

ALASKA
7464

LEGISLATURE
SENATE

COMMITTEE
JUDICIARY

FILES

1991-1992

8672

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
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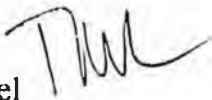
Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

March 20, 1991

SUBJECT: Anatomical Gifts (CSSB 112(Judiciary))

TO: Senator Rick Halford
ATTN: Doug Baily

FROM: Terri Lauterbach 
Legislative Counsel

Enclosed is a draft version of a Judiciary CS for SB 112. It is in draft form pending your approval of the changes I made in the language passed out by the committee.

I have moved the handwritten language that was added to the typed amendment to a different location than where it was written in. The handwritten language pertains to hospitals, which are covered in AS 13.50.014, so I have put the amendment in AS 13.50.014(c). See section 3 of the enclosed draft.

The typed amendment appears in section 5 of the enclosed draft.

Please let me know if I can answer further questions about this matter. Also let me know when you want a final CS.

TML:pl
91-194.plm

Enclosure

Alaska State Legislature

Al Adams
District L

WHILE IN SESSION
P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3707

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3245

3111 C Street
Anchorage, Alaska 99503
(907) 561-7622

Official Business

TO: Senator Rick Halford, Chair
Senate Judiciary Committee

FROM: Senator Al Adams *APA/ms*

RE: Senate Bill 112

DATE: March 18, 1991

I would like to propose the attached amendment to the HESS CS for Senate Bill 112. Unfortunately I will be out of town during the bill's hearing in the Senate Judiciary Committee on March 19, 1991.

This amendment has been discussed with Senator Fahrenkamp's staff who conceptually agreed with the inclusion of this language. A copy of the final language has today been distributed to the sponsor for approval.

In my absence, I would ask that you or one of the other members of the committee move the amendment. My staff will be at the meeting to respond to inquiries.

Thank you.

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: CSSB 112(HES)

Page 2, after line 13:

Insert a new bill section to read:

** Sec. 4. AS 13.50.016 is amended by adding a new subsection to read:

(b) The requirements of this section do not apply to law enforcement or medical personnel who respond to the scene of an accident or emergency in an area where all hospitals within a reasonable distance have been exempted under AS 13.50.014(c) from the requirements of AS 13.50.014."

Renumber the remaining bill section accordingly. *However, Hospital Exempted in the sec shall make reasonable effort to contact - Dominic Bush if the deceased person has consented to*

*Sen Coltrin asks what about keeping neonatal in Bush Clinic while we do a search?
Also - Need rural search for patient moved to Anchorage.
Harlan Runn - Hospital Assoc.*

on amendment 2/27

*Amend moved by Rodley -
~~But add~~ - adopted w/o abstract -
move next 2nd amend -
move (S w) amendment -*

BILL NO: SB 112

DATE: 3/5/91

TITLE: An Act relating to anatomical gifts.

CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

DEPARTMENT OF
PUBLIC SAFETY

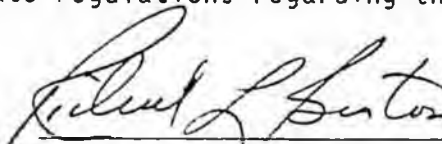
SB 112 modifies the existing anatomical gift statute in the following ways:

1. Unless a gift is revoked before death by the donor, the gift becomes irrevocable and does not require the consent or concurrence of any person after the donor's death.
2. Requires hospital administrators and employees to make a reasonable search for a document or other information, identifying the deceased as a donor, or as a person who has refused to make an anatomical gift.
3. Requires law enforcement officers to make a "reasonable search" for a document of gift or other information identifying the bearer as a donor, or as a person who has refused to make an anatomical gift, and to inform hospital personnel of the intended gift.
4. The bill establishes that failure of either hospital administrators or police officers to make a reasonable search may subject the administrator or police office to "appropriate administrative sanctions".

The Department of Public Safety interprets the requirement that law enforcement personnel at the scene of a death make a "reasonable search" for an anatomical gift document to mean that the officer must take an extra moment or two to search the person of the deceased for documents proclaiming him or her as a donor.

The Department of Public Safety supports this bill, as it has the laudable goal of encouraging Alaskans to donate their organs, upon their death, to other persons in dire need of those organs.

The Department proposes one change in the bill. In Section 3, at page 2, line 13, the word "administrative" should be changed to "disciplinary", and a period should be placed after "sanctions", ending the sentence. Line 14 should be omitted entirely. Disciplinary actions against State Troopers are taken under authority of the Department's Operating Procedures Manual (OPM), state personnel rules, bargaining unit contracts, and other applicable provisions. The Department of Public Safety does not have separate regulations regarding this subject.



Richard L. Burton
Commissioner

MANAGING NEEDS, SAVING LIVES

**BUILDING A COMPREHENSIVE
NETWORK FOR TRANSPLANTATION
AND BIOMEDICAL RESEARCH
A REPORT ON POLICY OPTIONS**

BY JOEL L. SWERDLOW

**THE ANNENBERG
WASHINGTON PROGRAM**

*Communications Policy Studies
Northwestern University*

DEDICATION

About a year ago I read a newspaper story about how a 49-year-old woman in Wisconsin had saved the life of a six-year-old girl in Raleigh, N.C., who was dying of leukemia. The girl needed a bone marrow transplant and had no siblings whose antigens matched hers. But the woman in Wisconsin was a perfect match—a computer search that cost pennies brought the two of them together.

The story made me think of my brother, Paul H. Swerdlow. He was full of life and love, a Ph.D. in nuclear physics and a board-certified radiologist—a man with much to give. In late 1984 he lay dying of leukemia.

Paul's hope for life was that either our sister or I would be a match. Technicians took our blood. We all tried to keep busy with other things while we waited for the results. When the telephone rang, however, the lab reported that neither of us matched Paul. Seven months later, at the age of 42, he died.

Paul lived in Boston. In just that area, according to medical experts, there were about 100 people who might have saved him. In all of America, as many as 25,000 people might have saved my brother's life—if society had set up the necessary communications system. It could have been so simple, but ultimately it was impossible. And, as this report shows, the need goes far beyond my brother's particular illness.

My brother lived in the world of medicine and

science; my work involves politics and public policy. "We should write something together," he often said. "The people in your world have to better understand the great advances in mine."

During the past six months I've visited in Paul's world. I've interviewed hundreds of health care providers, read medical journals and transcripts of congressional hearings, and attended conventions of transplant specialists. Although I was sometimes the only nonmedical person at the meetings, few participants seemed surprised to see me. The transplantation community knows the outside world will eventually pay more attention. Some expect the attention to come in the form of scandal, bred by the lack of regulation in tissue recovery and the huge dollar flow in the processing and distribution of organs and tissues. Others expect that the public will some day demand to know why more sick and injured people don't benefit from transplants.

I repeatedly heard one message from professionals who work long hours, receive little recognition and make miracles: To accept the status quo, given today's capabilities, is inexcusable.

This report is dedicated to all the people who would have helped my brother if given the chance, to all who now suffer for lack of a transplant and to those who will make possible the happy endings yet to come.

JOEL L. SWERDLOW

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By Richard L. Fuller and Thomas J. Moore, Eye Bank Association of America; William E. Grizzle, University of Alabama at Birmingham; Dale Hatfield, communications consultant; Nancy Holland, American Council on Transplantation; William V. Miller, American Red Cross; John M. Newmann, health policy consultant; Luke Skelley, American Association of Organ Procurement Organizations; Rodney A. Smolla, law professor, College of William and Mary; William W. Tomford, American Association of Tissue Banks; Pamela Weinberg, National Marrow Donor Program; Steven S. Wildman, communications professor, Northwestern University.	
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INTRODUCTION

This report is worthy of attention for its fresh, comprehensive look at the issues in the critical field of human organ and tissue transplantation, and, in particular, for its emphasis on improving communications within the field and coordination of efforts to increase organ and tissue availability.

The shortage of organs and tissues is often the factor that most severely limits physicians' ability to treat patients who need a transplant. The patients' life-or-death situation and the present scarcity of available organs demand the most efficient use of present resources and intensification of efforts to increase supply.

We are making progress in increasing supply through such measures as state required-request laws for organ donation, the Uniform Anatomical Gift Act and federal requirements that hospitals develop written protocols for identification of potential organ donors. Despite these important steps, however we are still unable to provide lifesaving organs to even a majority of individuals who need transplants.

Innovative means of increasing supply should be both encouraged and subjected to thoughtful scrutiny by patients, physicians and other health care personnel, ethicists, legal experts, hospital administrators and those involved in organ procurement and distribution. Improvements in supply are likely to be achieved by involving all parties concerned with improving patient care.

M. ROY SCHWARZ, M.D.
Assistant Executive Vice President,
Medical Education and Science
American Medical Association

propose a comprehensive National Human Organ and Tissue Policy. The task force would both initiate and coordinate demonstration projects in the medical community and propose legislation. It would consider and recommend plans for initiatives such as these, built on existing institutions:

- a comprehensive national computer-based communications network to coordinate the recovery and allocation of donated tissues as well as organs under consistent, equitable ground rules,
- a continuous, intensive public education campaign to promote donation and family discussion of donation options,
- experimentation with a statewide electronic donor registry and other mechanisms that would let donors themselves (instead of their next of kin) make the final decision to donate,
- training and incentives for hospital personnel to increase the recognition of potential donors and improve requests for donation,
- streamlined systems on the local level for more extensive recovery of donated organs and tissues,
- an expanded computer registry of living Americans who volunteer to donate lifesaving bone marrow,
- a 24-hour database of medical literature and a telephone hotline to make available the latest techniques and data to health care providers,
- a coordinated system of national databases, linked with all tissue and organ transplantation centers and procurement organizations, to collect data on treatment, cost and outcomes for evaluation,

- assessment of public attitudes about and the desirability of expanding "presumed-consent" laws, which would increase donation by declaring that everyone has given consent to donation unless they explicitly withhold it (registering their refusal with a national databank), and

- a medical consensus conference on the desirability of beginning kidney recovery from non-heart-beating donors, which would greatly increase the supply of the most frequently transplanted organ.

Many people still think of transplantation as a high-technology luxury. In fact, investing in the measures described above would save money for taxpayers and society as a whole, because transplantation is often less costly than alternative treatments.

More importantly, the lives saved and suffering ended give us tens of thousands of human reasons for action.

OPTIONS: TO INCREASE DONATION

In the Dan Smith scenario, Dan was able to donate because he and his wife had talked about donation long before his fatal accident and because hospital personnel were prepared to respond to his wish. These things seem simple, but they are not the norm in the United States today. As long as patients are waiting for organ transplants, the failure to recover a single suitable donated organ is tantamount to withholding medical care. A concerted effort is needed, including any or all of the following policy options, before we can expect more people to give or receive "the gift of life."

