

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5226 SCRA SB 447

798

Pages 4 & 6

I

100TH CONGRESS
1ST SESSION

H. R. 911

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1987

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

MAY 27, 1987

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

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 wil-
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.

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100TH CONGRESS
1ST SESSION

S. 929

Entitled the "Volunteer Protection Act of 1987".

IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, MARCH 30), 1987

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

A BILL

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4 agencies, educational institutions, local governments,
5 foundations, and other civic programs, have been ad-
6 versely affected through the withdrawal of volunteers
7 from boards of directors and service in other capacities;

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9 communities is thereby diminished, resulting in fewer
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14 by making it difficult for insurers and self-insurers to
15 project their liability with any degree of confidence and
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17 tions to obtain liability insurance coverage for volun-
18 teer directors and officers with respect to their personal
19 capacities; and

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21 and cost-effective social service programs which
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1 connection with such participation is an appropriate
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4 the interests of social service program beneficiaries and tax-
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 2 WITH RESPECT TO ORGANIZATIONS.—Nothing in this sec-
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 4 any nonprofit organization or any governmental entity
 5 against any volunteer of such organization or entity.

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18 (2) In the case of a State whose legislature does not
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 20 this Act and before the beginning of fiscal year 1989, such
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3 Puerto Rico, the Virgin Islands, Guam, American
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5 tory or possession of the United States, or any political
6 subdivision of any such State, territory, or possession.

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HOWARD A. LAZAR

January 22, 1988

Tom Smith
Patrol Director
Maverick Patrol
P.O. Box 81071
College AK 99708

Re: Senate Bill 346; House Bill 340

Dear Tom:

I have cogitated about the two problems you directed to my attention. Hopefully the solutions proposed below will be of use to you.

As I understand them, the two problems are as follows:

1. Immunity for the Organization. Some attorneys testifying before the L & C Committee yesterday raised the specter of a candy stripper in a hospital pulling the plug on a respirator, and asking if this legislation would exempt the hospital from liability in such a case. I'm not sure that this example has a basis in reality: The candy stripper would not be considered a "member" of the hospital (while the candy stripper organization would appropriately be protected), and the candy stripper would not be "providing first aid, search, rescue, or other emergency services." If this is the only example of the problem, I would prefer to meet it head on rather than diddle with the language of the bill to meet a highly improbable scenario.

The bigger problem, it seems to me, is whether non-profit organizations that provide medical assistance on a "fee-for-services-rendered" basis would be protected for acts of their "members." Such organizations would include the Lutheran hospital in Fairbanks and the Sisters of Providence hospital in Anchorage. We have no interest in providing immunity to those who charge for their services. One way to solve the problem would be to add a third proviso to the bill, which would read: "(3) the organization does not receive compensation for the services it provides to the public." or "(3) the organization does not receive compensation from the persons for whom it provides the services." This would distinguish ski patrols and the civil air

Tom Smith
January 22, 1987
Page 2

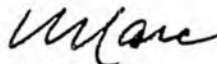
patrol from "non-profit" organizations that charge for services. Try it out and see what you think.

2. Use of the Word "Regardless". You indicated that someone had a problem with the use of the word "regardless". The same meaning could be had by deleting the word "regardless" and putting "or not" after "whether". That section of the bill would then read: ". . . other emergency services, whether or not the organization or its members are under a preexisting duty to render assistance . . ." The meaning is precisely the same, and the word "regardless" has been eliminated.

We also discussed the effects of H.R. 911 and the state legislation that has been introduced to comply with H.R. 911 if it is adopted. I am enclosing a copy of the letter I sent to Tom Moyer and Katherine Reardon, along with the printout from the BillCast database. While the proposed legislation certainly wouldn't hurt us, I agree with you that the combination could be fatal to our bills.

Well, use this stuff as you see best. If you think direct contact between staff and me would be helpful, that's OK. I prefer to minimize the voices with which we speak, and I know that you and Bob will do a great job. If you need anything else, let me know.

Very truly yours,



Marc Bond

Enc.

cc: Bob Janes

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

- | | |
|---|--|
| <p>Part</p> <p>I. General rule.</p> <p>II. Private foundations.</p> <p>III. Taxation of business income of certain exempt organizations.</p> | <p>Part</p> <p>IV. Farmers' cooperatives.</p> <p>V. Shipowners' protection and indemnity associations.</p> <p>VI. Political organizations.</p> <p>VII. Certain homeowners associations.</p> |
|---|--|

1976 Amendment. Pub.L. 94-455, Title XXI, § 2101(d), Oct. 4, 1976, 90 Stat. 1899, added part VII heading.

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

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

PART I—GENERAL RULE

- | | |
|--|---|
| <p>Sec.</p> <p>501. Exemption from tax on corporations, certain trusts, etc.</p> <p>502. Feeder organizations.</p> <p>503. Requirements for exemption.</p> <p>504. Status after organization ceases to qualify for exemption under sec-</p> | <p>Sec.</p> <p>tion 501(c) (3) because of substantial lobbying.</p> <p>505. Additional requirements for organizations described in paragraph (9), (17), or (20) of section 501(c).</p> |
|--|---|

1984 Amendment. Pub.L. 98-369, Title V, § 513(b), July 18, 1984, 98 Stat. 865, added item 505, applicable to years beginning after Dec. 31, 1984.

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

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

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

(a) Exemption from taxation.—An organization described in subsection (c) or (c¹) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

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

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

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

(A) is exempt from Federal income taxes—

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

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

(B) is described in subsection (f).

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

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

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

(5) Labor, agricultural, or horticultural organizations.

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

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

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

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

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

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

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

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

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

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

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

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

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

Act as amended and supplemented before July 18,

the without regard to any provision of law which is in title and which is not contained in a revenue Act,

subsection (i).

for the exclusive purpose of holding title to therefrom, and turning over the entire amount to an organization which itself is exempt under this

community chest, fund, or foundation, organized for religious, charitable, scientific, testing for public purposes, or to foster national or international (but only if no part of its activities involve the sale or equipment), or for the prevention of cruelty to the net earnings of which inures to the benefit of individual, no substantial part of the activities of the organization is to influence legislation, or otherwise attempting, to influence legislation provided in subsection (h)), and which does not include the publishing or distributing of literature on behalf of any candidate for public office. Organizations not organized for profit but operated for the promotion of social welfare, or local associations of employees, the net earnings of which are limited to the employees of a designated person or municipality, and the net earnings of which are for the promotion of educational, or recreational purposes.

horticultural organizations.

boards of commerce, real-estate boards, boards of trade, or leagues (whether or not administering a pension plan) not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual. Organizations organized for the promotion of pleasure, recreation, and other nonprofitable purposes, the net earnings of which are for such purposes and no part of which inures to the benefit of any private shareholder

societies, orders, or associations—

which are organized for the exclusive benefit of the members of a lodge system or for the exclusive benefit of the members of a lodge system, and which are operating under the lodge system, and which are providing for the payment of life, sick, accident, or other benefits to the members of such association or to the beneficiaries, if no part of the net earnings of such association inures to the benefit of any private shareholder or individual.

societies, orders, or associations, operating under the lodge system or for the exclusive benefit of the members of a lodge system, and which are providing for the payment of life, sick, accident, or other benefits to the members of such association or to the beneficiaries, if no part of the net earnings of such association inures to the benefit of any private shareholder or individual.

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and associations of a purely local character, if no part of the net earnings inures (other than through payment of life, sick, accident, or other benefits) to the benefit of any private shareholder or individual.

solely of amounts received from public taxation, or from assessments on the teaching salaries of members, or from investments.

insurance associations of a purely local character, or mutual or cooperative telephone companies, only if 85 percent or more of the income consists

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

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

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

(ii) from qualified pole rentals, or

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

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

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

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

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

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

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

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

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

(i) domestic building and loan associations,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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or other producers, and operated in conjunction with such corporation shall not be denied any such corporation if the dividend rate of such stock is fixed at not to exceed in the State of incorporation or 8 percent per annum on the value of the consideration for which the stock is issued, substantially all such stock (other than nonvoting stock) which are not entitled or permitted to participate in the profits of the corporation, on dissolution or otherwise, is owned by such association, or members thereof, shall not be denied any such corporation because there is in the plan a reserve required by State law or a reasonable purpose.

forming part of a plan providing for the payment of compensation benefits, if—

(A) it is impossible, at any time prior to the satisfaction of the plan, for any part of the contributions (within the taxable year or thereafter) used for, or other than the providing of supplemental unemployment benefits,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) to pay administrative and other incidental expenses of such trust (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of such trust.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) to pay administrative and other incidental expenses of such trust (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of such trust.

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

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

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

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

(I) public debt securities of the United States,

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

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

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

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

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

(A) the purpose of such trust is exclusively—

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

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

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

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

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

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

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

(23) any¹ association organized before 1880 more than 75 percent of the members of which are present or past members of the Armed Forces and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents.

