

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4831 HLAB HB 517 - HB 526

4831

Alaska State Legislature

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Legislative Council
Finance Subcommittee
for the University of Alaska
Joint Committee
on Economic Recovery



P.O. Box V
Juneau, Alaska 99811
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REPRESENTATIVE FRAN ULMER

M E M O R A N D U M

March 15, 1988

TO: Representative Dave Donley, Chair
House Labor and Commerce Committee

FROM: Representative Fran Ulmer

SUBJECT: House Bill 517

I sincerely would appreciate if you would hold a hearing on House Bill 517, "An Act relating to civil liability of certain volunteers," which is currently in House Labor and Commerce. I have attached a letter from the Association of Retired Persons indicating their support for this bill. In addition, it is supported by municipalities and volunteer organizations who feel strongly that this kind of protection is essential. I am hopeful that you will be able to calendar it next week so that it has an opportunity to proceed and, hopefully, be adopted this legislative session.

Thank you very much for your assistance.

Attachment



ALASKA STATE LEGISLATIVE COMMITTEE

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3/22/88

The Honorable Dave Donley, Chairman
House Labor and Commerce Committee
PO Box V
Juneau, AK 99811

RECEIVED
MAR 25 1988

Dear Representative Donley:

We urge that the House Labor and Commerce 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 especially 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.

Alaska non-profit organizations and organizations covered by IRS 501(c)(3) status are doing great work for Alaska. In many cases, they are providing essential services to low-income and to frail elderly citizens.

We feel that protection from civil liability is important to all volunteers and urge that your committee approve this legislation as soon as possible.

Sincerely yours,

Miss Patricia Oakes, Chairman
AARP/Alaska State Legislative Committee



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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 CSHE 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 Appendices 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).

CORRECTION

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

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Table of Contents

Introduction	1
Background/Overview	1
Volunteer in America	
The Liability Crisis	
The Move to Legislative Protection	
Analysis of Protective Legislation	2
Extent of Organizational Coverage	
Types of Volunteers Covered	
Extent of Protection	
Summary of Coverage	
Implications and Impact	5
Impact on Lawsuits	
Impact on Insurance	
Impact on Volunteering	
Impact on Volunteer Management	
Impact on Service Recipients	
Impact on Social Service Agencies	
Conclusion	9
Footnotes	10
Appendices:	
1. Case Citations	11
2. IRC Classification of Tax Exempt Organizations	13
3. State Legislation: Breakdown by State	14
4. State Legislation: Variations	15
5. State Legislation: Citations	16
6. Federal Legislation: Analysis of HR 911	17
7. Volunteer Liability Bibliography	18

An Analysis of Volunteer Protection Legislation

Introduction

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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).

- 2. Suit against a direct service volunteer for criminal action (usually involving child abuse or molestation).
- 3. Suit against a board member for mismanagement of the agency on which the volunteer serves.
- 4. Suit against a board member related to the programs or activities of the agency on which the volunteer serves.

(Appendix 1 provides examples and citations of some of the lawsuits which have been filed regarding both direct service and board volunteers.)

Beginning in approximately 1983 the explosion of lawsuits began to significantly affect the volunteer community. At that time over 13 million lawsuits were being filed each year, primarily involving claims of negligence. Although few of these lawsuits involved the social services community, and even fewer involved personal suits against volunteers, a tremor of fear struck the volunteer community.

This reaction was based upon two factors:

First, since previous experience had been that there was no reason to worry about lawsuits, the realization of exposure to risk of suit came as a massive and unpleasant shock to the volunteers. Despite the relative improbability of suit, the perception of risk was such that even one suit in a community could serve to damage or paralyze volunteer recruitment efforts. As public attention was focused upon the liability crisis, and as volunteer groups began to be cited as a possible target, the fear grew even in communities where no lawsuit had previously been filed.

Second, volunteer organizations began to receive tangible reminder of the potential of suit from the insurance industry. Many volunteer organizations either had been covering or sought to cover board volunteers with insurance that would provide protection in the event of suit. The premiums for this coverage began to escalate tremendously, with increases of 300% annually not being uncommon.¹ In addition, many volunteer-utilizing programs were simply denied insurance coverage and were told that they were too much of a risk to receive protection. This served both to reinforce the perception of risk and at the same time to instill a feeling of hopelessness and desperation among volunteers and volunteer organizations.

The Move to Legislative Protection

Legislative relief from suit has been provided in some other areas of social services. Parks and recreation programs in some states have been granted limited immunity from suits involving negligence,² and immunity has been sought for individuals working in child welfare³. Louisiana has had a provision since 1972 that limits suits against non-profit board members by recipients of the agency's services.

The move to exempt volunteers from suit began in New Jersey and in Pennsylvania with an attempt to provide protection for volunteers working in sports programs. Volunteer coaches and workers in programs such as Little League were one of the central focuses of fear of suits arising from an injury to a child through misuse of equipment or through improper coaching techniques. During legislative consideration, the original bills were expanded to include protection for board volunteers as well.

When news of the enacted legislation in Pennsylvania and New Jersey spread, other states began to rapidly follow suit. By the end of the 1986 legislative sessions, 20 states had enacted some form of protective legislation. By mid-1987 the number of

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.

2. Individuals who receive a stipend, such as volunteers under the Foster Grandparents program of the ACTION agency.
3. Student interns who are receiving educational credits.
4. Corporate employees who receive a salary, but who are 'loaned' to a non-profit agency.
5. Board members who serve as official delegates to a board as a part of their work duties.

The creativity of the volunteer community in obtaining unpaid workers has apparently progressed beyond the creativity of legislative drafters.

Extent of Protection

The protection being provided in the legislation does not totally render a volunteer immune from suit. The legislation is limited to civil cases (with the exception of Wisconsin), and mostly restricted to cases involving negligence. Underlying almost all of the legislation is the explicit or implicit requirement that the volunteer be operating in good faith and within the scope of their volunteer duties in order to qualify for protection.

In addition, the protection provided to the volunteer may be limited in three areas:

A. Extent of wrong-doing allowed

Most legislation does not exempt a volunteer from all and any mis-conduct. Usually a limit is set beyond which the volunteer does not receive protection. The common limits are as follows:

1. "Knowledge/participation": the volunteer is liable if they were a direct participant in the wrong-doing.
2. "Wanton/gross misconduct": the volunteer is liable if their conduct is sufficiently grievous as to be seriously flawed, or such a level of mistake as to constitute much more than an inadvertent error on the part of the volunteer.
3. "Willful/intentional misconduct": the volunteer is liable if the misconduct is of a deliberate nature.

In essence, most legislation provides protection by raising the burden of proof on the plaintiff to demonstration of a higher level of wrong-doing.

B. Exempted plaintiffs

Some potential plaintiffs are exempted from the protections granted by the new laws. Examples of those are:

1. The agency itself, which could still file suit against one of its own volunteers for misconduct. This exemption is aimed at protecting agencies from wrongful actions of members of their boards.
2. The Attorney General of the state, who is commonly charged with supervision over non-profit agencies.
3. Third parties who do not receive services from the agency, in what is essentially a variation that has existed for years in the old charitable immunity doctrine.

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,⁴ 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?

What is obvious is that the legislation does provide some additional protection to volunteers. While the protection is not universal, at least in the area of negligence suits it will clearly be more difficult for plaintiffs to meet the heightened burden of proof required under most of the new legislation. This should ultimately reduce the incidence of suit through discouraging potential plaintiffs.