FULLY IMPLEMENT THE "REQUIRED-REQUEST" LAWS

In the mid- to late 1980s, public policymakers took what they hoped would be a major step to increase donation: federal regulations and "required-request" laws in 41 states and the District of Columbia obligate hospitals to ask next of kin whether they wish to donate the organs and tissues of a recently deceased family member.³³

In practice, however, state agencies make little effort (or have little authority) to enforce required-request laws, and many hospitals—including major transplant centers—have done nothing to implement them, according to hospital officials. Short-staffed hospitals frequently lack the resources to perform the time-consuming, demanding tasks necessary to acquire donated tissue and organs.

The first task is for physicians to identify medically eligible donors and alert the appropriate hospital personnel. This is not so likely to be done as

one might expect. A recent sample of 195 physicians and nurses found that only 35 percent "correctly identified the legal and medical criteria for determining" brain-death.³⁴ The leader of one of the nation's most successful organ procurement organizations says the hospitals in his area often do not call when they have potential donors because they do not properly identify them. "We sit around and wait far more than we should," he says.

Second; a hospital or organ procurement worker must approach the family to request donation—a delicate task. When the health-care worker assigned to request donation doesn't want to do it or doesn't know how, says University of Minnesota ethicist Arthur Caplan, "the consent rate is . . . zero."³⁵ In some states, furthermore, the required-request laws do not apply to tissue donation and do nothing to encourage donation of human material for medical research.³⁶

It is too soon to know how well required-request laws work. Caplan, their principal proponent, remains optimistic that "the supply of organs and tissues will significantly increase once all protocols are in place and people are more comfortable with required request."³⁷ However, evidence about the effects of the laws is conflicting. Tissue bank officials indicate that tissue donations have increased, perhaps by as much as 300 percent.³⁸ The Eye Bank Association of America reports only a 4 percent increase in 1988.³⁹ A recent UNOS study reveals "a marked upturn trend for the 15-month period ending in December 1988,"⁴⁰ although some transplant surgeons question this finding.

Experience indicates that donations surge in hospitals where trained professionals have adequate time to communicate with donor families.⁴¹ At the

same time, reports from some localities, including a statewide Ohio survey, show no change in the donation rate after passage of required-request laws.⁴² Whatever the success of required-request laws, experts agree that there is little reason to believe that these laws alone will produce an adequate supply.

INCENTIVES AND TRAINING TO PROMOTE REQUIRED-REQUEST

Requesting donations is a difficult, labor-intensive task that demands sensitivity and special skills. Yet it often falls upon hospital personnel who are already overworked and underpaid. Thus, money for training and incentives is needed: public/private-sector mechanisms could pay for training of personnel to implement required-request. Hospitals could be motivated by more consistent enforcement of existing required-request statutes and by linking their accreditation or tax-exempt status to effective donor-recruitment efforts.

When the House of Representatives was considering transplantation legislation in 1984, then-Congressman Albert Gore predicted that the bill would inspire "educational and training programs in every hospital and medical community throughout this country in order to greatly increase the rate of organ donation."⁴³ But no organization received the mandate or the money necessary to conduct such an effective nationwide training program. Training has been sporadic, and varies significantly from hospital to hospital.

BUILD A CONTINUING PUBLIC EDUCATION CAMPAIGN

Despite extraordinary dedication of the OPOs and voluntary organizations, current efforts to spread the word about donation have been underfunded.⁴⁴ For various reasons the health community has not yet fully enlisted the communications media in this cause as effectively as it has put out messages about smoking, seat belts, drunk driving, illegal drugs and AIDS.

By not volunteering to donate their own or their relatives' organs and tissues, too many people opt to permit avoidable suffering and death without knowing they are making the choice.

Today, the major effort to educate the donation decision-maker occurs immediately after the death of a relative, when a health-care worker sits down with the grieving next of kin. It is not the ideal time for either one. A concerted public education program would at least lay the groundwork for such sensitive discussions.

Teaching people about donation when they are in a learning setting can be very effective; therefore, donor-awareness programs could well be expanded in schools, churches, synagogues and civic organizations. Other mechanisms, some already in use, are also appropriate—among them, public service advertisements and dramatizations of the donation theme in popular television programs.⁴⁵

Other health-related campaigns have shown that sustained effort can change behavior, particularly when the message taps into preexisting public support. According to public opinion polls, transplantation has such support. If campaigns are to promote complex changes in behavior, however, they must be continuous. Sporadic campaigns yield sporadic results.

The ideal campaign would encourage people to consider universal donation—all tissues and organs for medical research as well as transplantation. As a complement to in-depth efforts, it would also offer a 24-hour "800" Human Organ and Tissue (HOT) hotline, similar to the service the OPTN now operates (dial 800-24-DONOR), that anyone could call to ask questions.

In-depth research on Americans' current knowledge and attitudes about donation would help in fine-tuning the donor-options message, perhaps building on the familiar "Give the Gift of Life" theme now employed. Surveys and anecdotal evidence suggest, for instance, that many fear that organ and tissue donation disfigures the body before burial and in the afterlife. (Polls show that a vast majority of the American people believes in an afterlife.⁴⁶) Outreach could reassure people that the major religions in this country encourage donation and could clarify the poorly understood concept of brain-death.

LET DONORS DECIDE FOR THEMSELVES

Federal and state laws give adults the right to decide whether to donate their tissues and organs.

Indeed, many people carry signed consent forms or fill in pledges on their drivers' licenses. Many assume that their wishes will be automatically respected, but often they are wrong. Hospitals contend that family values must be protected and fear negative publicity and legal challenges by displeased survivors. Therefore, they almost always let the next of kin make the final decision, regardless of the wishes of the deceased.

ONLY ABOUT 5% OF ELIGIBLE
ADULTS DONATE BLOOD. IF
THE SAME PERCENTAGE
DONATED TISSUE, THE
NATION'S TISSUE NEEDS
COULD BE MET.

By letting donors themselves decide, we protect two basic values: First, we protect our right to decide, which is already granted by law. Second, we can save lives: when health-care institutions accept the next of kin's refusal to honor an organ donor's wishes, they may be withholding medical care from transplant candidates. This is particularly true in cases when a potential organ donor has just died, a recipient is at hand and the next of kin cannot be reached to be asked for consent.

Letting the donor decide would also clarify in the public mind who is making the decision and give donors a measure of personal satisfaction while they are still living.

Various kinds of legislation could put the decision back in donors' own hands. New laws could, for example, strengthen and more clearly define the protection against liability afforded hospital officials and physicians who act on the basis of signed donor cards. States could obligate hospitals and OPOs to recover organs and tissues for which there is a donor card and a demonstrated need. States could also more diligently enforce existing administrative penalties or allow civil liability to be im-

posed against institutions that fail to act on the basis of donor cards.

A DONOR REGISTRY

A communications option that would help return the donation decision to the donor is a computerized donor registry,⁴⁷ which medical personnel would consult shortly before or after the death of a person medically eligible to donate. With information from the registry, personnel could act promptly to recover organs and tissues during the brief period of time in which they are most useful for transplantation and research. For people who register as donors and then change their minds, the registry would permit easy updates.

In 1984, the Senate committee responsible for the National Organ Transplant Act reported its belief "that one important and appropriate new activity to include in the national computer registry is to provide a centralized list of individuals who have voluntarily agreed to donate organs. . . ."

To avoid pitting the health care community against the family, donor registries (and nonelectronic alternatives such as consent forms and living wills) could include certification that the donor had discussed the decision with family members and, as appropriate, that the family had endorsed the decision. The registry could also bring in medical history data vital for screening for AIDS, hepatitis and other infectious diseases (and helpful in locating particular types of diseased tissues needed for research).

Great Britain briefly tested in-hospital donor registries with some success in the mid-1980s.⁴⁸ Twenty-one hospitals were connected in a system listing more than a quarter-million donation volunteers. Britain is now considering a system that would allow people to sign up as donors through a computer network with terminals in every physician's office. This would have the dual advantage of placing the discussion of donation in the context of the patient-physician relationship and removing it from the family's time of grief.

Georgetown University bioethicist Robert Veatch suggests that the government could increase the percentage of Americans making the donation decision themselves, and encourage family discussion of the decision, by adding donation questions to income tax forms.⁵⁰ For example, the forms could

ask the taxpayer, "Do you wish to be an organ/tissue donor? With any limitations?" If a central registry were created, those who consented would have their names entered.

Opponents argue that donor registries are too expensive and difficult to keep up to date, that registries cannot guarantee confidentiality,⁵¹ and that reliance on a registry might inadvertently contradict family wishes. Furthermore, critics say, hospitals might still leave the actual decision to next of kin, disregarding a donor registry just as they now ignore notations on donor drivers' licenses.

A MEDICAL ARGUMENT FOR LETTING DONORS DECIDE

Changing medical practice may increase the number of cases when doctors must determine quickly whether they have consent for donation. Kidneys recovered as late as one hour after coronary death can be transplanted, if certain medical steps are taken.⁵² American transplant teams now almost always take kidneys only from brain-dead donors whose hearts are beating with support from ventilators, but recovering from non-heart-beating donors in addition would greatly increase the supply of kidneys—by far the most frequently transplanted organ. By the end of the century, says transplant surgeon David Anaise of the State University of New York at Stony Brook, livers and other organs may also be recovered from non-heart-beating donors.

Anaise estimates this the practice would increase the supply of kidneys tenfold if proper medical procedures are followed. It is, he says, "the only solution to the supply problem."⁵³

Although the practice arouses opposition from parts of the medical community, many surgeons argue that "non-heart-beating donors can be a reasonable approach to help alleviate the shortage of kidneys."⁵⁴ Animal studies and advances in drugs that inhibit tissue death also suggest the practice may be productive.⁵⁵

Each year, tens of thousands of Americans medically eligible to donate organs suffer coronary death from some form of heart attack or trauma.⁵⁶ Use of a donor registry, for rapid identification of those patients who have already consented to donate, would enable hospitals to coordinate rescue squads, emergency room personnel and organ recovery

teams to recover the kidneys without delay.

States could adopt laws making it unnecessary to seek permission from next of kin before taking medical steps to protect the transplantability of organs from the deceased, thereby keeping their options open for later donation.⁵⁷ (Hospitals already perform a number of routine nondeforming procedures on cadavers for which permission is not requested.⁵⁸)

EXAMINE THE DESIRABILITY OF EXPANDING PRESUMED-CONSENT

More than a dozen countries—including France, Israel and Italy—have adopted "presumed-consent" laws, under which everyone is designated a donor unless they register their refusal.⁵⁹ These laws may not have had much effect, however, because most physicians still seek family permission.

The prevailing view among U.S. health care professionals is that presumed consent would never attract public support. However, given the new capability of computer/communications systems to register declinations, presumed-consent laws may be consistent with our basic values.⁶⁰

Such a suggestion may seem startling, but limited presumed-consent laws are already on the books. Twenty-one states—double the number of only a few years ago—have such laws for corneas obtained from bodies under the jurisdiction of a medical examiner; unless the next of kin object, the medical examiner may remove the corneas of the deceased during autopsy. Seventeen states have similar provisions for pituitary glands.⁶¹ Various states also have presumed-consent laws for unclaimed bodies. These laws could be expanded to provide tissues for research.