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

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

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

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

(iii) is organized for the exclusive purposes of—

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

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

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the trust and the processing of claims against such Acts; and

the trust may be used for, or diverted to, any

as described in subparagraph (A), or

to the extent that the trustee determines that such property is not currently needed for the purposes described in subparagraph (A) in—

(i) the United States,

State or local government which are not in the interest of, or

deposits in a bank (as defined in section 3102) or credit union (within the meaning of section 3102) or credit union Act, 12 U.S.C. 1752(6)) located in

Black Lung Disability Trust Fund established to the general fund of the United States in satisfaction of any tax or other civil or criminal liability established or contributed to the trust.

The term "Black Lung Acts" means part C of the Black Lung Act of 1977, and any State law relating to or death due to pneumoconiosis.

located in the United States and established in an employer plan if—

it is exclusively—

as described in section 4223(c) or (h) of the Internal Revenue Act of 1974, and

and necessary administrative expenses in connection with the operation of the trust and the trust.

the trust may be used for, or diverted to, any

as described in subparagraph (A), or

securities, obligations, or time or demand deposits (ii) of paragraph (21)(B),

requirements of paragraphs (2), (3), and (4) of section 4223(c) of the Employee Retirement Income Security Act of 1974, and

provided that, on dissolution of the trust, assets shall be distributed to plans which have participated in such trust established under section 4223(r) of such Act in which employers have participated in the fund. If before 1980 more than 75 percent of the past members of the Armed Forces and a State provide insurance and other benefits to veterans

section 4049 of the Employee Retirement Income Security Act on the date of the enactment of the Internal Revenue Act of 1986.

which—

shareholders or beneficiaries, or beneficial interest, and for the exclusive purposes of—

and holding title to, and collecting income

amount of income from such property (less expenses) of organizations described in subparagraph (C) of section 1361 or such corporation or beneficiaries of such

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

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

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

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

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

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

(v) any organization described in this paragraph.

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

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

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

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

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

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

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

(1) such organization is organized and operated solely—

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

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

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

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

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

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

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
TIM KELLY, Vice Chairman
RICK HALFORD
MIKE SZYMANSKI
FRED ZHAROFF



P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4989

Senate Community and Regional Affairs Committee

*Don't attempt to
non-judicially
delete from original
to + 7 hazardous
activities
to + presumption*

March 17, 1988

TO: Senate Community and Regional Affairs Committee Members

FROM: Senate C&RA Staff *NK*

RE: CSSB 447 (C&RA) - "An Act relating to liability for damages or injury resulting from hazardous recreational activities."

RE: CSSB 448 (C&RA) - "An Act relating to civil liability of certain volunteers."

These two committee substitutes respond to concerns raised when these bills were previously heard by the committee. CSSB 447 has had substantial deletion of verbiage but the bill still does the same thing. The CS and a mark up of the original bill showing the deletions is attached.

Section 1 of CSSB 448 adds subsection (d) which makes plain that the immunity provided for volunteers in Section 1 does not include applying advanced life support techniques if the volunteer is not authorized to do so by law. This addition was urged by the Department of Health and Social Services. Section 2 expands coverage of volunteers helping the state from just Division of Parks volunteers to volunteers for any state department.

July 1, 1988 effective dates are added to both bills. Senator Duncan, the sponsor, supports the changes in both CS's.

5-1483L
Lauterbach
3/17/88

Original sponsor: Duncan

1 IN THE SENATE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 447 (C&RA)

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 liability for damage or injury
7 resulting from hazardous recreational activities; and
8 providing for an effective date."

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

10 * Section 1. AS 09.50.250 is amended to read:

11 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person
12 or corporation having a contract, quasi-contract, or tort claim
13 against the state may bring an action against the state in the superi-
14 or court. A person who may present the claim under AS 44.77 may not
15 bring an action under this section except as set out in AS 44.77.-
16 040(c). A person who may bring an action under AS 36.30.560 - 36.30.-
17 695 may not bring an action under this section except as set out in
18 AS 36.30.685. However, an [NO] action may not be brought under this
19 section if the claim

20 (1) is an action for tort, and is based upon an act or
21 omission of an employee of the state, exercising due care, in the
22 execution of a statute or regulation, whether or not the statute or
23 regulation is valid; or is an action for tort, and based upon the
24 exercise or performance or the failure to exercise or perform a dis-
25 cretionary function or duty on the part of a state agency or an em-
26 ployee of the state, whether or not the discretion involved is abused;

27 (2) is for damages caused by the imposition or establish-
28 ment of a quarantine by the state;

29 (3) arises out of assault, battery, false imprisonment,

1 false arrest, malicious prosecution, abuse of process, libel, slander,
2 misrepresentation, deceit, or interference with contract rights;

3 (4) is an action for property damage or personal injury
4 arising out of the person's participation in a hazardous recreational
5 activity conducted on property owned, managed, or leased by the state.

6 * Sec. 2. AS 09.50.250 is amended by adding new subsections to read:

7 (b) The provisions of (a)(4) of this section do not limit lia-
8 bility that would otherwise exist for an act of gross negligence by
9 the state or an employee of the state that is the proximate cause of
10 the damage or injury.

11 (c) Nothing in this section limits the liability of an indepen-
12 dent concessionaire, or a person or organization other than the state,
13 whether or not the person or organization has a contractual relation-
14 ship with the state to use the property owned, managed, or leased by
15 the state, for injury or damage suffered as a result of a hazardous
16 recreational activity operated by the concessionaire, person, or
17 organization on property owned, managed, or leased by the state.

18 (d) In this section,

19 (1) "hazardous recreational activity" means a recreational
20 activity that creates a substantial risk of injury to a participant;

21 (2) "participant" means

22 (A) a participant, regardless of whether the person
23 was directly involved in the activity in question at the time of
24 the injury or damage;

25 (B) a person who assists another to participate in the
26 activity; or

27 (C) a spectator who

28 (i) knew or reasonably should have known that the
29 activity created a substantial risk of injury to the

1 spectator; and

2 (ii) was voluntarily in the place of risk or,
3 having the ability to do so, failed to leave.

4 * Sec. 3. AS 09.65.070(e) is repealed and reenacted to read:

5 (e) In this section

6 (1) "hazardous recreational activity" and "participant"
7 have the meanings given in AS 09.50.250(d);

8 (2) "municipality" has the meaning given in AS 01.10.060
9 and includes a public corporation established by the municipality;

10 (3) "nonprofit entity" means an entity

11 (A) incorporated under AS 10.20; or

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

13 (Internal Revenue Code of 1954);

14 (4) "village" means an unincorporated community where at
15 least 25 people reside as a social unit.

16 * Sec. 4. AS 09.65.070 is amended by adding new subsections to read:

17 (f) A person may not bring an action for property damage or
18 personal injury arising out of the person's participation in a hazar-
19 dous recreational activity if the action is against

20 (1) a municipality, or an agent, officer, or employee of a
21 municipality, and the activity was conducted

22 (A) by the municipality; or

23 (B) on property owned, managed, or leased by the
24 municipality; or

25 (2) a municipality, or a nonprofit entity whose recreation-
26 al activities are cosponsored by a municipality under the terms of an
27 ordinance adopted by the municipality for a period of not more than
28 five years, or an agent, officer, or employee of the municipality or
29 nonprofit entity, and the activity was conducted by the nonprofit

1 entity, or jointly by the municipality and the nonprofit entity, or
2 property owned, managed, or leased by the municipality.

3 (g) The provisions of (f) of this section do not limit liability
4 that would otherwise exist for an act of gross negligence by a munic-
5 ipality, a nonprofit entity, or an agent, officer, or employee of a
6 municipality or nonprofit entity that is the proximate cause of the
7 damage or injury.

8 * Sec. 5. This Act takes effect July 1, 1988.

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MARK UP

1 IN THE SENATE

BY DUNCAN

2

CS SENATE BILL NO. 447 (C+RA)

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 liability for damage or injury resulting from hazardous recreational activities."

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

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* Section 1. AS 09.50.250 is amended to read:

11

Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state in the superior court. A person who may present the claim under AS 44.77 may not bring an action under this section except as set out in AS 44.77.-040(c). A person who may bring an action under AS 36.30.560 - 36.30.-695 may not bring an action under this section except as set out in AS 36.30.685. However, an [NO] action may not be brought under this section if the claim

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(1) is an action for tort, and is based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not the statute or regulation is valid; or is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused;

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(2) is for damages caused by the imposition or establishment of a quarantine by the state;

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(3) arises out of assault, battery, false imprisonment,

1 false arrest, malicious prosecution, abuse of process, libel, slander,
2 misrepresentation, deceit, or interference with contract rights;

3 (4) is an action for property damage or personal injury
4 arising out of the person's participation in a hazardous recreational
5 activity conducted on property owned, managed, or leased by the state.