In addition, some types of lawsuits will be more significantly affected. One type of suit, for example, which caused considerable unrest among non-profit board members, was the suit which arose over a program or activity conducted by the non-profit, during which someone was injured. In addition to suing the non-profit agency, many plaintiffs were also filing against individual board members (many of whom had considerably more assets than the non-profit agency). The requirements in the new legislation for demonstration of active participation or involvement in the actual wrong-doing should substantially reduce this type of suit.

2. Impact on Insurance

Impact of the legislation on insurance is much harder to predict, and depends on whether one thinks that the pricing of insurance premiums is directly related to risks. The period since enactment of the new legislation has been too short for empirical demonstration of any reduction in rates. On an inferential basis, a few more companies are now advertising the availability of Directors and Officers insurance coverage for board volunteers.

One negative result in the area of insurance has been a tendency toward over-reaction in the volunteer community in estimating the amount of protection provided in the new legislation. This has led to some agencies deciding that they could safely cancel or fail to renew insurance policies. Such an action is clearly not justifiable solely as a result of the legislation, both because of its lack of universal coverage and because of the benefit of insurance in providing assistance in defending against even frivolous suits.

3. Impact on Volunteering

Quantitative statistics are also lacking on the potential impact of the legislation on volunteering. Since no data exists on any present deterrent effect that litigation has had on volunteer involvement, it is difficult to predict to what extent this remedy may alleviate fear among potential volunteers. Inferential data exists concerning non-profit board volunteers: a study conducted in 1986 by the National Association of Corporate Directors found that only 36% of those responding said they would serve on not-for-profit boards that did not have insurance protection.⁵ A study by the Opinion Research Center for Peat, Marwick found that 6% of the survey respondents reported having a person resign from their board because of concern over potential liability and 8% reported having had a potential board member refuse to join the board.⁶

The most significant quantitative impact that the legislation may have on volunteering may well occur on a sectoral basis. Under current patterns of state legislation there is wide diversity in which organizations are covered, and within a given state large areas of the volunteer community are often outside the protection offered by the legislation. This opens a potential scenario in which those organizations that are within the protective purview of the new legislation may utilize that protection to gain a competitive advantage in recruiting both service volunteers and board members. While the actual increase in safety generated by the new legislation may be small in terms of absolute probabilities, a targeted marketing campaign could certainly make use of the new legislation to remind volunteers that they do not need to face even a

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

contained requirements on agencies for the provision of written volunteer job descriptions, training programs, and personnel to manage and supervise volunteers. This language was removed in the legislative deliberations, but the intent of the language will certainly be re-created as court cases outline the need for good volunteer management.

5. Impact on Service Recipients

Two potential areas of impact on service recipients may be affected by the new legislation. The first involves the additional possibility that some types of volunteer work will continue to be done. The areas of volunteering most affected by fear of litigation have been those involving volunteer driving and those involving primarily physical activity (home repair, coaching, etc.). The new protective legislation may make it much easier to continue to recruit volunteers for programs in these areas. The exception, of course, will lie in those states which have exempted from protection suits involving vehicles, as 8 states have already done (see Appendix 3).

The second area of potential impact on service recipients lies in the claim voiced during legislative deliberation of the legislation that removal of the fear of lawsuit will diminish the quality of service provided to clients because it removes an incentive for the volunteers to perform at high standards. Several states have attempted to deal with this problem by enacting legislation that still allows for the volunteer-utilizing organization itself to bring suit against the volunteer, an act which presumably could be initiated in the event that the volunteer was involved in unsatisfactory performance of his duties.

6. Impact on Social Service Agencies

Overall, given the factors discussed above, the liability protection legislation should have a small, but significant, impact on social service agencies. If nothing else, the legislation counter-balances the hysteria over lawsuits that has stifled the development of volunteer programs in some agencies. It removes a disincentive for volunteering that has been growing steadily, particularly among board volunteers. And it opens the door for re-negotiation over insurance rates and coverage. The only 'negative' impacts of the legislation lie in the imposition of requirements of better management of volunteers, something which the agencies probably should have been doing already and which the agencies will certainly benefit from in more ways than simply acquiring liability protection.

Conclusion

Three final conclusions can be made about the new protective legislation:

1. It is probably here to stay and will probably spread to all states within a short period of time. The degree of legislative enthusiasm which resulted in 36 states enacting legislation in 16 months without any coordinated national campaign (and occasionally no organized local campaign) is not likely to quickly diminish.
2. It cannot be ignored. Ultimately the legislation could have a major impact on the volunteer management practices of almost all organizations.
3. It's final impact will probably be positive. The legislation will probably result in benefits to volunteer-utilizing organizations in the areas of insurance, volunteer recruitment, improved retention of volunteers, and ability to better provide assistance to service recipients.

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.

Footnotes

1. Opinion Research Corporation, Directors and Officers Liability: A Crisis in the Making (Washington: Peat Marwick) 1987, p. 6.
2. See Kozlowski, "No Ordinary Negligence Liability Under Recreational Immunity Statutes," 21 Parks and Recreation 20 (January 1986).
3. See Besharov, "Child Welfare Liability: The Need for Immunity Legislation," Child Today (September/October 1986).
4. Kahn, "Legal Issues in Volunteerism: Preliminary Survey Results," Journal of Volunteer Administration (Winter 1984-85).
5. Opinion Research Corporation, p. 12.
6. Opinion Research Corporation, p. 7.

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 484 (1959)
(injury caused by volunteer scout master at scouting event)
9. *Daxter 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. Satter* 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. Retr. 610 (1980)
(board member sued for conflict of interest through service on multiple hospital boards)

7. *Harris et al v. Attorney General* 31 Conn. Supp. 93, 324 A 2d 279 (1974)
(board sued regarding maintenance of prudent level of insurance)
8. *Newman v. Forward Lands, Inc* 430 F. Supp. 1320 (1977)
(board sued for improper placement of funds)
9. *Tiliman v. Wheaton-Haven Recreation Association, Inc* 517 F. 2d 1141 (1975)
(directors held liable for violation of Civil Rights Act)
10. *Lefkowitz v. Museum of the American Indian (Heye Foundation)* No. 41461 - 75 (Sup. Ct., N.Y. Co. 1975)
(board sued for mismanagement, granting false tax evaluations of donations)

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)	Veterans Organization
501(d)	Religious and apostolic associations
501(e)	Cooperative hospital service organizations
501(f)	Cooperative service organizations of educational organizations
521(a)	Farmer's cooperative associations

Appendix 3
State Legislation: Breakdown by State

	Organizational Coverage					Volunteer Coverage					Extent of Protection									
	Unincorporated Volunteer Groups	Non-Profit Corporation	State Government	Local Government	For Profit Corporation	Board of Directors	Advisory Committee	Direct Service	Sports Volunteers	Approves, Participates	Gross, Wanton	With Intentional	X to Corporation	X to 3rd Parties	X to All General	Health, Hospital Exclusion	Professional Services Exclusion	Vehicles Exclusion	Insurance Limitations	Criminal Violation Inclusion
Alaska		X				X					X									
Alabama		X	X			X				X	X	X	X					X	X	
Arkansas	X	X	X							X	X			X						
Colorado	X	X				X														
Connecticut		X				X					X	X								
Delaware		X				X			X											
Florida		X				X					X									
Hawaii		X				X					X									
Idaho		X				X		X			X	X								
Indiana		X	X			X	X												X	
Iowa		X				X					X								X	
Kansas		X				X				X										
Louisiana		X				X					X			X						
Maryland		X				X					X	X								
Mass		X				X					X									
Michigan			X			X	X				X					X				
Minnesota		X				X					X	X								
Missouri		X				X					X	X						X		
Montana		X				X					X	X								
Nebraska		X				X					X	X								
Nevada	X	X				X														
New Hampshire	X	X				X			X											
New Jersey		X				X														
New York		X				X					X	X								
NC Carolina		X				X	X				X	X					X	X		
North Dakota		X				X					X	X						X		
Ohio		X				X				X	X	X								
Oklahoma		X				X				X	X	X								
Pennsylvania	X	X				X			X									X	X	
South Dakota		X	X			X	X				X	X						X	X	
Tennessee		X	X			X					X	X								
Texas		X				X					X	X				X			X	
Vermont		X				X					X	X								
Virginia		X				X					X	X								
Washington		X				X					X	X								
West Virginia		X				X		X			X	X						X	X	
Wyoming		X				X					X	X								X

For any serious analysis please refer directly to the legislation in each individual state.

