

SB

184

813 Lancaster Drive
Fairbanks, Alaska 99712
March 16, 1993

Senator Steve Frank
Alaska State Senate
Room 518
State Capitol
Juneau, Alaska 99801-1182

RECEIVED MAR 18 1993

Re: Limitation of Liability of Volunteers
Proposed New Statute

Dear Steve:

As I mentioned in our telephone conversation of Thursday, March 11, 1993, the Washington, D.C. Council (the equivalent of its city council) recently adopted D.C. Act 9-353, for the stated purpose of amending the District of Columbia Nonprofit Corporation Act "to provide immunity from civil liability for volunteers and employees of non-profit corporations." The statute strikes a careful balance among the competing concerns in this area. I have drafted a modified version of the statute, attempting to apply those concepts to Alaska law.

In this letter I will try to make the case for adoption of this or a similar statute. I emphasize that while I have had a great deal of experience with non-profit corporations, as a director, officer and attorney, I am writing as a private citizen and not on behalf of any group or non-profit corporation.

Present Alaska law provides for a few limited kinds of protection for volunteers. There are special statutes protecting emergency medical technicians (AS 09.65.090(b)), volunteer aircraft safety inspections (AS 09.65.092), physicians and other medical professionals delivering "good Samaritan" services (AS 09.65.090(a)), emergency veterinary care (AS 09.65.097), and a general limitation on the liability of officers and directors of non-profit corporations (AS 10.20.151(d)). The standards and rules of liability for each of these exceptions is slightly different, resulting in confusing and sometimes contradictory guidelines that depend upon the character of the services delivered by the volunteer. By far the greatest number of volunteers have no protection at all. And the organizations for which they work have no protection at all from the negligence of the volunteers.

BASIS FOR THE BILL
LETTER FROM ADVOCATE

To the extent that the average volunteer thinks about the risk of personal liability at all, they assume they have some statutory protection from liability or that if they don't their homeowner's or automobile insurance will protect them. Most of the time all of those assumptions are false.

There is a second aspect to volunteer liability: the rule of law called "respondeat superior" - the rule that the master will respond, meaning the "employer" is liable for the torts of the "employee" - applies to volunteers in most instances as well. Thus, a non-profit corporation may be liable for the negligence of its volunteers.

These risks are presently managed partially, if at all. In the best case, non-profit monies are spent on insurance premiums for liability policies that might be more effectively spent on delivery of the services. And areas containing high risk are simply not serviced at all.

The proposed statute attempts to balance various competing interests:

(1) the need to encourage volunteers to donate their services without risk of personal ruin in the event they are negligent;

(2) the need to keep and retain employees at non-profit corporations, often at substantially lower wages than equivalent positions in the private sector;

(3) the need to assure non-profit corporations that they can deliver services without facing financial ruin in the event of employee or volunteer negligence; and

(4) assurance that volunteers, employees of non-profit corporations and the non-profit corporations will have sufficient economic stake in risk management that they do not become careless in the delivery of their services.

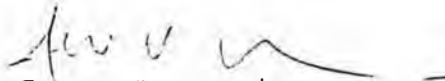
The general scheme of the proposed statute is to relieve volunteers from their negligence if minimum levels of insurance are in place at the non-profit corporation. Levels of misconduct more serious than negligence or gross negligence are no excuse. A volunteer could then serve without risk of personal financial liability for their negligence. The non-profit corporation can maintain reasonable levels of insurance and be assured it has adequate protection. And the levels of insurance are high enough to assure that the non-profit corporations will still act with a sufficient level of care to protect the general public.

Senator Steve Frank
March 16, 1993
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The insurance levels required to trigger protection for volunteers could be extended to employees as well. The amounts of insurance required could be adjusted to different levels, say to the levels required for auto insurance. The kinds of insurance required could be changed to clarify the type of coverages required. But all of those changes are mere glosses on the structure. The important issue is to get a form of general volunteer protection in place.

If there is anything I can do to assist in the adoption of this proposal, please do not hesitate to contact me.

Sincerely yours.



