9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

(10) Domestic fraternal societies, orders, or associations, operating under the lodge system—

(A) the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and

(B) which do not provide for the payment of life, sick, accident, or other benefits.

(11) Teachers' retirement fund associations of a purely local character, if—

(A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and

(B) the income consists solely of amounts received from public taxation, amounts received from assessments on the teaching salaries of members, and income in respect of investments.

(12)(A) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists



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Sec. 01.10.060. Definitions. In the laws of the state, unless the context otherwise requires,

(1) "action" includes any matter or proceeding in a court, civil or criminal;

(2) "daytime" means the period between sunrise and sunset;

(3) "month" means a calendar month unless otherwise expressed;

(4) "municipality" means a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality;

(5) "nighttime" means the period between sunset and sunrise;

(6) "oath" includes affirmation or declaration;

(7) "peace officer" means any officer of the state troopers, members of the police force of any incorporated city or borough, United States marshals and their deputies, and other officers whose duty it is to enforce and preserve the public peace;

(8) "person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person;

(9) "personal property" includes money, goods, chattels, things in action, and evidences of debt;

(10) "property" includes real and personal property;

(11) "real property" is coextensive with land, tenements, and hereditaments;

(12) "signature" or "subscription" includes the mark of a person who cannot write, with the name of that person written near the mark by a witness who writes the witness's own name near the name of the person who cannot write; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names to the sworn statement;

(13) "state" means the State of Alaska unless applied to the different parts of the United States and in the latter case it includes the District of Columbia and the territories;

(14) "writing" includes printing. (§ 4 ch 62 SLA 1962; am § 2 ch 66 SLA 1965; am § 10 ch 117 SLA 1968; am § 19 ch 74 SLA 1985)

Revisor's notes. — Reorganized in 1985 to alphabetize the defined terms.

Effect of amendments. — The 1985 amendment added paragraph (4).

NOTES TO DECISIONS

Cited in *Foltz-Nelson Architects v. Kobylk*, Sup. Ct. Op. No. 3273 (File No. S-2050), P.2d (1988).

Applied in *Clark v. State*, Ct. App. Op. No. 716 (File No. A-1840), 738 P.2d 765 (1987).

Quoted in *Hull v. Alaska Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 2605 (File No. 6346), 658 P.2d 122 (1983).