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 5
State Legislation Citations

Alaska	09.17.050	1986
Arizona	Ch 129 §10-1017	1987
Arkansas	Act 390	1987
Colorado	CRS 13-21-116	1986
Connecticut	PL86-338(10)	1986
Delaware	Ch 81, Title 10, §8133	1986
Florida	FS 607.1645	1987
Georgia	14-3-113.1	1987
Hawaii	HRS 416	1986
Illinois	F'L84-1431 Arts 1 & 7	1986
Indiana	IC 34-4-11.5-1	1986
Iowa	25A.24	1987
	613A.2	1987
	613.19	1987
Kansas	SB 28	1987
Louisiana	LRS 9.2792	1972
Maryland	Ch 643 §5-312	1986
Massachusetts	Ch 156B §13	1986
Michigan	MCL 691.1401	1986
Minnesota	Ch 455 §317.201	1987
Nebraska	LB 67	1987
Nevada	NRS 411.480	1987
New Hampshire	RSA 508.16	1986
New Jersey	SB 678	1986
New York	NYL 375 §11-13	1986
North Carolina	Art 43-B §1-539.10	1987
North Dakota	§10-24-05	1987
	HB 1080	1987
Ohio	ORC 2305.38	1986
Oklahoma	Title 18 §865	1986
Pennsylvania	Title 42 §832.2	1986
South Dakota	SB 1317	1987
Tennessee	28-3-301	1986
	29-20-201	1986
Texas	Title 4, Ch 84, §84.001	1987
Vermont	S 37	1987
Virginia	§13.2-870.1	1987
Washington	RCW 4.24	1986
Wisconsin	Act 13	1987
Wyoming	WS 1-23-107	1986

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.

Appendix 7
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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

	H411 86	NP	Sports vols	?
	Ch68, title 16 part IV, subchap VI 87	501(c)	Org, staff, Board	No liability in construction or maintenance of parkland
FL	HB1096 87 FS607.1645	501(c) (3,4,5,6)	Board	Xbreach of duties; Xviolation of criminal law; Xderive improper benefit; Xrecklessness, bad faith, willful, wanton
GA	H209 87 14-3-113.1	NP corp	Board	Act in good faith, like ordinarily prudent person (No additional liability protection)
HA	HRS416 86	NP corp	Board	Xgross negligence
IA	25A.24 87	State Govt	Commission, volunteer	Xintentional misconduct, knowing violation of law, or transaction in which derives improper benefit
	613A.2 87	Municipality	Commission, volunteer	Xintentional misconduct, knowing violation of law, or transaction in which derives improper benefit
	SF471 87 §613.19	NP Corp; unincorporated association	Board, Volunteer	Xintentional misconduct, knowing violation of law, or transaction in which derives improper benefit
	HF630 87 232.13	State govt	Com Service Vol	State accepts liability for child given community work assignment
IL	PL84-1431 Art 1 86	Local public entity	Bd, commission, volunteer	Xwillful, wanton
	PL84-1431 Art 7 86	501(c)	Board	Xwillful, wanton
	Ch 32 §108.70 87	501(c)(3)	Board, Vols	Xwillful, wanton; Xto corporation
IN	IC34-4-11.5-1 86	St/local Govt; NP corp; Business trade assoc	Board, commission	Liability limited to ins coverage; if no coverage, then immune
KS	SB29 87	501(c)	Bo; other person	Xauthorizes approves

	HF141 87	NP org exempt under MS240.05	"Director, officer, trustee, member or agent"	Good faith, within scope, Xwilfull, 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, wilful, wanton acts
NB	LB 67 of 87	501 (c)(2,3,4,5,7,8,11 or 19)	Board	Act within scope; Xwilful, 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; Xwilful, gross; Xreimbursement of expenses above \$2000; Xreceipt of compensation
	HB1080 87	NP orgs	Volunteer	Act in scope; Xwilful, gross; Xvehicle
		NP orgs	Sports vols	Act within scope; participated in training and safety program; Xwilful, 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, Xwilful, wanton

			who performs services"; Xvolunteer who delivers health care services in medical facility	actively participates + willful, wanton, intent; Xonly to extent of insurance
LA	RS9:2792 72	Public, charitable or NP hospital, or organization	Board; 'member'	Not liable to any who receive benefits
MA	Ch156B §13 86	NP Corporation	Director, officer	Articles of organization may eliminate or limit liability to corp or membership Xbreach of loyalty, bad faith, intent, conflict of int. Xonly to shareholders or members
	? 87	NP	Board	Xgross negligence, intent; Xrelated to commercial activities, including FR; Xvehicle
ME	87 bill, Subst HB6134	501(c)(3)	Board	Xgross negligence, recklessness, intent
MD	Ch643 §5-312 86	501(c)(3)	Board; vol employee	Org must carry ins; Xmalice, gross negligence, Xto Att Gen Xhealth care malpractice
	87 bill HB1178	501(c)(3)	"Officer, trustee, or other person"	Xauthorizes, approves or actively participates; Xratifies; Xwillful, wanton; Xto Att Gen
	87 bill HB1425	501(c)(3), Xhospitals	Vols who render health care services	Xwillful, wanton, gross, intentional
	87 bill SB165	501(c)(3)	Dup of HB1178	
MI	MCL691.1401 86	St/local agency, pol. sub-division	Bd; commission, volunteer - must be "specifically designated"	Xgross negligence Xhospital or med care facilities
	MCL450.1561 86	Corporation, including NP	Board	Right to indemnification; Corp can eliminate liability to Corp or to shareholders Xbreach of duty, Xbad faith or intent or conflict of interest
MN	Ch455 §317. 001 86	NP corp	Board	"occasional sole by reason of membership or participation"

	87bill 7100	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 vc!, 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 S3201	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

