

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4711 HJUD HB 339 - HB 340

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STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY  
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POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

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

*House Judiciary:*

*3-10-88*

*3-24-88*

*4-5-88*

SECTIONAL ANALYSIS FOR HB 339

Sec. 41.15.910 Commercial Firewood Sales

Requires that a person who wishes to sell firewood must first obtain a commercial firewood sales permit from the Department of Natural Resources. In order to obtain a permit a person must provide proof of ownership. This section gives the Commissioner the authority to adopt regulations to enforce the bill.

Sec. 41.15.915 Civil/Criminal Penalties

Sets up civil and criminal penalties for persons who sell firewood without a valid permit.

Sec. 41.15.925 Injunctions

Allows the Court to provide injunctive relief by requiring that an act be discontinued if it can be shown that it poses an imminent threat of continued violation and probable success. It is not necessary to prove that the act is causing irreparable physical harm.

Sec. 41.15.930 Definitions

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 13, 1988

SUBJECT: Draft SSHB 339  
TO: Representative Mike Davis  
FROM: Jack Chenoweth  
Legislative Counsel

Enclosed is a draft Sponsor Substitute for House Bill 339, based on notes and suggestions by Assistant Attorney General John McDonagh. His drafting model and summary were most helpful.

The bill draft shifts the focus from "theft of timber" to the narrower topic--the key problem, according to McDonagh--of unauthorized harvest of timber and commercial sale of it as firewood. This draft reflects Mr. McDonagh's recommendation that "[t]he commercial sale phase offers the best opportunity for effective curative legislation."

Please note the following changes from the draft suggested by Mr. McDonagh.

Mr. McDonagh suggested locating the new provision in article 1 of AS 41.15, a subdivision that emphasizes protection of forested lands chiefly against forest fires. Since this matter is somewhat unrelated to that, but does address a serious problem, I have chosen to locate the new material in that portion of AS 41.15 that collects "miscellaneous provisions."

In the suggested AS 41.15.025(a), Mr. McDonagh excepted "a federal, state, or local government entity" from the definition of "a person." These terms are already excluded. See AS 01.10.060(8). It is not necessary to do so again.

I have "loosened" the proof of ownership requirement slightly. In Mr. McDonagh's draft, proof of ownership could be shown by provision of either the "legal instrument" or the "bill of sale." I have used substantially the same lan-

Representative Mike Davis  
Page 2  
February 13, 1988

guage, but suggest that the commissioner could, by authority of regulation, accept other documentation that the commissioner reasonably believes would reflect a legal acquisition of the firewood.

I have deleted the material in the proposed AS 41.15.025(b)(1)(E) and (b)(2)(F) of Mr. McDonagh's draft. Again, the commissioner may establish other "proofs of ownership" under authority to adopt regulations. What I thought was unnecessary in his suggestion was the giving of permission to the commissioner to require "any other information . . . necessary to establish adequate proof of ownership" in the context of a "legal instrument" or "bill of sale." Since most wood sellers will likely try to fulfill one of those two requirements, those two approaches should be specific as to their requirements as a matter of statute; the commissioner should not be allowed to add to them on a case-by-case basis.

The second part of Mr. McDonagh's AS 41.15.025(c) is unnecessary. The statute he cites [AS 41.15.950] specifies persons who may enforce the provision of AS 41.15.

The second part of Mr. McDonagh's AS 41.15.025(d) is, to my mind, unnecessary. The statutory provisions will take effect. The statute does not require the commissioner to adopt regulations to give the statute effect, but permits the commissioner to do so to carry out its provisions.

I have separated out the civil and criminal penalties into their own respective sections. I have not included language suggested by Mr. McDonagh in his proposed AS 41.15.025(g) authorizing injunctive relief, as other authority of law (AS 09.40.230) would be applicable.

If this memorandum or the bill draft prompt questions, please contact me. Since Marilyn Heiman authorized my working with Mr. McDonagh and he was good enough to provide me copies of his work product, I have taken the liberty of sharing a copy of this draft and these comments with him.

JC:mkr  
b2/087

Enclosure

cc: John A. McDonagh  
Assistant Attorney General  
Fairbanks

Original sponsors: Davis and Boyer

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 339 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to timber, defining the crime  
7 trespass by cutting or injuring timber, regulating  
8 commercial sales of firewood, and authorizing disposition  
9 of state-owned unbranded and abandoned timber  
10 to persons for personal, noncommercial use."

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

12 \* Section 1. AS 09.45.730 is repealed and reenacted to read:

13 Sec. 09.45.730. TRESPASS BY CUTTING OR INJURING TIMBER. (a)  
14 person who cuts down, injures, or carries off timber without lawful  
15 authority is liable for treble the amount of damages that may  
16 assessed in a civil action

17 (1) to the owner of the land for destruction or removal  
18 the timber from the owner's land;

19 (2) to the state for destruction or removal of the timber  
20 from state land;

21 (3) to a municipality or village for destruction or removal  
22 of the timber from the land of the municipality or village.

23 (b) Notwithstanding (a) of this section, the person who cuts  
24 down, injures, or carries off timber without lawful authority  
25 liable for actual damages to the owner of the land specified in (a)  
26 this section if

27 (1) the trespass was unintentional or involuntary;

28 (2) the defendant had probable cause to believe that the  
29 land on which the trespass was committed was the defendant's own

1 that of the person in whose service or by whose direction the act wa  
2 done; or

3 (3) the timber was taken from unenclosed woodland for th  
4 purpose of repairing a public highway or bridge that is constructed o  
5 the land or adjoining it.

6 (c) In this section, "timber" means

7 (1) live trees and shrubs; and

8 (2) trees and shrubs grown on the land that are dead fro  
9 any cause and remain on the land.

10 \* Sec. 2. AS 41.15 is amended by adding new sections to article 5 t  
11 read:

12 Sec. 41.15.910. COMMERCIAL FIREWOOD SALES. (a) A person ma  
13 not sell firewood without first obtaining a commercial firewood sale  
14 permit from the commissioner.

15 (b) The commissioner shall issue a permit to a person who pro  
16 vides the commissioner with adequate proof of ownership of the fire  
17 wood to be sold. The commissioner may accept as proof of ownership

18 (1) a harvest permit, contract, or other legal instrumen  
19 issued by the owner of the land from which the firewood was harveste  
20 or, if the firewood was harvested from public land, issued by a muni  
21 cipality or a state or federal agency that specifies the

22 (A) date of execution of the legal instrument and th  
23 date of its termination, if any;

24 (B) name and address of the permittee or contracto  
25 who harvested the firewood;

26 (C) location, by legal description or legal address  
27 where the firewood was harvested; and

28 (D) estimated amount, volume, and species of th  
29 firewood harvested from each location;

1 (2) a bill of sale showing title to the firewood that  
2 specifies the

3 (A) date of execution of the bill of sale;

4 (B) name and address of the person who sold the fire  
5 wood to the permit applicant;

6 (C) name and address of the permit applicant;

7 (D) amount, volume, and species of the firewood trans  
8 ferred by the bill of sale; and

9 (E) location, by legal description or legal address  
10 from which the firewood was harvested; or

11 (3) a certificate of registration issued as evidence of  
12 compliance with AS 45.50.210 - 45.50.325.

13 (c) The commissioner may include in the permit the terms and  
14 conditions that the commissioner believes to be necessary to carry out  
15 this section.

16 (d) A permit is valid for one year.

17 (e) The commissioner may adopt regulations to implement and  
18 enforce this section.

19 Sec. 41.15.915. CIVIL PENALTY FOR SALES WITHOUT PERMIT. In  
20 addition to damages under AS 09.45.730, a person who sells firewood in  
21 violation of AS 41.15.910, who violates a term or condition of the  
22 permit issued under AS 41.15.910, or who violates a regulation adopted  
23 under AS 41.15.910 is liable to the state in a civil action for

24 (1) the reasonable costs incurred by the state in the  
25 detection, investigation, and attempted correction of the violation,  
26 including reasonable court costs and attorney's fees; and

27 (2) three times the retail value of the firewood that  
28 sold in violation of AS 41.15.910, the permit, or the regulations.

29 Sec. 41.15.920. SALES WITHOUT PERMIT MADE A VIOLATION. (a)

1 person who knowingly sells firewood in violation of AS 41.15.910  
2 who knowingly violates a term or condition of the permit issued under  
3 AS 41.15.910 or a regulation adopted under AS 41.15.910 is guilty of  
4 violation.

5 (b) If, in a proceeding under this section, the defendant shows  
6 by a preponderance of the evidence, that the commercial firewood was  
7 harvested from the property of the defendant or from the property of  
8 another with the permission of the property owner, the court may not  
9 impose a fine.

10 Sec. 41.15.925. INJUNCTIONS. (a) The superior court has jurisdic-  
11 tion to enjoin a violation of AS 41.15.910 - 41.15.930, a regu-  
12 lation adopted under AS 41.15.910 - 41.15.930, or a permit, or a term  
13 or condition of a permit issued under AS 41.15.910 - 41.15.930.

14 (b) In an action brought under this section, temporary or pre-  
15 liminary relief may be obtained upon a showing of an imminent threat  
16 of continued violation and probable success on the merits, without the  
17 necessity of demonstrating irreparable physical harm.

18 Sec. 41.15.930. DEFINITIONS. In AS 41.15.910 - 41.15.930

19 (1) "commissioner" means the commissioner of natural resources;  
20

21 (2) "firewood" means natural logs or portions of natural  
22 logs suitable for use as a solid fuel, with processing of the logs  
23 limited to cutting to length and splitting;

24 (3) "permit" means a commercial firewood sales permit  
25 authorized by AS 41.15.910.

26 \* Sec. 3. AS 45.50.235(b) is amended to read:

27 (b) Timber property that [WHICH] becomes state property under  
28 the provisions of (a) of this section may be

29 (1) sold under terms and conditions established by the  
CSHB 339(Jud) -4-

1 director of the division of lands; or

2 (2) recovered, without a permit, by any person for per-  
3 sonal, noncommercial use.

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Original sponsors: Davis and Boyer

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 339 ( )  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to trespass by cutting or injuring  
7 timber and regulating commercial sales of firewood."

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

9 \* Section 1. AS 09.45.730 is repealed and reenacted to read:

10 Sec. 09.45.730. TRESPASS BY CUTTING OR INJURING TIMBER. (a) A  
11 person who cuts down, injures, or carries off timber without lawful  
12 authority is liable for treble the amount of damages that may be  
13 assessed in a civil action

14 (1) to the owner of the land for destruction or removal of  
15 the timber from the owner's land;

16 (2) to the state for destruction or removal of the timber  
17 from state land;

18 (3) to a municipality or village for destruction or removal  
19 of the timber from the land of the municipality or village.

20 (b) Notwithstanding (a) of this section, the person who cuts  
21 down, injures, or carries off timber without lawful authority is  
22 liable for actual damages to the owner of the land specified in (a) of  
23 this section if

24 (1) the trespass was unintentional or involuntary;

25 (2) the defendant had probable cause to believe that the  
26 land on which the trespass was committed was the defendant's own or  
27 that of the person in whose service or by whose direction the act was  
28 done; or

29 (3) the timber was taken from unenclosed woodland for the

1 purpose of repairing a public highway or bridge that is constructed on  
2 the land or adjoining it.

3 (c) In this section, "timber" means

4 (1) live trees and shrubs; and

5 (2) trees and shrubs grown on the land that are dead from  
6 any cause and remain on the land.

7 \* Sec. 2. AS 41.15 is amended by adding new sections to article 5 to  
8 read:

9 Sec. 41.15.910. COMMERCIAL FIREWOOD SALES. (a) A person may  
10 not sell firewood without first obtaining a commercial firewood sales  
11 permit from the commissioner.

12 (b) The commissioner shall issue a permit to a person who pro-  
13 vides the commissioner with adequate proof of ownership of the fire-  
14 wood to be sold. The commissioner may accept as proof of ownership

15 (1) a harvest permit, contract, or other legal instrument  
16 issued by the owner of the land from which the firewood was harvested  
17 or, if the firewood was harvested from public land, issued by a muni-  
18 cipality or a state or federal agency that specifies the

19 (A) date of execution of the legal instrument and the  
20 date of its termination, if any;

21 (B) name and address of the permittee or contractor  
22 who harvested the firewood;

23 (C) location, by legal description or legal address,  
24 where the firewood was harvested; and

25 (D) estimated amount, volume, and species of the  
26 firewood harvested from each location;

27 (2) a bill of sale showing title to the firewood that  
28 specifies the

29 (A) date of execution of the bill of sale;

1 (B) name and address of the person who sold the fire  
2 wood to the permit applicant;

3 (C) name and address of the permit applicant;

4 (D) amount, volume, and species of the firewood trans  
5 ferred by the bill of sale; and

6 (E) location, by legal description or legal address  
7 from which the firewood was harvested; or

8 (3) a certificate of registration issued as evidence of  
9 compliance with AS 45.50.210 - 45.50.325.

10 (c) The commissioner may include in the permit the terms and  
11 conditions that the commissioner believes to be necessary to carry out  
12 this section.

13 (d) A permit is valid for one year.

14 (e) The commissioner may adopt regulations to implement and  
15 enforce this section.

16 Sec. 41.15.914. CIVIL PENALTY FOR SALES WITHOUT PERMIT. In  
17 addition to damages under AS 09.45.730, a person who sells firewood in  
18 violation of AS 41.15.910, who violates a term or condition of the  
19 permit issued under AS 41.15.910, or who violates a regulation adopted  
20 under AS 41.15.910 is liable to the state in a civil action for

21 (1) the reasonable costs incurred by the state in the  
22 detection, investigation, and attempted correction of the violation,  
23 including reasonable court costs and attorney's fees; and

24 (2) the <sup>triple the retail</sup> ~~gross profits~~ realized by the person from the sale  
25 of firewood made in violation of AS 41.15.910, the permit, or the  
26 regulations.

27 Sec. 41.15.918. CRIMINAL PENALTY FOR SALES WITHOUT PERMIT. A  
28 person who knowingly sells firewood in violation of AS 41.15.910 or  
29 who knowingly violates a term or condition of the permit issued under

In a proceeding under

1 AS 41.15.910 or a regulation adopted under AS 41.15.910 is guilty of a  
2 ~~class B misdemeanor~~ <sup>violation</sup>.

3 Sec. 41.15.922. AFFIRMATIVE DEFENSE. It is an affirmative  
4 defense to a proceeding under AS 41.15.918 that the defendant in the  
5 criminal proceeding shows, by a preponderance of the evidence, that  
6 the commercial firewood was harvested from the property of the defen-  
7 ant [or from the property of another with the permission of the prop-  
8 erty owner.]

9 Sec. 41.15.926. INJUNCTIONS. (a) The superior court has juris-  
10 diction to enjoin a violation of AS 41.15.910 - 41.15.930, a regu-  
11 lation adopted under AS 41.15.910 - 41.15.930, or a permit, or a term  
12 or condition of a permit issued under AS 41.15.910 - 41.15.930.