James D. DeWitt

Enclosure

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295
(907) 465-3603
(FAX) 465-2539

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 28, 1993

RECEIVED APR 30 1993

Honorable Steve Frank
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Re: SB 184

Dear Senator Frank:

At the request of the Governor's legislative office, we have reviewed SB 184. The bill would create a new statute, AS 09.65.098, which would immunize employees and volunteers of certain non-profit corporations from civil liability under certain conditions. If applicable, the bill provides immunity to individual [employees] and volunteers but does not affect the liability of the non-profit corporations for whom those individuals work or provide their services. Proposed AS 09.65.098(a) and (d).

The immunity is predicated on one of two things: The non-profit corporation must either (1) maintain a minimum level of liability insurance or (2) have administrative operating costs under \$100,000 and be tax-exempt. Proposed AS 09.65.098(b).¹ The bill does not preclude liability for gross negligence, recklessness, or intentional misconduct. Proposed AS 09.65.098(c). If enacted, the bill would apply only to actions that accrue on or after its effective date. Sec. 2.

As noted, the bill would eliminate the personal liability of volunteers and [employees] of certain non-profit corporations for simple negligence, but would not affect the liability of the non-profits themselves. It should be understood that, because of this immunity, there would be no possibility of third party recovery from a non-profit corporation or an insurer for an employee's or

¹ We express no opinion on the insurance levels used in the bill, but do suggest that an insurance specialist verify that standard forms of coverage are available at the levels identified. The Division of Risk Management in the Department of Administration, or the Division of Insurance in the Department of Commerce and Economic Development, may be able to provide assistance in this area.

REVIEW BY DEPT OF LAW

Honorable Steve Frank
Alaska State Legislature
Re: SB 184

April 28, 1993
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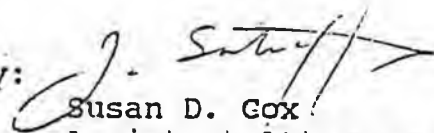
volunteer's personal liability. Even though the non-profit may have the liability insurance specified in the bill, such insurance would not provide coverage for acts or omissions that are statutorily immunized from liability. Therefore, recovery from the non-profit or its insurer would be incumbent on proving direct negligence by the non-profit itself, or by establishing that the non-profit is vicariously liable for the acts or omissions of the [employee] or volunteer.²

We have no comments on legal aspects of the bill other than the observations above. Please feel free to contact us if you have further questions.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By:

 For:
Susan D. Cox
Assistant Attorney General

SDC:bap

cc: Deborah E. Behr
Log # 93-004

² It is conceivable that there might be circumstances in which a volunteer could perform a service for a non-profit corporation and be immune under AS 09.65.098(a), yet the non-profit would not necessarily have direct or vicarious liability. In such circumstances, there might not be a source of recovery for injured third parties, notwithstanding the fact that the non-profit may have liability insurance. Conversely, there could be situations where an employee or volunteer is immune and the non-profit corporation definitely has liability, but there is no liability insurance coverage. See proposed AS 09.65.098(b).

Alaska State Legislature

STEVE FRANK

119 N. Cushman, Rm. 213
Fairbanks, Alaska 99701
(907) 452-3421



While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709
Capitol Rm. 417

Senate

TO: Senator Robin Taylor, Chairman
Senate Judiciary Committee

FROM: Senator Steve Frank, Co-Chairman
Senate Finance Committee

RE: SPONSOR STATEMENT for CS SB 184 (L & C):
Civil Liability of Volunteers

DATE: January 31, 1994

Senate Bill 184 proposes to make volunteers of non-profit corporations in Alaska immune to civil liability for damages incurred while on the job. Immunity will only be granted for civil damages incurred while the volunteer is performing his/her duties in good faith without being reckless or grossly negligent.

This immunity will only apply to volunteers of non-profit corporations which have a liability insurance policy of at least \$200,000 per individual claim, and \$500,000 for all claims arising from the same occurrence.

Certain kinds of volunteers are already protected against civil liability in Alaska law; EMTs, volunteer aircraft safety inspectors, doctors and other medical professionals delivering "good Samaritan" services, emergency veterinary care, and a general limit to liability for officers and directors of non-profit corporations.

But for the most part, individual volunteers in Alaska have no statutory protection from liability. This bill is necessary to allow volunteers of non-profit corporations to give their services freely without the threat of a lawsuit and personal ruin. Volunteers are an important, powerful resource in our state and they deserve protection from liability.