	RSA508:15	Person, corp, org in food distribution	Volunteer, Org	Xgross, reckless
	87bill HB237	501(c)	"Any Volunteer"	Good faith, acting in scope; Xwillful, wanton, gross; Xto corp
NJ	NJSA 2A: 62A-6 86	NP org	Sports volunteer	Not liable to player or participant if trained, acting w/supervision; Xin educational inst; Xmotor vehicle; Xwillful wanton
	2A:53A-7 87	NP corp, society, association; NP federation	Board, volunteer	Xreckless disregard; Xwillful, wanton; Xmotor vehicle
NY	NY Laws 375 §§11-13 86	501(c)	Board	Xgross negligence, intent; Xto corporation
NV	NRS411.480 87	NP corp, assoc, org formed under laws of state	Board	Xintent, fraud or knowing violation of law
OH	ORC2305.38 86	Non-hospital, charitable NP corporation under ORC1702	Bd; volunteer	Xprior knowledge and approval, or ratification Xwillful, wanton, or intentional
OK	Title 18, §865 86	501(c)	Board	Not responsible for acts of employees or other directors Xown negligence or intent
	Title 18, §867 87	501(c)	Board	Xbreach of duty to Corp; Xbad faith, intent; Ximproper personal benefit
PA	Title 42 §8332.1 86	NP assoc	Sports volunteer	Xbelow generally practiced standards; Xtransportation; Xrelate to care of playing area
	Title 42, §8332.2 86	501(c)(3)	Board	Xbelow generally practiced standards
RI	87bill Leg init #6A	NP Org	Board	Xbad faith, intent, derive improper benefit
	87bill S85	501(c); govt entity	Board; Direct service volunteer	Act in good faith and within scope; Xwillful, wanton; Xto agency
	87bill S40	501(c)	Board	Act in good faith and in scope; Xwillful, wanton

				Xintent, willful, wanton XBd member liability to organization and its members
UT	SB214 86 (Gov veto)	NP corp	Board	
VA	§13.2-870.1 87	Corp	Board	Liabe only to amount of compensation: Xwill- ful, knowing violation
VT	S37 87	501(c)(3)	Board	Good faith, Xwillful, wanton
WA	RCW4.24 sec 86	NP corp	Board	Xgross negligence, Xto corporatio.
	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 viola- 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 assocs	Board	Xto extent of insurance; if no insurance, then immune
WY	WS1-23-107 86	NP corp; government	Boa.d, commission	Xintentional tort or illegal acts

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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. BRAZER, 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. HILEB, 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. PEPPER, Mr. CARPER, Mr. SENSENBENNER, Mr. KOLBE, Mr. SMITH of New Jersey, Mr. YATRON, Mr. BOEHLERT, Mr. HYDE, Mr. UPTON, Mr. SCHULZE, Mr. MCCLOSKEY, Mr. LATTA, Mr. BILEY, Mr. BADHAM, Mr. RAVENEL, Mr. MCKINNEY, Mr. STALLINGS, Mr. JACOBS, Mr. EMERSON, Mr. BOULTEB, Mr. GRAY of Illinois, Mr. BURTON of Indiana, Mr. FUSTER, Mrs. MARTIN of Illinois, Mr. SUNDQUIST, Mr. HASTERT, Mr. ROE, Mr. PETBI, 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

A BILL

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.

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;

13 (2) as a result of this perception, many nonprofit
14 public and private organizations and governmental en-
15 tities, including voluntary associations, social service
16 agencies, educational institutions, local governments,
17 foundations, and other civic programs, have been ad-
18 versely affected through the withdrawal of volunteers
19 from boards of directors and service in other capacities;

20 (3) the contribution of these programs to their
21 communities is thereby diminished, resulting in fewer

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 tal entities for actions undertaken in good faith on behalf of
2 such organizations.

3 SEC. 3 NO PREEMPTION OF STATE TORT LAW.

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

6 SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.

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

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

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

17 (b) CONCERNING RESPONSIBILITY OF VOLUNTEERS
18 WITH RESPECT TO ORGANIZATIONS.—Nothing in this sec-
19 tion shall be construed to affect any civil action brought by
20 any nonprofit organization or any governmental entity
21 against any volunteer of such organization or entity.

22 (c) NO EFFECT ON LIABILITY OF ORGANIZATION.—
23 Nothing in this section shall be construed to affect the liabil-
24 ity of any nonprofit organization or governmental entity with
25 respect to injury caused to any person.

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.

1 SEC. 6. DEFINITIONS.

2 For purposes of this Act—

3 (1) the term "volunteer" means an individual per-
4 forming services for a nonprofit organization or a gov-
5 ernmental entity who does not receive compensation,
6 or any other thing of value in lieu of compensation, for
7 such services (other than reimbursement for expenses
8 actually incurred or honoraria not to exceed \$300 per
9 year for government service), and such term includes a
10 volunteer serving as a director, officer, trustee, or
11 direct service volunteer;

12 (2) the term "nonprofit organization" means any
13 organization exempt from taxation under section 501(c)
14 of the Internal Revenue Code of 1954;

15 (3) the term "damage or injury" includes physical,
16 nonphysical, economic, and noneconomic damage; and

17 (4) the term "State" means each of the several
18 States, the District of Columbia, the Commonwealth of
19 Puerto Rico, the Virgin Islands, Guam, American
20 Samoa, the Northern Mariana Islands, any other terri-
21 tory or possession of the United States, or any political
22 subdivision of any such State, territory, or possession.

○

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



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

REPRESENTATIVE FRAN ULMER

M E M O R A N D U M

February 22, 1988

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

FROM: Representative Fran Ulmer

SUBJECT: House Bill 517, "An Act relating to civil liability of
certain volunteers"

I would very much appreciate if you would review HB 517 and consider either waiving or holding a prompt hearing on the bill. It has support from municipalities, recreation groups, and the legislative committee of the American Association of Retired Persons.

If you would like additional information, please let me know.

RECEIVED
FEB 22 1988

BILL NO: HB 517

DATE: 3/2/88

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

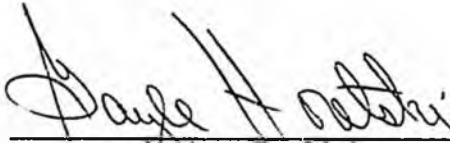
CONTACT: Col Robert E. Jent
269-5641

DEPARTMENT OF
PUBLIC SAFETY
POSTAL PERMIT

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] Date: 3-2-88
 Agency: Public Safety

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

Alaska Recreation and Park Association

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



February 26, 1988

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

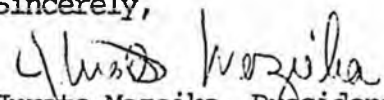
Dear Representative Donley:

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.

HB 517

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A

1988

CORRECTION

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

Alaska Recreation and Park Association

P.O. Box 102664
Anchorage, Alaska 99510-2064



February 26, 1988

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

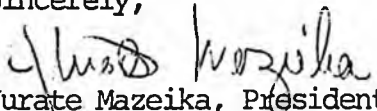
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Sincerely,


Jurate Mazeika, President
Alaska Recreation and Park Assoc.

HB 517

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5 8

Alaska State Legislature

REPRESENTATIVE BILL HUDSON

P.O. BOX V
Juneau, Alaska
99811
(907)465-3744 or 4991

COMMITTEES:
Transportation
HESS
Telecommunications
Fisheries
International Trade

February 16, 1988

Representative Dave Donley,
Chairman - House Labor and
Commerce Committee
Alaska State Legislature
Juneau, Alaska

Dear Representative Donley: *Dave*

On Monday, February 15, I introduced HB 518 relating to the farming of aquatic plants and animals. This bill is supported by the many fishermen across the state. It allows the residents of our state to become involved in new economic industries and allows for the aquatic farming of plants and animals indigenous to our state.

One such indigenous plant to be maracultured in Alaska is the macrocystis kelp which is used for the herring roe on kelp pounding fishery. This bill sets the siting and permitting process in place, and allows for the type of economic stimulus very much needed by Alaska.