13 (b) In an action brought under this section, temporary or pre-  
14 liminary relief may be obtained upon a showing of an imminent threat  
15 of continued violation and probable success on the merits, without the  
16 necessity of demonstrating irreparable physical harm.

17 Sec. 41.15.930. DEFINITIONS. In AS 41.15.910 - 41.15.930

18 (1) "commissioner" means the commissioner of natural re-  
19 sources;

20 (2) "firewood" means natural logs or portions of natural  
21 logs suitable for use as a solid fuel, with processing of the logs  
22 limited to cutting to length and splitting;

23 (3) "permit" means a commercial firewood sales permit  
24 authorized by AS 41.15.910.  
25  
26  
27  
28  
29

5-1526L  
Chenoweth  
2/25/88

Original sponsors: Davis and Boyer

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 339 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act regulating commercial sales of firewood."

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

8 \* Section '1. AS 41.15 is amended by adding new sections to article 5 to  
9 read:

10 Sec. 41.15.910. COMMERCIAL FIREWOOD SALES. (a) A person may  
11 not sell firewood without first obtaining a commercial firewood sales  
12 permit from the commissioner.

13 (b) The commissioner shall issue a permit to a person who pro-  
14 vides the commissioner with adequate proof of ownership of the fire-  
15 wood to be sold. The commissioner may accept as proof of ownership

16 (1) a harvest permit, contract, or other legal instrument  
17 issued by the owner of the land from which the firewood was harvested  
18 or, if the firewood was harvested from public land, issued by a muni-  
19 cipality or a state or federal agency that specifies the

20 (A) date of execution of the legal instrument and the  
21 date of its termination, if any;

22 (B) name and address of the permittee or contractor  
23 who harvested the firewood;

24 (C) location, by legal description or legal address,  
25 where the firewood was harvested; and

26 (D) estimated amount, volume, and species of the  
27 firewood harvested from each location; or

28 (2) a bill of sale showing title to the firewood that  
29 specifies the

1 (A) date of execution of the bill of sale;

2 (B) name and address of the person who sold the fire-  
3 wood to the permit applicant;

4 (C) name and address of the permit applicant;

5 (D) amount, volume, and species of the firewood trans-  
6 ferred by the bill of sale; and

7 (E) location, by legal description or legal address,  
8 from which the firewood was harvested.

9 (c) The commissioner may include in the permit the terms and  
10 conditions that the commissioner believes to be necessary to carry out  
11 this section.

12 (d) A permit is valid for one year.

13 (e) The commissioner may adopt regulations to implement and  
14 enforce this section.

15 Sec. 41.15.915. CIVIL PENALTY FOR SALES WITHOUT PERMIT. A  
16 person who sells firewood without a valid commercial firewood sales  
17 permit under AS 41.15.910 who fails to comply with a term or condition  
18 of the permit or who fails to comply with a regulation adopted under  
19 AS 41.15.910 is liable to the state in a civil action for

20 (1) the reasonable costs incurred by the state in the  
21 detection, investigation, and attempted correction of the violation,  
22 including reasonable court costs and attorney's fees; and

23 (2) the gross profits realized by the person from the sale  
24 of firewood made in violation of AS 41.15.910, the permit, or the  
25 regulations.

26 Sec. 41.15.920. CRIMINAL PENALTY. A person who knowingly sells  
27 firewood without a valid commercial firewood sales permit or who  
28 knowingly violates a term or condition of the permit or a regulation  
29 adopted under AS 41.15.910 is guilty of a class B misdemeanor.

1           Sec. 41.15.925. INJUNCTIONS. (a) The superior court has juris-  
 2           diction to enjoin a violation of AS 41.15.910 - 41.15.930, a regu-  
 3           lation adopted under AS 41.15.910 - 41.15.930, or a permit, or a term  
 4           or condition of a permit issued under AS 41.15.910 - 41.15.930.

5           (b) In an action brought under this section, temporary or pre-  
 6           liminary relief may be obtained upon a showing of an imminent threat  
 7           of continued violation and probable success on the merits, without the  
 8           necessity of demonstrating irreparable physical harm.

9           Sec. 41.15.930. DEFINITIONS. In AS 41.15.910 - 41.15.930

10           (1) "commissioner" means the commissioner of natural re-  
 11           sources;

12           (2) "firewood" means natural logs or portions of natural  
 13           logs suitable for use as a solid fuel, with processing of the logs  
 14           limited to cutting to length and splitting;

15           (3) "permit" means a commercial firewood sales permit  
 16           authorized by AS 41.15.910.

A M E N D M E N T

Offered in the HOUSE

By Gruenberg

TO: CSHB 339( )

Page 4, line 8, after "owner":

Insert ", or that the firewood bears the defendant's log brand"

Page 4, following line 22:

Insert a new paragraph to read:

"(3) "log brand" means the mark or designation issued under AS 45.50.210 - 45.50.325 used to identify ownership of timber property;"

Renumber subsequent paragraph accordingly.

and is not clearly  
 am § 1 ch 191  
 8 SLA 1975)

right to the ex-  
 five years from  
 by application  
 prescribed fee.  
 ms. (§ 2 ch 51  
 3 SLA 1975)

each piece of tim-  
 ber, lake, river,  
 use of rafting or  
 at least one end

in whose name  
 that person; and  
 the time public  
 30 days from the  
 from the date of  
 45.50.237, it is  
 lawful transporter

end of the water

of the state.  
 AS 1953; am § 2  
 , 7 ch 232 SLA

department. The  
 the possession  
 the adrift in the  
 the shoreland  
 in the water  
 within 15 days  
 , indicating the  
 the area of recov-  
 t may require.

Unless the time for recovery is extended under AS 45.50.237, the rightful transporter or owner of timber property has 90 days from the date the loss is reported to recover the timber property. After 90 days from the date of reporting or upon the expiration of any extension granted under AS 45.50.237, the timber property is considered to be abandoned, no notice is required to be published under AS 45.50.234, and the timber property is presumed to be the property of the state. (§ 2 ch 232 SLA 1976)

**Sec. 45.50.234. Publication of notice of intent to claim abandoned property.** Except as provided in AS 45.50.232, the department shall publish notice of its intent to claim abandoned timber property under AS 45.50.210 — 45.50.325 for not less than 30 days from the date that first notice is published under this section. Notice shall be published once a week for at least three consecutive weeks in a newspaper of general circulation nearest the area where the timber property is located and, if feasible, posted in a centrally located public place within or in close proximity to the area where the timber property is located. (§ 2 ch 232 SLA 1976)

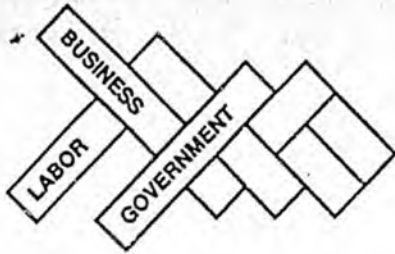
**Sec. 45.50.235. Ownership of unbranded and abandoned timber property.** (a) Timber property which is unbranded or on which a brand is not distinguishable and which is located in a coastal water, lake, river, creek or other waterway of the state or on state owned coastline is presumed to be the property of the state. Timber property which is abandoned property as defined in AS 45.50.230(a)(2) is presumed to be the property of the state 90 days after the period of reporting as required in AS 45.50.232 unless an extension has been granted, or 30 days after the period of notice has expired as provided under AS 45.50.234.

(b) Timber property which becomes state property under the provisions of this section may be sold under terms and conditions established by the director of the division of lands. (§ 4 ch 168 SLA 1970; am § 3 ch 68 SLA 1975; am § 3 ch 232 SLA 1976; am § 5 ch 73 SLA 1978)

**Sec. 45.50.237. Extension of period for recovery of timber property.** The department shall extend the 90-day period for recovery of timber property after reporting specified in AS 45.50.232 if a good faith effort to salvage the timber property is being made by the person requesting the extension. Extensions shall be granted for limited periods only but may be continued until salvage is completed, and guidelines shall be established specifying what constitutes a good faith effort for purposes of extension under regulations adopted by the de-

ADD AT THE END OF 45.50.235 (b) BETWEEN "LANDS" AND THE PERIOD:

or may be recovered, without a permit, by any person for personal, non-  
commercial use.



# UNIFIED FAIRBANKS

## A RESOLUTION IN SUPPORT OF HOUSE BILL #339

### AN ACT RELATING TO THEFT OF TIMBER PRODUCTS

**WHEREAS**, the Interior of Alaska has the largest timber reserves in the state of Alaska; and

**WHEREAS**, the marketing of this timber resource is a top priority of the timber industry; and

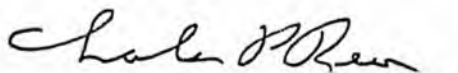
**WHEREAS**, interest is now being expressed in the development of that timber industry; and

**WHEREAS**, it is necessary to protect the timber resources to allow for their full development by licensed and regulated operators;

**NOW THEREFORE** be it resolved that Unified Fairbanks encourages the Legislature to pass House Bill #339 for the benefit of protecting that resource.

This resolution was passed by Unified Fairbanks on February 3, 1988.

UNIFIED FAIRBANKS

  
Charles P. Rees, President

PC:bill339



# 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) 456-8161

## MEMORANDUM

To: House Judiciary Committee

From: Rep. Mike Davis *Mike Davis*

Re: HB 339

Date: March 10, 1988

---

I introduced HB 339 in response to a serious problem faced by commercial firewood sellers in the Interior. Some people in the Interior are trespassing and stealing timber off private or state land and then selling the timber as firewood. These people compete with the legitimate lumber and firewood sales companies.

The existing statutes and regulations do not provide adequate authority to deal with the problem. The only way the Department can prove that a person has illegally taken timber is by catching the person in the act, which is very time consuming and resource intensive.

The approach of the original bill was to include theft of timber into the theft statutes and to criminalize transportation of timber products on a highway or waterway without proof of ownership. This approach provided a broader solution than was necessary.

The Committee Substitute changes the approach of the original bill by requiring that persons who sell firewood must first obtain a permit from the Department of Natural Resources.

Although, legislative solutions could be directed at the harvest phase, the transportation phase or the commercial sale phase, the sale phase offers the best opportunity for addressing the problem. It is easily identifiable and enforceable.



# Alaska State Legislature

Representative Mike Davis

P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4930/4941

Interim Office:  
P.O. Box 81435  
Fairbanks, Alaska 99708

## MEMORANDUM

TO: HOUSE MEMBERS

FROM: REP. DAVIS *Mike*

RE: THEFT OF TIMBER

DATE: JANUARY 9, 1988

---

I have prefiled HB 339 to respond to the problem of theft of timber in our forests. HB 339 amends title 11 to include the theft of timber in the definition of theft.

Our state and private land is being subjected to timber theft. Without adequate statutory authority, the Department of Natural Resources is unable to prevent or prosecute those who steal timber.

An increasing amount of lumber companies are concerned that their business is being undercut by persons who steal timber from state or private land and sell it as fire wood.

Increased penalties will help to prevent this problem in the future and protect Alaskan businesses and our forests from the theft of timber.

If you are interested in co-sponsoring HB 339 or have any questions regarding this issue please let me know.

**Notes on House Bill 339** - "an Act relating to the theft of timber products"

By - F. A. Seymour, Senior Marketing Specialist      January 22, 1988

The need for this legislation rest in the basic problem of not being able to identify a log or processed wood in relationship to its point of origin once the logs are removed from the harvest area.

Persons entering public or private land with (or without) a permit for taking wood from a general area can, and unfortunately do on numerous occasions, take wood in firewood or log form from cutting units that have been sold to commercial harvesting companies. This theft frequently includes cutting firewood and or short logs from high value timber decks that have been cut, graded and stored awaiting transport to a processing facility by the legal owner of the wood. The remote nature of the product location, multiple adjacent cutting units, wide variable in individual log values that are not apparent to firewood or casual log users, and related timber harvesting and transportaion activity all contribute to the problem that this legislation will address.

As the industry grows in the interior Alaska more and more trucks will be on the highways and byways and it is reasonable and necessary that once a quantity of logs or related simi processed wood product is removed from the harvest area the carrier be held responsible for having in their possession sufficient documentation to clearly identify the harvest area from which it came, the owner, authorized contractor or transport company, the estimated volume and the species of the wood.

Once this legislation becomes law it will be possible when suspected timber theft is occurring for law enforcement officers to investigate and detain apparent violators for possible prosecution.

**Notes on House Bill 339 - "an Act relating to the theft of timber products"**

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## City/State

# B

# Timber rustling suspect charged by state

FAIRBANKS (AP) — A two-month undercover investigation has resulted in a Fairbanks man being charged with stealing wood and trespassing on state land.

Gary Burke, 33, faces up to a year in jail and a \$5,000 fine following the investigation by the Department of Natural Resources.

"Existing laws require us to observe people harvesting the wood and selling it," said Don Fuller, area forester. "To do

that, we had to go undercover.

"We followed people into the woods to watch them cut trees illegally, then we followed them into town to observe them selling it," Fuller said Friday. "In some cases, we purchased wood from the unlicensed vendors."

Fuller blames "timber rustlers" for depleting timber in some areas intended for public use, for stealing wood from private land, for leaving gaping holes and large stumps in areas that were

to be re-forested, and for undermining the business of legal commercial operators, who must abide by strict regulations.

Some of the nine cutters under investigation have sold more than 200 cords of wood this year, Fuller said.

"I don't want to hold this as a hammer over the public head, but if these illegal practices don't stop . . . we may have to close down public wood cutting areas."

Unless they own land, most commercial operators must contract with the state to cut trees from a specific plot. There are about 20 commercial operators in Fairbanks, Fuller said.

Operators are bound by law to post promissory bonds, pay the state \$5 per cord of wood sold, abide by environmental standards and clean up and replant plots, Fuller said.

"Frankly, I'm being asked by some legal woodcutters why they

should not revert to stealing wood too if we are not going to do anything about the theft going on at this point," Fuller said.

Fuller said some illegal woodcutters have cheated customers.

"We intend to file fraud charges against one guy," Fuller said. "We bought a cord from him and donated it to Santa's Clearinghouse. Not only did the guy not deliver a full cord, the wood was rotten."

#B 339

ALASKA INTERIOR WOODCUTTER'S ASSOCIATION  
5180 Aeronca  
Fairbanks, Alaska 99709

January 28, 1988

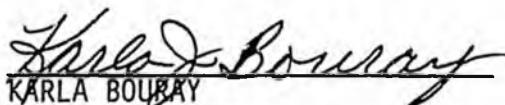
The Honorable John Sund  
Pouch V  
Juneau, Alaska 99811

Dear Representative Sund:

The Alaska Interior Woodcutter's Association recently passed two resolutions, 88-1 Timber Trespass Legislation and 88-2 Reforestation Fund (attached). Both issues are very critical to the health and future of the wood industry in Alaska.

The Alaska Interior Woodcutter's Association urgently requests your support for H.B. 339 introduced by Davis and Boyer and the subsequent development of regulations by the Department of Natural Resources (DNR) to make enforcement effective.

