

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4739 HJUD HB 491 - HB 521

31

2. To provide, whenever necessary, medical, dental and surgical care, hospitalization and custodial care for the spouse, children and other dependents of the principal;

3. To continue whatever provision has been made by the principal, prior to the creation of the agency or thereafter, for his spouse, children and other dependents, with respect to automobiles, or other means of transportation, including by way of illustration but not by way of restriction, power to license, to insure and to replace any automobiles owned by the principal and customarily used by the spouse, children or other dependents of the principal;

4. To continue whatever charge accounts have been operated by the principal prior to the creation of the agency or thereafter, for the convenience of his spouse, children or other dependents, to open such new accounts as the agent shall think to be desirable for the accomplishment of any of the purposes enumerated in this section, and to pay the items charged on such accounts by any person authorized or permitted by the principal to make such charges prior to the creation of the agency;

5. To continue the discharge of any services or duties assumed by the principal, prior to the creation of the agency or thereafter, to any parent, relative or friend of the principal;

6. To supervise and to enforce, to defend or to settle any claim by or against the principal arising out of property damages or personal injuries suffered by or caused by the principal, or under such circumstances that the loss resulting therefrom will, or may fall on the principal;

7. To continue payments incidental to the membership or affiliation of the principal in any church, club, society, order or other organization or to continue contributions thereto;

8. To demand, to receive, to obtain by action, proceeding or otherwise any money or other thing of value to which the principal is or may become or may claim to be entitled as salary, wages, commission or other remuneration for services performed, or as a dividend or distribution upon any stock, or as interest or principal upon any indebtedness, or any periodic distribution of profits from any partnership or business in which the principal has or claims an interest, and to endorse, collect or otherwise realize upon any instrument for the payment so received;

9. To prepare, to execute and to file all tax, social security, unemployment insurance and information returns required by the laws of the United States, or of any state or subdivision thereof, or of any foreign government, to prepare, to execute and to file all other papers and instruments which the agent shall think to be desirable or necessary for the safeguarding of the principal against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation, and to pay, to compromise, or to contest or to apply for refunds in connection with any taxes or assessments for which the principal is or may be liable;

10. To utilize any asset of the principal for the performance of the powers enumerated in this section, including by way of illustration and not by way of restriction, power to draw money by check or otherwise from any bank deposit of the principal, to sell any land, chattel, bond, share, commodity interest, chose in action or other asset of the principal, to borrow money and to pledge as security for such loan, any asset, including insurance, which belongs to the principal;

11. To execute, to acknowledge, to verify, to seal, to file and to deliver any application, consent, petition, notice, release, waiver, agreement or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

12. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any transaction enumerated in this section or to intervene in any action or proceeding relating thereto;

13. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereon; and

14. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, for the welfare of the spouse, children or dependents of the principal or for the preservation and maintenance of the other personal relationships of the principal to parents, relatives, friends and organizations.

All powers described in this section 5-1502I of the general obligations law shall be exercisable equally whether the acts required for their execution shall relate to real or personal property owned by the principal at the giving of the power of attorney or thereafter acquired and whether such acts shall be performable in the state of New York or elsewhere.

**Sec. 5-1502J. Construction — benefits from military service**

In a statutory short form power of attorney, the language conferring general authority with respect to "benefits from military service," must be construed to mean that the principal authorizes the agent:

1. To execute vouchers in the name of the principal for any and all allowances and reimbursements payable by the United States, or by any state or subdivision thereof, to the principal, including by way of illustration and not of restriction, all allowances and reimbursements for transportation of the principal and of his dependents, and for shipment of household effects, to receive, to indorse and to collect the proceeds of any check payable to the order of the principal drawn on the treasurer or other fiscal officer or depository of the United States or of any state or subdivision thereof;

2. To take possession and to order the removal and shipment, of any property of the principal from any post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, to execute and to deliver any release, voucher, receipt, bill of lading, shipping ticket, certificate or other instrument which the agent shall think to be desirable or necessary for such purpose;

3. To prepare, to file and to prosecute the claim of the principal to any benefit or assistance, financial or otherwise, to which the principal is, or claims to be, entitled, under the provisions of any statute or regulation existing at the creation of the agency or thereafter enacted by the United States or by any state or by any subdivision thereof, or by any foreign government, which benefit or assistance arises from or is based upon military service performed prior to or after the creation of the agency by the principal or by any person related by blood or by marriage to the principal, to execute any receipt or other instrument which the agent shall think to be desirable or necessary for the enforcement or for the collection of such claim;

4. To receive the financial proceeds of any claim of the type described in this section, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;

5. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any benefits from military service or to intervene in any action or proceeding relating thereto;

6. To hire, to discharge, and to compensate any attorney, accountant, expert witness, or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section; and

7. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, and which the agent shall think to be desirable or necessary, to assure to the principal, and to the dependents of the principal, the maximum possible benefit from the military service performed prior to or after the creation of the agency by the principal or by any person related by blood or marriage to the principal.

All powers described in this section 5-1502J of the general obligations law shall be exercisable equally with respect to any benefits from military service existing at the giving of the power of attorney or thereafter accruing, and whether accruing in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

**Sec. 5-1502K. Construction — records, reports and statements**

In a statutory short form power of attorney, the language conferring general authority with respect to "records, reports and statements," must be construed to mean that the principal authorizes the agent:

1. To keep records of all cash received and disbursed for or on account of the principal, of all credits and debits to the account of the principal, and of all transactions affecting in any way the assets and liabilities of the principal;

2. To prepare, to execute and to file all tax, social security, unemployment insurance and information returns, required by the laws of the United States, of any state or of any subdivision thereof or of any foreign government to prepare, to execute and to file all other papers and instruments which the agent shall think to be desirable or necessary for the safeguarding of the principal against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation;

3. To prepare, to execute and to file any record, report or statement, which the agent shall think to be desirable or necessary for the safeguarding or maintenance of the principal's interest, with respect to price, rent, wage or rationing control, or other governmental activity;

*DRAFTING THE DURABLE POWER — NEW YORK*

4. To hire, to discharge, and to compensate any attorney, accountant, broker, or other assistant or assistants when the agent shall think such action to be desirable for the proper execution of any of the powers described in this section; and

5. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with the preparation, execution, filing, storage or other utilization of any records, reports or statements of or concerning the principal's affairs.