Thank you for hearing this bill.

SPONSOR STATEMENT

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 1, 1994

SUBJECT: Sectional Summary of CSSB 184 (L&C)

TO: Senator Steve Frank

FROM: Michael F. Ford *M.F.*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Provides that a person who volunteers for a nonprofit corporation is not liable for civil damages that result from an act or omission of that person, if the nonprofit corporation is insured or is exempt from applicable insurance requirements. Limits the immunity to acts or omissions that are not intentional, reckless, or grossly negligent. Establishes liability insurance requirements that must be met in order to create immunity for volunteers. Provides that for acts or omissions of a volunteer a nonprofit corporation that is insured as required by this section is only liable up to the limit of the corporation's policy of liability insurance.

Section 2. Applicability section.

Section 3. Effective date.

MFF:pl
94-090.plm

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CS SB 184(FIN)
Work draft 8-LS0954/E 1/21/94

Revision Date: 01/21/94 Dept. Affected: Alaska Court System
Title: An Act relating to civil liability of BRU: Trial Courts
volunteers of certain nonprofit corporations Components: _____
Sponsor: Frank
Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 94) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)
No fiscal impact

Prepared by: C. S. Christensen III, Staff Counsel *CSC* Phone: 264- 3228
Agency: Alaska Court System Date: 01/21/94

Approved by: Arthur H. Snowden, II, Administrative Director *AHS*
Agency: Alaska Court System Date: 01/21/94

PREPARER TO PROVIDE ALL DISTRIBUTED FISCAL NOTES TO OFFICE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CS SB 184

Revision Date: 1/24/94
Title: Volunteers and Employees of Nonprofits
Sponsor: Senator Frank
Requestor: _____

Department Affected: Commerce and Economic Development
BRU: Insurance
Component: Operations
COMPONENT SERIAL NO. 354

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUND SOURCE

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 94) cost: \$ 0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact.

Prepared by: Joan Brown, Administrative Officer
Division: Insurance

Phone: 465-2597
Date: 1/24/94

Approved by Commissioner: Paul Fuhs 
Agency: Commerce and Economic Development

Date: 2-3-94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office



Iditarod Trail Sled Dog Race

P.O. Box 870800 • Wasilla, AK 99687-0800 • (907) 376-5155 • Fax (907) 373-6998

February 3, 1994

Senator Steve Frank
State Capitol
Juneau AK 99801-1182

Dear Senator Frank

As you may know, the success of the annual Iditarod Trail Sled Dog Race depends largely upon the efforts of in excess of 1,500 loyal and dedicated volunteers. Because continued volunteerism is considered vital to the Race, the Iditarod Trail Committee, Inc. (ITC) wishes to take this opportunity to support CSSB 184 (L&C).

The growing concern which has been expressed from time to time by volunteers over potential civil liability, even as a result of well-intentioned efforts on behalf of the Race, is of genuine concern to the ITC. While the personal risk of liability may not be the only reason that volunteerism in general is declining on a nationwide basis, most believe it to be a primary reason.

The ITC believes that passage of CSSB 184 would help to alleviate this unfavorable trend by removing this particular concern from the minds of volunteers associated with the Iditarod as well as the many other fine organizations who benefit tremendously from important volunteer contributions.

Thank you for your consideration.

Sincerely yours for,

The Iditarod Trail Committee, Inc.


Stan Hoolcy
Executive Director

cc: ITC Board of Directors

TOTAL P.001

LETTERS OF SUPPORT



Fairbanks Community Food Bank Service

517 Caffrey Road
Fairbanks, Alaska 99701-9990
(907) 452-7761 FAX 456-2377

April 13, 1993

Senator Frank, Co-Chair
Senate Finance Committee
FAX 465-4714

Dear Senator Frank,

Thank you for your follow-through on SB184 and for the prompt hearing and proposed amendment.

The clarifying language of this bill will make all non-profits breathe easier.

The Fairbanks Community Food Bank operates almost entirely by volunteer help. In 1992, that amounted to 10,000 volunteer hours and the work accomplished was amazing. It is right to give these generous people the protection and encouragement they need to continue to perform such important work for the community.