The Alaska Interior Woodcutter's Association is dismayed that reforestation funding was cut by the Governor's office from DNR's proposed capitol improvement projects. Additionally, the mechanism established in AS 41.17.310 for funding the reforestation fund is not being followed. Instead of a continuing fund in which a portion of timber sale revenues are deposited and annually approved by the legislature, the current budget process puts reforestation projects in competition with other capitol improvement projects. When put in this playing field, reforestation loses because planting seedlings doesn't seem as important as new buildings or equipment.

  
KARLA BOURAY  
Acting Secretary, A.I.W.A.

ALASKA INTERIOR WOODCUTTER'S ASSOCIATION  
5180 Aeronca  
Fairbanks, Alaska 99709

RESOLUTION 88-1  
Title: Timber Trespass Legislation, H.B. 339

WHEREAS the Interior Woodcutter's Association was organized to represent all segments of the wood products industry of Interior Alaska.

WHEREAS the wood products industry employs over 200 people in the wood industry and sells products with a market value of over six million dollars.

WHEREAS timber trespass and theft have become an overwhelming problem on state, borough, university, and private lands.

WHEREAS timber theft denies large amounts of revenue to the state for timber resources stolen.

WHEREAS timber thieves largely steal in Personal Use Woodcutting Areas taking the easily accessible wood and leaving harder-to-get wood for legitimate Personal Use Firewood cutters.

WHEREAS the timber thieves bear no responsibility for clean-up and proper utilization of timber resources and seriously hurt legitimate commercial operators who have to bear such costs.

WHEREAS current legislation puts the burden of proof on the Division of Forestry whose limited budget and manpower make enforcement of such statutes nearly impractical.

WHEREAS current legislation would require a "man behind every tree" to enforce.

THEREFORE, be it resolved that:

The Alaska Interior Woodcutter's Association fully endorses the passage of H.B. 339 relating to timber theft and proof of ownership.

Further be resolved that the Alaska Interior Woodcutter's Association requests the State of Alaska, Department of Natural Resources, to promulgate regulations to make enforcement of legislation practical

Recommendation: PASS

Adoption: PASS     X     NO PASS                     

Distribution: Legislative Distribution  
Governor  
FNSB, W. Helms  
United Fairbanks  
DNR Commissioner  
State Forester

*Karla Bouray* 1/25/88  
KARLA BOURAY (Date)  
Acting Secretary, A.I.W.A.

DATE: April 5, 1988

The Judiciary Committee has considered HB 339

"An Act relating to theft of timber products."

RECOMMENDS:

- replace with CS HB 339 (Jud)  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 \_\_\_\_\_
- zero with analysis

SIGNING DO PASS:

*[Signature]*  
 \_\_\_\_\_  
*Franklin*  
 \_\_\_\_\_  
*San G. G. G.*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

SIGNING OTHER RECOMMENDATIONS:

*[Signature]*  
 \_\_\_\_\_  
*Franklin Taylor (NOTES)*  
*Samora Thomas (NOTES)*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
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 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Chairman's signature

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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

March 7, 1988

The Honorable John Sund  
Chairman, House Judiciary Committee  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Sund:

Subject: HB 339, an act relating to theft of timber products.

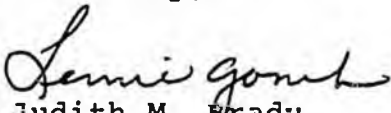
Position: The Department of Natural Resources supports HB 339 with changes as proposed by the Attorney General's Office.

Background: HB 339 attempts to address a problem faced by the Division of Forestry and many commercial firewood dealers in Northern Alaska. This problem involves the unauthorized harvest of timber from state lands. The existing statutes provide inadequate authority to deal with this problem. At present, the Division of Forestry must prove that the firewood seller unlawfully obtained timber from state land, which is difficult to do once timber has been removed from the harvest site. The department, the sponsor of the house version of this bill (which is identical to the senate version), and private timber operators have recently worked with the office of the Attorney General in Fairbanks to craft language that will more effectively get at the problem. This language has been provided to the sponsors and committee staff, as well as an analysis by John McDonagh, Assistant Attorney General.

Recommendation: The department supports the concept of the bill as originally written but prefers the changes drafted by the office of the Attorney General as a more effective way to address the problem.

We look forward to working with the committee and staff through the progress of this legislation.

Sincerely,

  
for  
Judith M. Brady  
Commissioner

cc: Committee Members  
Bill Sponsors  
Bob Evans  
Rod Swope

# MEMORANDUM

# State of Alaska

TO: The Honorable Judith M. Brady.  
Commissioner  
Department of Natural Resources

DATE: February 12, 1988

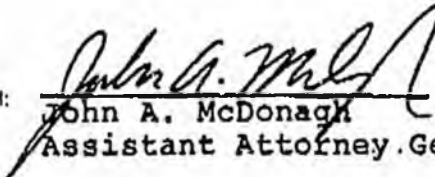
FILE NO:

TELEPHONE NO: 452-1568

THRU:

SUBJECT: HB 339

FROM:

  
John A. McDonagh  
Assistant Attorney General

Your February 5, 1988 memorandum requests the Department of Law to review HB 339 entitled "An act relating to theft of timber products." We have discussed the bill with your office staff, the Division of Forestry, the District Attorney's Office, and Representative Davis' office. Based upon those discussions and upon our own reading of HB 339, we offer the following comments.

## Background.

HB 339 attempts to address a serious problem faced by the Division of Forestry and many commercial firewood sellers in northern Alaska. The problem involves the unauthorized harvest of timber from state, borough, and private lands, and the commercial sale of that timber as firewood. Commercial firewood sellers who purchase timber from the state, the borough, and private landowners complain that they are being driven out of business by sellers who harvest firewood timber without the permission of, or payment to, the rightful landowner. The Division of Forestry informs us that it has received numerous such complaints from legitimate commercial firewood sellers.

The existing statutes and regulations provide inadequate authority to deal with this problem. At present, the Division of Forestry must prove that the firewood seller unlawfully obtained the timber from state land. Generally, this requires a division employee to catch the seller "in the act" of unlawfully harvesting the timber. The present laws do not regulate the sale of unlawfully harvested firewood, nor do the laws give the division authority to address the problems posed by unauthorized firewood harvests from non-state lands. All of the persons with whom we have discussed this problem believe it is serious and requires corrective legislation.

Analysis.

The present version of HB 339 presents several problems. Section 2 of the bill creates a new crime called "theft of timber products." This crime occurs when a person "with intent to deprive another person of property.... transports on a public highway or water of the state timber products ... without proof of ownership of the timber products." Section 1 of the bill amends the theft definition statute, AS 11.46.100, to include "theft of timber products" within the theft definition.

The first problem concerns the bill's application of the "theft" concept. The act of transporting timber products on a highway without proof of ownership does not constitute theft under traditional common law and statutory principles. The District Attorney's Office has questioned the wisdom of broadening the AS 11.46.100 theft definition beyond its traditional scope through the addition of this new offense. Stated more simply, the Department of Law is somewhat concerned that "theft of timber products", as defined in the bill, is not really "theft" as understood by courts, juries, law enforcement officers, and the public.

A second problem concerns the bill's broad coverage. The bill criminalizes transportation of "timber products" on a highway or waterway without proof of ownership. The bill does not separately define "timber products", but states that these products include "deciduous or coniferous trees, sawlogs, poles, cedar products, pulp logs, fuelwood, or other timber products."<sup>1</sup> An extremely wide variety of wood products could be construed as "timber products" under the bill. It therefore appears that the bill's prohibition goes far beyond what is reasonably necessary to address the problem of commercial sales of unlawfully harvested firewood.

Finally, the bill presents potential problems with enforcement and public perception. The Division of Forestry informs us that the bill would be enforced primarily through highway stops and spot checks of persons transporting "timber products." Once stopped, the person would have to produce "proof of ownership" of the timber products. Given the traditional Alaska notions of personal liberty, such an enforcement scheme may well prove unpopular and difficult to implement.

---

<sup>1</sup>Subsection (b) sets forth defenses to prosecution that somewhat limit the bill's application. However, these defenses  
(Footnote Continued)

Recommendation.

All of the persons with whom we have discussed this bill agree that legislation is needed to address the problems posed by the commercial sale of unlawfully harvested firewood. In theory, curative legislation could be directed at any of three distinct phases of the problem: the harvest phase; the transportation phase; or the commercial sale phase.

Because firewood may be unlawfully harvested from a variety of state, borough, and private lands, and because it is often impossible to catch a person "in the act" of harvesting firewood from these lands, we suggest that legislation should not focus on the harvest phase. Because of the potential enforcement and public perception problems discussed above, legislation directed at the transportation phase seems unacceptable. Also, it may be difficult to determine whether wood products in transit are intended for resale as commercial firewood.

The commercial sale phase offers the best opportunity for effective curative legislation. The sale phase is easily identifiable: Most commercial firewood sellers advertise in a prominent manner. The sale phase is also the convergence point for firewood unlawfully harvested from the various land categories. Finally, if legislation is directed at the sale phase, one can tailor the legislation to focus solely upon the sellers of commercial firewood. Properly tailored legislation can avoid the overbreadth problems, the enforcement problems, and the public perception problems discussed above.

At your office's request, we have prepared a suggested outline of legislation directed at the sale phase. A copy is attached. At Larry Ostrosky's suggestion, we have sent copies of this memorandum and the outline to legislative drafter Jack Chenoweth and to Representative Davis' office. If you have any questions or if we may be of further assistance, please do not hesitate to contact me.

JAM/mjf  
Attachment  
cc: Jack Chenoweth  
Representative Mike Davis

---

(Footnote Continued)  
are narrow in scope and, as defenses, must be raised by the accused after he is charged with the crime.

**DRAFT**

IN THE HOUSE

BY: \_\_\_\_\_

HOUSE BILL NO. \_\_\_\_\_

IN THE LEGISLATURE FOR THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of commercial firewood sales."

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

\* Section 1. AS 41.15 is amended by adding a new section to read:

Sec. 41.15.025. COMMERCIAL FIREWOOD SALES.

(a) A person, other than a federal, state, or local government entity, who intends to sell firewood must first obtain a commercial firewood sales permit from the Commissioner.

(b) Upon request, the Commissioner may issue a commercial firewood sales permit to a person who provides the Commissioner with adequate proof of ownership of the firewood to be sold. As used in this section, "proof of ownership" includes one or more of the following:

(1) A permit, contract, or other legal instrument issued by the owner of the land from which the firewood was harvested that specifies

(A) the date of execution of the legal instrument and the date of its termination, if any;

(B) the name and address of the permittee or contractor who harvested the firewood;

**DRAFT**

DRAFT

(C) each location, by legal description or legal address, from which the firewood was harvested;

(D) the estimated amount, volume, and species of the firewood harvested from each location; and

(E) any other information the Commissioner deems necessary to establish adequate proof of ownership.

(2) A bill of sale showing ownership of the firewood that specifies

(A) the date of execution of the bill of sale;

(B) the name and address of the person who sold the firewood to the commercial firewood sale permit applicant;

(C) the name and address of the commercial firewood sale permit applicant;

(D) the amount, volume, and species of the firewood transferred by the bill of sale;

(E) the location, by legal description or legal address, of the property from which the firewood was harvested.

(F) any other information the Commissioner deems necessary to establish adequate proof of ownership.

(c) Sales of firewood without a commercial firewood sales permit are prohibited. The Commissioner and the

DRAFT

**DRAFT**

persons designated in AS 41.15.950(a) shall have authority to enforce this section.

(d) The Commissioner may adopt regulations to implement and enforce this section. However, adoption of regulations is not a prerequisite to implementation and enforcement of the requirements set forth in this section.

(e) The Commissioner may include in a commercial firewood sales permit the terms and conditions the Commissioner deems necessary to carry out this section. The duration of a commercial firewood sales permit shall not exceed one year.

(f) A person who sells firewood without a valid commercial firewood sales permit, or who fails to comply with the permit's terms, or who fails to comply with a regulation adopted under this section, shall be liable to the state in a civil action for

(1) the reasonable costs incurred by the state in the detection, investigation, and attempted correction of the violation, including but not limited to reasonable court costs and attorney's fees; and

(2) the gross profits realized by the violator from the sale of firewood made in violation of this section, the permit, or the regulations;

**DRAFT**

**DRAFT**

(g) The superior court has jurisdiction to enjoin a violation of this section, a permit issued under this section, or a regulation adopted under this section. In actions brought under this section, temporary or preliminary relief may be obtained upon a showing of imminent threat of continued violation and probable success on the merits, without the necessity of demonstrating physical irreparable harm.

(h) A person who knowingly sells firewood without a valid commercial firewood sales permit, or who knowingly violates a permit term or a regulation adopted under this section, is guilty of a class B misdemeanor.

\*Section 2. AS 41.15.170 is amended by adding a new paragraph to read:

(5) "firewood" means natural logs or portions thereof suitable for use as a solid fuel with processing limited to cutting to length and splitting.

**DRAFT**

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act relating to theft of  
timber products  
Sponsor: Geahill DAVIS  
Requestor: \_\_\_\_\_

Agency Affected: Natural Resources  
BRU: Forest Management  
Components: Forest Management

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 FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: George K. Hollett Phone: 465-2491  
Division: Forestry Date: 2-29-88  
Approved by Commissioner: *Kenji Gorman* Date: 2-8-88  
Agency: Natural Resources

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

HB

340

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

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

*House Judiciary:*

*2-17-88*

*3-08-88*

(7)

# HOUSE COMMITTEE REPORT

Date referred: 1/22/88

FURTHER REFERRALS:

DATE: March 8, 1988

The Judiciary Committee has considered HB 340

"An Act granting immunity from civil liability for providing volunteer emergency services."

**RECOMMENDS:**

- replace with CS HB 340 (Jud)  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 inter.

**ATTACHES NEW FISCAL NOTE(s):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published Jan 22, 1988
- zero with analysis

**SIGNING DO PASS:**

*Laura A. Baker*  
*[Signature]*  
*[Signature]*  
*[Signature]*  
*[Signature]*  
*[Signature]*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SIGNING OTHER RECOMMENDATIONS:**

\_\_\_\_\_  
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 \_\_\_\_\_  
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 \_\_\_\_\_  
 \_\_\_\_\_

*[Signature]*  
 Chairman's signature

Original sponsors: Davis, Koponen,  
Ulmer, et al.

*Adopted*

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 340 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act granting certain volunteers immunity from  
7 civil liability for providing emergency services."

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

9 \* Section 1. AS 09.65.090 is amended by adding new subsections to read:

10 (c) A member of an organization that exists for the purpose of  
11 providing emergency services is not liable for civil damages for  
12 injury to a person that results from an act or omission in providing  
13 first aid, search, rescue, or other emergency services to the person,  
14 regardless of whether the member is under a preexisting duty to render  
15 assistance, if the member provided the service while acting as a  
16 volunteer member of the organization; in this paragraph, "volunteer"  
17 means a person who is paid not more than \$10 a day and a total of not  
18 more than \$500 a year, not including ski lift tickets and reimburse-  
19 ment for expenses actually incurred, for providing emergency services.