Presumed consent seems to be attracting support within the medical community for use in areas other than transplantation. Medical leaders, for example, are discussing mandatory autopsies and application of presumed consent to "intubation training" for physicians, which does not disfigure the corpse and is necessary for sound medical training.⁶²

In Britain, furthermore, there is reportedly substantial public support for laws under which "doctors [can] remove organs from dead people for transplant unless they had specifically 'opted out' before death."⁶³

S B

146

SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE

BILL NUMBER: ^{SJB} 146
ABBREVIATED TITLE: Limited Driving Privileges / Suspended License

SPONSER: Menard ORIGINAL RECEIVED: 3-15-91
WRITTEN REQUEST TO SCHEDULE REC'D: 3-18-91 FROM: Menard
SPONSER'S STATEMENT REC'D: 3-18-91 FROM: Menard (Iola Young)
SECTIONAL ANALYSIS RQST'D: _____ FROM: _____
SECTIONAL ANALYSIS RECEIVED: _____

FISCAL NOTE (ORIGINAL)
RQST'D OF: _____ REC'D FROM: Public Safety DATE: With Bill -
RQST'D OF: _____ REC'D FROM: _____ DATE: _____
RQST'D OF: _____ REC'D FROM: _____ DATE: _____

FISCAL NOTE (C.S.)
RQST'D OF: _____ REC'D FROM: _____ DATE: _____
RQST'D OF: _____ REC'D FROM: _____ DATE: _____
RQST'D OF: _____ REC'D FROM: _____ DATE: _____

FIVE DAY NOTICE GIVEN: _____ NOTICE OF HEARINGS GIVEN: _____
COMMITTEES OF REFERRAL: FIRST: Jud SECOND: _____ THIRD: _____

COMMITTEE ACTION

DATE: 4-9-91
Heard - Amended - Passed on Individual Rec.
Bill Sent to Sen Frank for Signature & Final
CS Requested of LAA.

PERSONS TO BE NOTIFIED OF HEARING

1. SPONSOR Menard (Iola) 6. _____
2. AGENCY Public Safety - 4322 7. _____
3. _____ 8. _____
4. _____ 9. _____
5. _____ 10. _____

Changes in CSSB-146 (STA.)
 no fiscal impact. This
 local note is appropriate.

No. 1
 Bill Version: SB 146
 (S) Publish Date: 3/14/91

STATE OF ALASKA
 1991 LEGISLATIVE SESSION

3/13/91 date
Ally Comte Aide (initial)

Revision Date: _____
 Title: An Act relating to limited driving privileges.
 Sponsor: _____
 Requestor: _____
 Department Affected: Public Safety
 BRU: Motor Vehicles
 Component: Driver Services

COMPONENT SERIAL NO.

	5	0	0
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact None

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

Prepared by: Juanita Hensley, Chief Phone: 465-4335
 Division: Division of Motor Vehicles Date: 3/4/91
 Approved by Commissioner: Richard L. Burton Richard L. Burton
 Agency: Department of Public Safety Date: 3/4/91

Distribution (by preparer): L

OMB, & Impacted Agency(ies).



Alaska State Legislature

Senator Curt Menard



While in
Session:
P.O. Box V
Juneau, Alaska
99811
(907)465-2679

Interim:
165 E. Parks
Highway
Wasilla, Alaska
99687
(907)373-2878

Senate
District
E

DATE: April 8, 1991

TO: Senator Rick Halford, Chair
Senate Judiciary Committee

FROM: Senator Curt Menard

RE: SB 146, relating to limited driving privileges for a person whose driver's license is suspended for failure to have motor vehicle liability insurance.

The above referenced bill has been referred to Senate Judiciary. I am writing to request that it be scheduled for hearing at your earliest convenience.

The bill allows the Department of Motor Vehicles an important additional factor to be considered in granting limited licenses to persons whose license has been suspended for failure to have liability insurance. SB 146 adds medical purposes as a reason for which a limited license may be granted. Current law allows a limited license for work purposes only.

This legislation applies only to licenses suspended for failure to have motor vehicle liability insurance. It does not apply to license revocation or suspension for any other offense, such as accumulation of points, DWI, or failure to provide proof of financial responsibility.

Although the legislation provides an additional purpose for which a limited license may be granted, the same restrictions remain:

- . Proof that insurance has been obtained (SR 22) and
- . The license has not been suspended two or more times in the preceding 10 years.

Thank you for your consideration of my request. If you have any questions please give me a call. I would appreciate your favorable consideration on this measure.



Alaska State Legislature

Senator Curt Menard



While in
Session:
P.O. Box V
Juneau, Alaska
99811
(907)465-2679

Interim:
165 E. Parks
Highway
Wasilla, Alaska
99687
(907)373-2878

DATE: March 18, 1991

TO: Senator Rick Halford, Chair
Senate Judiciary Committee

FROM: Senator Curt Menard *CM/1*

RE: SB 146, relating to limited driving privileges
for a person whose driver's license is
suspended for failure to have motor vehicle
liability insurance.

Senate
District
E

The above referenced bill has been referred to Senate Judiciary. I am writing to request that it be scheduled for hearing at your earliest convenience.

The bill allows the Department of Motor Vehicles an important additional factor to be considered in granting limited licenses to persons whose license has been suspended for failure to have liability insurance. SB 146 adds medical purposes as a reason for which a limited license may be granted. Current law allows a limited license for work purposes only.

This legislation applies only to licenses suspended for failure to have motor vehicle liability insurance. It does not apply to license revocation or suspension for any other offense, such as accumulation of points, DWI, or failure to provide proof of financial responsibility.

Although the legislation provides an additional purpose for which a limited license may be granted, the same restrictions remain:

- . Proof that insurance has been obtained (SR 22) and
- . The license has not been suspended two or more times in the preceding 10 years.

Thank you for your consideration of my request. If you have any questions please give me a call. I would appreciate your favorable consideration on this measure.

WE SUPPORT



SB 196 -

Adams - Wants to Pick up Drive Dependents
for medical care.

Adams - How can dept decide who gets the
special permit.

Collin - Med Person is too broad. What if a
person has a hard time walking.

Knutz - Need amendment if we want to cover
dependents -

Collin - Change medical reasons to
medical care - on line 5 -

and medical care needs on line 11 -

Amendment on p 5 & 11 -

Same title -

Moved on Ind Res

CS FOR SENATE BILL NO. 146 (STATE AFFAIRS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 3/14/91
Referred: Judiciary

Sponsors: SENATOR MENARD

AP'D 9 - Passed on the floor

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to limited driving privileges for a person whose driver's license is
2 suspended for failure to have motor vehicle liability insurance."

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

4 * Section 1. AS 28.22.041(c) is amended to read:

5 (c) The department may grant limited license privileges only for medical reasons ^{OR} or for
6 work purposes [ONLY] to a person whose license has been suspended under this section if

7 (1) the person has filed proof of financial responsibility for the future as required
8 by AS 28.22.061;

9 (2) the person's license has not been suspended two or more times under this
10 section or former AS 28.22.240 in the preceding 10 years;

11 (3) the department determines that the person's ^{in this dependent car - needs} medical needs cannot be met
12 or the person's ability to earn a livelihood would be severely impaired unless [IF] a limited
13 license privilege is [NOT] granted; and

14 (4) the department determines that a limitation can be placed on the license that

BILL NO: CSSB 146 (SA)

DATE: 4/9/91

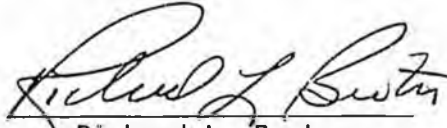
TITLE: Limited Licenses for
Mandatory Insurance

CONTACT: Juanita Hensley
465-4335

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This bill requires the Department to issue a "limited license" to persons whose licenses are suspended for not having motor vehicle liability insurance. Under this bill, limited licenses could be issued for "medical reasons, or for work purposes".

The Department of Public Safety supports CSSB 146 (SA).



Richard L. Burton
Commissioner

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BILL NO: SB 146

DATE: 3/6/91

TITLE: Limited Licenses for
Mandatory Insurance

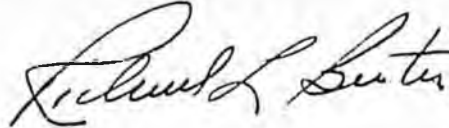
CONTACT: Juanita Hensley
465-4335

DEPARTMENT OF
PUBLIC SAFETY

This bill requires the Department to issue a "limited license" to persons whose licenses are suspended for not having motor vehicle liability insurance. Under this bill, limited licenses could be issued for "medical reasons, to avoid family hardship, or for work purposes".

The Department's position is that the wording "to avoid a family hardship" is too broad, and should be deleted. The bill does not give any guidance as to what "a family hardship" is. Any family which would be inconvenienced by losing the services of an adult driver would feel that they are experiencing a hardship. Suspension of a drivers license is a punitive sanction, imposed because the motorist violated state law. There isn't much point in suspending a driver's license for not having motor vehicle insurance if an individual can be issued a limited license to drive for any reason.

The Department supports this bill with the recommended amendment.



Richard L. Burton
Commissioner



Palmer Police Department

423 SOUTH VALLEY WAY
PALMER, ALASKA 99645



RONALD L. OTTE
CHIEF OF POLICE

PHONE (907) 745-4811

TO: Senator Curt Menard

FROM: Ron Otte
Chief of Police - Palmer

DATE: March 4, 1991

RE: SB 146
"Limited driving privileges for a person whose driver's
license is suspended for failure to have liability insurance."

ATTENTION: Lola Young

I have reviewed the proposed amendments to AS 28.22.041 (c). I have no objections and, in fact, would support the concept of allowing limited driving privileges for medical reasons to avoid family hardship once a person has filed proof of financial responsibility. SB 146 provides balance and common sense when legitimate human needs dictate.

***** TRANSMITTAL MEMO *****

TO: Sen. Menard

DEPT: _____ FAX #: 416-3786

FROM: Palmer PD PHONE: 745-4811

CC: Chief Otte FAX: 745-3314

NO OF PAGES: 1

Permit to be used for internal use only

3-2-91

To Whom it May Concern:

I support the new bill Curt Menard has introduced.

I am a single father (7 years) of an 11 year old boy. I lost my license because of an uninsured accident, which was not my fault.

I received a limited license to go to and from work. However, this license does not permit me to go to the store, post office or bank.

Because I live in the Mat-Su Valley, where city transit is non-existent and postal service is not available, not to mention grocery stores which are 5 miles away, I have no choice but to break this law nearly daily.

I was stopped recently by the Alaska Troopers coming from the post office. I was ticketed for violation of my limited license. Now I face a mandatory 30 days in jail and another years suspension.

When I get out I'm sure I will be ticketed again.

The law, the way it stands, has made a common criminal out of me.