All powers described in this section 5-1502K of the general obligations law shall be exercisable equally with respect to any records, reports or statements of or concerning the affairs of the principal existing at the giving of the power of attorney or thereafter arising, and whether arising in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

**Sec. 5-1502L. Construction — all other matters**

In a statutory short form power of attorney, the language conferring general authority with respect to "all other matters," must be construed to mean that the principal authorizes the agent to act as an alter ego of the principal with respect to any and all possible matters and affairs which are not enumerated in sections 5-1502A to 5-1502K, inclusive, of this chapter, and which the principal can do through an agent.

[L.1963, c. 576, § 1.]

**Sec. 5-1503. Modifications of the statutory short form power of attorney**

A power of attorney which satisfies the requirements of subdivision two of section 5-1501 of this chapter is not prevented from being a "statutory short form power of attorney," as this phrase is used in the sections of this title, by the fact that it also contains additional language which:

1. Eliminates from the power of attorney one or more of the powers enumerated in one or more of the constructional sections of this title with respect to a subdivision of the statutory short form power of attorney not eliminated therefrom by the principal; or
2. Supplements one or more of the powers enumerated in one or more of the constructional sections in this title with respect to a subdivision of the statutory short form power of attorney not eliminated therefrom by the principal, by specifically listing additional powers of the agent; or
3. Makes some additional provision which is not inconsistent with the other provisions of the statutory short form power of attorney.

[L.1963, c. 576, § 1.]

**Sec. 5-1601. Powers of attorney which survive disability or incompetence**

1. The subsequent disability or incompetence of a principal shall not revoke or terminate the authority of an attorney-in-fact who acts under a power of attorney in a writing executed by such principal which contains the words "This power of attorney shall not be affected by the subsequent disability or incompetence of the principal," or words of similar import showing the intent of such principal that the authority conferred shall be exercisable notwithstanding his subsequent disability or incompetence.

2. All acts done by an attorney-in-fact pursuant to a power granted pursuant to subdivision one of this section during any period of disability or incompetence shall have the same effect and inure to the benefit of and bind a principal and his distributees, devisees, legatees and personal representatives as if such principal were competent and not disabled. If a committee or conservator thereafter is appointed for such principal, such attorney-in-fact, during the continuance of the appointment, shall account to the committee or conservator rather than to such principal. The committee or conservator shall have the same power such principal would have had if he were not disabled or incompetent to revoke, suspend or terminate all or any part of such power of attorney.

[N.Y. Gen. Oblig. Law § 5-1601 (McKinney 1978) (effective June 10, 1975); L. 1975, c. 195, § 1.]



ALASKA STATE LEGISLATIVE COMMITTEE

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(907) 457-4386

MAR 25 1988

3/22/88

and  
Representatives Niilo Koponen  
and Johnny Ellis, Co-Chairmen  
House HESS Committee  
PO Box V  
Juneau, AK 99811

Dear Representatives Koponen and Ellis:

AARP/Alaska State Legislative Committee is pleased to see legislation such as HB 491, "An Act establishing a statutory form power of attorney."

We feel such legislation is vital to clearly defining for Alaskans both general and durable powers of attorney. Such clarification is important not only to those who deal with complex legal issues through attorneys or who can afford to have attorneys draw up their powers of attorney, but also to those whose lower incomes cause them to rely on pre-printed forms for these matters.

Because low-income elderly persons are often unknowing victims of unclear or scattered statutes, bringing together these materials into a clear package seems especially important.

We urge your committee's support of this legislation and hope that it will include protection of "living wills" and state benefits.

Sincerely yours,

Miss Patricia Oakes, Chairman  
AARP/Alaska State Legislative Committee

# CARTA

## Central Alaska Retired Teachers Association

Advocate for Retired and Pre-Retired Educators

1620 Crescent Drive  
Anchorage, AK 99504  
April 15, 1988

Representative Johnny Ellis  
Alaska State Legislature  
PO Box V (MS 3100)  
Juneau, AK 99811

APR 20 1988

Dear Representative Ellis:

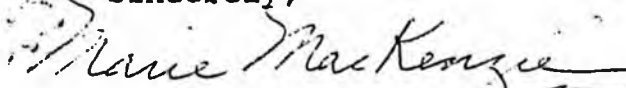
The Legislative Committee of the Central Alaska Retired Teachers Association (CARTA) has studied and considered a number of proposed bills this past year. We recently sent you a report of our activities that led to making our decisions. As we near the end of the session, we strongly urge passage of the following bills:

1. House Substitute for SB56 - Annuity Bill (First Priority)
2. SB67 - Mental Health Insurance Bill
3. HB491 - Establishing a Statutory Form Power of Attorney
4. SB442 - Relating to the Older Alaskan Commission and the protection of elderly persons, establishing the office of Older Alaskan Ombudsman
5. HB306 - Anatomical gifts

CARTA also strongly supports funding the recommendations of the Governor's Commission on Children and Youth.

We appreciate your attention and time for our concerns.

Sincerely,



Marie MacKenzie, Chairman  
Legislative Committee

cc: Vera Gazaway, President, CARTA  
Joan McKinnon, President, Alaska State Retired Teachers Assn  
Patricia Oakes, Chairman, AARP State Legislative Committee  
Anchorage Senior Citizens Advisory Committee

Anchorage, Alaska  
March 18, 1988

MAR 24 1988

TO: REPRESENTATIVE JOHNNY ELLIS  
REPRESENTATIVE MAX GRUENBERG, Jr.

FROM: Thelma P. Langdon - 2363 Capt. Cook Drive - Anchorage 99517

RE: HB NO. 491 - "An Act establishing a statutory form power of attorney"

**I am in strong support of this bill.** As one of the organizers of the Alzheimer's Disease Family Support Group, I know what a great help it would be to the families of victims of Alzheimer's Disease and Related Disorders.

My own father has a severe and progressive dementia and my sister and I need to have the kind of authority and protection this bill addresses. In carrying out our responsibility we need to have the authority to make decisions he cannot or will not make.

Thank you for introducing this bill.

*Thelma P. Langdon*

*MSR  
constit*

# HOUSE COMMITTEE REPORT

(7)

Date referred: 2/15/88

FURTHER REFERRALS: Judiciary

DATE: April 19, 1988

The Health, Education and Social Services Committee has considered HB 491

"An Act establishing a statutory form power of attorney."