20 (d) The immunity provided under (c) of this section does not  
21 apply to civil damages that result from providing or attempting to  
22 provide any of the following advanced life support techniques unless  
23 the person who provided them was authorized by law to provide them:

- 24 (1) electric cardiac defibrillation;
- 25 (2) administration of antiarrhythmic agents;
- 26 (3) intravenous therapy;
- 27 (4) intramuscular therapy; or
- 28 (5) use of endotracheal intubation devices.

Original sponsors: Davis, Koponen,  
Ulmer, et al.

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 340 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

9 \* Section 1. AS 09.65.090 is amended by adding new subsections to read:

10 (c) An organization and its members are not liable for civil  
11 damages <sup>to an injured party</sup> as a result of an act or omission in providing first aid,  
12 search, rescue, or other emergency services, <sup>to that party</sup> regardless of whether the  
13 organization or members are under a preexisting duty to render assis-  
14 tance, if

15 [ (1) the organization exists for the purpose of providing  
16 the service rendered; and

17 (2) ] the member provided the service while acting as a  
18 volunteer member of the organization. <sup>(1)</sup> in this paragraph, "volunteer"  
19 means a person who <sup>receives cash payment of</sup> [is paid] not more than \$10 a day and a total of not  
20 more than \$500 a year, not including reimbursement for expenses ac-  
21 tually incurred, for providing emergency services. <sup>(2)</sup> "organization" means

22 (d) The immunity provided under (c) of this section does not  
23 apply to civil damages that result from providing or attempting to  
24 provide any of the following advanced life support techniques unless  
25 the person who provided them was authorized by law to provide them:

- 26 (1) electric cardiac defibrillation;  
27 (2) administration of antiarrhythmic agents;  
28 (3) intravenous therapy;  
29 (4) intramuscular therapy; or

Original sponsors: Davis, Koponen,  
Ulmer, et al.

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE HOUSE

2

CS FOR HOUSE BILL NO. 340 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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

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

9 \* Section 1. AS 09.65.090 is amended by adding a new subsection to  
10 read:

11 (c) An organization and its members are not liable for civil  
12 damages as a result of an act or omission in providing first aid,  
13 search, rescue, or other emergency services, regardless of whether the  
14 organization or members are under a preexisting duty to render assis-  
15 tance, if

16 (1) the organization exists for the purpose of providing  
17 the service rendered; and

18 (2) the member provided the service while acting as a  
19 volunteer member of the organization; in this paragraph, "volunteer"  
20 means a person who receives financial consideration of not more than  
21 \$10 a day and a total of not more than \$500 a year, not including  
22 reimbursement for expenses actually incurred, for providing emergency  
23 services.

Issues:

Preexisting duty:

definition volunteer:

financial consideration

organization & members

EMS

AMENDMENT

by BARNES

Offered in the HOUSE

To: CSHB 340 (L&C)

Page 1, Line 13:

After "services," insert "not to include advanced life support procedures as defined in AS 18.08.090" and before "regardless".

option 1

"in this paragraph "organization" means a non-governmental entity incorporated under AS 10.20.005 or exempt from taxation under US 26.501.(c) (3) and (4), excluding hospitals.



# Alaska State Legislature

Representative Mike Davis

District 19

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Interim Office:  
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TO: All Representatives  
FROM: Rep. Mike Davis  
DATE: March 17, 1988  
RE: CSHB 340, granting immunity from civil liability for providing volunteer emergency services.

CSHB 340 is on the House calendar today. This bill amends the Good Samaritan Act to protect volunteers in first aid and rescue organizations from 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 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.

*Lee Lee v State 1971*

Original sponsors: Davis, Koponen,  
Ulmer, et al.

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 CS FOR HOUSE BILL NO. 340 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL

6 For an Act entitled: "An Act granting certain volunteers immunity from  
7 civil liability for providing emergency services."

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

9 \* Section 1. AS 09.65.090 is amended by adding new subsections to read:

10 (c) A member of an organization that exists for the purpose of  
11 providing emergency services is not liable for civil damages for  
12 injury to a person that results from an act or omission in providing  
13 first aid, search, rescue, or other emergency services to the person,  
14 regardless of whether the member is under a preexisting duty to render  
15 assistance, if the member provided the service while acting as a  
16 volunteer member of the organization; in this paragraph, "volunteer"  
17 means a person who is paid not more than \$10 a day and a total of not  
18 more than \$500 a year, not including ski lift tickets and reimburse-  
19 ment for expenses actually incurred, for providing emergency services.

20 (d) The immunity provided under (c) of this section does not  
21 apply to civil damages that result from providing or attempting to  
22 provide any of the following advanced life support techniques unless  
23 the person who provided them was authorized by law to provide them:

- 24 (1) electric cardiac defibrillation;  
25 (2) administration of antiarrhythmic agents;  
26 (3) intravenous therapy;  
27 (4) intramuscular therapy; or  
28 (5) use of endotracheal intubation devices.

LETTER OF INTENT

It is the intent of the House Judiciary Committee that ski lift tickets not be considered payment of volunteers for the purposes of AS 09.65.090.

5-1495L  
Hein  
2/26/88

Original sponsors: Davis, Koponen,  
Ulmer, et al.

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 340 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

9 \* Section 1. AS 09.65.090 is amended by adding new subsections to read:

10 (c) An organization and its members are not liable for civil  
11 damages as a result of an act or omission in providing first aid.  
12 search, rescue, or other emergency services, regardless of whether the  
13 organization or members are under a preexisting duty to render assis-  
14 tance, if

15 (1) the organization exists for the purpose of providing  
16 the service rendered; and

17 (2) the member provided the service while acting as a  
18 volunteer member of the organization; in this paragraph, "volunteer"  
19 means a person who is paid not more than \$10 a day and a total of not  
20 more than \$500 a year, not including reimbursement for expenses ac-  
21 tually incurred, for providing emergency services.

22 (d) The immunity provided under (c) of this section does not  
23 apply to civil damages that result from providing or attempting to  
24 provide any of the following advanced life support techniques unless  
25 the person who provided them was authorized by law to provide them:

26 (1) electric cardiac defibrillation;

27 (2) administration of antiarrhythmic agents;

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1 (5) use of endotracheal intubation devices.  
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MEMORANDUM INRE: CSHB 340 (L&C)

TO: RAMONA

FROM: ROGER

This bill deals with volunteer emergency service organizations and civil liability. This Act expands AS 09.65.090 to include such organizations as ski patrols, search and rescue teams and other such efforts. This legislation would enable volunteer members of organizations described hereinabove to participate in these worthwhile and oftentimes lifesaving operations without fear of civil suit.

In regard to Page 1, Line 13, some concern has been expressed by Dept of H & SS that this "other emergency services" provision does not include advanced life support services such as defibrillation, drug therapy, intravenous therapy and advanced airways treatment that should only be provided by trained and licensed persons.

It is likely that the enactment of this legislation would increase the number of emergency service volunteers and would decrease the rate of attrition among emergency service volunteers. This is good legislation, and would allay the fears of some of your constituents.

Appellant did object to the borrowed servant instruction given below on the general ground that it was not a proper statement of the law. However, such a general objection is particularly noninformative to the trial judge who is called upon to instruct on the law. It simply does not meet the requirements of Civil Rule 51(a) which provides in part:

No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, *stating distinctly* the matter to which he objects and the grounds of his objection. (emphasis added)

We have construed this section to require specific objection in criminal cases before claimed error in the instructions will be considered on appeal.<sup>2</sup> There is no compelling reason to relax this requirement in civil litigation where there are even greater opportunities to refine the issues before trial.

For the Rule 51(a) procedure to function properly, a substantial burden must be imposed on counsel to present specific objections. Otherwise, the trial judge will be unable to adequately review the objection and consider the argument made in formulating jury instructions.

Under the provisions of the Second Restatement of Agency,<sup>3</sup> the instruction given was not such plain error as should lead to this court's intervention in the absence of a proper objection at trial. I would, therefore, affirm the judgment below.

But if you should find that Dan Walsh was negligent, and that his negligence was a proximate cause of injury to plaintiff (and that the evidence does not support the defense of contributory negligence) then you must decide whether at the time of the accident Dan Walsh was acting within the scope of his employment.

If you find either that Dan Walsh was not then the agent (or employee) of the defendant, or, if the agent (or employee), that he was not acting within the scope of his employment, then your verdict must be in favor of the defendant; but if you find that Dan Walsh was acting as

Elizabeth Llewellyn LEE, a minor, by  
through her next friend, Sallie New-  
man Lee, natural mother,

v.

STATE of Alaska and Frank Johnson,  
State Trooper, Appellees.

No. 1395.

Supreme Court of Alaska.

Nov. 30, 1971.

Plaintiff who was shot by state trooper while he was rescuing her after lioness grabbed her arm in its teeth and held her. Bars of cage brought suit against operator of amusement concession, state trooper of the state. The Superior Court, Third Judicial District, Edward V. Davis, Jr., entered judgment for state officer and state trooper and plaintiff appealed. The Supreme Court, Boney, C. J., held that state trooper was under duty to go to aid of plaintiff minor and Good Samaritan Statute did not apply and jury should have been instructed to return a verdict for plaintiff and against defendant state trooper if defendant state trooper was found to have been ordinarily negligent. Plaintiff further held that evidence that plaintiff minor was shot by state trooper, an expert marksman, created question for jury whether state trooper had been ordinarily negligent.

Judgment reversed and case remanded for new trial.

Erwin, J., not participating.

agent (or employee) of the defendant and within the scope of his employment and if you will have found in plaintiff's favor on the other issues mentioned in this instruction then you [sic] verdict must be for the plaintiff.

2. Pope v. State, 478 P.2d 801, 805-808 (Alaska 1970), reh. denied 480 P.2d 687 (Alaska 1971). See also, Bakken v. State, Op. No. 728, 489 P.2d 120, at 123 (Alaska, 1971) (Erwin, J., dissenting).

3. Restatement (Second) of Agency § 227 (1958).

## 1. Negligence ⇨12

Purpose of Good Samaritan Statute is to induce voluntary rescue by removing fear of potential liability which acts as an impediment to such rescue and it is directed at persons who are not under some preexisting duty to rescue. AS 09.65.090.

## 2. States ⇨79, 112

State trooper was under duty to go to aid of plaintiff minor whose arm was grabbed by lioness in its teeth and who was held by lioness to bars of cage, and Good Samaritan Statute did not apply and jury should have been instructed to return a verdict for plaintiff and against defendant state trooper who shot plaintiff during rescue and defendant state if they found state trooper to have been ordinarily negligent. AS 09.65.090, 18.65.080, 18.65.110, 44.41.020.

## 3. Negligence ⇨136(14)

Evidence that plaintiff minor was shot by state trooper, an expert marksman, who was rescuing her after lioness had grabbed her arm in its teeth and held her to bars of cage created question for jury whether state trooper had been ordinarily negligent.

## 4. Appeal and Error ⇨1194(2)

Where plaintiff suffered two distinct sets of injuries of those relating to bite of lioness and those caused by errant gunshot by state trooper, her rescuer, and under instruction jury could have awarded damages against operator of amusement concession for both sets of injuries and jury's verdict for officer and state had to be reversed on appeal, on remand, if officer and state were held liable and damages were awarded against them, they should be entitled to credit for that portion of \$15,000 paid by operator of amusement concession which related to gunshot wound but were not entitled to credit for that portion relating to the bite.

## 5. Trial ⇨335

Where plaintiff, who suffered injuries relating to bite of lioness and to errant gunshot by state trooper, her rescuer, brought suit against operator of amusement concession and against state and state

trooper and recovered against operator of amusement concession and judgment in favor of state trooper and state had to be reversed on appeal, neither plaintiff nor defendants waived their rights to benefits of apportionment of damages by failure to request special interrogatories requiring jury to apportion damages awarded against operator of amusement concession.

## 6. Appeal and Error ⇨1194(2)

Where plaintiff, who suffered injuries relating to bite of lioness and to errant gunshot by state trooper, her rescuer, recovered against operator of amusement concession and judgment in favor of state and state trooper had to be reversed on appeal, apportionment of damages awarded against operator of amusement concession was necessary and had to be made on remand on evidence presented to the trial court and plaintiff would have to prove by preponderance of evidence to what extent damages awarded were compensation for the bite.

## 7. Release ⇨25

Full compensation amounts to satisfaction and should be carefully distinguished from a release; two factors properly used to distinguish a release from a satisfaction are: intent of parties and extent of compensation.

## 8. Release ⇨55

Law presumes a release to be a satisfaction unless plaintiff can prove otherwise.

Ernest Z. Rehbock and J. L. McCarrey, Jr., Anchorage, for appellant.

George N. Hayes and Daniel A. Moore, Jr., of Delaney, Wiles, Moore, Hayes & Reitman, Anchorage, for appellees.

Before BONEY, C. J., and DIMOND, RABINOWITZ and CONNOR, JJ.

## OPINION

BONEY, Chief Justice.

The plaintiff-appellant appeals from a judgment for the defendants-appellees.

On August 19, 1967, the plaintiff, then a child of twelve, and a thirteen year old friend attended an amusement park in Anchorage, Alaska. They stopped to pet a lioness kept in a cage by the operator of the amusement concession, Alaska Amusements, Inc. The beast thereupon grabbed the plaintiff's arm in its teeth and held her to the bars of the cage. The plaintiff's companion tried unsuccessfully to secure her release by beating the lioness over the head with a pipe, and then ran to a nearby State Trooper office for help. Defendant Johnson, an Alaska State Trooper, was thus brought to the scene. Johnson placed his arm around the plaintiff, cocked his gun, and shot the lioness in the head. He then cocked his gun again in preparation for a second shot. However, his first shot had found its mark. The lioness dropped dead releasing the plaintiff's arm. Apparently recoiling from this release, the plaintiff and Officer Johnson fell to the ground. His gun went off wounding the plaintiff in her right thigh.

On July 10, 1968, the plaintiff filed suit against Alaska Amusements, Inc., Officer Johnson, and the State of Alaska. The case was tried by a jury, which served in only an advisory capacity as to the state.<sup>1</sup> The plaintiff was granted a jury verdict against Alaska Amusements, Inc., and a judgment has been entered for \$15,000. No appeal has been taken from that judgment and according to counsel for the plaintiff, it has been satisfied. The jury returned a verdict for Officer Johnson and the state. Judgment thereon was entered for Officer Johnson. The court adopted the jury verdict for the state and accordingly entered judgment against the plaintiff.

1. AS 09.50.290 requires that tort claims against the state be tried by the court without a jury.
2. W. Prosser, *Law of Torts* § 58, at 340 (4th ed. 1971).

The central issue in this appeal is whether, as the trial court ruled, the Alaska Good Samaritan Statute, AS 09.65.090, shields the defendants from liability for ordinary negligence. The plaintiff argues that the court below improperly applied that statute by instructing the jury that:

AS 09.65.090 reads as follows:

(a) A person who, without expecting compensation, renders care to an injured or sick person, who appears to be in immediate need of aid is not liable for civil damages as a result of an act or omission in rendering emergency care, or as a result of an act or failure to act to provide or arrange for further medical treatment or care for the injured person.