6 * Sec. 2. AS 09.50.250 is amended by adding new subsections to read:

7 (b) The provisions of (a)(4) of this section do not limit lia-
8 bility that would otherwise exist for

9 (1) damage or injury suffered by a participant in a hazard-
10 ous recreational activity if

11 (A) the damage or injury resulted from a different
12 hazardous recreational activity or dangerous condition;

13 (B) the state or an employee of the state
14 (i) knew of the different activity or condition;

15 and
16 (ii) failed to protect or warn the participant;

17 and
18 (C) the participant, acting reasonably, did not assume
19 that damage or injury from the different activity or condition
20 was an inherent risk of the participation in the hazardous recre-
21 ational activity;

22 (2) damage or injury suffered in a case in which permission
23 to participate in the hazardous recreational activity was granted for
24 a specific fee,

25 (3) injury suffered to the extent proximately caused by the
26 negligent failure of the state or an employee of the state to properly
27 construct or maintain in good repair a structure, recreational equip-
28 ment or machinery, or substantial work of improvement used in the
29 hazardous recreational activity from which the damage or injury arose;

1 (4) damage or injury suffered in a case in which the state
2 or an employee of the state recklessly or with gross negligence pro-
3 moted the participation in a hazardous recreational activity; for
4 purposes of this paragraph, promotional literature or a public an-
5 nouncement or advertisement that merely describes the available facil-
6 ities and services on the property does not in itself constitute a
7 reckless or grossly negligent promotion; or

8 (5) an act of gross negligence by the state or an employee
9 of the state that is the proximate cause of the damage or injury.

10 ~~(c) Nothing in (b) of this section creates a duty of care or~~
11 ~~basis of liability for personal injury or for damage to personal~~
12 ~~property.~~

13 (C) (d) Nothing in this section limits the liability of an independ-
14 ent concessionaire, or any person or organization other than the
15 state, whether or not the person or organization has a contractual
16 relationship with the state to use the property owned, managed, or
17 leased by the state, for injury or damage suffered as a result of a
18 hazardous recreational activity operated by the concessionaire, per-
19 son, or organization on property owned, managed, or leased by the
20 state.

21 (e) In this section,

22 (1) "hazardous recreational activity" means a recreational
23 activity that creates a substantial risk of injury to a participant,
24 and includes activities such as

25 (A) water contact activities, except diving, in places
26 where or at a time when lifeguards are not provided and reason-
27 able warning has been given or the injured party should reason-
28 ably have known that there was no lifeguard provided at the time;

29 (B) diving into water from other than a diving board

1 or diving platform, or at a place or from a structure where
2 diving is prohibited and reasonable warning has been given;

3 (C) airplane flying, animal riding, and equestrian
4 activities, archery, bicycling, boating, cross-country and down-
5 hill skiing, gymnastics, hang gliding, hockey and roller hockey,
6 ice skating, kayaking, motorized vehicle racing, off-road motor-
7 cycling, off-road four-wheel driving, orienteering, pistol and
8 rifle shooting, rock climbing and ice climbing, rocketeering,
9 rodeo, scuba diving, skateboarding, sky diving, spelunking, sport
10 parachuting, sports in which it is reasonably foreseeable that
11 there will be rough bodily contact by participants, surfing,
12 track and field sports, trampolining, tree climbing, tree rope
13 swinging, water skiing, white water rafting, and wind surfing;

14 (2) "participant" means

15 (A) a participant, regardless of whether the person
16 was directly involved in the activity in question at the time of
17 the injury or damage;

18 (B) a person who assists another to participate in the
19 activity; or

20 (C) a spectator who

21 (i) knew or reasonably should have known that the
22 activity created a substantial risk of injury to the specta-
23 tor; and

24 (ii) was voluntarily in the place of risk or,
25 having the ability to do so, failed to leave;

26 (3) "specific fee"

27 (A) means a fee charged specifically for participation
28 in the hazardous recreational activity from which the damage or
29 injury arose;

- 1 (B) does not include
2 (i) a fee or consideration charged for a general
3 purpose such as a general park admission charge, a vehicle
4 entry or parking fee, an administrative or group use appli-
5 cation or permit fee, or a fee reasonably necessary for the
6 support of the recreational program that involves the haz-
7 ardous recreational activity;
8 (ii) a fee paid in trust to a municipality for the
9 benefit of a private organization that originates, sponsors,
10 or conducts a hazardous recreational activity.

11 * Sec. 3. AS 09.65.070(e) is repealed and reenacted to read:

12 (e) In this section

13 (1) "hazardous recreational activity," "participant," and
14 "specific fee" have the meanings given in AS 09.50.250(e);

15 (2) "municipality" has the meaning given in AS 01.10.060
16 and includes a public corporation established by the municipality;

17 (3) "nonprofit entity" means an entity

18 (A) incorporated under AS 10.20; or

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

20 (Internal Revenue Code of 1954);

21 (4) "village" means an unincorporated community where at
22 least 25 people reside as a social unit.

23 * Sec. 4. AS 09.65.070 is amended by adding new subsections to read:

24 (f) A person may not bring an action for property damage or
25 personal injury arising out of the person's participation in a hazar-
26 dous recreational activity if the action is against

27 (1) a municipality, or an agent, officer, or employee of a
28 municipality, and the activity was conducted

29 (A) by the municipality; or

1 (B) on property owned, managed, or leased by the
2 municipality; or

3 (2) a municipality, or a nonprofit entity whose recreation-
4 al activities are cosponsored by a municipality under the terms of an
5 ordinance adopted by the municipality for a period of not more than
6 five years, or an agent, officer, or employee of the municipality or
7 nonprofit entity, and the activity was conducted by the nonprofit
8 entity, or jointly by the municipality and the nonprofit entity, on
9 property owned, managed, or leased by the municipality.

10 (g) The provisions of (f) of this section do not limit liability
11 that would otherwise exist for

12 (1) damage or injury suffered by a participant in a hazard-
13 ous recreational activity if

14 (A) the damage or injury resulted from a different
15 hazardous recreational activity or dangerous condition;

16 (B) a municipality, a nonprofit entity, or an agent,
17 officer, or employee of the municipality or nonprofit entity

18 (i) knew of the different activity or condition;

19 and

20 (ii) failed to protect or warn the participant;

21 and

22 (C) the participant, acting reasonably, did not assume
23 that damage or injury from the different activity or condition
24 was an inherent risk of the participation in the hazardous recre-
25 ational activity;

26 (2) damage or injury suffered in a case in which permission
27 to participate in the hazardous recreational activity was granted for
28 a specific fee;

29 (3) the owner of recreational equipment or machinery, a

1 structure, or a substantial work of improvement used in a hazardous
2 recreational activity, or an employee of the owner, for injury proxi-
3 mately caused by the negligent failure by the owner or employee to
4 properly construct or maintain in good repair the equipment, machin-
5 ery, structure, or improvement;

6 (4) damage or injury suffered in a case in which a munici-
7 pality, a nonprofit entity, or an agent, officer, or employee of a
8 municipality or nonprofit entity recklessly or with gross negligence
9 promoted as safe the participation in a hazardous recreational activi-
10 ty; for purposes of this paragraph, promotional literature or a public
11 announcement or advertisement that merely describes the available
12 facilities and services on the property does not in itself constitute
13 a reckless or grossly negligent promotion; or

14 (5) an act of gross negligence by a municipality, a non-
15 profit entity, or an agent, officer, or employee of a municipality or
16 nonprofit entity that is the proximate cause of the damage or injury.

17 (g) (1) Nothing in (g) of this section creates a duty of care or
18 basis of liability for personal injury or for damage to personal
19 property.

Eff. July 1, 1988

5-1484L
Lauterbac
3/17/88

Original sponsor: Duncan

1 IN THE SENATE

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 448 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil liability of certain volun-
7 teers and civil liability for emergency aid; and
8 providing for an effective date."

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

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

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

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

18 (2) the member provides the service while acting as a
19 volunteer member of the organization.

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

24 (1) electric cardiac defibrillation;

25 (2) administration of antiarrhythmic agents;

26 (3) intravenous therapy;

27 (4) intramuscular therapy; or

28 (5) use of endotracheal intubation devices or esophageal
29 airway devices.

1 (e) In this section, "volunteer" means a person who is paid not
2 more than \$500 a year, not including reimbursement for expenses ac-
3 tually incurred, for providing emergency services.

4 * Sec. 2. AS 09.65 is amended by adding a new section to read:

5 Sec. 09.65.098. CIVIL LIABILITY OF CERTAIN VOLUNTEERS. (a) A
6 person working as a volunteer for the state, ^{Div of Parks} for a municipality, or
7 for a nonprofit entity is not liable for civil damages as a result of
8 an act or omission while acting in good faith and within the person's
9 official functions and duties.

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

13 (c) This section does not affect

14 (1) a civil action brought by the state, a municipality, or
15 a nonprofit entity against, respectively, a volunteer of the state,
16 the municipality, or the entity; ^{Div of Parks}

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

19 (d) In this section,

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

22 (2) "nonprofit entity" means an entity

23 (A) incorporated under AS 10.20; or

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

25 (Internal Revenue Code of 1954);

26 (3) "volunteer" means a person who is paid not more ^{rewording} than
27 \$500 a year, not including reimbursement for expenses actually incur-
28 red, for services performed for the state, a municipality, or a non-
29 profit entity.