### RECOMMEND

- replace with CSHB 491 (HESS)  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:

John Ellis  
Nikhil Kopper  
Max [unclear]  
Bill [unclear]  
Reed E. [unclear]

### SIGNING OTHER RECOMMENDATIONS: -

Nikhil Kopper  
 Co-Chairman's signature  
 8/1 5/11

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY


MEMORANDUM

April 22, 1988

SUBJECT: CSHB 491 (HESS), sectional analysis

TO: Representative Johnny Ellis, Co-Chair  
House Health, Education and Social Services  
Committee

FROM: Jack Chenoweth  
Legislative Council



This legislation amends existing law governing the use of powers of attorney and adds to that body of law new sections that authorize and direct the use of a statutory form power of attorney.

A person typically uses a power of attorney to designate another to serve as the person's agent or representative. The instrument may be a general power of attorney, giving full power to the designee, but is often a special power of attorney, giving the designee specifically limited authority within time and other constraints. A power of attorney is usually drawn by an attorney or legal representative, but individuals may prepare their own, with or without benefit of preprinted forms.

CSHB 491 (HESS) draws initially upon a model act. In the main, its purpose is to authorize and define use of a power of attorney and to set out a specific form that the maker of a power of attorney should use in order to claim the benefits of the statutory power of attorney statutes. This legislation also prescribes limits on the exercise of authority by the agent or representative within each of 15 different categories for which the statutory power of attorney may be used. Presumably the drafters of the model act believe that these categories cover the most common kinds of personal and business affairs for which a power of attorney is commonly used.

Proposed bill section 1 of CSHB 491 (HESS) contains, first, two statutory form sections.

Proposed AS 13.26.332 sets out the language of the statutory power of attorney. The statutory form power of attorney relies upon the maker to check off and to cross out. As the bill is drafted, the maker of the power of attorney (termed "the principal" in this legislation) turns over to the agent designated in the power of attorney all authority except the authority that the principal chooses to specifically delete from the form in the manner set out at page 2 of the bill. The statutory power of attorney also makes provision for several contingencies, including appointment of more than one agent, the date or time the document is to be given effect, and a provision relating to termination of the power of attorney in the event of the principal's disability. The form also contains a notice to third parties to honor a completed statutory form power of attorney.

In the same bill section, proposed AS 13.26.335 sets out language of several optional provisions that may be included in or with the basic statutory form power of attorney set out in the preceding section. These include provisions covering provision of health care services under a "Living Will," the designation of alternate agents or attorneys-in-fact, and the nomination of a conservator or guardian.

\*

The next six sections of this bill section generally explain how the statutory form power of attorney provisions are to be executed, applied, and interpreted.

Proposed AS 13.26.338 specifies that the statutory form power of attorney and any incorporated optional provisions should be crossed out if the principal intends to withhold authority from the agent, and directs that any special limitations or provisions on an executed power of attorney must square with specific requirements of AS 13.26.347.

Proposed AS 13.26.341 incorporates direction as to how the instrument is to be interpreted and applied in the event the maker of the power of attorney elects one or more of several contingencies.

The longest section, AS 13.26.344, sets out guidance as to each of the 15 substantive elements within the statutory

form power of attorney. For each of the categories or subdivisions that the maker of the power of attorney may elect to confer or withhold from the agent (see page 2 of the bill), AS 13.26.344 defines what the grant of authority provided under each of those sections permits the agent to do in the principal's behalf. If authority is not expressly provided under each subsection of AS 13.26.344, the agent may not act on behalf of the principal on the basis of the authority granted by the instrument.

Proposed AS 13.26.347 (beginning at page 34 of the bill) is inserted to affirm that a power of attorney that is not in this statutory form may be valid as a statutory power of attorney (and, therefore, subject to interpretation under earlier provisions of this legislation) even as modified so long as the power of attorney conforms to the requirements of the section.

Generally, a power of attorney may be limited or may expire if the principal becomes disabled or incompetent. In contrast to that general proposition, this legislation favors the continuing viability of the document. Proposed AS 13.26.350(a) prescribes the continued validity of a statutory power of attorney after the maker of the power becomes disabled or becomes an invalid so long as the statutory power of attorney contains "words . . . showing the intent of the principal that the authority conferred shall [continue to] be exercisable." AS 13.26.350(b) affirms the continuing authority of the person acting under the statutory power of attorney to act during periods of disability, incompetence, or uncertainty, and describes the relationship between that person and any conservator who may be appointed for the maker of the power of attorney.

Proposed AS 13.26.353 collects miscellaneous provisions applicable to the preceding sections. Subsection (a) speaks to how disability of a principal who has given a statutory power of attorney may be established. Subsection (b) limits the liabilities of third parties who deal with an agent operating under "a properly executed" statutory power of attorney. Subsection (c) directs third parties to honor a properly executed statutory form power of attorney and prescribes a civil penalty for those who fail to honor the terms of a properly executed statutory power of attorney.

Representative Johnny Ellis  
Page 4  
April 22, 1988

Finally, proposed AS 13.26.356 adapts and carries forward the principal elements of a provision of existing law [AS 13.26.330, repealed later in this Act] that are applicable to all powers of attorney, whether or not executed in conformance with provisions governing the statutory form power of attorney. These provisions are applicable to determine the validity of the power of attorney in the event of the principal's death or disability.

Bill section 2, an uncodified section, is included in the bill to provide guidance as to how this Act--and specifically the new material added generally by AS 13.26.338 - 13.-26.356--affects an existing power of attorney. The several subsections address, in turn, (a) general powers of attorney, (b) special powers of attorney, and (c) so-called "durable" powers of attorney, that is, a power of attorney that continues to be valid even after the disability of the principal. As a general rule, subject only to the exceptions noted, the language makes the general principles of the material that is set out in bill section 1 applicable to existing powers of attorney.

In bill section 3 the two existing provisions governing the durability of a power of attorney in the event of the principal's death or disability are repealed. The subject is addressed in the material set out earlier in the bill.

JBC:gc  
WKG3:029



# Alzheimer's Disease Family Support Group

*Funded by Older Alaskans Commission*

Anchorage and Statewide Support  
9210 Jupiter Street  
Anchorage, Alaska 99507  
346-2366

Northern Region Coordinator  
P.O. Box 80188  
Fairbanks, Alaska 99708-0188

March 16, 1988

HESS Committee  
c/o Representative Johnny Ellis, Co-Chair  
PO Box V  
Juneau, Alaska 99811

MAR 21 1988

DeLo

Dear HESS Committee Members:

My purpose today is to present to you a review of, and support for, HB 491 "An Act establishing a statutory form power of attorney"

In my experiences as Out-reach Worker, Project Director, Board Member and Volunteer with the Alzheimer's Disease Family Support Group of Alaska (ADFSG) I have encountered many individuals needing or wanting a Durable Power of Attorney for themselves or a loved one.