(b) This section shall not preclude liability for civil damages as a result of gross negligence or intentional misconduct. Gross negligence means reckless, wilful, or wanton misconduct.

Unless you find that Frank Johnson acted in a grossly negligent manner as the statute defines "gross negligence" in the rescue efforts he made to extricate Elizabeth Lee, or unless you find that he intentionally shot her, you must find for Frank Johnson and against the plaintiffs.

[1] At common law there is no duty to rescue. "[T]he 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 \* \* \*." <sup>2</sup> 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.<sup>3</sup> However, once rescue operations have begun, the rescuer is held to a duty of due care.<sup>4</sup> Professor Prosser has pointed out that "[t]he result of all this is that the good Samaritan who tries to help may find him-

3. *Id.* 341-343.

4. Restatement (Second) of Torts § 323 (1965); W. Prosser, *Law of Torts* § 58, at 343 (4th ed. 1971).

self mulcted in damages, while the priest and the Levite who pass by on the other side go on their cheerful way rejoicing."<sup>5</sup> AS 09.65.090 and similar statutes in some forty-two states and the District of Columbia are in response to this problem.<sup>6</sup> Their purpose is to induce voluntary rescue by removing the fear of potential liability which acts as an impediment to such rescue. Thus they are directed at persons who are not under some pre-existing duty to rescue.<sup>7</sup>

[2] We feel, therefore, that the applicability of AS 09.65.090 to Officer Johnson depends upon whether or not he was under a duty to rescue the plaintiff. If he was, then he was not a member of that group of persons to whom the statute is directed and he should be denied its protection. No case has been found which considers the applicability of a Good Samaritan Act to a policeman.<sup>8</sup>

In discussing whether or not Officer Johnson had a duty to assist the plaintiff, both parties have directed our attention to provisions of Alaska law. The plaintiff notes that state troopers are employees of the Department of Public Safety and then cites AS 44.41.020:

The Department of Public Safety shall administer functions relative to the protection of life and property.

The defendants argue that the duties of police officers are statutory, and then refer to AS 18.65.080:

The Department of Public Safety and each member of the state troopers is charged with the enforcement of all criminal laws of the state, and has the power of a peace officer of the state or a municipality and those powers usu-

ally and customarily exercised by peace officers. Each member of the state troopers may prevent crime, pursue and apprehend offenders, obtain legal evidence, institute criminal proceedings, execute any lawful warrant or order of arrest, make an arrest without warrant for a violation of law committed in his presence, and may cooperate with other law enforcement agencies in detecting crime, apprehending criminals, and preserving law and order in the state.

The defendants also cite AS 18.65.110:

Members of the state troopers may not interfere with the rights or property of any person except in a lawful manner necessary for the prevention of crime or the capture and arrest of an offender.

The plaintiff seeks to have this court read AS 44.41.020 to indicate that the duties of the police are extremely broad—and thereby encompass actions such as those of Officer Johnson. The defendants see the statutes they cite as precise delineations of and limitations on the powers and duties of the police. We feel that a holding that police officers have no duty to rescue would not comport with public conceptions of their role. In *Wood v. Morris*<sup>9</sup> the court felt that the applicability of the Georgia Guest Statute turned, in part, on whether the policeman transporting an injured girl in his car had an obligation to care for her. The court said:

Whether or not the defendant policeman had any statutory obligation to care for the plaintiff, we think that there was an obligation in fact arising out of the customary role played by police officers in such emergencies, pursuant to

5. W. Prosser, *Law of Torts* § 56, at 344 (4th ed. 1971).

6. The Good Samaritan Statutes have not gone uncriticized. Note, *Good Samaritans and Liability for Medical Malpractice*, 64 *Colum.L.Rev.* 1301 (1964); Note, *California Good Samaritan Legislation: Exemptions from Civil Liability While Rendering Emergency Medical Aid*, 51 *Calif.L.Rev.* 816 (1963).

7. A rescuer under a pre-existing duty to rescue would not need the added inducement of immunity from civil liability for his ordinary negligence.

8. The two-page discussion in *Annot.*, 39 *A.L.R.3d* 222 (1971), is indicative of the dearth of material on the subject of "Construction of 'Good Samaritan' Statute Excusing from Civil Liability One Rendering Care in Emergency."

9. 109 *Ga.App.* 148, 135 *S.E.2d* 484 (1964).

their general responsibility of protecting the lives and welfare of citizens at large.<sup>10</sup>

We agree. We hold that Officer Johnson was under a duty to go to the aid of the plaintiff. Therefore, we conclude that it was error for the trial court to apply the Alaska Good Samaritan Statute. The jury should have been instructed to return a verdict for the plaintiff and against the defendants<sup>11</sup> if they found Officer Johnson to be *ordinarily* negligent. As this question has not been presented to a jury, the case should properly be remanded for a new trial.

[3] The defendants offer two arguments against a remand for a new trial. The defendants contend first that there is insufficient evidence for a jury to find that Officer Johnson was *ordinarily* negligent. The jury considered only whether he had been grossly negligent. Whether Officer Johnson acted reasonably is a jury question.<sup>12</sup> A young girl was shot by a rescuer who was an expert marksman; it is apparent that there is sufficient evidence for a jury to find that he had been *ordinarily* negligent.

The defendants also contend that this case is moot. They argue that the plaintiff, by virtue of her judgment against Alaska Amusements, has been compensated for her gunshot wound. The defendants maintain that an additional award for ordinary negligence against them on remand would result in a double recovery. The argument relies primarily on Instruction 21 which reads as follows:

10. 135 S.E.2d at 487.

11. The state's liability if Officer Johnson is held liable, seems to have been conceded. No argument on the issue has been offered; the liability would flow from the doctrine of respondeat superior.

12. *Cf. Mallonee v. Finch*, 413 P.2d 159, 161 (Alaska 1966); *Crawford v. Rogers*, 406 P.2d 189, 194 (Alaska 1965); *McCoy v. Alaska Brick Co.*, 389 P.2d 1009-1010 (Alaska 1964).

13. *See, e. g., Laurenzi v. Vranizan*, 25 Cal. 2d 808, 155 P.2d 633, 637 (1945); *W.*

If you find that Alaska Amusements, Inc. was negligent toward the plaintiff, Elizabeth Lee, and that its negligence was the proximate cause of her having been bitten by the lion, any further injuries suffered by her as a result of the gunshot wound are also part and parcel of the original negligence of Alaska Amusements, Inc., provided you find that Alaska Amusements, Inc.'s negligence placed Elizabeth Lee in a position of peril that included possible danger to her attendant upon a rescue operation. It is not necessary that Alaska Amusements, Inc., could foresee the exact nature and kind of further danger that might occur during a rescue operation. It is only necessary that reasonable men, in the position of Alaska Amusements, Inc., could foresee the possibility of danger to another during any rescue operation that might come about as the result of the method and manner of keeping the lion.

We agree with the defendants that, to the extent the plaintiff has already been compensated for certain of her injuries, she should not, on remand, be allowed a second recovery for those injuries.<sup>13</sup> Under Instruction 21 the damages awarded by the jury could have included compensation for the gunshot wound.<sup>14</sup> However, it does not follow that the case is mooted and a remand precluded. At the very least, costs and attorney's fees to the prevailing party or parties are in issue between the plaintiff and these defendants.<sup>15</sup>

Prosser, *Law of Torts* § 48, at 300 (4th ed. 1971):

When payment of the judgment in full is made by the judgment debtor, there is no doubt that the plaintiff is barred from a further action against another who is liable for the same damages, or from enforcement of another judgment against him. (Footnotes omitted)

14. The gunshot wound was the only injury the plaintiff suffered from Officer Johnson upon which she has sued.

15. Pursuant to Alaska R.Civ.P. 82(a), the trial court attorneys' fees and costs

[4] The plaintiff suffered two distinct sets of injuries: those relating to the bite of the lioness and those caused by the errant gunshot. Under Instruction 21 the jury could have awarded damages against Alaska Amusements, Inc., for both sets of injuries. On remand, if the defendants are held liable and damages are awarded against them, then they should be entitled to a credit for that portion of the \$15,000.00 paid by Alaska Amusements, Inc., which related to the gunshot wound.<sup>16</sup> They are not entitled, however, to a credit for that portion relating to the bite.

The damages awarded against Alaska Amusements, Inc., were not apportioned by the jury. A lump sum award was returned in accordance with Instruction 25, in which, in relevant part, the judge instructed the jury that:

If you should find for the plaintiff on the question of liability you will then determine as to the amount she is entitled to recover from the evidence and under these instructions. If you find against only one defendant then that amount will be entered in the verdict form prepared for the plaintiff and against that defendant. If you find in favor of plaintiff as against both defendants [Alaska Amusements, Inc., and Officer Johnson] then you should divide the total amount of damages between the two defendants as you may determine proper from the evi-

dence in this case. Enter the amount so determined as to each defendant on the appropriate verdict.<sup>17</sup>

[5] One easy solution to this difficult problem would be to hold that either the plaintiff or the defendants have waived their right to the benefits of apportionment by their failure to request special interrogatories requiring the jury to apportion the damages awarded against Alaska Amusements, Inc.<sup>18</sup> Such a holding would be unwarranted. To impose the burden of requesting special interrogatories on either party because that party could thereby benefit by protecting its rights would be to hold that the burdened party, but not the other party, should have foreseen the present difficulty. There is no reason to distinguish between the parties in this regard.

Another easy solution would be to assume that the full amount awarded against Alaska Amusements, Inc., was compensation either for the bite alone or for the gunshot wound alone. But we cannot assume that the jury awarded no damages for the bite of the lioness since the primary negligence of Alaska Amusements, Inc., was in the keeping of the beast. Instruction 21 precludes the contrary assumption that the full \$15,000.00 was awarded as compensation for the bite.

[6-8] Therefore, an apportionment of the damages awarded against Alaska Amusements, Inc., is necessary.<sup>19</sup> The ap-

against the plaintiff in the amount of \$2,620.60, \$1,310.30 to each of these two defendants.

16. Cf. W. Prosser, *Law of Torts* § 48 at 300 (4th ed. 1971):

"[E]ven a partial satisfaction of one judgment will not prevent obtaining or enforcing another, although it is everywhere agreed that the amount received must be credited pro tanto against the amount to be collected. (Footnote omitted.)

17. The jury could determine damages only as to Alaska Amusements, Inc., and Officer Johnson. The state's liability and damages against the state were to be determined by the judge. AS 09.50.200.

18. Alaska Amusements, Inc., was the only defendant potentially liable for both sets of injuries.

19. The situation is analogous to a release in which the plaintiff covenants with one joint tortfeasor not to sue. By accepting payment from Alaska Amusements, Inc., of a judgment which could have included compensation for the gunshot wound, the plaintiff has released Alaska Amusements, Inc., from any further liability. But acceptance of that payment does not necessarily indicate that the plaintiff has been fully compensated for the gunshot wound. Full compensation amounts to satisfaction and should be carefully distinguished from a release.

portionment must be made, on remand, on evidence presented to the trial court.<sup>20</sup> In apportioning those damages, the trial court will not be asked to determine what transpired in the jury room at the first trial. Rather, the plaintiff will have to prove, by a preponderance of the evidence, to what extent the damages awarded against Alaska Amusements, Inc., were compensation for the bite. If the plaintiff establishes that the bite-related damages should have been \$15,000.00 or more, then the defendants will receive no credit; but if the plaintiff can only establish that the bite-related damages were of an amount less than \$15,000.00, then the difference between that amount and \$15,000.00 will be credited against any damages awarded against the defendants.<sup>21</sup> The burden of proving an apportionment falls upon the plaintiff because, unless she can demonstrate to the contrary, her judgment is presumed to constitute full compensation.<sup>22</sup>

On remand, then, the procedure will be as follows. A new trial will be required as

The two factors properly used to distinguish a release from a satisfaction are the intent of the parties and the extent of compensation. 1 F. Harper & F. James, *The Law of Torts* § 10.01, at 711-12 (1956). Here their intent is nonoperative in that the "release" was by way of judgment, not contract; and the extent of compensation is what is to be determined on remand when the award against Alaska Amusements will be apportioned. *Of. Aldridge v. Morris*, 337 Ill.App. 369, 86 N.E.2d 143, 146-49 (Ill.App.1949); *Laurenzi v. Vranizan*, 25 Cal.2d 806, 155 P. 2d 633, 637 (1945).

20. As to the state, the apportionment will have to be made by the judge. AS 00-50.290. As to Officer Johnson, unless he and the plaintiff agree that the judge may apportion the damages and thereby determine the extent of the credit, his demand for a jury trial will still be in effect and the issue of apportionment will have to be put before the jury on re-

to both liability and damages. The jury will determine Officer Johnson's liability; the judge will determine the state's liability. If the defendants are found liable, then the jury will assess damages against Officer Johnson and the judge will have to make an independent finding as to damages against the state. The judge will also have to determine what portion, if any, of the \$15,000.00 awarded against Alaska Amusements, Inc., will be allowed as a credit against those damages. In like manner, the jury will determine what portion, if any, of that \$15,000.00 will be allowed as a credit against the damages awarded against Officer Johnson. In this way, there can be no double recovery by the plaintiff for her injuries.

We conclude that the case is not moot and that a remand for a new trial is appropriate.

The judgment is reversed and the case is remanded for a new trial.

ERWIN, J., not participating.

mand. See Alaska Constitution Art. I § 16; Alaska R.Civ.P. 38.

21. Thus, for example, if it is determined that \$10,000.00 of the \$15,000.00 related to the bite, then a \$5,000.00 credit will be allowed against any damages awarded against these defendants.

22. To continue the analogy discussed in note 19, *supra*, the law presumes a release to be a satisfaction unless the plaintiff can prove otherwise. *Ellis v. Essau*, 50 Wis. 138, 6 N.W. 518, 520 (1880). Here the amount paid by Alaska Amusements, Inc., for the gunshot wound is uncertain. Under the analogy, this amount is analogous to the sum paid for the release. In showing the release not to be a satisfaction, the plaintiff must prove both the extent of her damages (i. e. what amount would be a satisfaction) and the value of the release. Only if both figures are before the trier of fact can the two be compared to determine that the release does not amount to a satisfaction.

clear that the lawyer-as-witness disciplinary rules would not preclude Mr. McGee and his firm from continued representation of plaintiff. Rule 3.7(b) provides that,

"A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 [pertaining to conflict of interest with present clients] or Rule 1.9 [pertaining to conflicts with former clients]." See 52 U.S.L.W. 19 (Aug. 16, 1983).

See *American Cable*, supra at 1196 n. 2.

The court is convinced that defendant has not sustained its burden to show that Andrea Ramsay's testimony will in some manner taint the trial or the legal system. See *Greenebaum-Mountain Mtg.*, supra, at 1353-54. Defendant has shown no prejudice to itself nor any other reason why the trial cannot be conducted in fairness to all if Ms. Ramsay testifies. See *Greenebaum*, supra, at 1354 (main purpose of Canon 5 is to avoid prejudice at trial). As stated in *American Cable*, supra at 1196:

The rules prevent situations in which others might think the lawyer, as witness, is distorting the truth for his client or is enhancing his own credibility as advocate by virtue of having taken an oath as witness, as well as the uneasy situation that arises when an opposing counsel must impeach on cross-examination another lawyer-adversary. *Id.*

The rationale behind Canon 5, as applied to the facts of this litigation, does not persuade the court that disqualification of Mr. McGee and the firm of Williamson, McGee, Griggs and DeMoss is required.