HB 518 specifically provides that there will be no permits issued for the pen rearing of fin fish. Admittedly, maraculture is a hot topic. However, there is tremendous support for HB 518; thousands of fishermen across the state support this bill and would like the opportunity to begin the deliberations on this bill and begin the critically needed discussions.

Your favorable consideration for scheduling of this bill in the House Labor and Commerce Committee will be very much appreciated.

Respectfully,

Bill
Bill Hudson

cc: All Members of United Fishermen of Alaska



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HOUSE COMMITTEE REPORT

(7)

Date referred: 3/4/88

FURTHER REFERRALS: Finance

DATE: 3/22/88

The Labor & Commerce Committee has considered HB 523

"An Act relating to procurement preferences for certain products."

RECOMMENDS:

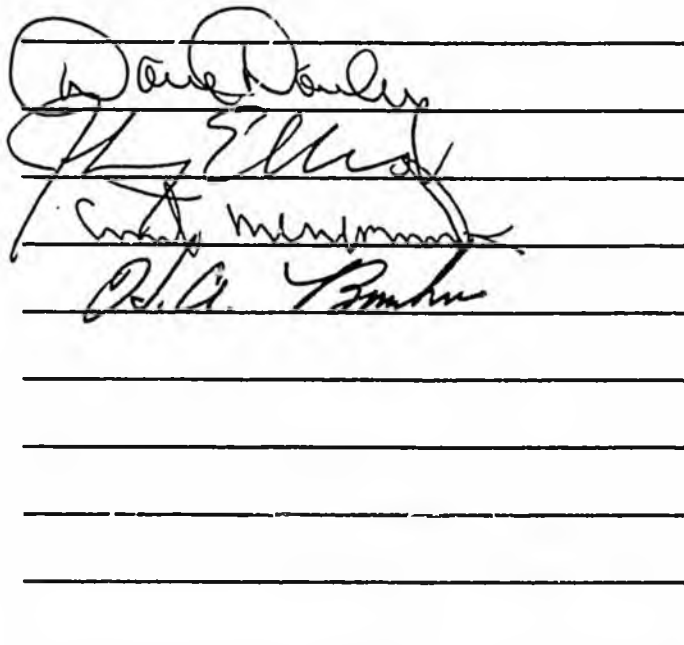
- replace with CS HB 523 (L+C) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

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 3/4/88
- zero with analysis

SIGNING DO PASS:



SIGNING OTHER RECOMMENDATIONS:

If unsure none



 Chairman's signature

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

HL+C	3-22-88	2:00 p.m.
HSA	3-2-88	3:00 p.m.



Official Business

COMMITTEE:

HOUSE LABOR & COMMERCE

DATE: March 22, 1988

SIGN-IN

Subject of meeting:

- HB 540 "An Act relating to access to an employee personnel file."
- HB 392 "An Act relating to municipal procurement of architectural, engineering, and land surveying services."
- HB 523 "An Act relating to procurement preference for certain products."
- HB 368 "An Act exempting certain persons from the requirement to be licensed as an occupational therapist or occupational therapy assistant."

PLEASE PRINT
NAME & TITLE

REPRESENTING

ADDRESS & ZIP

PHONE

DO YOU WANT TO TESTIFY?

SUBJECT: BILL #

MIKE MCMULLEN Labor Relation Res. Mgr	Dept. of Admin	P.O. Box C-0220 Juneau, AK 99811-0220	H W 465-4404	Yes	HB 540
James Sanwick Dept. of Labor	Dept. of Labor	P.O. Box 20630 Juneau, AK 99802-0630	H W 465-4834	Yes	HB 540
RICHARD RITTER	APDC AIA	800 GLACIER AVE. JUNEAU, AK. 99801	H W 586-1371	YES	HB 392
Bob Link	Dept of Admin	1	H W 465-2250	if Needed	HB 523
Robin Langman	Board Physical Therapy Occupational Therapy	P.O. Box 32461 Juneau, AK. 99803	H 7806082 W 5862624	if needed	HB 368
Julie Bern	City of Homer	P.O. B. 360 HOMER AK.	H 700 W	NO.	
Steve Hale	LOE	700 F	H 2800 W	YES	HB 368
			H W		
			H W		
			H W		

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: The House Labor & Commerce Committee
FROM: Rep. Steve Frank
RE: House Bill 523 - recycled products preference
DATE: March 22, 1988

The proposed committee substitute would expand the bill's scope by extending the recycled products preference to municipalities.

Under existing law, state purchases are subject to the "Alaska Bidders Preference" and the "Alaska Products Preference"; however, the municipalities are not included in these requirements. Because the municipalities represent a significant potential market for recycled products we believe that it is appropriate to extend the product preference to local governments. Furthermore, since municipalities are responsible for waste disposal, increased use of recycled products will reduce their waste problem.

A final revision reflected in the CS is a title change to limit the bill's applicability to recycled products.

Thank you for your consideration.

5-1898X
Bannister
3/21/88

Original sponsors: Frank and Menard

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 523 ()
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 a preference for recycled prod-
7 ucts in state and municipal procurements."

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

9 * Section 1. AS 29.10.200 is amended by adding a new paragraph to read:

10 (49) AS 29.71.040 (procurement preferences)

11 * Sec. 2. AS 29.71 is amended by adding a new section to read:

12 Sec. 29.71.040. PROCUREMENT PREFERENCES. (a) Alaska recycled
13 products shall be used in municipal procurements when the products are
14 of comparable quality, of equivalent price, and appropriate for the
15 intended use.

16 (b) Unless the procurement is governed by AS 36.15.050, in the
17 evaluation of a bid or proposal for a procurement by a municipality,
18 if a bid or proposal designates the use of recycled Alaska products
19 for the products identified in the contract specifications, and if the
20 recycled Alaska products meet the contract specifications, the bid or
21 offer shall be decreased by the percentage of preference given to the
22 recycled Alaska products under AS 36.30.332.

23 (c) The contract specifications for a municipal procurement must
24 include a provision that describes the preference granted under (b) of
25 this section.

26 (d) If a successful bidder or offeror who receives the prefer-
27 ence under (b) of this section fails to use the designated recycled
28 Alaska product for a reason within the control of the successful
29 bidder or offeror, each payment under the contract shall be reduced by

1 the percentage reduction scheduled under AS 36.30.330(a) for the
2 classification the product has received under AS 36.30.332.

3 (e) In the evaluation of a bid or proposal for a municipal
4 procurement, a person is not a responsible bidder or offeror if,
5 during two contracts for which the person received a preference under
6 (b) of this section during the preceding three years, the person
7 failed to use the recycled Alaska product designated in the person's
8 bids or proposals for the contracts for reasons within the control of
9 the bidder or offeror.

10 (f) This section applies to home rule and general law municipal-
11 ities.

12 (g) In this section, "recycled Alaska product" has the meaning
13 given in AS 36.30.338.

14 * Sec. 3. AS 36.30.324 is amended to read:

15 Sec. 36.30.324. USE OF ALASKA PRODUCTS. Alaska products shall
16 be used whenever practicable in procurements for an agency. Recycled
17 Alaska products shall be used when they are of comparable quality, of
18 equivalent price, and appropriate for the intended use.