Sincerely,

Samantha Castle-Kirstein
Samantha Castle-Kirstein
Executive Director



A United Way Agency

FAIRBANKS REGION
 OLDER AMERICAN VOLUNTEER PROGRAMS
 FOSTER GRANDPARENT, SENIOR COMPANION,
 RETIRED SENIOR VOLUNTEER

c/o Senior Center • 142A Moore Street • Fairbanks, AK 99701 • (907) 452-6417



FAIRBANKS REGION
 OLDER AMERICAN VOLUNTEER PROGRAMS

M E M O R A N D U M

Anchorage
 Fairbanks
 Hoonah
 Juneau
 Palmer
 Tanacross
 Wasilla
 North Pole
 Minco
 Tanana
 Nulato

TO: Senator Frank; Co-Chair Senate Finance
 FROM: Jeanne Thomas *Jeanne Thomas*
 SUBJECT: SB 184: Civil Liability of Volunteers
 DATE: April 13, 1993



Anchorage
 Fairbanks
 Hoonah
 Juneau
 Palmer
 Wasilla
 Kenai
 North Pole

On behalf of the Fairbanks Region OAVP I would like to express our support for SB 184, which proposes to make volunteers and employees of non-profit corporations in Alaska immune to civil liability for damages incurred while on the job. We also support the proposed amendment that states that corporations may only be held liable up to the limit of their insurance coverage.

In the Fairbanks region we have over 100 senior volunteers serving in dozens of agencies in a wide variety of community service volunteer positions. We also have numerous community volunteers that give freely of their time to our programs on a regular basis.

Our programs exist to provide seniors the opportunity to serve their community as volunteers. They impact thousands of people's lives and gave over 38,000 hours of community service last year. We feel it is imperative that these volunteers do not have to serve their communities under the threat of personal ruin or lawsuit.

We feel the passage of this bill is imperative not only to our volunteers but all volunteers serving with non-profits.



Fairbanks
 Juneau
 North Pole





United Way
of Anchorage

Post Office Box 102052
Anchorage, Alaska 99510-2052
Phone (907) 582-4483
Fax (907) 503-0020

April 13, 1993

The Honorable Senator Frank
The Senate of Alaska
State Capitol Building, Room 518
Juneau, Alaska 99801

Dear Honorable Frank:

As Executive Director of the United of Anchorage, I would like to offer my support for Senate Bill 184.

The United Way of Anchorage works for the largest volunteer network in Alaska. We help fund 39 health and human service organizations in southcentral Alaska. This Bill would enhance these organizations' ability to recruit volunteers and ensure their altruistic efforts are protected by law.

Please do all possible to have Senate Bill 184 passed.

Sincerely,

A handwritten signature in cursive script that reads "Dennis G. McMillian".

Dennis G. McMillian
Executive Director

DGM:ah



United Way
of
Mat-Su Borough

April 13, 1993

Senator Steve Frank
Senate Finance Committee

Subject: HB 184

Dear Senator:

United Way of Mat-Su would like to express its support of HB 184. Without such legislation the business of helping friends, neighbors, and relatives would be very difficult.

Through your energy and foresight we can continue doing what is necessary to enrich the lives of many.

Thank you.

Sincerely,

Kris Becker
Executive Director

Palmer Senior Citizens' Center, Inc.


"Seniors helping Seniors"

Senator Steve Frank, Co-Chair
Senate Finance Committee

Dear Senator Frank:

Palmer Senior Center sincerely supports SB184 that would limit civil liability for non-profit volunteers and staff. Please consider PSCC a supporter of this bill.

Sincerely,


Robert Tubbs
Executive Director



United Way

WASILLA
AREA
SENIORS
INC.



Senator Frank,

Just a quick note to voice our
support for SB 184. Your efforts in
addressing this matter are to be applauded
and you have our sincere thanks!

[Signature]
Executive Director

April 13, 1993

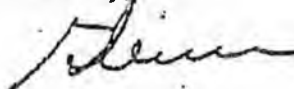
Senator Kelly, Co-Chair
Senate Labor and Commerce Committee
FAX 465-4714

Dear Tim,

Thanks for the prompt hearing of SB184.

The clarifying language of this bill will make all non-profits breathe easier. Hope it can be passed out of committee with a unanimous "Do-Pass."

Sincerely,



Glenn Hackney
Non-profit volunteer