The court finds no factual support for defendant's claim that Disciplinary Rule 5-102(B) compels disqualification, and declines to embrace defendant's "appearance of impropriety" argument under Disciplinary Rule 9-101. Nor does the court find it necessary to determine whether Andrea Ramsay has or has not acted as one of the counsel of record for plaintiff in light her assurance to this court that she is not representing plaintiff in this action and will not be involved in any trial of this matter as an attorney. (Dk. # 35, p. 3.)

IT IS THEREFORE ORDERED that defendant's motion for disqualification of plaintiff's counsel is granted to the extent that Andrea Ramsay shall not participate as an attorney in the practice of her profession in the future course of this litigation.

IT IS FURTHER ORDERED that defendant's motion for disqualification of plaintiff's counsel is denied to the extent that it seeks to disqualify John F. McGee and the law firm of Williamson, McGee, Griggs and DeMoss from further participation in this lawsuit.



Jacque BUNTING, as Personal  
Representative of the Estate  
of Harold Dierich, Plaintiff,

v.

UNITED STATES of America,  
Defendant.

No. A85-665 Civil.

United States District Court,  
D. Alaska.

July 2, 1987.

In action brought against Coast Guard pursuant to the Federal Tort Claims Act, both plaintiff and Government moved for summary judgment. The District Court, von der Heydt, J., held that: (1) state tort law determines standard of care applicable to Coast Guard's actions; (2) under Alaska's "good Samaritan" statute, partial immunity applies only to persons who had no preexisting duty to render aid; (3) question of whether Coast Guard had duty to render aid is not question of state law, as state law controls only question of whether Coast Guard may be liable if such duty existed but was carried out in negligent manner; (4) plaintiff could not maintain ordinary negligence claim against Coast Guard, which had no legal obligation to go

to pilot's aid, but could maintain action based upon gross negligence or reckless or intentional misconduct.

Ordered accordingly.

1. United States  $\Rightarrow$  78(14)

In order to determine standard of care applicable to Coast Guard's actions in negligence action against Government pursuant to Tort Claims Act, court must look to state tort law. 28 U.S.C.A. §§ 1346, 2674.

2. Negligence  $\Rightarrow$  8

Alaska's "good Samaritan" statute provides partial immunity only to persons who had no preexisting duty to render aid to injured, ill, or emotionally distraught person. AS 09.65.090.

3. United States  $\Rightarrow$  78(14)

In action against Coast Guard pursuant to Federal Tort Claims Act, question of whether Coast Guard had duty to render aid is not question of state law; state law controlled only question of whether Coast Guard may be liable if such duty existed but was carried out in negligent manner. 28 U.S.C.A. §§ 1346, 2671 et seq.

4. United States  $\Rightarrow$  78(7)

Pursuant to federal law, Coast Guard has no legal duty to render aid to persons in distress. 14 U.S.C.A. §§ 2, 88.

5. United States  $\Rightarrow$  78(9)

Tort action against Coast Guard alleging negligence in rescue of pilot could not be maintained pursuant to Alaska's "good Samaritan" statute, where Coast Guard had no legal obligation to go to pilot's aid; however, Coast Guard would be liable for gross negligence or reckless or intentional misconduct. 28 U.S.C.A. § 2674.

Lewis F. Gordon, Bailly & Mason, Anchorage, Alaska, for plaintiff.

Mark A. Rosenbaum, Asst. U.S. Atty., Anchorage, Alaska, for defendant.

1. Because no maritime tort has been alleged, this action is unlike many suits arising out of Coast Guard rescues. It is not covered by the Suits in Admiralty Act, 46 U.S.C. § 741 et seq.

MEMORANDUM AND ORDER

VON DER HEYDT, District Judge.

This matter is before the court on the parties' cross-motions for partial summary judgment. Both parties seek a determination of the standard of care to be applied in this case. The facts relevant to this determination are not in dispute.

Harold Dierich, Jr., plaintiff's deceased was the pilot of a plane that crashed in Narrow Strait, near Kodiak, on July 21, 1984. A Coast Guard helicopter rescued him about an hour and a half later and carried him to the Coast Guard dispensary at Kodiak. The dispensary is a facility that exists primarily for the treatment of Coast Guard personnel. Upon arrival at the dispensary Mr. Dierich appeared to be suffering from severe hypothermia. After about ninety minutes of treatment at the dispensary, he was transported by ambulance to Kodiak Island Hospital. He went into cardiac arrest in the ambulance and subsequently died at the hospital.

Count I of the Second Amended Complaint alleges that the treatment at the dispensary was negligent, and that the handling of transport to a more capable facility was likewise negligent. Count II alleges that these operations were handled in a grossly negligent manner. The alleged torts took place on land. This action has been brought under the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq.

[1] The Tort Claims Act renders the government liable "in the same manner and to the same extent as a private individual under like circumstances." *Id.* § 2674. The court therefore must look to state tort law to determine the standard of care applicable to the Coast Guard's actions.

[2] At common law there normally was no duty to render emergency aid, but one who voluntarily undertook such aid was held to a standard of ordinary care. To reduce the risk of liability for such a

(*cf.* 28 U.S.C. § 2680(d)), and the federal common law of maritime torts does not apply. See *Patentas v. United States*, 687 F.2d 707, 713 (3d Cir.1982).

Cite as 662 F.Supp. 971 (D.Alaska 1987)

unteer, Alaska has adopted a "good Samaritan" statute, A.S. 09.65.090, which reads:

**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.

The Supreme Court of Alaska has held that the partial immunity granted by this statute applies only to persons who had no pre-existing duty to render aid. *Lee v. State*, 490 P.2d 1206, 1209 (Alaska 1971) (good Samaritan statute did not shield police officer who shot child while rescuing child from lioness, because officer had legal duty to attempt rescue), *overruled on other grounds*, 545 P.2d 165 (Alaska 1976).

The chief question presented by this case is whether the Coast Guard had a pre-existing duty to go to Mr. Dierich's aid. Plaintiff relies again on *Lee v. State*, analogizing the position of the Coast Guard to that of the policeman in *Lee*. The Alaska Supreme Court found that the policeman had a state common law duty to rescue growing out of custom and public expectation. *Id.* at 1209-10. The court also suggested that such a duty might be drawn from certain state statutes relating to the Department of Public Safety. *Id.*

[3,4] Reliance on *Lee* is misplaced in this context. The question whether the Coast Guard has a duty to render aid is not a question of state law; state law controls only the question whether the Coast Guard may be liable if such a duty exists but has been carried out in a negligent manner. Federal statutes, notably 14 U.S.C. §§ 2 and 88, establish the activities that the Coast Guard is required to perform. While the issue has not been decided in this circuit, out-of-circuit authority uniformly

holds that the Coast Guard has no legal duty to render aid to persons in distress. *E.g., Frank v. United States*, 250 F.2d 178 (3d Cir.1957), *cert. denied*, 356 U.S. 962, 78 S.Ct. 1000, 2 L.Ed.2d 1069 (1958); *Kurowsky v. United States*, 660 F.Supp. 442, 1987 A.M.C. 781, 792 (S.D.N.Y.1986); *Daley v. United States*, 499 F.Supp. 1005, 1009 (D.Mass.1980); *Mazullo v. United States*, 1980 A.M.C. 1038, 1044-47 (D.D.C.1979) (citing many cases). This court agrees.

Plaintiff observes that many of these cases have gone on to hold that if the Coast Guard does elect to undertake a rescue, its subsequent conduct will, at least in certain circumstances, be judged by a standard of ordinary care. *E.g., Kurowsky, supra; Daley, supra*, 499 F.Supp. at 1010; *United States v. DeVane*, 306 F.2d 182, 186 (5th Cir.1962). But these cases were decided under traditional common law principles, in the absence of a protective good Samaritan statute.

[5] By statute, Alaska has partially immunized the conduct of one who, voluntarily and without prior obligation, renders emergency aid. The Coast Guard had no legal obligation to go to Mr. Dierich's aid. The court cannot hold the Coast Guard to a higher standard of care than would be applied to a private individual under like circumstances. 28 U.S.C. § 2674. Here the position of the Coast Guard is analogous to that of a private company operating a helicopter service and a clinic for its employees. If such a company rescued a downed pilot and brought him to the employee clinic for emergency treatment, the company's liability would be limited to gross negligence or reckless or intentional misconduct. Because the Coast Guard's conduct must be judged on the same basis, the count of plaintiff's complaint based on ordinary negligence must be dismissed.

Accordingly, IT IS ORDERED:

(1) THAT defendant's motion for partial summary judgment (Docket No. 47) is granted;

(2) THAT Count I of plaintiff's Second Amended Complaint is dismissed;

(3) THAT plaintiff's motion for partial summary judgment (Docket No. 64) is denied.

Anthony J. DiFlippo, Fleming, O'Byrne & Fleming, Fort Lauderdale, Fla., for defendants Golden Beach and Neiman.

#### ORDER

GONZALEZ, District Judge.

THIS CAUSE has come before the court upon the petition for removal, filed by the defendants, City of Golden Beach and Robert Neiman. The plaintiffs have sued the defendants, City of Golden Beach, Robert Neiman, Trafalgar Towers Association, Inc., and Trafalgar Towers Association, #2, Inc., for damages sustained by the plaintiffs' decedent.

The plaintiffs allege that the City's employee, Robert Neiman acted negligently operating a City vehicle while within the scope of his employment as a police officer with the City of Golden Beach. This negligence is alleged to have resulted in the death of the plaintiffs' decedent, Stephan Duncan. Allegedly, the defendant, Neiman, "engaged in a high speed chase of a vehicle being driven by Stephanie Duncan[,] ran his motor vehicle into the rear of the vehicle being driven by Stephanie Duncan and forced the vehicle off the roadway." Plaintiffs' First Amended Complaint at ¶ 11.

The plaintiffs further allege that the vehicle "struck a guardrail ... and fell into the intercoastal [sic] waterway." Plaintiffs' First Amended Complaint at ¶ 12. According to the plaintiffs' allegation the defendant, Neiman, tried but failed to save Ms. Duncan. Ms. Duncan was apparently rescued through some other means, but died four days after the accident. The plaintiffs assert that the police officer, defendant, Neiman, was not trained by the City in water rescue. The plaintiffs have sued the City and Robert Neiman for negligence and have sued the defendants for damages resulting from violations of U.S.C. § 1983.

The defendants, Trafalgar Towers Association, Inc., and Trafalgar Towers Association, #2, Inc., are allegedly the parties who placed the guardrail along the road where the accident occurred. The plaintiffs assert that the guardrail was negligently



Michael DUNCAN etc., et al., Plaintiffs,

v.

CITY OF GOLDEN BEACH, etc., et al., Defendants.

No. 87-6375-CIV-GONZALEZ.

United States District Court,  
S.D. Florida, N.D.

July 6, 1987.

On petition to remove § 1983 claims in action arising out of death of motorist in high speed chase, the District Court, Gonzalez, J., held that claims were not removable, as separate and independent.

Petition denied and cause remanded.

#### Removal of Cases § 1983

Section 1983 claims against city and its police officer arising out of death of motorist in high speed chase were not removable, as separate and independent from claims against parties who placed guardrail along road where accident occurred, where complaint sought recovery for only one wrong, alleged to have occurred as a result of an "interlocking series of transactions," involving primarily the same facts. 28 U.S.C.A. § 1441(c).

Jack L. Herskowitz, Miami, Fla., for plaintiffs.

**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, III, 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) any<sup>1</sup> 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 (I).

(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

of amounts collected from members for the expenses.

(B) In the case of a mutual or cooperative (A) shall be applied without taking into account—

(i) from a nonmember telephone communication services which involve membership in a telephone company,

(ii) from qualified pole rentals, or

(iii) from the sale of display listings to members of the mutual or cooperative.

(C) In the case of a mutual or cooperative shall be applied without taking into account from qualified pole rentals.

(D) For purposes of this paragraph, the any rental of a pole (or other structure used for other structure)—

(i) is used by a telephone or electric wires which are used by such company for services to its members, and

(ii) is used pursuant to the rental addition to the wires described in clause transmission by wire of electricity or of

For purposes of the preceding sentence, the the right to use the pole (or other structure

(13) Cemetery companies owned and operated for their members or which are not operated exclusively for the purpose of the disposition of human remains, which is not permitted by its charter to engage in any other business, incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(14)(A) Credit unions without capital stock and without profit.

(B) Corporations or associations without capital stock, organized before September 1, 1957, and operated for mutual purposes of providing reserve funds for, and

(i) domestic building and loan associations,

(ii) cooperative banks without capital stock for mutual purposes and without profit,

(iii) mutual savings banks not having shares, or

(iv) mutual savings banks described in

(C) Corporations or associations organized and operated for mutual purposes and without reserve funds for associations or banks (other than those described in subparagraph (B)); but only if 85 percent or more of the net earnings are used to provide such reserve funds and to invest such funds in any corporation or association (other than a corporation or association described in subparagraph (B)).

(15)(A) Insurance companies or associations (other than reciprocal underwriters) if the net earnings (other than direct written premiums) for the taxable year

(B) For purposes of subparagraph (A), if the net earnings are derived from a business which is described in subparagraph (A) shall be treated as receiving during the taxable year the net earnings of the associations which are members of the same company or association for which the net earnings are received.

(C) For purposes of subparagraph (B), the term "net earnings" shall have the meaning given such term by section 831(b).

(16) Corporations organized by an association or members thereof, for the purpose

of amounts collected from members for the sole purpose of meeting losses and expenses.

(B) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from a nonmember telephone company for the performance of communication services which involve members of the mutual or cooperative telephone company,

(ii) from qualified pole rentals, or

(iii) from the sale of display listings in a directory furnished to the members of the mutual or cooperative telephone company.

(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued from qualified pole rentals.

(D) For purposes of this paragraph, the term "qualified pole rental" means any rental of a pole (or other structure used to support wires) if such pole (or other structure)—

(i) is used by the telephone or electric company to support one or more wires which are used by such company in providing telephone or electric services to its members, and

(ii) is used pursuant to the rental to support one or more wires (in addition to the wires described in clause (i)) for use in connection with the transmission by wire of electricity or of telephone or other communications.

For purposes of the preceding sentence, the term "rental" includes any sale of the right to use the pole (or other structure).

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(14)(A) Credit unions without capital stock organized and operated for mutual purposes and without profit.

(B) Corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of, shares or deposits in—

(i) domestic building and loan associations,

(ii) cooperative banks without capital stock organized and operated for mutual purposes and without profit,

(iii) mutual savings banks not having capital stock represented by shares, or

(iv) mutual savings banks described in section 591(b)

(C) Corporations or associations organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for associations or banks described in clause (i), (ii), or (iii) of subparagraph (B); but only if 85 percent or more of the income is attributable to providing such reserve funds and to investments. This subparagraph shall not apply to any corporation or association entitled to exemption under subparagraph (B).