Sincerely,
Craig J. Ness

S B

153

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill No. CS SB 153

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to mental health BRU: Trial Courts
 Sponsor: Pourchot Components: _____
 Requestor: _____ COMPONENT SERIAL NO.

000 000	000 768
-----------	-----------

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	7.2	7.2	7.2	7.2	7.2	7.2
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	7.2	7.2	7.2	7.2	7.2	7.2
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	7.2	7.2	7.2	7.2	7.2	7.2
FEDERAL FUNDS						
OTHER						
TOTAL	7.2	7.2	7.2	7.2	7.2	7.2



POSITIONS:

FULL-TIME						
PART-TIME	2.0	2.0	2.0	2.0	2.0	2.0
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Division: Alaska Court System Date: 04/23/92
 Approved by: Arthur H. Snowden, II, Administrative Director  Date: 04/23/92
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legis Sponsor, Requestor, OMB, & Impacted Agency(ies).

Alaska Court System
Fiscal Analysis
CS SB 153

The fiscal analysis is based on the assumption that this legislation will require an estimated 20 hearings a year. Each hearing is estimated to last 2 to 3 hours. Current court staff can not assume the additional burden of the hearings. The court will have to hire a part-time pro tem superior court judge and in-court clerk to fill in for current judges and staff who will handle the hearings.

Personal Services

<u>Classification</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro tempore superior court judge, 1 month, PPT, Anchorage (assumes fully vested, retired judge)	\$2,013	\$1,641	\$3,654
In-Court Clerk, range 12B, 1 month, PPT, Anchorage	2,410	1,112	<u>3,522</u>
			<u>\$7,176</u>

ALASKA STATE LEGISLATURE

SENATE FINANCE COMMITTEE,
CO-CHAIR



Senator Pat Pourchot

ANCHORAGE
P.O. BOX 104836
ANCHORAGE, AK 99510
(W) (907) 561-7623
(H) (907) 338-2425

JUNEAU
P.O. BOX V
STATE CAPITOL
JUNEAU, AK 99811
(907) 465-3712

MEMORANDUM

TO: Senator Rick Halford, Chair
Senate Judiciary Committee.

FROM: Senator Pat Pourchot. *Pat*

DATE: April 16, 1992

SUBJECT: SB 153, An Act relating to mental health.

I respectfully request a hearing at the earliest possible date for SB 153, An Act relating to mental health. The purpose of the legislation is to clearly establish procedures for the protection of patient's rights in evaluation and treatment facilities.

Recently, we have been working closely with mental health advocates, the Alaska Mental Health Board, the Department of Law and the Department of Health and Social Services to make revisions to the original bill introduced last session. The most important additions have been in the area of safeguards and oversight on psychotropic medications.

You may recall that the State of Alaska has been involved in litigation over the issue of forced medication at API. The changes to this legislation incorporate the recommendations of the Involuntary Medication Task Force and should settle the legal issues raised in Branson v. State of Alaska.

Attached, you will find back up materials for committee members and the public. Please contact Dan Austin at 465-3879 if you have any questions.

SB 153, "An Act relating to mental health."

Senator Pat Pourchot

The legislation was introduced in the first session of the Seventeenth Legislature at the request of mental health services consumers and advocates. The purpose of this Act is to guarantee that patients will have appropriate representation in decisions pertaining to their treatment.

In 1987, a patient at the Alaska Psychiatric Institution brought suit against the state for not providing an opportunity to withhold informed consent to the administration of psychoactive medication. A state task force consisting of mental health professionals, advocates and attorneys met for a year and a half to respond to legal issues raised in Eranson v. State of Alaska.

The draft CS presented to the Senate Health, Education and Social Services Committee is a revision of SB 153 incorporating the recommendations of the task force.

SECTIONAL SUMMARY

Sec. 1 The Department of Health and Social Services shall set standards under which each designated treatment facility will provide for the psychological, social, vocational, educational and recreational needs of the patient.

Sec. 2 Requires all evaluation and designated treatment facilities to administer treatment and medication only in a manner consistent with the statutes.

Sec. 3 A patient ordered to receive involuntary outpatient treatment may be required to undergo inpatient treatment when the provider of treatment determines that an appropriate facility will accept the patient and that the patient is mentally ill and likely to cause serious harm to themselves or others.

In that case, the following statutes relating to notice and hearing apply:

AS 47.30.795 Involuntary outpatient care for committed persons

(c) If during the commitment period the provider of outpatient care determines that the respondent can no longer be treated on an outpatient basis because the respondent is likely to cause harm to self or others or is gravely disabled, the provider shall give the respondent oral and written notice that the respondent must return to the treatment facility within 24 hours, with copies to the respondent's attorney and guardian, if any, the court, and the inpatient treatment facility. If the respondent fails to arrive at the treatment facility within 24 hours after receiving the notice, the professional person in charge may contact the appropriate peace officers who shall take the respondent into custody and transport the respondent to the facility. If it is determined by the professional person in charge to be necessary, a member of the treatment facility staff shall accompany the peace officers when they take the respondent into custody.

Sec. 47.30.745. 90-day commitment hearing rights. (a) A respondent subject to a petition for 90-day commitment has, in addition to the rights specified elsewhere in this chapter, or otherwise applicable, the rights enumerated in this section. Written notice of these rights shall be served on the respondent and the respondent's attorney and guardian, if any, and may be served on an adult designated by the respondent at the time the petition for 90-day commitment is served. An attempt shall be made by oral explanation to ensure that the respondent understands the rights enumerated in the notice. If the respondent does not understand English, the explanation shall be given in a language the respondent understands.

(b) Unless the respondent is released or is admitted voluntarily following the filing of a petition and before the hearing, the respondent is entitled to a judicial hearing within five judicial days of the filing of the petition as set out in AS 47.30.740(b) to determine if the respondent is mentally ill and as a result is likely to cause harm to self or others, or if the respondent is gravely disabled. If the respondent is admitted voluntarily following the filing of the petition, the voluntary admission constitutes a waiver of any hearing rights under AS 47.30.740 or under AS 47.30.685. If at any time during the respondent's voluntary admission under this subsection, the respondent submits to the facility a written request to leave, the professional person in charge may file with the court a petition for a 180-day commitment of the respondent under AS 47.30.770. The 180-day commitment hearing shall be scheduled for a date not later than 90 days after the respondent's voluntary admission.

(c) The respondent is entitled to a jury trial upon request filed with the court if the request is made at least two judicial days before the hearing. If the respondent requests a jury trial, the hearing may be continued for no more than 10 calendar days. The jury shall consist of six persons.

(d) If a jury trial is not requested, the court may still continue the hearing at the respondent's request for no more than 10 calendar days.

(e) The respondent has a right to retain an independent licensed physician or other mental health professional to examine the respondent and to testify on the respondent's behalf. Upon request by an indigent respondent, the court shall appoint an independent licensed physician or other mental health professional to examine the respondent and testify on the respondent's behalf. The court shall consider an indigent respondent's request for a specific physician or mental health professional. A motion for the appointment may be filed in court at any reasonable time before the hearing and shall be acted upon promptly. Reasonable fees and expenses for expert examiners shall be determined by the rules of court.

(f) The proceeding shall in all respects be in accord with constitutional guarantees of due process and, except as otherwise specifically provided in AS 47.30.700 — 47.30.915, the rules of evidence and procedure in civil proceedings.

(g) Until the court issues a final decision, the respondent shall continue to be treated at the treatment facility unless the petition for 90-day commitment is withdrawn. If a decision has not been made within 20 days of filing of the petition, not including extensions of time due to jury trial or other requests by the respondent, the respondent shall be released. (§ 1 ch 84 SLA 1981; am § 14 ch 142 SLA 1984)

Sec. 4 Expands, at the request of the patient, those persons who may participate in formulating the patient's individualized treatment plan. In addition to the patient's counsel, guardian or designated adult, representatives may now include a mental health professional previously engaged in the patient's care outside of the evaluation or treatment facility and another representative of the patient's choice.

This section also stipulates that the mental health care professionals may not withhold any of the evaluation or treatment information from the patient or others if the the patient has signed a waiver of confidentiality.

Sec. 5 Amends one sentence in AS 47.30.825(d) to read: "When practicable, the patient shall be consulted as to the patient's preference among forms of adequate, medically advisable restraints including medication, and that preference shall be honored (CONSIDERED)."

Sec. 6 AS 47.30.825(c) is reenacted to provide that a patient capable of giving informed consent has the right to give or withhold that consent to medication and treatment when it is not a crisis or impending crisis situation as described in AS 47.30.838(a)(1):

Sec. 47.30.838. PSYCHOTROPIC MEDICATION IN EMERGENCIES. (a) Except as provided in (c) of this section, an evaluation facility or designated treatment facility may administer psychotropic medication to a patient without the patient's informed consent, regardless of whether the patient is capable of giving informed consent, only if

(1) there is a crisis situation, or an impending crisis situation, that requires immediate use of the medication to preserve the life of, or prevent significant physical harm to, the patient or another person, as determined by a licensed physician or a registered nurse; the behavior or condition of the patient giving rise to a crisis under this paragraph and the staff's response to the behavior or condition must be documented in the patient's medical record; the documentation must include an explanation of alternative responses to the crisis that were considered or attempted by the staff and why those responses were not sufficient; and

Sec. 7 Adds four (AS 47.30.836-.839) new sections pertaining to PSYCHOTROPIC MEDICATIONS IN NON-EMERGENCIES, INFORMED CONSENT, PSYCHOTROPIC MEDICATIONS IN EMERGENCIES and COURT-ORDERED ADMINISTRATION OF MEDICATION.

AS 47.30.836 PSYCHOTROPIC MEDICATION IN NON-EMERGENCIES: Facilities may not administer psychotropic medication in a situation that does not involve a crisis without the patient's informed consent unless the court

determines that the patient lacks the capacity to give informed consent and the court approves use of the medication.

AS 47.30.837 INFORMED CONSENT: Defines informed consent for the purposes of the section and describes the facility's responsibility to provide necessary information for the patient's decision. "Competent," "voluntary," and "informed" are defined in detail.

AS 47.30.838 PSYCHOTROPIC MEDICATION IN EMERGENCIES: Describes "crisis" situation, who determines, and requires documentation and consideration of alternatives. Limits "crisis" period to 24 hours, requires that conditions, medication, dose and method of administration be specified. May extend to 3 "crisis" periods for a total of 72 hours. Requires post-"crisis" consultation and discussion with patient. Without court approval, psychotropic medications may not be administered without the patient's informed consent for more than 3 "crisis" periods.

AS 47.30.839 COURT-ORDERED ADMINISTRATION OF MEDICATION: Allows a facility to obtain court approval for the administration of psychotropic medication under specific circumstances and in a specified manner. The court must appoint a court visitor to help determine if the patient is capable of informed consent. Describes documentation the visitor must include in the report to the court. Requires hearing within 72 hours. The court determines the competency of the patient to give informed consent. If the court rules that the patient is incapable of informed consent, the court shall approve the proposed medication. This applies to the initial commitment period and is reconsidered if the facility files a petition to extend or continue commitment. If the patient becomes competent and gives informed consent, it shall be documented in writing in the patient's file.