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* Sec. 3. This Act takes effect July 1, 1988.

RECEIVED FEB 26 1988

Position Paper

SB 448

For an Act entitled: "An Act relating to civil liability of certain volunteers."

This Act amends AS 09.65.090 (civil liability for emergency aid) to expand the coverage to a person who provides emergency services (e.g., first aid and search and rescue) while acting as a volunteer for an organization that exists for the purpose of providing the service rendered, regardless of whether the organization or members are under a preexisting duty to render assistance. Currently, AS 09.65.090 provides immunity from liability only to persons who do not have a preexisting duty to act.

This Act also amends AS 09.65 by adding a new section to provide immunity from liability for civil damages for volunteers working for the Division of Parks and Outdoor Recreation, Department of Natural Resources; for a municipality; or for a nonprofit entity if the person is acting in good faith and within the person's official functions and duties. This section does not preclude liability for civil damages as a result of gross negligence, recklessness, or intentional misconduct.

Impact of Bill

This legislation increases immunity from liability for volunteer workers, many of whom have a preexisting duty to act and, consequently, are not covered by AS 09.65. It is expected that passage of this legislation would increase the number of individuals willing to provide volunteer services and would decrease the rate of attrition among volunteer workers.

Position

The Department of Health and Social Services supports the intent of this legislation. However, the department recommends that SB 448 be amended to add the following statement:

AS 09.65.090(e) -This section does not apply to persons who provide advanced life support medical procedures, including cardiac defibrillation,

administration of antiarrhythmic agents, intravenous therapy, intramuscular therapy, or use of esophageal airway devices or endotracheal intubation devices, or other invasive medical procedures, unless the person is authorized by law to perform these procedures.

Recommended by: *Elizabeth Ward*
Elizabeth Ward, M.N.
Director
Division of Public Health

Date: *February 18, 1988*

Approved by: *Myra M. Munson*
Myra M. Munson
Commissioner
Department of Health and
Social Services

Date: *Feb 23, 1988*

FISCAL NOTE

REQUEST:

Revision Date: 2/16/88
Title: An Act relating to civil liability of certain . . .
Sponsor: Duncan
Requestor: _____

Agency Affected: Health & Social Services
BRU: State Health Services
Components: EMS Certification and Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The enactment of SB 448 would have no direct fiscal impact on the Department of Health and Social Services.

Prepared by: Elizabeth Ward, Director *Elizabeth Ward* Phone: 465-3090
Division: Public Health Date: 2-19-88

Approved by Commissioner: Mona M. Munn *Mona M. Munn* Date: 2-23-88
Agency: Department of Health & Social Services

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

BILL NO: SB 448

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

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.



Arthur English
Commissioner

FISCAL NOTE

REQUEST

Revision Date: _____
Title: "An Act granting immunity . . . for providing . . . emergency services."
Sponsor: Sen. Duncan
Requestor: Senate C&RA

Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Detachments

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

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

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

Phone: 269-5691
Date: 2/23/88

Approved by Commissioner: *[Signature]*
Agency: Public Safety

Date: 3-1-88

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

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 3/10/88 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY

**FISCAL NOTE(S) ATTACHED yes **
IN ACCORDANCE WITH AS 24.08.035
(see below)

2/16/88 DATE TURNED INTO OFFICE 3/18/88
Mr. President:

C&RA Committee considered SB 447

liability for damage or injury resulting from hazardous recreational activities

and recommended:

- replace with CS for SB 447 same tit
- attached amendment(s) and new tit
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____
- letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Mah... Do not pass
Tim Kelly - No Rec

Julius Stroganowski Do Pass
Chairman signature and recommendation

Committee Backup Attached

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 3/10/88 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY

**FISCAL NOTE(S) ATTACHED yes **
IN ACCORDANCE WITH AS 24.08/035
(see below)

2/16/88 DATE TURNED INTO OFFICE 3/18/88
Mr. President:

C&RA Committee considered SB 448
civil liability of certain volunteers

and recommended:

- replace with CS _____ same title
- attached amendment(s) and new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____
- letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

M. J. [Signature] (No Rec)
Tim [Signature] (No Rec)

Allen Stangel [Signature] Do Pass
Chairman signature and recommendation

Committee Backup Attached

Original sponsor: Duncan

1 IN THE SENATE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 367 (C&RA)

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 optional exemptions from munic-
7 ipal taxes."

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

9 * Section 1. AS 29.45.050(b) is amended to read:

10 (b) A municipality may by ordinance

11 (1) classify boats and vessels for the purposes of taxation
12 and may establish the assessed valuation of boats and vessels on the
13 basis of their registered or certificated net tonnage;

14 (2) classify and exempt from taxation

15 (A) the property of an organization not organized for
16 business or profit-making purposes and used exclusively for
17 community purposes if the income derived from rental of that
18 property does not exceed the actual cost to the owner of the use
19 by the renter;

20 (B) historic sites, buildings, and monuments;

21 (C) land of a nonprofit organization used for agricul-
22 tural purposes if rights to subdivide the land are conveyed to
23 the state and the conveyance includes a covenant restricting use
24 of the land to agricultural purposes only; rights conveyed to the
25 state under this subparagraph may be conveyed by the state only
26 in accordance with AS 38.05.069(c);

27 (3) exempt personal property from taxation;

28 (4) exempt business inventories from taxation;

29 (5) classify as to type and exempt or partially exempt any

1 or all types of motor vehicles from taxation;

2 (6) classify as to type and exempt or partially exempt any
3 or all inventories produced from the processing or manufacturing in
4 the state of a natural resource originating in the state;

5 (7) exempt, for a period not to exceed five years, personal
6 property used in the processing of fisheries resources from up to 100
7 percent of the rate of taxes levied on other property; for purposes of
8 this paragraph "fisheries resources" includes all aquatic plants and
9 animals.

1 IN THE SENATE

BY DUNCAN

2  SENATE BILL NO. 447 (C+RA)

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 liability for damage or in-
7 jury resulting from hazardous recreational activi-
8 ties."

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

10 * Section 1. AS 09.50.250 is amended to read:

11 Sec. 09.50.250. (A) ACTIONABLE CLAIMS AGAINST THE STATE. A person
12 or corporation having a contract, quasi-contract, or tort claim
13 against the state may bring an action against the state in the superi-
14 or court. A person who may present the claim under AS 44.77 may not
15 bring an action under this section except as set out in AS 44.77.-
16 040(c). A person who may bring an action under AS 36.30.560 - 36.30.-
17 695 may not bring an action under this section except as set out in
18 AS 36.30.685. However, an [NO] action may not be brought under this
19 section if the claim

20 (1) is an action for tort, and is based upon an act or
21 omission of an employee of the state, exercising due care, in the
22 execution of a statute or regulation, whether or not the statute or
23 regulation is valid; or is an action for tort, and based upon the
24 exercise or performance or the failure to exercise or perform a dis-
25 cretionary function or duty on the part of a state agency or an em-
26 ployee of the state, whether or not the discretion involved is abused;

27 (2) is for damages caused by the imposition or establish-
28 ment of a quarantine by the state;

29 (3) arises out of assault, battery, false imprisonment,

1 false arrest, malicious prosecution, abuse of process, libel, slander,
2 misrepresentation, deceit, or interference with contract rights;

3 (4) is an action for property damage or personal injury
4 arising out of the person's participation in a hazardous recreational
5 activity conducted on property owned, managed, or leased by the state.

6 * Sec. 2. AS 09.50.250 is amended by adding new subsections to read:

7 (b) The provisions of (a)(4) of this section do not limit lia-
8 bility that would otherwise exist for - - '

9 (1) damage or injury suffered by a participant in a hazard-
10 ous recreational activity if

11 (A) the damage or injury resulted from a different
12 hazardous recreational activity or dangerous condition;

13 (B) the state or an employee of the state

14 (i) knew of the different activity or condition;

15 and

16 (ii) failed to protect or warn the participant;

17 and

18 (C) the participant, acting reasonably, did not assume
19 that damage o. injury from the different activity or condition
20 was an inherent risk of the participation in the hazardous recre-
21 ational activity;

22 (2) ~~damage or injury suffered in a case in which permission~~
23 ~~to participate in the hazardous recreational activity was granted for~~
24 ~~a specific fee;~~

25 (3) injury suffered to the extent proximately caused by the
26 negligent failure of the state or an employee of the state to properly
27 construct or maintain in good repair a structure, recreational equip-
28 ment or machinery, or substantial work of improvement used in the
29 hazardous recreational activity from which the damage or injury arose;

1 (4) damage or injury suffered in a case in which the state
2 or an employee of the state recklessly or with gross negligence pro-
3 moted the participation in a hazardous recreational activity; for
4 purposes of this paragraph, promotional literature or a public an-
5 nouncement or advertisement that merely describes the available facil-
6 ities and services on the property does not in itself constitute a
7 reckless or grossly negligent promotion; or

8 ~~(c)~~ an act of gross negligence by the state or an employee
9 of the state that is the proximate cause of the damage or injury.