19 * Sec. 4. AS 36.30.332(a) is amended to read:

20 (a) The commissioner of commerce and economic development shall
21 adopt regulations establishing the value added in the state for mate-
22 rials and supplies produced or manufactured in the state that are used
23 in a state procurement and establishing whether a product qualifies as
24 a recycled Alaska product. The commissioner [AND] shall publish a
25 list of the products annually. A supplier may request inclusion of
26 its product on the appropriate list.

27 * Sec. 5. AS 36.30.338 is amended by adding a new paragraph to read:

28 (4) "recycled Alaska product" means an Alaska product of
29 which not less than 50 percent of the value of the product consists of

1 a product that was previously used in another product, if the re-
2 cycling process is done in the state.
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AMENDMENT

TO: House Bill 523 - procurement preferences for recycled products

BY: Frank

New Section 3. AS 14.14.060 (h) is amended to read:

School boards within the borough may determine their own policy separate from the borough for the purchase of supplies and equipment except that school boards shall comply with AS 29.71.040.

Renumber remaining sections of the bill in proper sequence.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to procurement preferences for certain products
Sponsor: Frank and Menard
Requestor: House State Affairs

Agency Affected: Administration
BRU: General Services & Supply

Components: Purchasing

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This fiscal note addresses the administrative cost of the bill on the bidding process.

Prepared By: Robert J. Link *Robert J. Link*
Division: General Services & Supply

Phone: 465-2250
Date: 02/25/88

Approved by Commissioner: John M. Andrews *John M. Andrews*
Agency: Department of Administration

Date: 3/18/88

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: An Act relating to procurement preferences for certain products BRU: General Services & Supply
 Sponsor: Frank Components: Purchasing
 Requestor: House State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This fiscal note addresses the administrative cost of the bill on the bidding process.

Prepared By: Robert J. Link Phone: 465-2250
 Division: General Services & Supply Date: 02/25/88

Approved by Commissioner: John M. Andrews Date: 2/29/88
 Agency: Department of Administration

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION CSHB 523(SA)
PUBLISH DATE HOUSE 3/4/88

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Econ. Dev.
 Title: "An Act relating to procurement preference for certain products" BRU: Division of Business Development
 Sponsor: Representative Frank Components: _____
 Requester: State Affairs Committee

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

FUNDING: (Thousands of dollars)

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

POSITIONS:

FULLTIME		-0-	-0-	-0-	-0-	-0-
PARTTIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

HB 523 states that, in the evaluation of a bid or proposal for procurement for an agency, the offeror or bidder receive additional five percent preference for products that qualify as recycled Alaskan products. The implementation of this legislation can be handled within the division budget at this time.

Prepared by: Larry Mercurieff, Director Phone: 465-2017
 Division: Business Development Date: March 1, 1988

Approved By Commissioner: J. Anthony Smith Date: March 1, 1988
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

HOUSE COMMITTEE REPORT

3/4

Date referred: 2/15/88

FURTHER REFERRALS: Labor & Commerce
Finance

DATE: 3-2-88

The State Affairs Committee has considered HB 523

"An Act relating to procurement preferences for certain products."

RECOMMENDS:

replace with CS HB 523 (SA) 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 zero with analysis

SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]

 Chairman's signature

POSITION PAPER
HB 523


This bill attempts to encourage the manufacture of recycled products within Alaska by providing a 5% preference above existing preferences. A bidder offering Alaskan products made of recycled products could qualify for a total of 17% in preferences. The impact of the cost of administering the bid process would be minimal.

We have a neutral position on this bill because we have no way to assess the positive impact of encouraging the use of recycled products versus the potential increase in purchase price and having a preference which favors one Alaskan bidder over another.

We would recommend amending the bill as follows:

Section 6, Section 36.30.338(5) "recycled Alaska product" means an Alaskan product of which not less than 50% of the value of the product consists of a product that was previously used in another product and the recycling process was performed in Alaska.

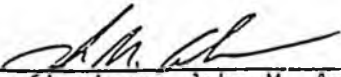
This would avoid the situation in which one Alaskan vendor received a 5% greater preference for using a product which was recycled someplace other than Alaska.



Robert J. Link, Director
Division of General Services & Supply

2/25/88

Date



Commissioner John M. Andrews
Department of Administration

2/29/88

Date

H B

5 2 6

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/15/88

FURTHER REFERRALS:

HESS
Finance

DATE: 3/24/88

The Labor & Commerce Committee has considered HB 526

"An Act relating to the practice of social work and establishing the Board of Social Worker Examiners; and providing for an effective date."

RECOMMENDS:

- replace with CS HB526 (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 _____
- zero with analysis

SIGNING DO PASS:

David Duley

W.A. [Signature]

[Signature]

Cliff Davidson

SIGNING OTHER RECOMMENDATIONS:

David Duley

Chairman's signature

STATE OF ALASKA
THE LEGISLATURE

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

May, 1988

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

Mary Van Nimwegen

HL+C

3-24-88

2:00 p.m.



Official Business

COMMITTEE:
HOUSE LABOR & COMMERCE

DATE: March 24, 1988

SIGN-IN

Subject of meeting:

HB 526 "An Act relating to the practice of social work and establishing the Board of Social Worker Examiners; and providing for an effective date."
 HB 394 "An Act relating to electric and telephone cooperatives; and providing for an effective date."
 HB 368 "An Act exempting certain persons from the requirement to be licensed as an occupational therapist or occupational therapy assistant; and providing for an effective date."

PLEASE PRINT
NAME & TITLE
DOVE KULL

REPRESENTING

ADDRESS & ZIP

PHONE

DO YOU WANT
TO TESTIFY?

SUBJECT:
BILL #

✓ Dove Kull	Myself	Wendover Apts # 1010 326-4th St Juneau, AK 99801	H 586-2670 W	Yes	526
Shana Hornum	NASW	410 W. 12th Juneau	H 6-6240 W 9-4412	yes	526
Ann O'Leary	DASS / DEUS	Box 1465 Juneau, AK 99811	H 364-2136 W 468-3170	yes	526
Jennifer Strickler	Dept. of Commerce Div. of Occupational Lic.	P.O. Box D-Lic. Juneau, AK 99811	H W 465-2144	yes	526
Robin Langman	Occupational Therapy	3272 Hospital Drive, Juneau AK 99802	H 7806082 W 5862624	yes	368
			H W		
			H W		
			H W		
			H W		
			H W		

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892

March 28, 1988

Colleen C. Patrick-Riley, MSW, ACSW
2907 W 30th Avenue
Anchorage, Alaska 99503

Dear Ms. Patrick-Riley:

Thanks for your March 23 letter urging my support for HB 526, licensing of social workers. I'm sorry I missed you when I tried to call you at home.

The House Labor and Commerce Committee passed HB 526 on to the next committee of referral last week with a unanimous "do pass" recommendation. The measure is now in the House Health, Education and Social Services Committee with a further referral to House Finance. Considering the strong support for HB 526, I expect it will reach the Senate with sufficient time for consideration by that body prior to adjournment.

Thanks again for sharing your thoughtful letter with me and my Committee members and please stay in touch.

Sincerely,



Representative Dave Donley, Chair
House Labor and Commerce Committee

cc: House Labor and Commerce Committee Files

(M) 3/24/88
(M) 3/25/88

March 23, 1988

AG
+FF

Sorry
I missed you

Return

The Honorable David Donley
Chairman, Labor and Commerce Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Donley,

I'm writing to request your strong support for licensure of Clinical Social Workers in independent private practice. I understand a committee substitute for HB526 will address this very issue and is being considered at a teleconference hearing on Thursday, March 24.