Sec. 8 AS 47.30.840(a)(9) is amended to read: "A person undergoing evaluation or treatment under AS 47.30.660-47.30.915 has the right to reasonable opportunity for indoor and outdoor exercise and recreation;

Sec. 9 New section AS 47.30.847 PATIENT'S GRIEVANCE PROCEDURES: Establishes a patient's grievance procedure and requires each facility to designate a staff member trained in mental health consumer advocacy to serve as the patient's advocate, upon patient's request, in bringing grievances and pursuing redress.

Sec. 10 Adds a final sentence to AS 47.30.850 EXPUNGEMENT OF RECORDS: Upon the filing of the motion and full release, the court shall order the court records expunged.

Sec. 11 Repeals AS 47.30.825(e): "A patient has the right to be free from unnecessary or excessive medication. Psychotropic medication may be administered only on the order of a licensed physician when the physician determines that this medication is in the best interest of the patient or will prevent serious harm to others." Previous sections supercede.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

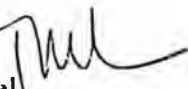
240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

April 21, 1992

SUBJECT: Sectional Summary for CSSB 153 (HES)

TO: Senator Rick Halford
Attn: Jeff

FROM: Terri Lauterbach 
Legislative Counsel

You have asked for a sectional analysis for CSSB 153 (HES). In the absence of specific questions, this memo provides a summary of the bill. If you have questions not addressed by this memo, please let me know.

Section 1. Requires the office of public advocacy to provide visitors (investigators) in proceedings described in sec. 8 of the CS, which relates to administration of psychotropic medication to patients in mental treatment facilities.

Sec. 2. Requires the Department of Health and Social Services to set programmatic standards for treatment facilities.

Sec. 3. In conjunction with other changes in the CS, clarifies the conditions under which a treatment facility or evaluation facility may administer medication or other treatment to an involuntarily committed patient.

Sec. 4. Corrects a reference.

Sec. 5. Describes who must be involved in treatment decisions if requested by the patient.

Sec. 6. Strengthens patients' rights to have their treatment preferences honored.

Sec. 7. In conjunction with other changes in the CS, clarifies the conditions under which a facility may administer medication or other treatment to a patient.

Sec. 8. Enacts four new sections of law relating to the administration of psychotropic medication.

Sec. 47.30.836. Relates to nonemergency medication. Requires informed consent or a court order. A court order can only be issued if the patient lacks the capacity to consent.

Sec. 47.30.837. Describes the elements of informed consent.

Sec. 47.30.838. Relates to emergency situations. Limits the use of medication in an emergency before court approval is needed.

Sec. 47.30.839. Describes court procedures to be used when a patient seems to lack the capacity to consent to medication. In contrast to sec. 47.30.836, (a)(2) of this section indicates that a competent patient's refusal of medication could be overturned by a court. Sec. 47.30.836 indicates that a court gets involved only if the patient lacks capacity for informed consent. **This apparent inconsistency should be clarified in the bill.**

Sec. 9. Clarifies a patient's right to exercise and recreation.

Sec. 10. Establishes a patient's right to the availability of grievance procedures.

Sec. 11. Clarifies the duty of a court to order expungement of patients' records under certain conditions.

Sec. 12. Repeals a subsection about medication that is made superfluous by other changes in the CS.

TML:pl:gc
92-275.plm

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSSB 153(HES)

BY SENATOR POURCHOT

Page 6, line 13, after "":

Insert "or"

Page 6, lines 14 - 15:

Delete all material.

Renumber the following paragraph accordingly.

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSSB 153 (HES)

BY SENATOR POURCHOT

Page 7, line 9, after "AS 47.30.837":

Insert "and the patient's capacity to give or withhold informed consent at the time of previously expressed wishes regarding medication if previously expressed wishes are documented under (d)(2) of this section"

Page 7, line 16, after "consent":

Insert "and, by clear and convincing evidence, was not competent to provide informed consent at the time of previously expressed wishes documented under (d)(2) of this section"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 153(HES)

BY SENATOR POURCHOT

Page 1, line 4, after "visitors":

Insert "and guardians ad litem"

Page 6, line 23:

Delete the first "appoint"

Insert "direct the Public Defender Agency to provide"

Delete the second "appoint"

Insert "direct the office of public advocacy to provide"

ALASKA MENTAL HEALTH BOARD

Walter J. Hickel, Governor
State of Alaska

431 N. Franklin Street
Juneau, Alaska 99801
(907)465-3071

April 22, 1992

Senator Rick Halford, Chair
Senate Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Halford,

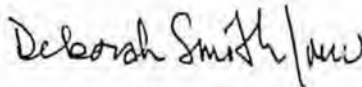
I am unfortunately unable to attend the hearing on CSSB 153 scheduled for April 23, 1992.

The Alaska Mental Health Board has worked with Advocacy Services of Alaska, with consumers of mental health services and with the Division of Mental Health and Developmental Disabilities in revising SB 153.

The Alaska Mental Health Board met and discussed this legislation and has taken a formal position in support of the Committee Substitute for SB 153. The Board feels that the legislation is necessary to protect patient rights in evaluation and treatment institutions, to insure good treatment and the right to refuse treatment .

I appreciate the opportunity to convey to you and your committee the Alaska Mental Health Board's support for CS SB 153.

Sincerely,



Deborah Smith,
Executive Director

TASK FORCE REPORT ON USE OF
INVOLUNTARY MEDICATION
(October 30, 1990)

HISTORY

The Involuntary Medication Task Force, (Task Force), has met for the past year and a half to address the issues surrounding a civilly committed psychiatric patient's right to give or withhold informed consent to the administration of psychoactive medication. The Task Force was formed in response to, and in hopes of settling, the legal issues raised in Branson v. State of Alaska, 3AN 87-9988 (CIV.)

API

MEMBERS

The members of the Task Force are:

ELIZABETH SHAW (LEBA)
Assistant Attorney General
P.O. Box "K"
Juneau, Alaska 99811-0300
Tel. 465-3603

JEFF JESSEE
THERESA HILLHOUSE
Advocacy Services of Alaska
615 E. 82nd, Suite 101
Anchorage, Alaska 99518
Tel. 344-1002

JOHN HESS, M.D.
Medical Director
Alaska Psychiatric Institute
2900 Providence Drive
Anchorage Alaska 99508
Tel. 561-1633

CAREY EDNEY, PH.D.,
CHAIRPERSON
Children's Unit
Charter North Hospital
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Anchorage, Alaska 99501
Tel. 258-7575

TODD RISLEY, PH.D.
Director
Division of Mental Health &
Developmental Disabilities
P.O. Box H-04
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Tel. 465-3370

IRVIN ROTHROCK, M.D.
Alaska Mental Health Board
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Tel. 452-1739

THELMA LANGDON
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Tel. 258-7575

JIM GOTTSTEIN
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Anchorage, Alaska 99501

PIERRE VEUTHEY
Acting Medical Director
Alaska Psychiatric Inst.
1/89 - 12/89

VICKI MALONE
204 E. Fifteenth Avenue
Anchorage, Alaska 99501
Tel. 277-8485

ANDREA SCHMOOK
Mental Health Consumers
3/89 - 10/89

CINDY STROUT
Advocacy Services of Alaska
7/89 - 9/90

CARLA GROSCH
Advocacy Services of Alaska
3/89 - 10/89

STATEMENT OF PURPOSE

The Task Force has formulated a policy on the use of psychoactive medications for civilly committed psychiatric patients who withhold informed consent to such medication. The Task Force has attempted to create a procedure which maximizes patient dignity and autonomy, and recognizes the significant liberty interests involved. It is the Task Forces' hope that the procedures and philosophies embodied in these policies encourage and support sound medical practice, and provide a framework for valuing the personal autonomy of the patient in often difficult circumstances.

POLICIES AND PROCEDURES

I. THE RIGHT TO WITHHOLD CONSENT

It is the Task Forces opinion that civilly committed patients not adjudicated incapacitated to make decisions regarding mental health treatment have the right to give or withhold consent to the administration of psychoactive medications in non-emergency situations.

II. EMERGENCY SITUATIONS

"Emergency" means an impending or crisis situation which creates circumstances demanding immediate action for preservation of life or prevention of significant physical harm to the person or others as determined by a licensed physician or a registered nurse.

This is the procedure to be followed in an emergency when a person is refusing medications:

- A. Medication may be administered if ordered in advance by a licensed physician. Such an order may be written, verbal, or telephonic. Emergency medications orders may include a "now" or "stat" dose plus p.r.n. (or "as necessary") doses. P.r.n. medications orders must specify the medications, the milligram dosages (or ml/cc if

10500 Old Eagle River Road
Eagle River, Alaska 99577
April 22, 1992

Senator Rick Halford
Chairman, Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

RE: SB 153 "An Act relating to mental health"

Dear Senator Halford:

I would like to add my voice to those supporting
SB 153.

This bill clarifies the ambiguities of administering
psychotropic medication in both emergency and non-emergency
situations. It allows mental health professionals to use
their best medical judgement in rendering patient care
without undue constrictions. SB 153 also manages to remain
conscious of patients' desires, while providing an avenue
for protection against self when necessary.

SB 153 is a carefully thought through piece of
legislation. Its passing will be a welcome addition to
existing statutes on patients' rights.

Sincerely,

Marilyn McKay
Marilyn McKay

*Letter to have
we passed out.
as annotated
send copy*

TUESDAY, April 14, 1992

Drugged patient wins jury ruling

API to pay \$225,000 in 1987 case

By SHEILA TOOMEY
Staff News reporter

A mentally ill woman, in a lawsuit against her with a potent psychiatric drug that left her permanently disfigured, has won a \$225,000 jury verdict against the Alaska Psychiatric Institute.

The verdict, returned Friday in Anchorage Superior Court, comes as the Legislature considers new rules governing forced medication of involuntarily committed patients, particularly the use of powerful anti-psychotic drugs, which can have serious side-effects.

In general, Alaska doctors

have a legal right to force-medicate patients who have been involuntarily committed.

Barbara Novelli, a 44-year-old Anchorage woman, suffers from bipolar disease, which is characterized by alternating cycles of depression and extreme mania. She has been treated for years with lithium carbonate, a mood "leveler" routinely used in such cases.

Lithium is not an antipsychotic drug and does not generally produce extreme side-effects.

But periodically, Novelli

Please see Page B-9, API

API: Woman wins lawsuit against state hospital

Continued from Page B-1

would stop taking her lithium and deteriorate into an acute psychotic state, according to court records. The 1987 incident that the jury examined occurred during her sixth admission to API. At the time, API staff knew that the drug they gave her, an antipsychotic called Navane, caused her to have muscle spasms, including facial twitching and involuntary limb and trunk movements.

At issue was whether API ever tried to persuade Novelli to voluntarily resume her lithium doses or, instead, caused permanent injury by forcibly injecting her with a drug that she had good reason to refuse.