The current statute gives authority for the DPA but does not give guidelines for the development of such a tool. Problems that have been encountered are:

1. There is no uniformity in how a DPA can be drawn up.
2. There is no guideline for identifying who has power and when power can be assumed. Currently anyone can be appointed and anything can be included to determine when a person becomes incapacitated. But this measure has to be expressly written into the DPA. Unfortunately, this measure has been overlooked and persons find themselves needing further legal assistance and may find themselves seeking guardianship.
3. Attorneys often do not understand what can be included in a DPA and find themselves doing a lot of research at the expense of the client. I have had families tell me what they wanted drawn up and what they actually received were worthless. It is imperative that a person seeking the DPA

HESS Committee  
March 16, 1988

Page 2 of 2

know and research all aspects of the DPA. But once again the lay person does not usually have skills to interpret legal jargon.

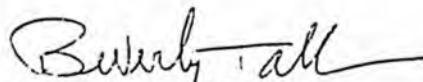
4. The present DPA can be questioned and not accepted by banks, health care agencies, social service agencies and state agencies (for instance, the Longevity Bonus Program does not accept a DPA).

After having reviewed the proposed bill, I can clearly see that the problems addressed above will be eliminated because:

1. The proposed bill will provide a statute that is, stated simply, a guided tour for those drawing up a DPA for a client, for individuals wishing to do it themselves, and for the institutions that may question the DPA. It will state specifically the powers that can be implemented under the DPA statute.

On behalf of the many families I have worked with in the past and will work with in the future, I support this bill as a positive effort in eliminating problems that have occurred with current law, and will streamline the process for families who are already overwhelmed with care issues.

Respectfully submitted:

  
Beverly Tallman  
Outreach Worker

*Not  
constit*

H B

4 9 8

# STATE OF ALASKA THE LEGISLATURE

POUGH Y. STATE CAPITOL  
JUNEAU, ALASKA 99811  
907.465.3900

## LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

H. JUD.	3-24-88	1:30p.m.
H. JUD	3-23-88	1:30p.m.

# HOUSE COMMITTEE REPORT

(7)

Date referred: 2/26/88

FURTHER REFERRALS:

DATE: March 24, 1988

The Judiciary Committee has considered HB 498

"An Act relating to the delivery of controlled substances and imitation controlled substances to minors."

**RECOMMENDS:**

- replace with \_\_\_\_\_  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

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

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published 2/26/88
- zero with analysis

**SIGNING DO PASS:**

Mr. Ulmer  
Sen. Costa  
Mike Havane  
Chad Taylor  
Mr. Schubert

**SIGNING OTHER RECOMMENDATIONS:**

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

Mr. Ulmer  
 Vice Chairman's signature

1 IN THE HOUSE

BY ULMER AND SWACKHAMMER

2

HOUSE BILL NO. 498

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 the delivery of controlled sub-  
7 stances and imitation controlled substances to mi-  
8 nors."

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

10 \* Section 1. AS 11.71.010(a) is amended to read:

11 (a) Except as authorized in AS 17.30, a person commits the crime  
12 of misconduct involving a controlled substance in the first degree if  
13 the person

14 (1) delivers any amount of a schedule IA controlled sub-  
15 stance to a person under 21 [19] years of age who is at least three  
16 years younger than the person delivering the substance; [OR]

17 (2) delivers any amount of a schedule IIA or IIIA controlled  
18 substance to a person under 21 [19] years of age who is at least three  
19 years younger than the ~~person delivering the substance;~~ or

20 (3) engages in a continuing criminal enterprise.

21 \* Sec. 2. AS 11.71.030(a) is amended to read:

22 (a) Except as authorized in AS 17.30, a person ~~commits the~~ crime  
23 of misconduct involving a controlled substance in the third degree if  
24 the person

25 (1) manufactures or delivers any amount of a schedule IIA or  
26 IIIA controlled substance or possesses any amount of a schedule IIA or  
27 IIIA controlled substance with intent to manufacture ~~or deliver;~~

28 (2) delivers any amount of a ~~schedule IVA, VA, or VIA con-~~  
29 trolled substance to a person under 21 [19] years of age who is at

1 least three years younger than the person delivering the substance; or  
2 (3) being 18 years of age or older, possesses any amount of  
3 a schedule IA or IIA controlled substance within the grounds of or on  
4 a parking lot immediately adjacent to a public or private preschool,  
5 elementary, junior high, or secondary school.

6 \* Sec. 3. AS 11.73.030(a) is amended to read:

7 (a) Except as provided in AS 11.73.050, a person 21 [19] years of  
8 age or older may not deliver an imitation controlled substance to a  
9 person under 21 [19] years of age, who is at least three years younger  
10 than the person delivering the substance.

DRUG	PROHIBITED ACT	CLASS OF OFFENSE
I A Heroin	Delivery of any amount to anyone under 19 and 3 years younger	Unclassified-1° 11.71.010(a)(1)
	Manufacture or delivery or possession with intent to manufacture or deliver any amount	A-2° 11.71.020(a)
	Defendant 18 or older, possession on school grounds, etc.	B-3° 11.71.030(a)(3)
	Possession of any amount	C-4° 11.71.040(a)(3)(4)
II A Cocaine	Delivery of any amount to anyone under 19 and 3 years younger	Unclassified-1° 11.71.010(a)(2)
	Manufacture or delivery or possession with intent to manufacture or deliver any amount	B-3° 11.71.030(a)(1)
	Defendant 18 or older, possession on school grounds, etc.	B-3° 11.71.030(a)(3)
	Possession of any amount	C-4° 11.71.040(a)(3)(4)
III Depressants Narcotics Codeine Hashish	Delivery of any amount to anyone under 19 and 3 years younger	Unclassified-1° 11.71.010(a)(2)
	Manufacture or delivery or possession with intent to manufacture or deliver any amount.	B-3° 11.71.030(a)(1)
	Possession of certain amounts	C-4° 11.71.040(a)(3)(B), (C)
	Defendant 18 or older, possession on school grounds, etc.	C-4° 11.71.040(a)(4)
Possession of certain amounts	A-5° 11.71.050(a)(3)(A), (B)	