10 ~~(c) Nothing in (b) of this section creates a duty of care or~~
11 ~~basis of liability for personal injury or for damage to personal~~
12 ~~property.~~

13 (d) Nothing in this section limits the liability of an indepen-
14 dent concessionaire, or any person or organization other than the
15 state, whether or not the person or organization has a contractual
16 relationship with the state to use the property owned, managed, or
17 leased by the state, for injury or damage suffered as a result of a
18 hazardous recreational activity operated by the concessionaire, per-
19 son, or organization on property owned, managed, or leased by the
20 state.

21 (e) In this section,

22 (1) "hazardous recreational activity" means a recreational
23 activity that creates a substantial risk of injury to a participant.

24 and includes activities such as

25 (A) water contact activities, except diving, in places
26 where or at a time when lifeguards are not provided and reason-
27 able warning has been given or the injured party should reason-
28 ably have known that there was no lifeguard provided at the time;

29 (B) diving into water from other than a diving board

1 or diving platform, or at a place or from a structure where
2 diving is prohibited and reasonable warning has been given;

3 (C) airplane flying, animal riding and equestrian
4 activities, archery, bicycling, boating, cross-country and down-
5 hill skiing, gymnastics, hang gliding, hockey and roller hockey,
6 ice skating, kayaking, motorized vehicle racing, off-road motor-
7 cycling, off-road four-wheel driving, orienteering, pistol and
8 rifle shooting, rock climbing and ice climbing, rocketeering,
9 rodeo, scuba diving, skateboarding, sky diving, spelunking, sport
10 parachuting, sports in which it is reasonably foreseeable that
11 there will be rough bodily contact by participants, surfing,
12 track and field sports, trampolining, tree climbing, tree rope
13 swinging, water skiing, white water rafting, and wind surfing;

14 (2) "participant" means

15 (A) a participant, regardless of whether the person
16 was directly involved in the activity in question at the time of
17 the injury or damage;

18 (B) a person who assists another to participate in the
19 activity; or

20 (C) a spectator who

21 (i) knew or reasonably should have known that the
22 activity created a substantial risk of injury to the specta-
23 tor; and

24 (ii) was voluntarily in the place of risk or,
25 having the ability to do so, failed to leave;

26 (3) "specific fee"

27 (A) means a fee charged specifically for participation
28 in the hazardous recreational activity from which the damage or
29 injury arose;

- 1 (B) does not include
2 (i) a fee or consideration charged for a general
3 purpose such as a general park admission charge, a vehicle
4 entry or parking fee, an administrative or group use appli-
5 cation or permit fee, or a fee reasonably necessary for the
6 support of the recreational program that involves the haz-
7 ardous recreational activity;
8 (ii) a fee paid in trust to a municipality for the
9 benefit of a private organization that originates, sponsors,
10 or conducts a hazardous recreational activity.

11 * Sec. 3. AS 09.65.070(e) is repealed and reenacted to read:

- 12 (e) In this section
13 (1) "hazardous recreational activity," "participant," and
14 "specific fee" have the meanings given in AS 09.50.250(e);
15 (2) "municipality" has the meaning given in AS 01.10.060
16 and includes a public corporation established by the municipality;
17 (3) "nonprofit entity" means an entity
18 (A) incorporated under AS 10.20; or
19 (B) exempt from taxation under 26 U.S.C. 501(c)(3)
20 (Internal Revenue Code of 1954);
21 (4) "village" means an unincorporated community where at
22 least 25 people reside as a social unit.

23 * Sec. 4. AS 09.65.070 is amended by adding new subsections to read:

- 24 (f) A person may not bring an action for property damage or
25 personal injury arising out of the person's participation in a hazar-
26 dous recreational activity if the action is against
27 (1) a municipality, or an agent, officer, or employee of a
28 municipality, and the activity was conducted
29 (A) by the municipality; or

1 (B) on property owned, managed, or leased by the
2 municipality; or

3 (2) a municipality, or a nonprofit entity whose recreation-
4 al activities are cosponsored by a municipality under the terms of an
5 ordinance adopted by the municipality for a period of not more than
6 five years, or an agent, officer, or employee of the municipality or
7 nonprofit entity, and the activity was conducted by the nonprofit
8 entity, or jointly by the municipality and the nonprofit entity, on
9 property owned, managed, or leased by the municipality.

10 (g) The provisions of (f) of this section do not limit liability
11 that would otherwise exist for . . .

12 (1) damage or injury suffered by a participant in a hazard-
13 ous recreational activity if

14 (A) the damage or injury resulted from a different
15 hazardous recreational activity or dangerous condition;

16 (B) a municipality, a nonprofit entity, or an agent,
17 officer, or employee of the municipality or nonprofit entity

18 (i) knew of the different activity or condition;

19 and

20 (ii) failed to protect or warn the participant;

21 and

22 (C) the participant, acting reasonably, did not assume
23 that damage or injury from the different activity or condition
24 was an inherent risk of the participation in the hazardous recre-
25 ational activity;

26 (2) damage or injury suffered in a case in which permission
27 to participate in the hazardous recreational activity was granted for
28 a specific fee;

29 (3) the owner of recreational equipment or machinery, a

1 structure, or a substantial work of improvement used in a hazardous
2 recreational activity, or an employee of the owner, for injury proxi-
3 mately caused by the negligent failure by the owner or employee to
4 properly construct or maintain in good repair the equipment, machin-
5 ery, structure, or improvement;

6 (4) damage or injury suffered in a case in which a municipi-
7 tality, a nonprofit entity, or an agent, officer, or employee of a
8 municipality or nonprofit entity recklessly or with gross negligence
9 promoted as safe the participation in a hazardous recreational activi-
10 ty; for purposes of this paragraph, promotional literature or a public
11 announcement or advertisement that merely describes the available
12 facilities and services on the property does not in itself constitute
13 a reckless or grossly negligent promotion; or

14 ~~(4)~~ an act of gross negligence by a municipality, a non-
15 profit entity, or an agent, officer, or employee of a municipality or
16 nonprofit entity that is the proximate cause of the damage or injury.

17 ~~(h)~~ Nothing in (g) of this section creates a duty of care or
18 basis of liability for personal injury or for damage to personal
19 property.

ALASKA RAILROAD CORPORATION



P.O. Box 7-2111 • Anchorage, Alaska 99510-7069

VIA TELECOPY

March 17, 1988

Honorable Arliss Sturgulewski
Chairman, Senate Community & Regional Affairs Committee
Pouch V
Juneau, Alaska 99811

Re: SB 447, An Act Relating to Liability for Damage or
Injury Resulting from Hazardous Recreational Activities

Dear Arliss,

I understand that Senate Bill No. 447 will be considered by your committee this afternoon. Thank you for this opportunity to express support for the legislation on the behalf of the Alaska Railroad Corporation ("ARRC").

As you know, SB 447 will protect the state and municipalities by placing limitations on their liability to those who engage in hazardous recreational activities on public lands and in public facilities. Examples include airplane flying, animal riding, archery, bicycling, boating, gymnastics, etc. By encouraging public authorities to open their lands and facilities for these activities, SB 447 will directly benefit tens of thousands of recreationalists and help maintain a tradition of active and vigorous Alaska living.

Since we anticipate that others will do a better job of generally explaining how litigation prosecuted by a few has closed indoor and outdoor recreational opportunities for many in Alaska, I would like to discuss the "no trespass" policy which ARRC has been forced to implement on its lands and facilities in light of the risk and reality of lawsuits by unauthorized users. Clearly, this is not a policy we are fond of enforcing. However, unless legislative relief is forthcoming, ARRC must act responsibly to protect its assets and income by continuing to deny access to rail lands and facilities for recreational use.

The Alaska Railroad Corporation owns and operates more than 500

miles of track winding through remote wilderness areas and congested urban settings. The property 100 feet either side from the center line of the track is called the "right-of-way." Currently, railroad rights-of-way are offlimits to joggers, walkers, bicyclers, hikers, hunters, fishermen, three-wheelers, snowmobilers, berry pickers, and others out of concern for their safety and the safety of our train crews and passengers. The most dangerous portion of the right-of-way is, of course, its roadbed. The roadbed consists of gravel or ballast and supports rails and ties. Trains passing over the roadbed cannot stop quickly or swerve to avoid people. Although trains are huge machines, environmental conditions can muffle sounds, whistles, and other train noises. Snowmachines, three-wheelers, and joggers with head sets pose special problems because approaching trains may not be heard over the roar of private vehicles or radios. Flying debris stirred up by passing trains is also a safety concern. Also, trains do not usually run according to a fixed timetable. Trains can come from any direction at any time. For these reasons, safety will always require that recreationalists keep a safe distance from the roadbed.