A lifelong Alaskan, I have worked as a professional social worker for 16 years. I have a strong commitment to the value and integrity of the profession, and a firm belief in the need for ensuring quality services. I have worked in mental health, child and family treatment, and forensics. I have been employed in both the public and the private sector.

I'm concerned about the current lack of standards and accountability for practicing social workers. While I personally see the merit in licensing any person who works under the title of social worker, I fully understand that multi-level licensure is not a viable possibility in the State of Alaska at the present time. Fortunately, social workers who work for public or non-profit agencies are accountable to their supervisors and/or a corporate Board of Directors. They must adhere to professional standards in order to retain continued employment. It is the responsibility of the employing agency to insure competent services are offered to clients in need.

However, Clinical Social Workers in independent private practice are accountable to no one. This is a scary fact. Clients are at grave risk. While most clinical social workers voluntarily choose to adhere to a professional code of ethics, pursue continuing education opportunities and seek appropriate supervision, many do not. I have learned of a few who have committed highly unethical and inappropriate behaviors with clients. They have taken advantage of clients, Alaskan residents, who were emotionally stressed and in pain. Clients are particularly vulnerable. I have recently heard of one social worker who enticed a client to have sex with him. There needs to be some legal sanction to prevent clinicians who would be abusive or incompetent from practicing.

I urge support of this bill to ensure both professional standards and accountability, and consumer protection.

A third and very legitimate reason to support passage of this bill is a fiscal one. At present most insurance companies will only pay psychiatrists and clinical psychologists who are licensed to practice in the state of Alaska. Clinical Social Workers are ineligible to receive third party insurance reimbursement from most insurance companies because they are not licensed. In states where Clinical Social Workers are licensed, they become eligible for third party insurance collection. This is an advantage not only to the Clinical Social Worker who is trying to earn an honest living,

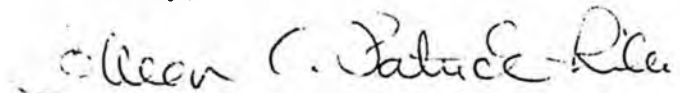
but also to the client who can more freely choose their therapist and have insurance rather than their own pocket pay the cost of services. The majority of counseling and therapy services in the State of Alaska are delivered by social workers, especially in rural areas. This is simply because there are more social workers than there are psychiatrists and clinical psychologists, both of whom are in short supply.

As a former Executive Director of a non-profit agency, I know that they too will benefit from passage of this legislation. Non-profit agencies can more easily afford the salary for a social worker than a psychiatrist or a clinical psychologist who command a higher salary. Lower salary costs and increasing third party insurance collection also increases the agency subsidy available to support seeing a greater number of low-income clients. The reality is there are never enough mental health services to meet the need for Alaskan residents.

Again I strongly urge your wholehearted support and prompt passage of the committee substitute to license Clinical Social Workers in independent private practice. I would appreciate your sharing the contents of my letter with your committee colleagues.

Thank you in advance for your consideration and support.

Sincerely,



Colleen C. Patrick-Riley
MSW, ACSW
2907 W. 30th Avenue
Anchorage, AK 99503

ph. 349-9621 (H)
561-1633 (W)

ALASKA FEDERATION OF NATIVES, INC.



411 W. 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3611

March 24, 1988

Representative Pat Pourchot
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Pourchot:

AFN has reviewed the proposed Committee Substitute for House Bill 526 (L & C). At this time, AFN has no objection to this substitute moving forward. Our concerns in previous drafts seem to have been met, specifically the very clear exemption for non-profit and state social workers.

If you have any questions please give me a call.

Sincerely,

Julie Kitka
Executive Vice President

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Health and Social Services
 Title: The practice of clinical social work and exempting certain persons from licensure BRU: _____
 Sponsor: Pourchot, Phillips, Collins Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

N/A

Prepared by: Yvonne M. Chase, Director *AMC* Phone: 465-3170
 Division: Division of Family and Youth Services Date: 03/24/88

Approved by Commissioner: Myra M. Munson *Myra M. Munson* Date: 3/24/88
 Agency: Department of Health and Social Services

Distribution (by preparer):

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

Original sponsors: Pourchot, Phillips
and Collins

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 526 ()

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 practice of clinical social
7 work and exempting certain persons from licensure as
8 clinical social workers; and providing for an effective
9 date."

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

11 * Section 1. PURPOSE. The purpose of this Act is to protect the public
12 by

13 (1) setting standards for the education, training, and experi-
14 ence for persons practicing clinical social work; and

15 (2) promoting high standards of professional performance by
16 those persons licensed to practice clinical social work.

17 * Sec. 2. AS 08 is amended by adding a new chapter to read:

18 CHAPTER 95. CLINICAL SOCIAL WORK.

19 ARTICLE 1. BOARD OF CLINICAL SOCIAL WORK EXAMINERS.

20 Sec. 08.95.010. CREATION AND MEMBERSHIP OF THE BOARD. (a)

21 There is created the Board of Clinical Social Work Examiners composed
22 of five members. Four members must be persons licensed under this
23 chapter, including at least one person who is not an employee of a
24 federal, state, or local government or of a private nonprofit organi-
25 zation that is exempt from federal income tax. One member must be a
26 public member.

27 (b) Members of the board shall elect a member of the board as
28 chair. The chair serves for a term of one year.

29 Sec. 08.95.020. BOARD MEETINGS. The board shall hold at least

1 one meeting each year. The board may hold additional meetings at the
2 call of the chair or of a majority of the board members.

3 Sec. 08.95.030. DUTIES. The board shall

4 (1) issue licenses to qualified applicants;

5 (2) submit an annual report of its proceedings to the
6 department;

7 (3) after a hearing, impose disciplinary sanctions on a
8 person who violates this chapter or the regulations or orders of the
9 board;

10 (4) adopt regulations requiring that continuing education
11 requirements be satisfied before a license is renewed;

12 (5) adopt regulations necessary to carry out the purpose of
13 this chapter.

14 Sec. 08.95.040. CONTINUING EDUCATION REQUIREMENT. (a) The
15 board shall adopt continuing education requirements for persons li-
16 censed under this chapter. Continuing education requirements must
17 include a minimum of 45 hours per biennium of education or training
18 with a minimum of six hours in substance abuse and six hours in
19 cross-cultural education emphasizing Alaskan Natives.

20 (b) The board shall appoint three persons licensed under this
21 chapter to serve as a continuing education committee. The committee
22 shall advise the board on matters related to continuing education for
23 clinical social workers. One person appointed to the committee must
24 be familiar with social problems in the rural areas of the state.

25 ARTICLE 2. LICENSING.

26 Sec. 08.95.100. LICENSE REQUIRED. (a) A person who practices
27 clinical social work without obtaining a license issued by the board
28 and without qualifying for an exemption from this chapter is guilty of
29 a class B misdemeanor.

1 (b) A person who is not licensed as a clinical social worker, or
2 whose license is suspended or revoked, or whose license has lapsed,
3 who uses in connection with the person's name the words or letters
4 "L.C.S.W.," "Licensed Clinical Social Worker," or other letters,
5 words, or insignia indicating or implying that the person is a li-
6 censed clinical social worker, or who in any way, orally, or in writ-
7 ing, directly or by implication, holds out as a licensed clinical
8 social worker is guilty of a class B misdemeanor.

9 (c) A person not licensed under this chapter may use the title
10 of "social worker."