DRUG	PROHIBITED ACT	CLASS OF OFFENSE
IV	Delivery of any amount to anyone under 19 and 3 years younger	B-3° 11.71.030(a)(2)
	Manufacture or delivery or possession with intent to manufacture or deliver any amount	C-4° 11.71.040(a)(1)
	Possession of certain amounts	C-4° 11.71.040(a)(3)(B), (C)
	Defendant 18 or older, possession on school grounds, etc.	C-4° 11.71.040(a)(4)
	Possession of certain amounts	A-5° 11.71.050(a)(3)(A), (B)
V Limited quantities of narcotic drugs and opium	Delivery of any amount to anyone under 19 and 3 years younger	B-3° 11.71.030(a)(2)
	Manufacture or delivery or possession with intent to manufacture or deliver any amount	C-4° 11.71.040(a)(1)
	Possession of certain amounts	C-4° 11.71.040(a)(3)(D), (E)
	Possession of certain amounts	A-5° 11.71.050(a)(3)(D)

DRUG	PROHIBITED ACT	CLASS OF OFFENSE
VI Marijuana	Delivery of any amount to anyone under 19 and 3 years younger	B-3° 11.71.030(a)(2)
	Manufacture or delivery or possession with intent to manufacture or deliver equal to or greater than 1 oz.	C-4° 11.71.040(a)(2)
	Possession of equal to or greater than 1 lb.	C-4° 11.71.040(a)(3)(F)
	Defendant 18 or older, possession on school grounds, etc.	C-4° 11.71.040(a)(4)
	Manufacture or delivery or possession with intent to manufacture or deliver equal to or greater than 1/2 oz.	A-5° 11.71.050(a)(1)
	Manufacture or delivery or possession with intent to manufacture or deliver less than 1/2 oz. for remuneration	A-5° 11.71.050(a)(2)
	Possession of equal to or greater than 1/2 lb.	A-5° 11.71.050(a)(3)(E)
	Use or display any amount or possess equal to or greater than 1 oz. in public	B-6° 11.71.060(a)(1)
	Possession of any amount in motor vehicle	B-6° 11.71.060(a)(2)
	Defendant under 19, possesses less than 4 oz.	B-6° 11.71.060(a)(3)
	Possession equal to or greater than 4 oz.	B-6° 11.71.060(a)(4)
	Manufacture or delivery or possession with intent to manufacture or deliver less than 1/2 oz.	Violation-7° 11.71.070(a)(1)
	Possession of less than 1 oz. in public	Violation-7° 11.71.070(a)(2)

Analysis/Impact of House Bill 498

AS 11.71.010(a)

Controlled substance            IA, IIA, IIIA

AS 11.71.030(a)

Controlled substance            IVA, VA, VIA

AS 11.73.030(a)

Imitation controlled substance

Present Law

Seller's Age

Buyer's Age

At least 3 years older

Under 19  
(18 and under)

HB 498

Seller's Age

Buyer's Age

At least 3 years older

Under 21

Examples

Seller's Age

Buyer's Age

At least:

23

20

Added by

22

19

HB 498

---

21

18

20

17

Current Law

19

16

18

15

STATE OF ALASKA  
THE LEGISLATURE

COPY

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 18, 1988

SUBJECT: HB 498, sectional analysis  
TO: Representative Fran Ulmer  
FROM: Jack Chenoweth  
Legislative Counsel

You have requested a sectional analysis of HB 498.

Stringent penalties are imposed for transactions involving delivery of controlled substances and imitation controlled substances to minors. Under current law, those penalties apply, generally, to delivery to persons under 19 years of age who are at least three years younger than the person delivering the substance. (The three year distinction arises out of concern that the proscribed transaction subject to more stringent penalties involve a genuine sale to a minor rather than a transmittal between persons of approximately the same age, one of whom is 19 or over and one of whom is just under that age.)

The changes made in HB 498 raise the age of persons to whom delivery is made from 19 to 21, maintaining the requirement that the person to whom the controlled substance or imitation controlled substance is delivered is at least three years younger than the person delivering the substance.

The changes apply as follows:

Section 1 amends AS 11.71.010(a), the provision defining misconduct involving controlled substances in the first degree by increasing the age of persons to whom delivery is made from 19 to 21. The provision is applicable to controlled substances on schedules IA, IIA, and IIIA, and generally cover transactions involving substances having the highest degree of danger or probable danger to a person or to the public. As a general summary of the most commonly

known drugs and narcotics, the substances covered under this provision include opium and morphine (schedule IA), LSD, cocaine, and amphetamines (schedule IIA), and hashish and similar substances (schedule IIIA). Violation of AS 11.71.-010 is an unclassified felony.

Section 2 amends AS 11.71.030(a), the provision defining misconduct involving controlled substances in the third degree by increasing the age of persons to whom deliver is made from 19 to 21. The provision is applicable to controlled substances on schedules IVA, VA, and VIA, and generally cover transactions involving substances having significantly lesser danger or probable danger to a person or the public. As a general summary of the most commonly known drugs and narcotics, the substances covered under this provision include salts chemically related to phenobarbital (schedule IVA), certain designated narcotics listed on other schedules that are present in limited quantities (schedule VA), and, of course, marijuana (schedule VIA). Violation of AS 11.71.030 is a class B felony.

Section 3 amends AS 11.73.030, the provision defining misconduct involving imitation controlled substances. Violation of AS 11.73.030 is a class B felony.

JBC:gc  
WKG1:0091

FISCAL NOTE

REQUEST

Revision Date: \_\_\_\_\_  
Title: "..delivery of controlled substances..  
to minors."  
Sponsor: Reps. Ulmer and Swackhammer  
Requestor: State Affairs

Agency Affected: Public Safety  
BRU: Alaska State Troopers  
Components: Criminal Investigation Bureau

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY88	FY89	FY90	FY91	FY92	FY93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUNDS						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan F.C.A.  
Division: Alaska State Troopers

Phone: 269-5691  
Date: 2/22/88

Approved by Commissioner: Wally Hoatski, Dep. Commr. Date: 2-24-88  
Agency: Public Safety

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



H B

5 7

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

H. JUD. 4-25-88 1:30 p.m.

1 IN THE HOUSE

BY ULMER

2

HOUSE BILL NO. 517

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 civil liability of certain volun-  
7 teers."