Nonetheless, there are land parcels, facilities such as walkways fixed to bridges, climbing rocks, tidelands, and other portions of the right-of-way which ARRC could open for recreational use and access if protection from unwarranted litigation was assured. These lands and facilities are not inherently dangerous, but have been offlimits for fear trial attorneys will cite a growing list of troublesome court decisions and argue that some unknown danger lead to a client's injury or that the practice of opening other rail properties to public use also "invited" or "attracted" their client to the roadbed area where injury resulted.

We regret that the majority of hikers, fishermen, hunters, canoeists, snowmachiners, mushers, and others who do exercise caution as they enjoy their activities bear the brunt of closed recreation opportunities and our "no trespass" policy. SB 447 can make a difference and is important legislation for a traditionally open Alaska.

As a technical matter, we recommend that the definition of "hazardous recreational activity" be modified to either include additional activities or adopt a broad, generic standard. Activities which may have been overlooked include snowmachining, mushing, all-terrain vehicle operation, rock climbing, and windsurfing.

Finally, SB 447 will permit liability against the state or municipality for "an act of gross negligence...that is the proximate cause of the damage or injury." Section 2(b)(5); section 4(g)(5). To truly effect its purpose to encourage the opening of public lands and facilities for recreation these

sections should be changed to: "a willful or malicious act by the [state or municipality] or an employee of the [state or municipality] that is the sole cause of the damage or injury."

Clearly, this exception to a general limitation of liability is intended to prevent public authorities from actively taking steps to injure recreationalists. Unfortunately, "gross negligence" will not effect that purpose without subjecting public authorities to arguments by trial attorneys that acts of simple negligence are really acts of gross negligence. There is simply too much room left for argument as to what is "simple" and what is "gross" negligence. For example, will a borough be subjected to liability for opening its hockey rink for "pick up" games if it fails to supervise a group of unsupervised teenagers who have been known to suffer injuries on other occasions? Is that "gross" negligence? Courts will disagree and, of equal importance, public authorities will be put to the same tremendous expense of defending lawsuits under this exception as presently drafted as they do today. As it stands now, SP 447's effectiveness may be entirely vitiated by the wording of this single exception.

A public authority's defense costs are not significantly defrayed by an award of partial attorney's fees against unsuccessful claimants who frequently cannot afford to pay. And these costs cannot be assessed against trial attorneys who may advise injured recreationalists to pursue claims of "gross" negligence, even if a claim is marginal or unfounded. Concern about depleting public budgets through payment of unreimburseable defense costs will continue to be a deterrent to many recreational activities. On the other hand, a "willful or malicious" standard will better effect the purpose of this legislation, discourage spurious litigation, and encourage the opening of public lands and facilities for recreational activities by significantly reducing the risk of adverse claims and related defense costs.

Thank you again for this opportunity to comment. We are hopeful that SB 447 will be amended in these important respects and reported favorably from your committee. I have asked our legislative liaison, Rick Urion, to present this letter to you on my behalf. We will stand by here to help address questions which may be raised by our letter or Rick's comments.

Sincerely,



F.G. Turpin
President & CEO

cc: Mr. Rick Urion

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

**FISCAL NOTE(S) ATTACHED **
IN ACCORDANCE WITH AS 24.08.035
(see below)

FURTHER

27

2/16/88 DATE TURNED INTO OFFICE _____

Mr. President:

C&RA Committee considered SB 447

liability for damage or injury resulting from hazardous recreational activities

and recommended:

[] replace with CS for SB 447 [] same title
[] attached amendment(s) and [] new title

[] do pass

[] do not pass

[] no recommendation

individual recommendations

[] further referral to _____

[] letter of intent adopted and attached

** Committee [] attached or [] adopted fiscal note(s)
[] zero [] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Mal. ... Do not pass
Twin Bell - No Rec

Archie Sturculowich Do Pass
Chairman signature & recommendation

[] Committee Backup Attached

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of _____ 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY

**FISCAL NOTE(S) ATTACHED _____ **
IN ACCORDANCE WITH AS 24.08.035
(see below)

2/16/88 DATE TURNED INTO OFFICE _____

Mr. President:

C&RA Committee considered SB 448

civil liability of certain volunteers

and recommended:

- replace with CS _____ same title
- attached amendment(s) and new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____
- letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Mike Snyder (No Rec)
Tim Keel (No Rec)

Allis Stangeland Do Pass
Chairman signature and recommendation

Committee Backup Attached

1 IN THE SENATE

BY DUNCAN

2

SENATE BILL NO. 448

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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

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

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

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

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

17 (2) the member provided the service while acting as a
18 volunteer member of the organization.

19 (d) In this section, "volunteer" means a person who receives
20 financial consideration of not more than \$500 a year, not including
21 reimbursement for expenses actually incurred, for providing emergency
22 services.

23 * Sec. 2. AS 09.65 is amended by adding a new section to read:

24 Sec. 09.65.098. CIVIL LIABILITY OF CERTAIN VOLUNTEERS. (a) A
25 person working as a volunteer for the division of parks and outdoor
26 recreation, Department of Natural Resources, for a municipality, or
27 for a nonprofit entity is not liable for civil damages as a result of
28 an act or omission while acting in good ^{od faith} faith and within the person's
29 ~~official~~ functions and duties *as a volunteer*

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

4 (c) This section does not affect

5 (1) a civil action brought by the state, a municipality, or
6 a nonprofit entity against, respectively, a volunteer of the division
7 of parks and outdoor recreation, the municipality, or the entity;

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

10 (d) In this section,

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

13 (2) "nonprofit entity" means an entity

14 (A) incorporated under AS 10.20; or

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

16 (Internal Revenue Code of 1954);

17 (3) "volunteer" means a person who receives financial
18 consideration of not more than \$500 a year, not including reimburse-
19 ment for expenses actually incurred, for services performed for a
20 municipality or nonprofit entity. - Div of Parks

only "Div of Parks" is Groden
~~Define Div of Parks~~

Senate Bill 448

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

Section 1.

Provides protection from civil liability for certain organizations (Civil Air Patrol, National Ski Patrol, Sea Dogs, etc.) and their members. Currently these organizations may face civil liability for an act or omission in providing first aid, search, rescue, or other emergency services.

Section 2.

Extends protection to volunteers for the division of parks and outdoor recreation, Department of Natural Resources, for municipalities, and certain nonprofit entities. However, this protection does not preclude a volunteers liability for civil damages as a result of gross negligence, recklessness, or intentional misconduct.

An agency, municipality, or nonprofit entity could still be held liable.

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

DELANEY, WILES, HAYES, REITMAN & BRUBAKER, INC.

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HOWARD A. LAZAR

June 29, 1987

Ronald M. Sturtz, Esq.
Hannoch Weisman
4 Becker Farm Road
Roseland, New Jersey 07068-3788

Re: Coverage of ski patrollers under the Good Samaritan laws

Dear Ron:

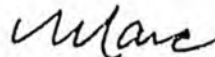
I read with interest yours dated June 24, 1987, to Walter with copies to the other members of the National Legal Committee. In particular, I appreciated your enclosure of the decision in Praet v. Borough of Savreville. It reflects, as the case indicates, a 1971 Alaska decision entitled Lee v. State, 490 P.2d 1206 (Alaska 1971). Based on the Lee case, I have consistently advised ski patrollers that they are not protected by the Good Samaritan law as construed by the Alaska Supreme Court.

As you will recall, this matter came up in correspondence to Warren Bowman, National Medical Advisor, from Walter Gregg dated October 16, 1986. At that time, I sent a copy of the Lee case to Walter, along with the suggestion that we discuss the Good Samaritan situation at our next meeting. A copy of my correspondence to Walter is enclosed.

I look forward to our potential meeting during the winter of 1987-88.

Very truly yours,

DELANEY, WILES, HAYES,
REITMAN & BRUBAKER, INC.



Marc D. Bond

MDB:bv:spia001

Encl.

DELANEY, WILES, HAYES, REITMAN & BRUBAKER, INC.

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HOWARD A. LAZAR

August 28, 1987

Ron Dippold
Regional Director, South East Region
National Ski Patrol System, Inc.
8318 Counterpane Lane
Juneau, Alaska 99801

Re: Coverage of Ski Patrollers under the Good Samaritan Act.

Dear Ron:

It has come to my attention that the topic of the Good Samaritan Act came up at the Alaska Division Board Meeting recently held in Juneau. I apologize for my inability to attend that meeting, but I had a prior commitment made in January of this year for that week.

The Good Samaritan Act (AS 09.65.090) has been the topic of extensive correspondence between Division legal advisors in recent months. It is an important question, because patrollers have the right to know the potential liability they may incur by participating in ski patrol activities.