11 Sec. 08.95.110. LICENSE TO PRACTICE CLINICAL SOCIAL WORK. The
12 board shall issue a license to practice clinical social work to a
13 person who

14 (1) has received a master's degree or a doctoral degree in
15 social work from a college or university accredited by the Council on
16 Social Work Education;

17 (2) has completed, within the 10 years before application
18 for licensure and under the supervision of a licensed clinical social
19 worker, licensed psychologist, licensed psychiatrist, or, with ap-
20 proval of the board, a clinical social worker who is exempt from this
21 chapter under AS 08.95.910, either (A) a minimum of two years of
22 continuous full time employment in postgraduate clinical social work;
23 or (B) a minimum of 3,000 hours of less than full-time employment in a
24 period of not less than two years in postgraduate clinical social
25 work; at least 100 hours of supervision required under this paragraph
26 shall be conducted by a qualified person approved by the board;

27 (3) is in good professional standing and is fit to practice
28 social work as determined by the board;

29 (4) has provided three professional references to the

1 board;

2 (5) has satisfactorily completed the examination given by
3 the board; and

4 (6) has paid required fees.

5 Sec. 08.95.120. LICENSING BY CREDENTIALS. The board shall issue
6 a license to practice clinical social work without examination if the
7 applicant

8 (1) holds a current license to practice clinical social
9 work in another jurisdiction that at the time of original issuance of
10 the license had requirements for licensure equal to or more stringent
11 than those of this state;

12 (2) is not the subject of an unresolved complaint or disci-
13 plinary action before a regulatory authority or a professional social
14 work association;

15 (3) has not failed the examination for a license to prac-
16 tice clinical social work in this state;

17 (4) has not had a license to practice clinical social work
18 revoked or suspended in this state or another jurisdiction;

19 (5) has submitted proof of continued competency satis-
20 factory to the board; and

21 (6) has paid required fees.

22 Sec. 08.95.130. DISPLAY OF LICENSE. A person licensed under
23 this chapter shall display the license in a conspicuous place where
24 the licensee practices.

25 ARTICLE 3. GENERAL PROVISIONS.

26 Sec. 08.95.900. CONFIDENTIALITY OF COMMUNICATION. (a) A li-
27 censed clinical social worker may not reveal to another person a
28 communication made to the licensee by a client about a matter concern-
29 ing which the client has employed the licensee in a professional

1 capacity. This section does not apply to a case conference with other
2 clinical social workers or with psychologists, psychological associ-
3 ates, physicians, or surgeons, or in the case in which the client in
4 writing authorized the licensee to reveal a communication.

5 (b) Notwithstanding (a) of this section, a licensed clinical
6 social worker shall report incidents of child abuse or neglect as
7 required by AS 47.17.020.

8 Sec. 08.95.910. EXEMPTIONS. This chapter does not apply to a
9 person who

10 (1) practices clinical social work as an employee of a
11 federal, state, or local government or of a private nonprofit orga-
12 nization that is exempt from federal income tax; or

13 (2) is a qualified member of a recognized profession, other
14 than clinical social work, and does not represent to the public by
15 title or description of service as practicing clinical social work.

16 Sec. 08.95.990. DEFINITIONS. In this chapter

17 (1) "board" means the Board of Clinical Social Work Ex-
18 aminers;

19 (2) "clinical social work" means a service in which a
20 special knowledge of social resources, human capabilities, and the
21 part that unconscious motivation plays in determining behavior is
22 directed, through the application of social work principles and meth-
23 ods, at helping individuals to achieve more adequate, satisfying, and
24 productive social adjustments;

25 (3) "clinical social worker" means a person who practices
26 clinical social work;

27 (4) "department" means the Department of Commerce and
28 Economic Development;

29 (5) "social work principles and methods" include counseling

1 and using techniques of applied psychotherapy of a nonmedical nature
2 to assist in the diagnosis and treatment of mental and emotional
3 conditions of individuals, families, and groups; providing information
4 and referral services; providing or arranging for the provision of
5 social services; explaining and interpreting the psychosocial aspects
6 in the situations of individuals, families, or groups; helping commu-
7 nities to organize, provide, or improve social and health services;
8 and doing research related to social work.

9 * Sec. 3. AS 08.01.010 is amended by adding a new paragraph to read:

10 (28) Board of Clinical Social Work Examiners (AS 08.95.010).

11 * Sec. 4. AS 08.02.010(a) is amended to read:

12 (a) An audiologist licensed under AS 08.11, a person licensed in
13 the state as a chiropractor under AS 08.20, a dentist under AS 08.36,
14 a medical practitioner or osteopath under AS 08.64, a registered nurse
15 under AS 08.68, an optometrist under AS 08.72, a registered pharmacist
16 under AS 08.80, a registered physical therapist or occupational thera-
17 pist under AS 08.84, [OR] a psychologist under AS 08.86, or a clinical
18 social worker licensed under AS 08.95, shall use as professional
19 identification appropriate letters or a title after that person's name
20 which represents that person's specific field of practice. The let-
21 ters or title shall appear on all signs, stationery, or other ad-
22 vertising in which the person offers or displays personal professional
23 services to the public. In addition, a person engaged in the practice
24 of medicine or osteopathy under AS 08.64.380(2) or a person engaged in
25 any manner in the healing arts who diagnoses, treats, tests, or coun-
26 sels other persons in relation to human health or disease and uses the
27 letters "M.D." or the title "doctor" or "physician" or another title
28 that tends to show that the person is willing or qualified to diag-
29 nose, treat, test, or counsel another person, shall clarify the

1 letters or title by adding the appropriate specialist designation, if
2 any, such as "dermatologist", "radiologist", "audiologist", "naturo-
3 path", or the like.

4 * Sec. 5. AS 08.03.010(c) is amended by adding a new paragraph to read:

5 (21) Board of Clinical Social Work Examiners (AS 08.95.010)

6 -- June 30, 1992.

7 * Sec. 6. INITIAL APPOINTMENTS TO THE BOARD OF CLINICAL SOCIAL WORK
8 EXAMINERS. Notwithstanding AS 08.95.010, as enacted by sec. 2 of this Act,
9 a person is eligible for an initial appointment as a professional member of
10 the Board of Social Work Examiners, if the person

11 (1) has received a master's degree or a doctoral degree in
12 social work from a college or university accredited by the Council on
13 Social Work Education;

14 (2) has completed, within the preceding 10 years, either

15 (A) a minimum of two years of continuous full-time employ-
16 ment in postgraduate clinical social work; or

17 (B) a minimum of 3,000 hours of less than full-time employ-
18 ment in postgraduate clinical social work in a period of not less than
19 two years;

20 (3) is in good professional standing; and

21 (4) has practiced clinical social work in this state within the
22 year preceding appointment.

23 * Sec. 7. TRANSITIONAL LICENSURE. (a) Notwithstanding AS 08.95.110,
24 as enacted by sec. 2 of this Act, the Board of Clinical Social Work Ex-
25 aminers shall issue a license to practice clinical social work to a person
26 who

27 (1) applies for a license before July 1, 1989; and

28 (2) satisfies the requirements of AS 08.95.110(1) - (4) and (6).

29 (b) Notwithstanding AS 08.95.110(2) as enacted by sec. 2 of this Act,

1 the board shall issue a license to practice clinical social work to a
2 person who applies for licensure under this section without regard to
3 whether the supervising clinical social worker is licensed in this state.

4 * Sec. 8. This Act takes effect July 1, 1988.

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