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

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

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

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

18 (c) This section does not affect

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

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

24 (d) In this section,

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

27 (2) "nonprofit entity" means an entity

28 (A) incorporated under AS 10.20; or

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

1           (Internal Revenue Code of 1954);

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

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 5, 1988

SUBJECT:           Constitutionality of CSHB 517 (L&C)

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

FROM:             Edward H. Hein *EH*  
                    Legislative Counsel

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

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

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

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

Representative Dave Donley  
Page 2  
April 5, 1988

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

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

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

Enclosure

EHH:gc  
WKG2:095

# Alaska State Legislature

## Committees:

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



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

## REPRESENTATIVE FRAN ULMER

### M E M O R A N D U M

March 29, 1988

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

FROM: Representative Fran Ulmer

SUBJECT: House Bill 517

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

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

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

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

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

Thank you for your favorable consideration of House Bill 517.

BILL NO: HB 517

DATE: 3/2/88

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

CONTACT: Col. Robert E. Jent  
269-5641

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

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

The Department of Public Safety supports this legislation.

  
\_\_\_\_\_  
for Arthur English  
Commissioner

FISCAL NOTE

REQUEST

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

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

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

Approved by Commissioner: [Signature], Dep. Comm. Date: 3-2-88  
 Agency: Public Safety

Distribution (by preparer):

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

POSITION PAPER  
HOUSE BILL NO. 517

RECEIVED  
MAR 17 1988

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

EFFECT OF BILL

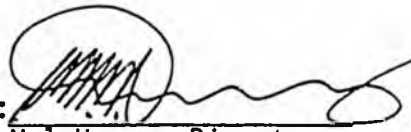
HB517 would protect volunteers working for State or local government or nonprofit entities from civil liability except in cases of gross negligence, recklessness, or intentional misconduct.

DISCUSSION

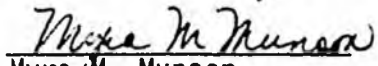
Volunteers are commonly used in human service agencies. They are a valuable adjunct to paid staff, and in many cases they provide services which are not otherwise available. It is in the State's best interest to encourage the use of volunteers at State agencies and in grantee nonprofit or local government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

RECOMMENDATION:

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

Recommended by:   
Mel Henry, Director

Date: 24<sup>th</sup> February 1988

Approved by:   
Myra M. Munson,  
Commissioner

Date: March 7, 1988

FISCAL NOTE

REQUEST:

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)


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


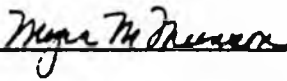
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

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

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

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

Distribution (by preparer):

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

# HOUSE COMMITTEE REPORT

(7)

Date referred: 2/15/88

FURTHER REFERRALS:

Judiciary

DATE: 3/31/88

The Labor & Commerce Committee has considered HB 517

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

## RECOMMENDS:

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

**ADOPTS:**  \_\_\_\_\_ letter of intent

## ATTACHES NEW FISCAL NOTE(S):

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

## SIGNING DO PASS:

## SIGNING OTHER RECOMMENDATIONS:

Alvin Koppen  
David Douley  
Ph Ellis  
Cliff Davidson  
Scott Johnson  
Paul Barber

David Douley  
Chairman's signature

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

THE SUPREME COURT OF THE STATE OF ALASKA

TURNER CONSTRUCTION COMPANY, INC., )

Petitioner, )

v. )

ROBERT SCALES and KIP CLAPPER, )

Respondents. )

File No. S-1429

O P I N I O N

---

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

Petitioner, )

v. )

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

Respondents. )

File No. S-1600

[No. 3290 - April 1, 1988]

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

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

governing actions against design professionals such as architects, engineers and contractors, and moved for judgment on the pleadings. Scales moved to strike the defense on the ground that the statute is unconstitutional. Superior Court Judge Douglas J. Serdahely granted Scales' motion, concluding that AS 09.10.055 violates the due process<sup>3</sup> and equal protection<sup>4</sup> clauses of the Alaska Constitution.

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

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

---

(Footnote Continued)

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

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

3. Alaska Const. art. I, § 7.

4. Alaska Const. art. I, § 1.

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

AS 09.10.055 (Emphasis added).

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

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

Id. at 365.<sup>6</sup>

### III. EQUAL PROTECTION

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

---

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

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

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

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

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

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

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

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

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

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

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

3290

*Pages 4 & 6*

100TH CONGRESS  
1ST SESSION

# H. R. 911

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

---

## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1987

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

MAY 27, 1987

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

100TH CONGRESS  
1ST SESSION

# S. 929

Entitled the "Volunteer Protection Act of 1987".

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## IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, MARCH 30), 1987

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

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## A BILL

Entitled the "Volunteer Protection Act of 1987".

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

3       SECTION 1. SHORT TITLE.

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

6       SEC. 2. FINDINGS AND PURPOSE.

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

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

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

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

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

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

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

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

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

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

15 SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.

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

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

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

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

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

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

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

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

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

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

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

10 SEC. 6. DEFINITIONS.

11 For purposes of this Act—

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

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

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

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

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Fairbanks, AK 99712  
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3/8/88

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

Dear Representative Ulmer:

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

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

Sincerely yours,

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

Patricia Oakes  
chairman

# **An Analysis of Volunteer Protection Legislation**

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

**by  
Stephen H. McCurley  
VM Systems  
September 1987**

# An Analysis of Volunteer Protection Legislation

## Introduction

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

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

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

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

## Background/Overview

### Volunteering in America

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

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

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

### The Liability Crisis

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

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

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

### Analysis of Protective Legislation

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

#### Extent of Organizational Coverage

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

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

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

#### Types of Volunteers Covered

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

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

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

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

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

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

### *C. Variations/Exceptions*

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

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

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

### **Summary of Coverage**

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

### **Implications and Impact**

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

#### **I. Impact on Lawsuits**

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

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

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

#### 4. Impact on Volunteer Management

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

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

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

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

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

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

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

## Appendix 1 Case Citations

### Direct Service Volunteers

1. Scottsdale Jaycees v. Superior Court 17 Ariz. App. 571, 499 P.2d 185 (1972)  
(volunteer involved in automobile accident en route to convention)
2. Sokolow v. City of Hope 41 Cal. 2d 668, 262 P. 2d 841 (1953)  
(hospital auxiliary in accident at fundraiser)
3. Malloy v. Fong 37 Cal. 2d 356, 231 P. 2d 241 (1951)  
(volunteer divinity student causes automobile accident)
4. Leno v. YMCA 17 Cal. App. 3d 651, 95 Cal. Rptr 96 (1971)  
(volunteer scuba instructor involved in drowning of student)
5. Trinity Lutheran Church v. Miller 451 NE 2d 1099 (1983)  
(volunteer driver injures motorcyclist while delivering holiday gifts)
6. Garcia v. Herald Tribune Fresh Air Fund 51 A.D. 2d 897, 380 N.Y.S. 2d 676 (1976)  
(volunteer host family involved in drowning of child)
7. Davis v. Shelton 33 A.D. 2d 707, 304 N.Y.S. 2d 722 (1969), appeal dismissed 26 N.Y. 2d 829, 257 N.E. 2d 902 (1970)  
(Boy Scout volunteer involved in accident where scout falls out of tree)
8. Ricker v. Boy Scouts of America 8 A.D. 2d 565, 183 N.Y.S. 2d 494 (1959)  
(injury caused by volunteer scout master at scouting event)
9. Baxter v. Morningside 10 Wash. App. 893, 521 P. 2d 946 (1974)  
(volunteer driver involved in accident while delivering package)
10. Manor v. Hanson 120 Wis. 2d 582, 356 N.W. 2d 925, (Ct. App. 1984)  
(volunteer driver for senior transportation program involved in accident)

### Board Volunteers

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

**Appendix 2**  
**IRC Classification of Tax Exempt Organizations**

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

**Appendix 4**  
**State Legislation: Variations In Coverage**

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

**Appendix B**  
**Federal Legislation: Analysis of HR911**

**Background:**

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

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

**Coverage:**

The essential elements of the Porter bill are as follows:

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

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

**Legislative Prospects:**

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

Resistance to the bill comes on two grounds:

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

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

30. Doug Johnston and C. Miller Sigmon, Can You Really Be Sued? A Liability Audit for Nonprofit Boards (Division of Archives & History, North Carolina Department of Cultural Resources) 1986.
31. Robert Cowden, "Directors and Officers of Charitable Corporations: Duties, Personal Liability, Indemnity and Insurance," Memorandum (Boston: Casner, Edwards, and Roseman) May 1985.
32. Vance Opperman, New Developments in Legal Responsibilities of the Board of Directors (Minneapolis: Opperman & Paquin) 1984.
33. Tamar Lewin, "Board Liability in Delaware," New York Times, D2 (January 13, 1987).
34. Craig Stoltz, "The Search for Liability Insurance," 38 Association Management 65 (February 1986).
35. Judy Haberek, "The Volunteer Protection Act of 1987: Gett' \_ HR911 Passed," Voluntary Action Leadership 15 (Spring/Summer 1987).
36. Steve McCurley, "Protecting Volunteers from Suit: A Look at State Legislation," Voluntary Action Leadership 17 (Spring/Summer 1987).
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# STATE VOLUNTEER LIABILITY LEGISLATION

Stephen McCurley

Draft #20 11/21/87

DRAFT

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

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

	Bill No	NP corp; town Corporation	Board; commission Officers, agents, employees	if "occasioned by membership or participation" Not liable to those in sponsored sports event; if minor, must have parental waiver
SD	§23A-28-11 86	Any recipient of community service defendants	Organizations	Xgross negligence, willful, wanton; and only to extent of insurance
	§47-22-65 86	NP corp	Board	None, can indemnify
	Ch 47-23 87	501(c); hosp	Board	Xwillful, wanton
	HB1317 87	501(a), 501(c), hospital, govt entity	Board, service vol, Commission	Act in good faith & within scope. Xwillful, wanton, Xmotor vehicle, Xto extent of insurance (Xfor Board)
TN	28-3-301 86	501(c)(3), (c)(6), electric cooperatives	Board	Xwillful, wanton, gross
	29-20-201 86	Govt boards, commissions	Board	Xwillful, wanton, gross
TX	87bill HB24	NP corp	Board	Xgross negligence: Xcorporation, shareholders
	87bill HB104	NP corp	Volunteer	Must be under supervision of director or paid employee
	87bill HB201	Any person	Court-apptd volunteer	Xwillful, gross
	87bill HB202	501(a),(c)(3) Nonhosp NP	Bd; volunteer Organization	Must act in good faith and within scope of duties; Xwillful, wanton, intentional; Xto corp Limit placed on monetary damages
	87bill SB201	State govt, Bd of higher education institution	Bd; volunteer; court-ordrd service	Not personally liable if within scope of duties
	87bill SB287/ HB564	NP Corps	Board	Xintent; Xto Corp.
	Title 4 Ch 84 §84.001 87	501(c)(3,4), except health-care provider	Board; volunteer	Act in good faith & within scope of duties; Xmotor vehicle to extent of insurance

				Xintent, willful, wanton XBd member liability to organization and its members
UT	SB2:4 86 (Gov veto)	NP corp	Board	
VA	§13.2-870.1 87	Corp	Board	Liable only to amount of compensation; Xwill- ful, knowing violation
VT	S37 87	301(c)(3)	Board	Good faith, Xwillful, wanton
WA	RCW4.24 sec 86	NP corp	Board	Xgross negligence, Xto corporation
	RCW7.70 86	Public or private hospital	Board	Not responsible for care by health care provider Xgross negligence in granting privilege
WI	Act 13 of 87	NP corp; credit union; fraternal benefit insurance	Board; vols	Bd: Xconflict of interest; criminal vicia- tion Xreason to believe conduct unlawful; Willful misconduct. Vol: criminal violation Xreason to believe conduct unlawful; Xvehicle related; Xprofessional services
	87bill SB65	NP org	Organization	Limits liability of org assigned children under sup'vised work program to \$25,000
WV	87bill #?	State +local govt; NP corp; other similar corps; business trade assoc	Board	Xto extent of insurance; if no insurance, then immune
WY	WS1-23-107 86	NP corp; government	Board, commission	Xintentional tort or illegal acts

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202/232-7535

100TH CONGRESS  
1ST SESSION

# H. R. 911

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

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1987

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

MAY 27, 1987

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

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

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

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

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

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

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

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

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

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



ALASKA STATE LEGISLATIVE COMMITTEE

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

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

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

3/22/88

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

Dear Representative Ulmer:

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

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

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

Sincerely yours,

Miss Patricia Oakes, Chairman  
AARP/Alaska State Legislative Committee

Alaska Recreation and Park Association

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



HB 517

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February 26, 1988

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

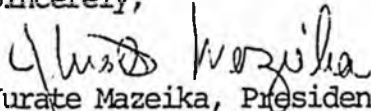
Dear Representative Donley:

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

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

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

Sincerely,

  
Jurate Mazeika, President  
Alaska Recreation and Park Assoc.