API Director Dr. Norwood Knight-Richardson said Monday that he was not surprised by the verdict.

"A lot of the issues around this (forced medica-

tion) are very, very difficult to understand," Knight-Richardson said.

The choice facing his staff, he said, was to leave Novelli in a deteriorating psychotic state, which, according to the court record included writhing on the floor and inappropriate sexual touching of other patients, or to bring her out of the psychosis and risk what they believed would be temporary side effects.

API staff claimed Novelli was offered lithium first and refused it, but there was no note to that effect in any hospital record, Knight-Richardson agreed.

Laurel Peterson, Novelli's attorney, said no such effort was made.

The hospital did not ask Novelli's family or friends to help persuade her to resume taking her lithium, he said, and they ignored specific warnings from her private psychiatrist not to use

an anti-psychotic.

API staff rushed to use an anti-psychotic, Peterson said, because it's the easiest way "to control a patient going through a psychotic episode." Such drugs "knock you on your butt... make you mute and catatonic," he said.

Five years after being force-medicated, Novelli's twitching symptoms remain, and she needs six pain-killers a day, he said.

Jurors awarded her \$25,000 for medical expenses and \$200,000 for suffering and disfigurement. Novelli's illness makes her largely unemployable, so jurors did not compensate her for lost wages.

The state is currently the defendant in another lawsuit over forced medication, a class action brought by Advocacy Services of Alaska on behalf of all such patients. Jeff Jesse, an attorney for the agency, said the suit is

on hold while a task force tries to deal with the issue through legislation. A hearing is scheduled today at 8:30 a.m.

Proposed reforms would require that the magistrate who normally holds commitment hearings at API decide if forcing a patient to take a drug is in the patient's best interest. The real purpose of the reforms is to force API to spend more time trying to get patients "to buy into their treatment," Jesse said. "We don't want to burden the system with unnecessary hoop jumping."

The judge will almost always uphold the institution, he predicted, but doctors who know they might have to explain their decision to an impartial outsider will make more considered judgments. "They act too quickly if there aren't rules making them more accountable for what happens."

S B

1 5 4

SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE

Bill Number: S154
Abbreviated Title: Exempt Certain Incidents re Haz Mat

Sponsor: _____ Original Received: May 11, 1991

Written Request to Schedule Rcv'd: _____ From: 0

Sponser's Statement Rcv'd: _____ From: _____

Sectional Analysis Rqst'd: _____ From: _____

Sectional Analysis Received: _____

Fiscal Note (Original)

Rqst'd Of: _____ Rcv'd From: _____ Date: _____

Rqst'd Of: _____ Rcv'd From: _____ Date: _____

Rqst'd Of: _____ Rcv'd From: _____ Date: _____

Fiscal Note (C.S.)

Rqst'd Of: _____ Rcv'd From: DEC Date: 3-18-91

Rqst'd Of: _____ Rcv'd From: _____ Date: _____

Rqst'd Of: _____ Rcv'd From: _____ Date: _____

Five Day Notice Given: Sen. R. Young Notice of Hearings Given: _____

Committees of Referral: First: _____ Second: _____ Third: _____

LAA Contact: _____ To Senate Secretary: _____

COMMITTEE ACTION

DATE:

_____	_____
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PERSONS TO BE NOTIFIED OF HEARING

- | | |
|------------|--------------------------------|
| 1. Sponsor | 6. <u>Julie Ellis 563-3766</u> |
| 2. Agency | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

SENATE COMMITTEE REPORT

DATE: 5/8/91

FURTHER:

DATE TURNED INTO OFFICE: 3/10/92

Judiciary Committee considered SENATE BILL NO. 154

"An Act relating to liability for environmental damage and to liens arising from environmental damage."

and recommended:

- replace with CS 5B 154 (JUD)
- or adopt _____ CS _____
- attached amendment(s)
- _____ letter of intent adopted

- same title
- new title
- technical title change (HB only)

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

ATTACHES NEW FISCAL NOTE(S): Dept/Date:

- fiscal note(s) _____
- zero fiscal note(s) _____
- appropriation-no fiscal note

APPROVES PREVIOUS:

- fiscal note(s) _____ Dept/Date: _____
- zero fiscal note(s) _____
- Governor's bill w/fiscal note

SIGNING DO PASS:

[Handwritten Signature]

[Handwritten Signature]

[Handwritten Signature]

OTHER RECOMMENDATIONS:

[Handwritten Signature] do pass

Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSSB 154 (Res)

Revision Date: _____ Department Affected: Environmental Conservation
 Title: Lender liability for environmental damage GRU: Spill Prevention and Response
 Component: Contaminated Sites
 Sponsor: Rodey
 Requestor: Rodey COMPONENT SERIAL NO.

1	4	3	1
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

If SB 154 is enacted into law, the number of contaminated sites for which the State would become responsible for cleaning up would be expected to increase. Also, the limitation on cost recovery to that property which was subject to the cleanup would be expected to severely limit DEC's ability to cost recover. However, estimating the fiscal impacts of these expectations is not possible.

Prepared By: Janice Adair Phone: 465-5050

Division: Commissioner's Office Date: January 26, 1992

Approved by Commissioner: Jan A. Tassler

Agency: Environmental Conservation Date: January 27, 1992

Distribution (by preparer): Leg. Fin. Legislative Services, Department, OMB, DDP, & Impacted Agency(ies).

SB 154

Section 1 of SB 154 was amended by the Senate Judiciary Committee to define owner and operator as anyone holding a security interest in a property as opposed to only financial institution.

Section 2 was amended to limit the property of a person that the state can file a lien against. The property is limited to property that was subject to the state's response, containment, removal or remedial action. And it also limits the lien and the person's liability to the difference between the value of the property before and after the state's action. Additionally, the state's lien cannot preempt established rights of liens already in place.

Patrick M. Rodey
Senator

Alaska State Legislature



Senate

3111 C. St., Suite 510
Anchorage, Alaska 99503
(907) 561-7618

During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-3793

M E M O R A N D U M

DATE: January 17, 1992

TO: Senator Rick Halford, Chairman
Senate Judiciary Committee

FROM: Senator Patrick M. Rodey *Pat*

SUBJ: Request for hearing on CSSB 154 (RES)

I respectfully request that CSSB 154 (RES) be scheduled in the Senate Judiciary Committee. The bill seeks to limit the liability of financial institutions and fiduciaries as innocent third parties in cases of environmental contamination. Currently, lending institutions which foreclose on property that is contaminated are liable for the cost of clean-up, even if they in no way caused or contributed to the contamination.

Likewise, the trust divisions of banking institutions should not be required to pay for a clean-up of property which it merely holds in trust for beneficiaries of estates and trust funds. Under present law, this is the case.

To summarize, this bill does the following:

- SECTION 1: References a new section, AS 46.03.825, which defines the circumstances under which financial institutions are exempted from liability.
- SECTION 2: Adds that new section, and stipulates exemption from liability for damages or costs of contamination that:
- 1) the institution acquires through foreclosure;
 - 2) the institution holds as a lessor under a credit agreement;

- 3) is subject to the financial oversight of the institution under a credit agreement, IF the institution doesn't exercise managerial control;
- 4) the institution acquires in a fiduciary capacity.

This section also provides for the reimbursement to the state by the institution for any clean-up activity, considered a benefit, up to the fair market value of the property.

"Financial institution" as defined, means: 1) a bank, credit union, or savings association, if the deposits are insured by FDIC, or another U.S. agency, or by an agency of the state; 2) a trust company owned by a bank, or which is subject to regulation by the U.S. Controller of the Currency.

- SECTION 3: Limits the value of the state's lien to the value of the affected facility or vessel, and not "all property" (any other assets).
- SECTION 4: Adds a new section which protects lienholders who have perfected their liens prior to the imposition of state liens.
- SECTION 5: Repeals the provision for those with ownership interest, to bring action for release of that portion of the lien consistent with their ownership interest.
- SECTION 6: Provides for protection from liability on property in situations referenced in section 2, 1 - 4, above.

I would appreciate a hearing at the earliest possible opportunity. Support material will be forthcoming. Please contact Tim Benintendi of my staff with any questions.



Senate

During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-3793

SPONSOR SUMMARY

Senate Bill 154

CSSB 154 (RES) relates to the strict liability provisions enacted into the state's environmental laws in the spring of 1939. The bill which the state legislature enacted then, HB 68, was patterned after the strict liability provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the law that established the SUPERFUND.

Just as the Congress and EPA are now re-thinking whether the strict liability provisions of federal law should be applied to the lending industry, so should the state be looking at the impact upon local lenders and fiduciary agents, and the availability of credit in Alaska.

The bill seeks to limit, not eliminate, the strict liability of financial institutions and fiduciaries as innocent third parties in cases of environmental contamination. Currently, lending institutions which foreclose on property that is contaminated are strictly liable for the cost of clean-up, even if they in no way caused or contributed to the contamination.

Likewise, the trust divisions of banking institutions should not be required to pay for a clean-up of property which it merely holds in trust for beneficiaries of estates and trust funds. Under present law, this is the case.

CSSB 154 (RES) deals with strict liability under AS46.03.822 (a), and does not effect liability for negligence. To summarize, the bill does the following:

SECTION 1: References a new section, AS 46.03.825, which defines the circumstances under which financial institutions are exempted from strict liability.

SECTION 2: Adds that the new section, and stipulates exemption from strict liability for damages or costs of contamination that:

- 1) the institution acquires through foreclosure;
- 2) the institution holds as a lessor under a credit agreement;
- 3) is subject to the financial oversight of the institution under a credit agreement, IF the institution doesn't exercise managerial control;
- 4) the institution acquires in a fiduciary capacity.

SECTION 3: Limits the value of the state's lien to the value of the affected facility or vessel, and not "all property" (any other assets).

SECTION 4: Adds a new section which protects lienholders who have perfected their liens prior to the imposition of state liens.

SECTION 5: Repeals the provision for those with ownership interest, to bring action for release of that portion of the lien consistent with their ownership interest.

SECTION 6: Makes it clear that the exemption from strict liability applies to contamination releases or threatened releases occurring after the effective date of the act, even if the property was acquired or held before the effective date of the act.

CSSB 154 (RES) is intended, in part, to avoid severely restricting access to credit in the Alaskan economy. Other potential for adverse economic impact exists which this bill is designed to address.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

January 22, 1992

SUBJECT: Sectional summary of CSSB 154(Resources)

TO: Senator Pat Rodey
Attn: Tim

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have requested a sectional summary of the above described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. This section amends AS 46.03.822, the section that creates strict liability for releases (and threatened releases) of hazardous substances. The amendment makes AS 46.03.822 subject to the new section (created in bill sec. 2) that exempts certain financial institutions from strict liability with regard to certain property.