(15)(A) Insurance companies or associations other than life (including interinsurers and reciprocal underwriters) if the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed \$350,000.

(B) For purposes of subparagraph (A), in determining whether any company or association is described in subparagraph (A), such company or association shall be treated as receiving during the taxable year amounts described in subparagraph (A) which are received during such year by all other companies or associations which are members of the same controlled group as the insurance company or association for which the determination is being made.

(C) For purposes of subparagraph (B), the term "controlled group" has the meaning given such term by section 831(b)(2)(B)(ii).

(16) Corporations organized by an association subject to part IV of this subchapter or members thereof, for the purpose of financing the ordinary crop

operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, on dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(17)(A) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if—

(i) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(ii) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)), and

(iii) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(B) In determining whether a plan meets the requirements of subparagraph (A), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall not be considered discriminatory—

(i) merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subparagraph (A) are then reduced by any sick, accident, or unemployment compensation benefits received under State or Federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(ii) merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under State or Federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for such benefits, or

(iii) merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subparagraph (A)) of supplemental unemployment compensation benefits provided wholly by the employer the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subparagraph (A).

(C) A plan shall be considered to meet the requirements of subparagraph (A) during the whole of any year of the plan if on one day in each quarter it satisfies such requirements.

(D) The term "supplemental unemployment compensation benefits" means only—

(i) benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(ii) sick and accident benefits subordinate to the benefits described in clause (i).

(E) Exemption shall not be denied under as entitled to such exemption as an association or subsection merely because such organization supplemental unemployment benefits (as defined).

(18) A trust or trusts created before June 1, 1954, providing for the payment of benefits under contributions of employees, if—

(A) under the plan, it is impossible, at an all liabilities with respect to employees un corpus or income to be (within the taxable diverted to, any purpose other than the pro

(B) such benefits are payable to employees set forth in the plan and which is for discriminatory in favor of employees who are (within the meaning of section 414(q)),

(C) such benefits do not discriminate highly compensated employees (within the plan shall not be considered discriminatory subparagraph merely because the benefit uniform relationship to the total compensation, of the employees covered

(D) in the case of a plan under which all contributions as deductible—

(i) such contributions do not exceed which a deduction is allowable under

(ii) requirements similar to those of section 401(k)(3)(A)(ii) are met with respect to

(iii) such contributions are treated of section 402(g) (other than paragraph

For purposes of subparagraph (D)(ii), rules 401(k)(8) shall apply. For purposes of section 401(k)(8)(ii) shall be treated as an excluded deferred arrangement.

(19) A post or organization of past or present of the United States, or an auxiliary unit or service for, any such post or organization—

(A) organized in the United States or

(B) at least 75 percent of the members members of the Armed Forces of the United States, the other members of which are individuals, widows, or widowers of past or present the United States or of cadets, and

(C) no part of the net earnings of the organization is in the hands of any private shareholder or individual.

(20) an organization or trust created or organized for the exclusive function of which is to form part of a plan or plans, within the meaning of section 401(k)(8)(ii) which receives contributions because of section 401(k)(8)(ii) which is excluded from qualifying as an organization described in section 401(k)(8)(ii) because it provides legal services or indemnity services unassociated with a qualified group

(21) A trust or trusts established in the United States, and contributed to by any person, if—

(A) the purpose of such trust or trusts

(i) to satisfy, in whole or in part, with respect to, claims for compensation for pneumoconiosis under Black Lung Act,

(ii) to pay premiums for insurance, and

(iii) to pay administrative and other expenses (including legal, accounting, actuarial

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(E) Exemption shall not be denied under subsection (a) to any organization entitled to such exemption as an association described in paragraph (9) of this subsection merely because such organization provides for the payment of supplemental unemployment benefits (as defined in subparagraph (D)(ii)).

(18) A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(A) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of benefits under the plan,

(B) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)),

(C) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this subparagraph merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan, and

(D) in the case of a plan under which an employee may designate certain contributions as deductible—

(i) such contributions do not exceed the amount with respect to which a deduction is allowable under section 219(b)(3),

(ii) requirements similar to the requirements of section 401(k)(3)(A)(ii) are met with respect to such elective contributions, and

(iii) such contributions are treated as elective deferrals for purposes of section 402(g) (other than paragraph (4) thereof).

For purposes of subparagraph (D)(ii), rules similar to the rules of section 401(k)(8) shall apply. For purposes of section 4979, any excess contribution under clause (ii) shall be treated as an excess contribution under a cash or deferred arrangement.

(19) A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions,

(B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, or widowers of past or present members of the Armed Forces of the United States or of cadets, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(20) an organization or trust created or organized in the United States, the exclusive function of which is to form part of a qualified group legal services plan or plans, within the meaning of section 120. An organization or trust which receives contributions because of section 120(c)(5)(C) shall not be prevented from qualifying as an organization described in this paragraph merely because it provides legal services or indemnification against the cost of legal services unassociated with a qualified group legal services plan.

(21) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

(A) the purpose of such trust or trusts is exclusively—

(i) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts;

(ii) to pay premiums for insurance exclusively covering such liability; and

(iii) to pay administrative and other incidental expenses of such trust (including legal, accounting, actuarial, and trustee expenses) in connec-

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tion with the operation of the trust and the processing of claims against such person under Black Lung Acts; and

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in subparagraph (A)) in—

(I) public debt securities of the United States,

(II) obligations of a State or local government which are not in default as to principal or interest, or

(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act, 12 U.S.C. 1752(6)) located in the United States, or

(iii) payment into the Black Lung Disability Trust Fund established under section 9501, or into the general fund of the United States Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust).

For purposes of this paragraph the term "Black Lung Acts" means part C of title IV of the Federal Mine Safety and Health Act of 1977, and any State law providing compensation for disability or death due to pneumoconiosis.

(22) A trust created or organized in the United States and established in writing by the plan sponsors of multiemployer plans if—

(A) the purpose of such trust is exclusively—

(i) to pay any amount described in section 4223(c) or (h) of the Employee Retirement Income Security Act of 1974, and

(ii) to pay reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the trust,

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) the investment in securities, obligations, or time or demand deposits described in clause (ii) of paragraph (21)(B),

(C) such trust meets the requirements of paragraphs (2), (3), and (4) of section 4223(b), 4223(h), or, if applicable, section 4223(c) of the Employee Retirement Income Security Act of 1974, and

(D) the trust instrument provides that, on dissolution of the trust, assets of the trust may not be paid other than to plans which have participated in the plan or, in the case of a trust established under section 4223(h) of such Act, to plans with respect to which employers have participated in the fund.

(23) any association organized before 1880 more than 75 percent of the members of which are present or past members of the Armed Forces and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents.

(24) A trust described in section 4049 of the Employee Retirement Income Security Act of 1974 (as in effect on the date of the enactment of the Single-Employer Pension Plan Amendments Act of 1986).

(25)(A) Any corporation or trust which—

(i) has no more than 35 shareholders or beneficiaries,

(ii) has only 1 class of stock or beneficial interest, and

(iii) is organized for the exclusive purposes of—

(I) acquiring real property and holding title to, and collecting income from, such property, and

(II) remitting the entire amount of income from such property (less expenses) to 1 or more organizations described in subparagraph (C) which are shareholders of such corporation or beneficiaries of such trust.

(B) A corporation or trust shall be determined with regard to whether the corporation or trust is described in subparagraph (C).

(C) An organization is described in this subsection if—

(i) a qualified pension, profit-sharing, or annuity plan which meets the requirements of section 401(a)

(ii) a governmental plan (within the meaning of section 408(a)(1))

(iii) the United States, any State, or any agency or instrumentality of the United States,

(iv) any organization described in section 501(c)(29)

(v) any organization described in section 501(c)(28)

(D) A corporation or trust described in this subsection shall be treated as a shareholder or beneficiary—

(i) to dismiss the corporation or trust with reasonable notice, upon a vote of the shareholders or beneficiaries holding a majority of interest in the corporation or trust,

(ii) to terminate their interest in the trust, if both of the following alternative conditions are met:

(I) by selling or exchanging their interest in the trust (subject to any organization described in this subsection) by sale or exchange does not in the hands of the transferee or transferees in such corporation or trust,

(II) by having their stock or interest in the trust or trust after the shareholders or beneficiaries give 60 days notice to such corporation or trust.

(d) Religious and apostolic organizations. Religious and apostolic associations or corporations have a common trust or fund if such associations or corporations engage in business with members, but only if the members thereof include in their gross income their entire pro rata share of the taxable income of the association or corporation, and such income is included in the gross income of a member of the association or corporation.

(e) Cooperative hospital service organizations. A cooperative hospital service organization shall be treated as an organization described in this subsection for charitable purposes, if—

(1) such organization is organized and operated for the following purposes:

(A) to perform, on a centralized basis, the following services which, if performed on its own, would constitute activities in the nature of a business: engineering, laboratory, printing, consulting, purchasing, warehousing, billing, and other services; and

(B) to perform such services solely for the benefit of the community which is—

(i) an organization described in section 501(c)(29)

(ii) a constituent part of an organization which is exempt from taxation under section 501(c)(29) and operated as a separate organization described in subsection (a),

(iii) owned and operated by the community, or a possession of the United States, or an agency or instrumentality of the United States,

(2) such organization is organized and operated for the following purposes: allocates or pays, within 8 1/2 months after the end of the year, earnings to patrons on the basis of services rendered to patrons during the year.

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(B) A corporation or trust shall be described in subparagraph (A) without regard to whether the corporation or trust is organized by 1 or more organizations described in subparagraph (C).

(C) An organization is described in this subparagraph if such organization is—

steer determines  
or the purposes

(i) a qualified pension, profit sharing, or stock bonus plan that meets the requirements of section 401(a),

(ii) a governmental plan (within the meaning of section 414(d)),

(iii) the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing,

(iv) any organization described in paragraph (3), or

(v) any organization described in this paragraph.

which are not in

(D) A corporation or trust described in this paragraph must permit its shareholders or beneficiaries—

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52(6)) located in

(i) to dismiss the corporation's or trust's investment adviser, following reasonable notice, upon a vote of the shareholders or beneficiaries holding a majority of interest in the corporation or trust, and

(ii) to terminate their interest in the corporation or trust by either, or both, of the following alternatives, as determined by the corporation or trust:

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civil or criminal  
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provisions.

(I) by selling or exchanging their stock in the corporation or interest in the trust (subject to any Federal or State securities law) to any organization described in subparagraph (C) so long as the sale or exchange does not increase the number of shareholders or beneficiaries in such corporation or trust above 35, or

(II) by having their stock or interest redeemed by the corporation or trust after the shareholder or beneficiary has provided 90 days notice to such corporation or trust.

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or (h) of the

(d) Religious and apostolic organizations.—The following organizations are referred to in subsection (a): Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

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(e) Cooperative hospital service organizations.—For purposes of this title, an organization shall be treated as an organization organized and operated exclusively for charitable purposes, if—

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(1) such organization is organized and operated solely—

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(A) to perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a hospital which is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption: data processing, purchasing, warehousing, billing and collection, food, clinical, industrial engineering, laboratory, printing, communications, record center, and personnel (including selection, testing, training, and education of personnel) services; and

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(B) to perform such services solely for two or more hospitals each of which is—

(i) an organization described in subsection (c)(3) which is exempt from taxation under subsection (a),

(ii) a constituent part of an organization described in subsection (c)(3) which is exempt from taxation under subsection (a) and which, if organized and operated as a separate entity, would constitute an organization described in subsection (c)(3), or

ting income

(iii) owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or an agency or instrumentality of any of the foregoing;

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(2) such organization is organized and operated on a cooperative basis and allocates or pays, within 8½ months after the close of its taxable year, all net earnings to patrons on the basis of services performed for them; and

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. *Urethano 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 *Tueggel v. City of Sitka*, 118 F. Supp. 399 (D. Alaska, 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. Alaska, 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 ACCLA 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;
- (3) 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 is taken

FEB 22 1988

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February 17, 1988

\*ALASKA AND DISTRICT OF COLUMBIA BARS  
\*\*WISCONSIN BAR  
ALL OTHERS DISTRICT OF COLUMBIA BAR

Honorable Chairman John Sund  
House Committee on Judiciary  
State Capitol Bldg.  
P. O. Box V (Mail Stop 3100)  
Juneau, AK 99811

Re: Good Samaritan Law Amendments  
(Our File No. 911.21)

Dear Chairman Sund:

We write on behalf of the Alaska Native Health Board and the Association of Regional Health Directors to comment on H.B. 340, a bill granting immunity from civil liability for individuals providing volunteer emergency services. This bill would amend AS 09.65.090 by adding a new subsection to Alaska's existing "Good Samaritan" statute.

The Good Samaritan statute promotes an important public policy by encouraging citizens (whether trained professionals or lay persons) to provide medical assistance to people suffering a medical emergency. The statute is particularly important given the ever-increasing tendency to turn to the courts to resolve all problems. While we believe that the protection of volunteers (addressed in the bill) is laudable, we also think the Committee should take this opportunity to address two additional serious health care issues in this area: (1) the liability of "Community Health Aides" providing emergency medical services, and (2) the liability of all persons who have a pre-existing duty to provide emergency services. We discuss these issues below.

Community Health Aides are the backbone of the health care delivery system throughout rural Alaska. In most villages, they are the only health care provider available in emergencies. As a consequence, Community Health Aides across the State feel a special obligation to assist those in need, especially those in

Honorable Chairman Sund  
February 17, 1988  
Page 2

need of emergency services, and to do so with whatever training and limited resources they may have.

Community Health Aides have a growing fear that as personal injury tort litigation reaches further into rural Alaska, they will soon be faced with lawsuits. Indeed, this trend has already begun. The Health Aides are particularly concerned about their potential exposure when they administer emergency medical care under circumstances where decisions and actions must be taken immediately, guidance from a physician is unavailable, and a person's life is at stake.

Title 11 currently sets forth general protection for individuals who provide emergency care without first receiving the patient's consent (as where the person is unconscious or otherwise unable to give consent) (AS 11.81.430(a)(5)(B)). The more important statute, however is the section now under scrutiny by this Committee, AS 09.65.090 (emphasis added):

(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 reasonable 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 aid.

(B) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

On its face, Section 90 would appear to include Community Health Aides within its scope. Clearly a Community Health Aide would be a "person at a hospital or any other location who renders emergency care ...." In 1971, however, the Alaska Supreme Court construed an earlier version of Section 90 to exclude from coverage any person with a "pre-existing duty" to render aid. Lee v. State, 490 P.2d 1206 (Alaska 1971), overruled in part on other grounds, 545 P.2d 165 (Alaska 1976). A Community Health Aide acting in his or her capacity as a Health Aide would apparently have a pre-existing duty, and under Lee would not be shielded from suit.