Original sponsor: Ulmer

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 517 (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 relating to civil liability of certain volun-  
7 teers."

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

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

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

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

17 (1) gross negligence, recklessness, or intentional miscon-  
18 duct; or

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

21 (c) This section does not affect

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

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

27 (d) In this section,

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

1 (2) "nonprofit entity" means an entity

2 (A) incorporated under AS 10.20; or

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

4 (Internal Revenue Code of 1954);

+ (C)(4)

5 (3) "volunteer" means a person who receives financial  
6 consideration of not more than \$500 a year, not including reimburse-  
7 ment for expenses actually incurred, for services performed for the  
8 state, a municipality, or a nonprofit entity.  
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521

# Alaska State Legislature

**STEVE FRANK**

DISTRICT 20A  
Finance Committee

1125 Sunset Drive  
Fairbanks, Alaska 99701



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

## House of Representatives

TO: House State Affairs Committee

FROM: Representative *Steve Frank*

RE: House Bill 521 - "An Act relating to open containers of alcoholic beverages in motor vehicles"

DATE: March 4, 1988

---

House Bill 521 would make it illegal to carry open containers of alcoholic beverages in the passenger compartment of a motor vehicle. A person in violation would be guilty of an infraction, which is punishable by a fine of up to \$300.

Alaska Administrative Code 13 02 545 prohibits drinking while driving; however, no statute or regulation exists prohibiting having an open container of alcohol in a vehicle. Therefore, the existing regulation cannot be enforced unless an officer actually sees the driver of a vehicle consuming an alcoholic beverage.

This bill would allow for open containers (including containers with a broken seal) to be carried in the trunk of a vehicle. In the case of a station wagon, hatch back, or similar vehicle that has no trunk or separate storage compartment, open containers could be transported, within another container, behind the last upright seat of the vehicle.

House Bill 521 has broad statewide support from such groups as the Anchorage and Fairbanks chapters of Mothers Against Drunk Driving (MADD), the Fairbanks Native Association, and the Alaska Council for the Prevention of Alcoholism and Drug Abuse. It is also supported by the Department of Health and Social Services (State Office of Alcoholism and Drug Abuse - SOADA) and the Department of Public Safety.

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

H B

521

# Alaska State Legislature

**STEVE FRANK**

DISTRICT 20A  
Finance Committee

1125 Sunset Drive  
Fairbanks, Alaska 99701



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

## House of Representatives

TO: House State Affairs Committee

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House Bill 3; which was introduced during the 13th Alaska Legislature, is identical to House Bill 521. As you can see, there was a great deal of support for HB 3 in the House in 1985.

\* CSHB 3(Jud)am

The question to be reconsidered: "Shall CSHB 3(Jud)am pass the House?" The roll was taken with the following result:

CSHB 3(JUD)AM RECON

Yeas: 34 Adams, Binkley, Boucher, Cato,  
Clocksin, Collins, Cotten, Duncan,  
Frank, Fuller, Furnace, Goll,  
Gruenberg, Grussendorf, Hanley,  
Hurley, Jenkins, Koponen, Larson,  
Martin, Miller, M.M., Miller, M.W.,  
Navarre, Pettyjohn, Phillips,  
Pignalberi, Pourchot, Rieger,  
Ringstad, Sund, Szymanski, Taylor,  
Thompson, Uehling

Nays: 4 Davis, Marrou, Pearce, Shultz

Excused: 1 Herrmann

Absent: 1 Wallis

And so, CSHB 3(Jud)am passed the House on reconsideration and was referred to the Chief Clerk for engrossment.

CSHB 17(Jud)

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 17 (Judiciary) (multiple convictions for motor vehicle theft and joyriding) which had been reported out of the Finance Committee and held in third reading under reconsideration (page 431) was again before the House in third reading.

The question to be reconsidered: "Shall CSHB 17(Jud) pass the House?" The roll was taken with the following result:

CSHB 17(JUD) RECONSIDERATION

Yeas: 34 Adams, Binkley, Boucher, Cato,  
Collins, Cotten, Duncan, Frank,  
Fuller, Furnace, Goll, Gruenberg,  
Grussendorf, Hanley, Jenkins,  
Larson, Marrou, Martin,  
Miller, M.M., Miller, M.W., Navarre,  
Pearce, Pettyjohn, Phillips,  
Pignalberi, Pourchot, Rieger,  
Ringstad, Shultz, Sund, Szymanski,  
Taylor, Thompson, Uehling

Nays: 3 Clocksin, Davis, Koponen

Excused: 1 Herrmann

Absent: 2 Hurley, Wallis



**STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
BILL ANALYSIS**

DEPARTMENT <b>Public Safety</b>	DIVISION <b>Alaska State Troopers</b>	BILL NUMBER <b>HB 521</b>	SPONSOR <b>Rep. Frank</b>
SHORT TITLE OF BILL <b>Open containers of alcoholic beverages</b>			
DEPARTMENT POSITION <b>Support</b>			
PREPARED BY <b>Col. Robert E. Jent</b>	DATE <b>2/29/88</b>	COMMISSIONER'S SIGNATURE <i>Arthur Engle</i>	DATE

**SUMMARY**

OTHER AGENCIES AFFECTED BY BILL <b>Department of law All law enforcement agencies</b>	CONSTITUENT GROUP(S) AFFECTED BY BILL <b>All licensed drivers</b>
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL
FISCAL IMPACT: <input checked="" type="checkbox"/> NONE <input checked="" type="checkbox"/> FISCAL NOTE ATTACHED	

BACKGROUND/LEGISLATIVE INTENT

This bill makes it an infraction for a person to drive a motor vehicle while there is an open container of alcoholic beverages in the passenger compartment. The basic purpose of the legislation is to discourage drinking while driving.

ANALYSIS OF BILL/PROGRAM EFFECTS

Nationally, the majority of serious and fatal accidents are connected with alcohol use by the driver. This measure will provide law enforcement officers with an additional deterrent to address this problem, although effective enforcement on a constant basis may prove difficult.

AMENDMENTS PROPOSED

This bill provides that a person is deemed to have consented to a preliminary breath test (PBT) if he drives with an open container in the vehicle. In *Leslie v. State*, 711 P. 2d 575 (Ct. App. 1986) the court of appeals held that a PBT result could not be used to help an officer decide whether to arrest a subject; the officer already has to have probable cause to arrest before he can require the driver to take a preliminary breath test. The bill, as presently drafted, does not address this issue.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.