Section 2. This section exempts certain qualifying financial institutions from the strict liability provisions of AS 46.03.822 - 46.03.828. Subsection (a) contains the exemption and ties the exemption to certain listed types of facilities and vessels held by the institution. These types of property include property acquired through foreclosure. Subsection (b) creates an exception to the exemption and allows the state to require the institution to reimburse the state for certain benefits received by the institution resulting from state response, containment, removal, or remedial action. Limits the reimbursement to the fair market value of the facility or vessel involved. Subsection (c) describes the financial institutions that qualify for the exemption.

Section 3. This section amends the section that gives the state a lien for its costs of response, containment, removal, or remedial action. The amendment limits the property against which the state has a lien to a facility or vessel that is owned by the liable person and that is subject to the action.

Section 4. This section makes the state's lien subject to the rights of certain parties if the parties' interests were perfected before notice of the state's lien was recorded.

Senator Pat Rodey
January 22, 1992
Page 2

Gives the parties the same protections against the state's lien that they have under state law against judgment liens that arise out of unsecured obligations and that arise at the same time notice of the state's lien was filed.

Section 5. This section repeals AS 46.08.075(e). That subsection authorizes a person with an ownership interest in property against which a state lien is recorded under AS 46.08.075 to ask a court to release the lien, and gives the court guidelines for releasing the lien.

Section 6. This section states that facilities and vessels are covered by proposed sec. 46.03.825 (bill sec. 2) even if they were acquired or held by, or subject to the financial control or financial oversight of, a financial institution before the effective date of the Act.

If I may be of further assistance, please advise.

TLB:gc
92-046.glc

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

May 1, 1991

SUBJECT: Sectional summary of CSSB 154~~(90)~~
(Work Order No. 7-LS0716\G, 4-23-91)

TO: Senator Pat Rodey
Attn: Tim

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have requested a sectional summary of the above described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. This section amends AS 46.03.822, the section that creates strict liability for releases (and threatened releases) of hazardous substances. The amendment makes AS 46.03.822 subject to the new section (created in bill sec. 2) that exempts certain financial institutions from strict liability with regard to certain property.

Section 2. This section exempts certain qualifying financial institutions from the strict liability provisions of AS 46.03.822 - 46.03.828. Subsection (a) contains the exemption and ties the exemption to certain listed types of facilities and vessels held by the institution. These types of property include property acquired through foreclosure. Subsection (b) creates an exception to the exemption and allows the state to require the institution to reimburse the state for certain benefits received by the institution resulting from state response, containment, removal, or remedial action. Limits the reimbursement to the fair market value of the facility or vessel involved. Subsection (c) describes the financial institutions that qualify for the exemption.

Section 3. This section amends the section that gives the state a lien for its costs of response, containment, removal, or remedial action. The amendment limits the property against which the state has a lien to a facility or vessel that is owned by the liable person and that is subject to the action.

Senator Pat Rodey

May 1, 1991

Page 2

Section 4. This section makes the state's lien subject to the rights of certain parties if the parties' interests were perfected before notice of the state's lien was recorded. Gives the parties the same protections against the state's lien that they have under state law against judgment liens that arise out of unsecured obligations and that arise at the same time notice of the state's lien was filed.

Section 5. This section repeals AS 46.08.075(e). That subsection authorizes a person with an ownership interest in property against which a state lien is recorded under AS 46.08.075 to ask a court to release the lien, and gives the court guidelines for releasing the lien.

Section 6. This section states that facilities and vessels are covered by proposed sec. 46.03.825 (bill sec. 2) even if they were acquired or held by, or subject to the financial control or financial oversight of, a financial institution before the effective date of the Act.

If I may be of further assistance, please advise.

TLB:pl:gc
91-326.plm

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

DATE: 3/1/91

FURTHER: Judiciary

Date of 5-Day Notice: 3/1/91
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/2/91

Resources Committee considered SB 154

Liability for environmental damage and to liens arising from environmental damage.

and recommended: 5 it be replaced with

- replace with _____ CS SB 154 Res ~~same title~~ new title
- attached amendment(s) and report it back as follows
- _____ letter of intent adopted

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

φ/KN

ATTACHES NEW FISCAL NOTE(S):

<input type="checkbox"/> fiscal note(s) _____	Dept/Date _____	<input checked="" type="checkbox"/> zero fiscal note(s) _____	Dept/Date _____
_____	_____	Res FN DEC 3/18/91	_____
_____	_____	_____	_____

- appropriation-no fiscal note
- Governor's bill w/fiscal note

SIGNING DO PASS:

[Signature]

OTHER RECOMMENDATIONS:

[Signature] NO REC
[Signature]

[Signature]
Chair: Signature and Recommendation

CS FOR SENATE BILL NO. 154 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR RODEY

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the liability of financial institutions arising out of an unpermitted
2 release of a hazardous substance or the substantial threat of an unpermitted release of
3 a hazardous substance, and to liens on the property of financial institutions resulting from
4 an oil or hazardous substance spill or the threat of an oil or hazardous substance spill."

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

6 * Section 1. AS 46.03.826 is amended by adding new paragraphs to read:

7 (16) "financial institution" means

8 (A) a bank, credit union, or savings association if the deposits of the bank,
9 credit union, or savings association are insured in whole or in part by the Federal Deposit
10 Insurance Corporation, by another agency of the United States, or by an agency of the
11 state;

12 (B) a trust company that is owned in whole or in part by a bank or that
13 is subject to regulation by the United States Comptroller of the Currency;

14 (17) "indicia of ownership" means, with regard to financial institutions, evidence

1 of interests held by the financial institution in real or personal property as security for a loan or
2 other obligation, including full title to real or personal property acquired through foreclosure or
3 an equivalent procedure, and including a mortgage, deed of trust, assignment, lien, pledge, or
4 other right to or other form of encumbrance against property that is recognized under applicable
5 law as establishing a bona fide security interest;

6 (18) "participating in the management of a vessel or facility" means with regard
7 to financial institutions the actual participation in the management or operational affairs by the
8 financial institution that is the holder of the security interest; in this paragraph, "participating in
9 the management of a vessel or facility"

10 (A) includes exercising

11 (i) decision-making control over the borrower's environmental
12 compliance, to the degree that the financial institution that is the security holder
13 has undertaken responsibility for the borrower's actions that result in a release or
14 threatened release;

15 (ii) management level control encompassing the borrower's
16 environmental compliance responsibilities comparable to that of a manager of the
17 borrower's enterprise;

18 (B) does not include

19 (i) the mere capacity or ability to influence, or the unexercised
20 right to control, facility operations;

21 (ii) undertaking or requiring an environmental audit or inspection;

22 (iii) imposing a requirement that the borrower clean up the vessel
23 or facility before or during the term of the security interest;

24 (iv) imposing a requirement of assurance that the vessel or facility
25 remains or is maintained in compliance with all applicable local, state, and federal
26 laws and regulations for the life of the loan or security interest; or

27 (v) periodic or regular monitoring of the borrower's business or
28 financial condition, loan workouts, or other actions that are reasonably necessary
29 for the security holder to adequately maintain the security interest;

30 (19) "primarily to protect a security interest" means, with regard to financial
31 institutions, that the indicia of ownership in the vessel or facility are held for the purpose of

1 securing payment or performance of a financial obligation, including a mortgage, installment sale,
2 trust receipt transaction, assignment, or other financing arrangement; with regard to financial
3 institutions, "primarily to protect a security interest" does not include an ownership interest in
4 property held for investment purposes, or for purposes other than as protection of a security
5 interest.

6 * Sec. 2. AS 46.08.075 is amended by adding new subsections to read:

7 (f) Notwithstanding (a) of this section, if the property subject to the response,
8 containment, removal, or remedial action by the state is owned by a financial institution that is
9 not an owner or operator under AS 46.03.826(8)(B), the state may file a lien against only that
10 property that was subject to the state's response, containment, removal, or remedial action. The
11 lien and the financial institution's obligation to the state for the state's costs of response,
12 containment, removal, and remedial action are satisfied by the payment of the net gain, if any,
13 in the fair market value of the property that has resulted directly from the state's response,
14 containment, removal, or remedial action and that is realized by the financial institution at the
15 time of sale.

16 (g) The lien imposed by (f) of this section is subject to the rights of a purchaser, holder
17 of a security interest, or judgment lien creditor if the interest of the purchaser, holder, or creditor
18 is perfected under applicable law before notice of the lien imposed by (f) of this section is filed
19 in the appropriate recorder's office under (b) of this section. The purchaser, holder of a security
20 interest, or judgment lien creditor shall be afforded the same protections against the lien imposed
21 by (f) of this section as are afforded under state law to a purchaser, holder of a security interest,
22 or judgment lien creditor against a judgment lien that arises out of an unsecured obligation and
23 that arises at the same time the notice of the lien created under (f) of this section is filed.

24 (h) In this section, "financial institution" has the meaning given in AS 46.03.826.



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: SB 154

APPROVED: 

TITLE: Liability for Environmental
Damage/Liens

DATE: February 24, 1992

Committee Substitute for Senate Bill 154¹ (as introduced by Senator Rodey in Senate Judiciary Committee on January 30, 1992) would limit the liability for environmental cleanup costs that might be incurred by lenders with security interests in contaminated property under the present strict liability for hazardous release law. DOT&PF has numerous circumstances where this bill could increase our liability as a potentially responsible party and thus expose the state general and airport revenue funds to expensive claims.

These exposures consist of the following types of circumstances:

- On lands leased to private parties for business purposes where the enterprise incurs a mortgage for business development costs and a release contaminates the property in question.
- On rights-of-way adjacent to private lands developed with borrowed funds where a release contaminates across property boundaries.
- In state harbors where a vessel releases contamination into public waters and/or tidelands.

¹ While the Committee Substitute for this bill was not officially introduced at the previous committee meeting, it was clear from the committee's discussion on January 30, 1992 that Senator Rodey would offer the CS when a quorum was present. Consequently, we have focused our comments on the work draft (7-LS0716\NP Bannister 1/29/92) distributed at that meeting.

For Further Information contact Katy McHugh at 465-3900.

BILL NO: SB 154
TITLE: Liability for Environmental Damage/Liens
DATE: February 24, 1992
PAGE: 2

While concerned for the increased financial risk this bill places on public funds, we are fully cognizant of the problems the current circumstances place on financial lenders. Under current law, if a lender forecloses on a property which secured a loan, and that property has been contaminated, their "deep pocket" can be fully exposed to whatever cleanup costs may arise regardless of any involvement in the decisions or actions which contributed to the problem. Thus the lender's risk on the loan may far exceed the actual loan amount.

We believe that relief for the banking and investment industry needs to be balanced with the added risk such relief places on other public and private parties. In some cases the additional risk is simply passed on to the municipal or state governments who may foreclose on the property for unpaid tax or lease payments. Thus it is important that limited liability only apply when lenders are in fact "innocent" having neither participated in any decision leading to the release nor having failed to inform authorities when they have knowledge of wrongdoing which has or could result in a release.