Based on a 1971 case decided by the Alaska Supreme Court, I have consistently taken the position that it is doubtful whether ski patrollers, either voluntary or professional, have any protection under Alaska's Good Samaritan Act. In Lee v. State, a State Trooper was called to the scene of an incident involving a lion attack against a carnival goer. The Trooper used his pistol to kill the lion. Unfortunately, in so doing, he also wounded the carnival goer. In its opinion, the Alaska Supreme Court held that the purpose of the Good Samaritan statutes is to induce voluntary rescue by removing the fear of potential liability of those that are not under some preexisting duty rescue. The court held that the Trooper could be held liable based on simple negligence, because he was under a duty to go to the aid of the carnival goer. Thus, the Good Samaritan statute was held inapplicable.

A ski patroller who is on duty and in the ski patrol uniform has an existing obligation to rescue injured individuals in the area or on the trails. Since patrollers have this duty, I believe it most likely

August 28, 1987

Page 2

the Alaska Supreme Court would rule patrollers are not protected by the Good Samaritan Act.

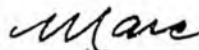
It should be noted that patrollers who are state-certified Emergency Medical Technicians (AS 18.08.086) or Paramedics (AS 08.64.366) are protected against liability for simple negligence by separate state statutes.

I have enclosed a copy of a monograph titled "The Legal Responsibility of Ski Patrollers," which was published in three installments in Frozen Slats two seasons ago. In addition, I have enclosed correspondence between myself and Walter Gregg, National Legal Counsel, and Ron Sturtz, Eastern Division Legal Counsel, concerning the Good Samaritan Act. I note with interest that Ron was successful in having the New Jersey Legislature specifically name volunteer ski patrollers as being protected by the Good Samaritan Act.

If you have further questions on this topic, or any other legal matters relating to the ski patrol, please do not hesitate to contact me.

Very truly yours,

DELANEY, WILES, HAYES,
REITMAN & BRUBAKER, INC.



Marc D. Bond

MDB:bv:ski42

Encl.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 12, 1988

SUBJECT: Civil liability of volunteers
(Work Order No. 5-1484)

TO: Senator Jim Duncan

FROM: Edward H. Hein *E.H.H.*
Legislative Counsel

Enclosed is the draft bill I discussed with your assistant, Dale Staley, relating to providing immunity for volunteers of municipalities and nonprofit organizations. The draft also incorporates provisions of HB 340, introduced by Representative Davis, that extends coverage under the Good Samaritan law to emergency services volunteers, such as ski patrol, search and rescue units, and independent volunteer fire department personnel.

Note that the definition I have provided for "nonprofit entity" at page 2, lines 11-14 makes reference to Section 501(c) of the Internal Revenue Code, which exempts nonprofit organizations from federal income taxes. Section 501(c) encompasses numerous types of organizations, which are spelled out in paragraphs (1) - (25) (see attached copy of IRS code). Nonprofits are often referred to as sec. 501(c)(3) organizations, but the federal bill (H.R. 911) I was given to use as a model defines nonprofits by reference to all of sec. 501(c). You may wish to consider whether you want to include all 25 types of organizations described in 501(c) within the immunity provided in your bill.

If I may be of further assistance, please feel free to contact me at your convenience.

Enclosure

EHH:gc
WKG1:023

AN ACT exempting volunteers of certain organizations from liability for damages under certain conditions and supplementing P. L. 1959, c. 90 (C. 2A:53A-7 et seq.).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1:30 a. Notwithstanding any other provision of law to the contrary, no person serving without compensation, other than reimbursement for actual expenses, as a trustee, director, officer or voluntary member of any board, council or governing body of any nonprofit corporation, society or association as provided in P. L. 1959, c. 90 (C. 2A:53A-7 to 2A:53A-11), or nonprofit federation council or affiliated group composed of these organizations or a voluntary association as provided by P. L. 1979, c. 172 (C. 18A:11-3) or to a conference under the jurisdiction of such a voluntary association, shall be liable for damages resulting from the exercise of judgment or discretion in connection with the duties of his office unless the actions evidence a reckless disregard for the duties imposed by the position.

b. Notwithstanding any provisions of law to the contrary, no person who provides volunteer service or assistance for any nonprofit corporation, society or association as provided in P. L. 1959, c. 90 (C. 2A:53A-7 to 2A:53A-11), or nonprofit federation council or affiliated group composed of these organizations or a voluntary association as provided by P. L. 1979, c. 172 (C. 18A:11-3) or to a conference under the jurisdiction of such a voluntary association shall be liable in any action for damages as a

38. N.J.S.A. 2A:53A-7.1.

result of his acts of commission or omission arising out of and in the course of his rendering the volunteer service or assistance.

Nothing in this subsection shall be deemed to grant immunity to any person causing damage by his willful, wanton or grossly negligent act of commission or omission.

Nothing in this subsection shall be deemed to grant immunity to any person causing damage as the result of his negligent operation of a motor vehicle.

2.¹ This act shall take effect immediately and shall apply to any cause of action arising on or after that date.

Approved April 6, 1987.

TORT LIABILITY AND MALPRACTICE

Exempts volunteers of certain organizations from civil liability under certain conditions.

Assembly Insurance Committee
Statement Senate, No. 2705—L 1987, c. 87

This bill would give immunity to unpaid trustees, directors, officers, or voluntary members of (1) any board, council, or governing body of any nonprofit corporation, society or association; or (2) a nonprofit federation, council or affiliated group composed of these organizations; or (3) a voluntary interscholastic sports organization or a conference within the jurisdiction of a voluntary interscholastic sports organization. Immunity would be extended to these individuals for any damages resulting from the exercise of judgment or discretion in connection with the duties of their office, unless the actions evidence a reckless disregard for the duties imposed by the position.

The bill also would extend immunity to individuals who provide volunteer service or assistance for any nonprofit corporation, society or association, or for a nonprofit federation, council or affiliated group composed of these organizations or a voluntary interscholastic athletic association or a conference affiliated with an interscholastic athletic association. These volunteers would not be given immunity for any act of commission or omission which is willful, wanton or grossly negligent or for negligence in connection with the operation of a motor vehicle.

Nonprofit organizations have recently experienced difficulty in attracting and keeping qualified individuals to serve as officers and on boards of directors of nonprofit and charitable associations because of the potential exposure to lawsuits which exists. Exposure to liability in these cases often means that the individual's own assets are placed in jeopardy, and many individuals have been reluctant to subject themselves to this risk. By giving immunity to trustees, officers, directors, and other uncompensated volunteers, the bill's purpose is to permit nonprofit and charitable organizations to continue to attract able people to serve in these capacities.

P. L. 1986, CHAPTER 13, approved May 12, 1986

1986 Senate No. 1678 (Second Official Copy Reprint)

AN ACT providing civil immunity from liability to certain volunteer athletic coaches *and officials* and supplementing Title 2A of the New Jersey Statutes.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. a. Notwithstanding any provisions of law to the contrary, no
2 person who provides services or assistance *free of charge, except*
3 *for reimbursement of expenses,* as an athletic coach *[or]* *;*
4 *manager, or official* for a sports team *[*, free of charge, except
5 for reimbursement of expenses.*]* *which is organized or perform-*
6 *ing pursuant to a non-profit or similar charter* shall be liable in
6A any civil action for damages *to a player or participant* as a re-
6B sult of his acts of commission or omission arising out of and in the
6C course of his rendering that service or assistance.

7 b. The provisions of subsection a. of this section shall apply not
8 only to organized sports competitions, but shall also apply to prac-
9 tice and instruction in that sport.

10 c. Nothing in this section shall be deemed to grant immunity to
11 any person causing damage by his willful, wanton, or grossly
12 negligent act of commission or omission, nor to any coach, man-
13 ager, or official who has not participated in a safety orientation
14 and training program established by the league or team with
15 which he is affiliated.

16 *d. Nothing in this section shall be deemed to grant immunity*
17 *to any person causing damage as the result of his negligent opera-*
18 *tion of a motor vehicle.*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted March 24, 1986.

**—Senate amendment adopted April 7, 1986.

1

19 e. Nothing in this section shall be deemed to grant immunity
20 to any person for any damage caused by that person permitting a
21 sport competition or practice to be conducted without supervision.

22 f. Nothing in this act shall apply to an athletic coach, manager,
23 or official who provides services or assistance as part of a public
24 or private educational institution's athletic program.*

1 2. This act shall take effect immediately.

P. L. 1987, CHAPTER 239, approved August 17, 1987

1987 Assembly No. 3713 (Official Copy Reprint)

AN ACT exempting certain sports officials from liability for damages under certain conditions.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. Notwithstanding any provisions of law to the contrary, "[no]"
2 *a* person who is accredited as a sport official by a voluntary asso-
3 ciation as provided by P. L. 1979, c. 172 (C. 18A:11-3) and who
4 serves that association, a conference under the jurisdiction of the
5 association, or a public entity as defined in Title 59 of the New
6 Jersey Statutes in the capacity of a sports official, whether or not
7 compensated for his services, shall *not* be liable in any action for
8 damages as a result of his acts of commission or omission arising
9 out of and in the course of his rendering the services. Nothing in
10 this act shall be deemed to grant immunity to any person causing
11 damage by his willful, wanton, or grossly negligent act of commis-
12 sion or omission, nor to any person causing damage as the result of
13 his negligent operation of a motor vehicle.