The earlier statute construed by the Court in Lee covered "[a] person who, without expecting compensation, renders care to an injured or sick person ...." AS 09.65.090 (1968). Amendment of the law in 1976 to broaden the scope of coverage to "[a] person at a hospital or other location..." reflected the Legislature's intent to include persons with a pre-existing duty

Honorable Chairman Sund  
February 17, 1988  
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(such as nurses and doctors in a hospital emergency). The legislative history to the 1976 amendment confirms this point. Despite the Legislature's effort, the courts continue to exclude "pre-existing duty" persons from Alaska's Good Samaritan statute, as demonstrated in a very recent decision from the federal district court in Alaska. See Bunting v. United States, 662 F.Supp. 971, 973 (D.Alaska 1987). For this reason, it is clear that Section 90 requires further amendment.

We note that Alaska has adopted a separate "good samaritan" statute to specifically protect emergency medical technicians (See AS 18.08.086(a)). This statute was amended in 1986 to broaden its scope to cover emergencies posing risks of serious harm (in addition to risks of death). As we understand it, much of the genesis for this statute and its 1986 amendment was concern over increasing tort litigation arising out of emergency situations where snap decisions must be made in order to save a person's life. The increased risk of litigation has in turn driven up insurance rates astronomically in recent years for emergency medical technicians, an additional strong incentive for this law and its 1986 amendment.

The situation with Community Health Aides is even more compelling than with emergency medical technicians and, we believe, justifies identical treatment by the Alaska Legislature. Specifically, Community Health Aides are required in identical circumstances to provide emergency aide as the only emergency care responders in their villages. In these villages there is no "emergency medical technician." Many (although not all) CHA's have taken EMT courses to enhance their ability to respond in such situations. Nevertheless, we are seeing a rising incidence of litigation and the threat of litigation in recent years. This has led to the same insurance crises for CHA's as for EMTs.

For these reasons, we suggest that this Committee clarify the Good Samaritan law in two ways. First, language should be inserted in Section 90(a) to expressly include Community Health Aides. Second, language should be inserted in the same section to expressly protect persons with a pre-existing duty. Under this proposal, Section 90(a) would be amended as follows, (new language underscored) (before addition of the language proposed in H.B. 340):

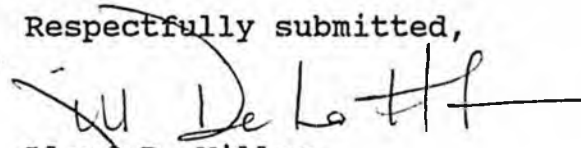
(A) a person at a hospital or any other location, including a community health aide, who renders emergency care or emergency counseling to an injured, ill or emotionally distraught person who reasonably appears to the person rendering the aide to be in immediate need of emergency aide in order to avoid serious harm or death is

Honorable Chairman Sund  
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Page 4

not liable for civil damages as a result of an act or omission in rendering aid, regardless of whether the person is under a pre-existing duty to render assistance.

We would be happy to elaborate at greater length the reasons why this amendment is so important and appropriate, and to furnish you with any additional information which you feel would be helpful.

Respectfully submitted,



Lloyd B. Miller  
Jill A. De La Hunt

LBM:JAD/kg  
cc: John Hartle  
All Committee Members  
Sund

11625 Paddock Lane  
Anchorage, Alaska 99516  
February 16, 1988

Representative John Sund  
Chairman, House Judiciary Committee  
Pouch V (MS 3100)  
Juneau, Alaska 99811

Dear Representative Sund,

I just had the opportunity to review the House Bill No. 340 which was amended by the House Labor and Commerce Committee.


This amendment, under Section 1 (c) (2), which further describes just what a "Volunteer" is completely wipes out the National Ski Patrol System (NSPS), which is non-profit volunteer organization who performs emergency services to ski resorts and other functions such as the Anchorage Fur Rendezvous, as being a volunteer under this amendment.

At most ski areas nationwide, where the NSPS performs volunteer emergency services such as the initial first aid assistance to injured skiers, the NSPS volunteer ski patrollers usually receive a free lift ticket (or "chit") for each day they patrol as an incentive to be a patroller. This amounts to a compensation of anywhere from \$10.00 to 36.00, depending upon the cost of the ski area ticket, for a days work of patrolling on their own time.

Most of the patrollers are dedicated to their duties and spend considerable amount of time and effort in training outside of their normal every day job and actual patrolling to keep up their skills in emergency first aid and other required training. I myself has spent over a 1,000 hours each year as both a volunteer instructor and as a trainee for the NSPS. Only a small part of this time was actually involved patrolling on the hill where a minute compensation was provided by the ski resort in the form of a "chit". The rest of the time was not compensated for other than obtaining the satisfaction of being in the position of helping people in need. It is quite common for other patrolers to spend this same amount of time and effort each year also.

Because I strongly feel the need of this legislation to protect dedicated NSPS volunteer patrollers while performing their duty from being liable for civil damages it is requested that every effort be taken by the Judiciary Committee to strick the wording "financial consideration" from Section 1 (c) (2), line 20 and substitute the words "cash payment" instead.

Sincerely yours,

  
Wallace J. Watts  
National Ski Patrol Member

CC: Representative Sam Cotton  
Representative Max Gruenberg Jr.  
Representative Romona Barnes

FEB 24 1988

Alaska State Legislature  
House of Representatives



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REPRESENTATIVE  
JIM ZAWACKI  
DISTRICT 7

MEMBER  
COMMUNITY & REGIONAL  
AFFAIRS COMMITTEE  
LEGISLATIVE BUDGET &  
AUDIT COMMITTEE  
FINANCE SUBCOMMITTEE

2/22/88

Dear John,

I have enclosed a  
copy of a letter with a  
legitimate concern pertaining  
to volunteers and their liability.

If his concern is  
warranted, is there anyway we  
can amend to eliminate problems.

Your assistance is  
appreciated.

Thanks John

Jim

C.C. Don Davis

February 15, 1988

Representative Jim Zawacki  
Pouch V  
Juneau, Alaska 99811

in re: HB 340

Dear Jim:

Thank-you for your letter dated February 3, 1988.

I note that you have sent a copy to Judy Kuleta. The only reason I can think of why you would have sent her a copy is because I am a member of the fire department in Girdwood. However, HB 340 has nothing to do with our Department in Girdwood. The members of the Girdwood Fire Department are not volunteers in the true sense of the word, they are paid on call firefighters. That is when there is a fire call each member of the Department who responds is paid \$10.00 per hour.

My interest comes from the area of the National Ski Patrol which provides mountain rescue services. The patrol of which I am a member is the Sourdough Ski Patrol which patrols at Mount Alyeska.

As you are aware the Ski Patrol does not charge for their services, i.e. it is a volunteer organization.

The ammendment of the Labor and Commerce Committee which defines or attempts to define volunteer completely changes the thrust of HB 340 as far as it relates to the Sourdough Ski Patrol.

The reason is simple. Mount Alyeska resort gives each patrol person a ski chit for each day patrolled. Said chits are redeemable for a ski ticket. Currently the cost of a ticket is \$22.00 which exceeds the \$10.00 per day limitation written in by the Labor and Commerce Committee. This in effect removes our ski patrol from coverage under the bill.

I much prefer the original wording of the bill. If something has to be said about compensation why not something along the order of "A volunteer organization is one which does not solicit funds for the service which it provides. The member provided the service while acting as a member of the organization." Not great wording but I am sure that you get my meaning.

There are many volunteer organizations which do not charge for their services, but what if the person(s) assisted give money to the individual providing the service, said individual accepting money as a donation to the organization while the donator may feel that he is giving compensation to the individual providing the service?

I do not want to beat it to death. All I ask is that you do what you can.

Thank-you,

Donald L. Davis

Donald L. Davis  
P.O. Box 674  
Girdwood, Alaska 99587

# Alaska State Legislature

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## House of Representatives

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P.O. BOX 783  
GIRDWOOD, ALASKA 99587  
(907) 783-2905

WHILE IN JUNEAU  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-2693/2719

REPRESENTATIVE  
JIM ZAWACKI  
DISTRICT 7

February 3, 1988

MEMBER  
COMMUNITY & REGIONAL  
AFFAIRS COMMITTEE  
LEGISLATIVE BUDGET &  
AUDIT COMMITTEE  
FINANCE SUBCOMMITTEE

Donald Davis  
P.O. Box 674  
Girdwood, AK 99587

Dear Don:

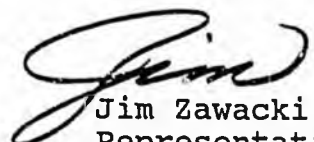
Thank you for your public opinion message regarding HB 340 and SB 346, granting immunity from civil liability for providing volunteer emergency services.

I am also in favor of these bills. Representative Mike Davis of Fairbanks is the prime sponsor and I have signed on the bill as a co-sponsor. HB 340 has moved from the House Labor & Commerce Committee to the House Judiciary Committee. House Labor & Commerce did make some changes to the bill so I have taken the liberty of enclosing a copy of the committee substitute for your review. HB 340 is scheduled on the House Judiciary Committee calendar for February 12th, Friday, at 1:30 p.m.. You and others in the community might want to send a p.o.m. of support to Representative John Sund who is the chairman of House Judiciary Committee. As for SB 346 it is in Senate Judiciary Committee and as of yet no hearing has been scheduled.

Don, for those people who are giving of themselves in saving lives and risking their own, we need to make sure they are protected from all liability.

I appreciate your input. If I can be of further assistance, please don't hesitate to contact me.

Sincerely,

  
Jim Zawacki  
Representative

Enclosure  
cc: Judy Coletta  
Fire Chief, Girdwood  
(20)

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE ZAWACKI

NAME: BERNICE LESKSKY

TITLE:

ADDRESS: 3211 SHAMROCK STREET

ZIP: 99504

CITY: ANCHORAGE

PHONE: 337-6333

BILL NO:

SUBJECT: GAME BOARD APPOINTMENT

MESSAGE: REQUEST YOU ASK THE GOVERNOR NOT TO REAPPOINT GAME BOARD MEMBER,  
AN BALLEMBERGHE, WHO IS SUPPORTED BY GREENPEACE DEFENDERS OF WILDLIFE.  
PORTSMAN STRONGLY OPPOSE HIM.

POMID: 03091558

DATE: 01/29/88

TIME: 09:15:58

LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

ADAMS  
BOUCHER  
BROWN  
COLLINS  
DAVIDSON  
DONLEY  
FRANK  
GOLL  
GRUSSENDORF  
HERRMANN  
HUDSON  
LARSON  
MENARD  
NAVARRE  
PETTYJOHN  
POURCHOT  
SHULTZ  
SUND  
TAYLOR  
WALLIS

BARNES  
BOYER  
CATO  
COTTEN  
DAVIS  
ELLIS  
FURNACE  
GRUENBERG  
HANLEY  
HOFFMAN  
KOPONEN  
MARTIN  
MILLER  
PEARCE  
PHILLIPS  
RIEGER  
SPRINGER  
SWACKHAMMER  
ULMER

ABOOD  
BINKLEY  
COGHILL  
DUNCAN  
ELIASON  
FAHRENKAMP  
FAIKS  
FANNING  
FISCHER  
HALFORD  
HENSLEY  
JONES  
JOSEPHSON  
KELLY  
KERTTULA  
RODEY  
STURGULENSKI  
SZYMANSKI  
UEHLING  
ZHAROFF

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE ZAWACKI

NAME: DONALD DAVIS

TITLE:

ADDRESS: P.O. DOX 674

ZIP: 99587

CITY: GIRDWOOD

PHONE: 783-2952

BILL NO:

SUBJECT: HB340/SB346, GOOD SAM ACT

MESSAGE: I'M IN FAVOR OF THESE BILLS.

POMID: 03094557

DATE: 01/29/88

TIME: 09:45:57

LIONAME: ANCHORAGE LIO

COPIES: SENATOR

SZYMANSKI

*add Bills*



# NATIONAL SKI PATROL SYSTEM, INC.

P.O. Box 432  
Douglas, Alaska 99824  
March 4, 1988

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

ALASKAN DIVISION

Honorable Mike Davis  
Alaska House of Representatives  
P.O. Box V  
Juneau, Alaska 99801

Dear Representative Davis:

This letter pertains to CSHB 340 (Labor & Commerce) regarding providing immunity from civil liability for certain kinds of volunteer work.

I understand the bill is scheduled for a House Judiciary Committee hearing next Monday. I plan to attend the hearing.

In the meantime, after consulting with a number of NSPS patrollers in Alaska, I have the following comments to offer. These are in particular related to Ed Hein's points explained to you in his memorandum of February 19:

1. Preexisting duty to rescue. This intent is what started the concern for necessary legislation, and we agree with Mr. Hein's explanation and rationale.
2. Definitions of volunteers and compensation. We are still concerned about this one. We need to be certain that the bill clearly states that only cash payments are included in the dollar amount limitations. Mr. Hein's suggestion for changing line 20, by striking the words "receives financial consideration of", and replacing them with "is paid" may solve our problem regarding the value of complimentary ski tickets which are given to patrollers in recognition for their service.

However, an even more direct and clear phrase has been proposed by one of our patrollers, Mr. Wallace Watts, from Anchorage. In a letter dated February 16, to Representative John Sund, Chairman, House Judiciary Committee, Mr. Watts suggests striking the words "financial consideration" and replacing them with the words "cash payments". We like this suggestion better, compared to "is paid".

3. Liability of organizations. We prefer to see the word-age left as is, and the organization also protected with immunity, except for proven negligence. Otherwise, it's conceivable that the officers of the organization, themselves, might be held liable. If that were to happen, it could seriously impede future recruitment efforts for emergency service volunteers; it could even jeopardize the basic mission of the charitable organization, which is one in the public interest. Negligence seems to be the key, here. If a member is proven negligent in his or her

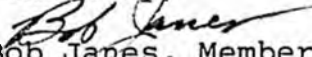
performance, then the recourse is already there - that of bringing a lawsuit against either or both the individual and the organization. There really seems to be no need to make a change in the wordage as stated in the bill right now.

4. Advanced life support. We understand the reason for this proposed amendment, and we have no objection to Mr. Hein's suggested wordage.

Finally, this legislation is extremely important to our organization, and we urge its passage out of the House Judiciary Committee next Monday.

We definitely need to have an appropriate law enacted during this Session of the Legislature. In that respect, we would encourage that companion bills on the Senate side, SB No. 346 (Fahrenkamp, et al), and SB No. 448 (Duncan) be reconciled in language consistent with HB 340.

Sincerely,

  
Bob Janes, Member  
Juneau Ski Patrol, NSPS

cc: ✓ Representative John Sund, Chairman House Judiciary Committee  
Representative Bill Hudson  
Representative Fran Ulmer  
Senator Jim Duncan

Committee



# Alaska State Legislature

Representative Mike Davis

P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4930/4941

Interim Office:  
P.O. Box 81435  
Fairbanks, Alaska 99708

TO: House Judiciary Committee  
FROM: Rep. Mike Davis  
DATE: February 11, 1988  
RE: CSHB 340, granting immunity from civil liability for providing volunteer emergency services.

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

BILL NO:

HB 340

DATE:

1/20/88

TITLE:

An Act 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 /jc*  
Arthur English, Commissioner

POSTAL PERMIT

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.