1 2. This act shall take effect immediately and shall apply to all
2 causes of action arising on or after the effective date.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted March 5, 1987.

Pages 4 & 6

I

100TH CONGRESS
1ST SESSION

H. R. 911

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1987

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

MAY 27, 1987

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

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.

○

100TH CONGRESS
1ST SESSION

S. 929

Entitled the "Volunteer Protection Act of 1987".

IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, MARCH 30), 1987

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

A BILL

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5 foundations, and other civic programs, have been ad-
6 versely affected through the withdrawal of volunteers
7 from boards of directors and service in other capacities.

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10 and higher cost programs than would be obtainable if
11 volunteers were participating;

12 (4) the unpredictability of liability awards and doc-
13 trines has added to the high cost of liability insurance
14 by making it difficult for insurers and self-insurers to
15 project their liability with any degree of confidence and
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1 connection with such participation is an appropriate
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 2 WITH RESPECT TO ORGANIZATIONS.—Nothing in this sec-
 3 tion shall be construed to affect any civil action brought by
 4 any nonprofit organization or any governmental entity
 5 against any volunteer of such organization or entity.

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 7 Nothing in this section shall be construed to affect the
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 16 otherwise has in effect State law which substantially com-
 17 plies with section 4(a).

18 (2) In the case of a State whose legislature does not
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 20 this Act and before the beginning of fiscal year 1989, such
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3 Puerto Rico, the Virgin Islands, Guam, American
4 Samoa, the Northern Mariana Islands, any other terri-
5 tory or possession of the United States, or any political
6 subdivision of any such State, territory, or possession.

○

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HOWARD A. LAZAR

January 22, 1988

Tom Smith
Patrol Director
Maverick Patrol
P.O. Box 81071
College AK 99708

Re: Senate Bill 346; House Bill 340

Dear Tom:

I have cogitated about the two problems you directed to my attention. Hopefully the solutions proposed below will be of use to you.

As I understand them, the two problems are as follows:

1. Immunity for the Organization. Some attorneys testifying before the L & C Committee yesterday raised the specter of a candy stripper in a hospital pulling the plug on a respirator, and asking if this legislation would exempt the hospital from liability in such a case. I'm not sure that this example has a basis in reality: The candy stripper would not be considered a "member" of the hospital (while the candy stripper organization would appropriately be protected), and the candy stripper would not be "providing first aid, search, rescue, or other emergency services." If this is the only example of the problem, I would prefer to meet it head on rather than diddle with the language of the bill to meet a highly improbable scenario.

The bigger problem, it seems to me, is whether non-profit organizations that provide medical assistance on a "fee-for-services-rendered" basis would be protected for acts of their "members." Such organizations would include the Lutheran hospital in Fairbanks and the Sisters of Providence hospital in Anchorage. We have no interest in providing immunity to those who charge for their services. One way to solve the problem would be to add a third proviso to the bill, which would read: "(3) the organization does not receive compensation for the services it provides to the public." or "(3) the organization does not receive compensation from the persons for whom it provides the services." This would distinguish ski patrols and the civil air

Tom Smith
January 22, 1987
Page 2

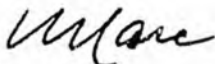
patrol from "non-profit" organizations that charge for services. Try it out and see what you think.

2. Use of the Word "Regardless". You indicated that someone had a problem with the use of the word "regardless". The same meaning could be had by deleting the word "regardless" and putting "or not" after "whether". That section of the bill would then read: ". . . other emergency services, whether or not the organization or its members are under a preexisting duty to render assistance . . ." The meaning is precisely the same, and the word "regardless" has been eliminated.

We also discussed the effects of H.R. 911 and the state legislation that has been introduced to comply with H.R. 911 if it is adopted. I am enclosing a copy of the letter I sent to Tom Moyer and Katherine Reardon, along with the printout from the BillCast database. While the proposed legislation certainly wouldn't hurt us, I agree with you that the combination could be fatal to our bills.

Well, use this stuff as you see best. If you think direct contact between staff and me would be helpful, that's OK. I prefer to minimize the voices with which we speak, and I know that you and Bob will do a great job. If you need anything else, let me know.

Very truly yours,



Marc Bond

Enc.

cc: Bob Janes

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

<p>Part</p> <p>I. General rule.</p> <p>II. Private foundations.</p> <p>III. Taxation of business income of certain exempt organizations.</p>	<p>Part</p> <p>IV. Farmers' cooperatives.</p> <p>V. Shipowners' protection and indemnity association.</p> <p>VI. Political organizations.</p> <p>VII. Certain homeowners associations.</p>
<p>1976 Amendment. Pub.L. 94-455, Title XXI, § 2101(d), Oct. 4, 1976, 90 Stat. 1899, added part VII heading.</p> <p>1975 Amendment. Pub.L. 93-625, § 10(d), Jan. 3, 1975, 88 Stat. 2119, added part VI heading.</p>	<p>1969 Amendment. Pub.L. 91-172, Title I, § 101(j) (58), Dec. 30, 1969, 83 Stat. 532, added part II heading, and redesignated former parts II, III and IV as parts III, IV and V, respectively.</p>

PART I—GENERAL RULE

<p>Sec.</p> <p>501. Exemption from tax on corporations, certain trusts, etc.</p> <p>502. Feeder organizations.</p> <p>503. Requirements for exemption.</p> <p>504. Status after organization ceases to qualify for exemption under section 501(c) (3) because of substantial lobbying.</p>	<p>Sec.</p> <p>505. Additional requirements for organizations described in paragraph (9), (17), or (20) of section 501(c) (3) because of substantial lobbying.</p>
<p>1984 Amendment. Pub.L. 98-369, Title V, § 513(b), July 18, 1984, 98 Stat. 865, added item 505, applicable to years beginning after Dec. 31, 1984.</p> <p>1976 Amendment. Pub.L. 94-455, Title XIII, § 1307(d) (3) (B), Oct. 4, 1976, 90 Stat. 1728, added item 504.</p>	<p>1969 Amendment. Pub.L. 91-172, Title I, § 101(j) (61), Dec. 30, 1969, 83 Stat. 532, struck out item relating to section 504.</p>

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

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

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

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

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

(A) is exempt from Federal income taxes—

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

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

(B) is described in subsection (f).

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

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

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

(5) Labor, agricultural, or horticultural organizations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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Act as amended and supplemented before July 18,

title without regard to any provision of law which is in title and which is not contained in a revenue Act,

subsection (f).

ed for the exclusive purpose of holding title to therefrom, and turning over the entire amount an organization which itself is exempt under this

community chest, fund, or foundation, organized for religious, charitable, scientific, testing for public purposes, or to foster national or international (but only if no part of its activities involve the sale or equipment), or for the prevention of cruelty to animals, or of the net earnings of which inures to the benefit of an individual, no substantial part of the activities of which are for the purpose of influencing legislation, or otherwise attempting, to influence legislation (including the publishing or distributing of statements on behalf of any candidate for public office), or of organizations not organized for profit but operated for the promotion of social welfare, or local associations of employees, the net earnings of which are limited to the employees of a designated person or persons, or of a municipality, and the net earnings of which are for the purpose of carrying on charitable, educational, or recreational purposes.

horticultural organizations.

members of commerce, real-estate boards, boards of trade, or leagues (whether or not administering a pension plan), or of organizations not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual, or of organizations for pleasure, recreation, and other nonprofitable purposes, or of organizations the net earnings of which are for such purposes and no part of which inures to the benefit of any private shareholder or individual.

societies, orders, or associations—

the lodge system or for the exclusive benefit of the lodge, or of a lodge itself operating under the lodge system, and for the payment of life, sick, accident, or other benefits to members, or to a society, order, or association or their dependents, or of beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or to their dependents, or to beneficiaries, if no part of the net earnings of which inures to the benefit of any private shareholder or individual.

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which are devoted exclusively to religious, charitable, educational, and fraternal purposes, and for the payment of life, sick, accident, or other benefits to members, or to a society, order, or association or their dependents, or of beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or to their dependents, or to beneficiaries, if no part of the net earnings of which inures to the benefit of any private shareholder or individual.

and associations of a purely local character, if—

the net earnings inures (other than through payment of life, sick, accident, or other benefits) to the benefit of any private shareholder or individual,

solely of amounts received from public taxation, or of amounts received from assessments on the teaching salaries of members, or of investments.

insurance associations of a purely local character, or of companies, mutual or cooperative telephone companies, or of associations of a purely local character, the net earnings of which inure only if 85 percent or more of the income is derived

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

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

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

(ii) from qualified pole rentals, or

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

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

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

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

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

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

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

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

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

(i) domestic building and loan associations,

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

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

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

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

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

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

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

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