We would endorse a bill which contained the following basic provisions:

- Bank and financial institutions could invoke limited liability (essentially the remaining balance of the loan) when:
 - 1) they do not participate in or direct the decisions, actions or inaction which caused the hazardous release or threatened release, and;
 - 2) they do not fail to promptly inform appropriate authorities when they have knowledge of the borrower's violation of any and all laws governing the use, storage, handling and disposal of materials which can cause contamination when released.
- Once invoked, such limited liability would require that they divest themselves of all further property rights in the original investment.
- The bill should not affect rights and obligations of parties, including financial institutions, under leases or other contracts.

We do not believe the language found in Section 2 (p.2, line 29) adequately protects other parties. The lender could actively participate in a decision which leads to the release or threatened release in a single business meeting. Thus we believe the language in this section should be changed by removing the word "continual": "...if the institution does not exercise actual, and direct ~~and continual~~ managerial control..."

We further recommend that the lender be held strictly liable for failure to act on the knowledge of any activity that relates to a release or threatened release. It is in the

BILL NO: SB 154
TITLE: Liability for Environmental Damage/Liens
DATE: February 24, 1992
PAGE: 3

public interest to prevent releases, and if they occur to take timely action. Under the current language of this bill, it appears that lenders could receive immunity even though they were knowledgeable about improper actions or actual releases, thus greatly aggravating the problem.

Finally, we believe it important that the construction of this statute not impinge upon the contractual right of parties. We would recommend that the bill be amended to modify AS 46.03.828 as follows:

Sec 46.03.828. Other rights of action not affected. The provisions of AS 46.03.822 - AS 46.03.828 do not abridge or alter a right of action or remedy under a contract or lease, another statute, in equity, or at common law.

We have not prepared a fiscal note for this bill because the effects are highly speculative and incalculable. However, if passed in it's current form there would undoubtedly be some greater financial liability to which the state becomes exposed and this liability would have the effect of causing the involuntary expenditure of state funds to an unknown amount.

National Bank of Alaska



Corporate Headquarters P.O. Box 100600 Anchorage, Alaska 99510 0800 (907) 278-1132

January 28, 1992

Senator Patrick Rodey
Alaska State Senate
P. O. Box Z (MS3100)
Juneau, Alaska 99811

Dear Senator Rodey:

I want to ask you for your support of Senate Bill #154 which deals with issues of environmental liability to lenders. Passage of the Bill will facilitate small business commerce in the State of Alaska.

We all wish to live in a clean and healthy environment; however, we have become concerned over attempts to hold lender's liable for the cost of cleaning up a borrower's property.

Lenders already have adequate incentives to encourage their borrowers to engage in environmentally safe practices but lenders are not equipped to police the environmental activities of their borrowers. Imposition of unlimited liability on lenders can be expected to restrict credit to any borrowers where there is environmental risk. A reduction in the availability of credit threatens businesses and their ability to contribute to cleanup of the environment and thereby also frustrates environmental interests.

Banks are now examining property carefully before they foreclose and sometimes walk away from their collateral in order to avoid liability. I have been designated the banks' "Environmental Risk Officer". As such, I review loan requests to assess the level of risk to the bank.

Imposing liability for environmental cleanup costs on lenders is likely to do little to prevent pollution, but may interfere with the availability of credit to even prudent businesses that use hazardous substances such as fish processors, all maritime businesses, trucking, car dealerships, dry cleaners, aviation and service stations to name just a few.

Senator Patrick Rodey
January 28, 1992
Page 2


We recently declined credit to a gift shop in Valdez, not because they used hazardous substances, but because they were next door to a service station. In rural Alaska most communities rely exclusively on petroleum for heat and transportation and to operate all forms of equipment essential to their livelihoods. Existing State environmental laws were modeled after what others have done in the lower 48 and do not consider problems unique to Alaska.

Meanwhile, other states continue to pass legislation similar to Senate Bill #154. In 1991 alone Arizona, Illinois, Indiana, Maine, Maryland, Minnesota, Missouri, Hawaii, Nebraska, Oregon, Texas, West Virginia, Indiana, Montana and New Mexico all passed such legislation.

Again I ask you for your support of Senate Bill #154.

Sincerely,

NATIONAL BANK OF ALASKA


Gerard Diemer
Assistant Vice President
Commercial Credit Services

GD:ld

National Bank of Alaska



Corporate Headquarters P.O. Box 100621 Anchorage, Alaska 99510-0600 (907) 276-1132

January 27, 1992

Senator Rick Halford
Alaska State Senate
P.O. Box Z (MS3100)
Juneau, AK 99811

Dear Senator Halford:

The State Banking Association is supporting Senate Bill #154. The reason for our support for this legislation is to facilitate small business commerce in the state of Alaska. That is, we must be able to make loans to small business without the constant threat of being required to cleanup environmental problems in which we were unaware nor did we contribute to the environmental problem. We believe in a strong due diligence by the state to protect us from environmental hazards.

We believe in the concept of a clean environment and that Alaska is in much better shape than much of the U.S. We do become extremely skittish when a state leasing official encourages us to make loans on its property and tells us that due to our financial resources, they would require us to cleanup any environmental problems regardless whether the problem was created by the state itself, an adjacent property owner, or a previous ground lessee.

Borrowing in the future will become more difficult if the state anticipates that we pay for everyone's environmental problems. We are encountering more and more cases whereby the marginal environmental risk causes us to decline to make the loan because of unknown future problems which we might encounter. We encourage you to vote for Senate Bill #154 which will go a long way to encourage lenders to lend on real estate and to small business.

Sincerely yours,

A handwritten signature in cursive script that reads "Jan Sieberts".

Jan Sieberts
Senior Vice President

sr

Support Letters



DENALI STATE BANK

119 N. Cushman Street • (807) 466-1400 • FAX (807) 466-2140 • P.O. Box 74568 • Fairbanks, Alaska 99707-4568

January 27, 1992

Senator Pat Rodey
c/o Alaska State Legislature

FAX # 463-3144

RE: CS for Senate Bill #154 (Resources)

Dear Senator Rodey:

As current President of the Alaska Bankers Association, I wish to thank you for sponsoring the above referenced bill. Lender Responsibility as a Potentially Responsible Party (PRP) came about as a result of court decisions, not as the intent of original legislation concerning these matters. Sponsors of this legislation in the United State Congress were shocked to find that courts were interpreting the legislation in a manner that made lien holders or fiduciaries responsible for environmental cleanup. In several cases the court held that by virtue of having a security interest in real estate, the financial institution as mortgagee was liable as a PRP for the entire cost of environmental cleanup. In June of 1991, the Federal Environmental Protection Agency (EPA) offered proposed changes to existing EPA Regulations for public comment and later in 1991, adopted these proposed changes. The new regulations extended relief to lien holders and fiduciaries as PRPs and now hold financial institutions liable only if they were actually managing the business or holding title when the environmental contamination occurred.

It is imperative that the State of Alaska closely follow new EPA regulations and SB154 accomplishes that purpose. Financial institution lenders are now currently reviewing all new real estate loans much more closely and performing various phases of environmental assessments on properties to limit lending on properties containing environmental hazards. However, this does not cover the problem of contaminated properties previously pledged as collateral or properties that may become contaminated after the closing of the loan. Banks have very little control over either of these two situations. As an industry, I believe that we have accepted the fact that if a property becomes contaminated and requires cleanup, the financial institution may have to "walk away" from it's loan and suffer a financial loss up to the outstanding balance of the loan. However, to remain as sound financial institutions, we cannot expose ourself to unknown and unlimited liability assessed against banks as lien holders or fiduciaries as these amounts become the discretion of the EPA or DEC and obviously may be far in excess of the bank's capital. For a bank with \$10,000,000 in capital to fail simply because they become a PRP in a \$20,000,000 environmental cleanup as mortgagee and thus subject to the "Deep Pocket" syndrome does not make sense at all.

January 27, 1992
Senator Pat Rodey
Page 2

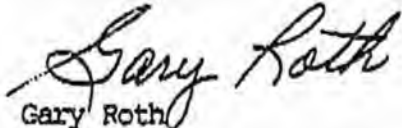
If allowed to continue in its present form, environmental liability simply becomes a consumer issue. Lending institutions will have to back away from many financially sound real estate loans because of our increased concern for lender liability. Thus, potential borrowers become the ultimate victim in this process because of their inability to achieve financing dollars. This affects not only financial institutions, but the Alaska Industrial Development and Export Authority, U.S. Small Business Administration, and other guarantors and lenders of credit for real estate loans and development. The potential lack of access to these funds will have a negative impact on the overall Alaskan economy.

Just as in everything else, common sense should prevail in this matter. I believe that the financial institutions have previously been listed as PRPs simply because of their financial capacity through which the DEC and EPA felt that they could recover cleanup costs. However, this is putting the financial industry at risk.

Most other states have adopted regulations such as SB154. I ask for your continued support and the support of your colleagues in doing so for the State of Alaska.

I will be happy to address any questions on this matter at any time. Thank you.

Sincerely yours,



Gary Roth
President and Chief Executive Officer

GR/bf



2

MAIN OFFICE:
3500 EIDE STREET
ANCHORAGE, AK 99503
563-3766

DIMOND BRANCH:
300 E. DIMOND BLVD.
ANCHORAGE, AK 99516
334-5144

SOLDOTNA BRANCH:
131 WAREHOUSE
SOLDOTNA, AK 99689
262-7000

EAGLE RIVER BRANCH:
16515 CENTERFIELD DRIVE
EAGLE RIVER, AK 99577
694-5444

CAMPUS BRANCH:
2801 PROVIDENCE DRIVE
ANCHORAGE, AK 99508
561-3151

April 26, 1991

State Senator Rick Halford
Resource Committee
P.O. Box V
Juneau, Alaska 99811

*referred to
S. Judiciary
5/8*

Dear Senator Halford:

I am writing to express my Credit Union's support of SB 154 sponsored by Senator Rodey. The bill will limit the liability to the lender for the cost of cleaning contaminated properties acquired through foreclosure.

Frontier Alaska State Credit Union is a source of non-investor real estate lending to its 24,000 member/owners. Due to the risk associated with contaminated property, we have had to curtail some types of real estate lending, most notably raw land loans. We also have had to incur additional expense for inspections, certifications and other expenses associated with holding foreclosed properties. Those additional expenses are passed on to our member/owners in the form of increased fees and/or higher loan rates. We have also found that the property can become contaminated during the term of the loan without the Credit Union's knowledge.

Because of the above mentioned risks, combined with the regulators inherent fear of real estate loans and associated losses, many Alaskans cannot find competitive real estate loans when they need them. Passage of this bill will help make competitive real estate loans available to more Alaskans. It will also aid the economic recovery currently taking place in the state. The Board of Directors and Management at Frontier urge swift passage of SB 154, so that affordable real estate loans are available to all qualified Alaskans.

Thank you for your time and attention to this matter. If you have any questions please don't hesitate to contact me.

Sincerely,

Leslie Ellis
Leslie Ellis
President



ALASKA CREDIT UNION LEAGUE

SUITE 650, 4000 CREDIT UNION DRIVE
ANCHORAGE, ALASKA 99503-6647
(907) 562-1255

Alaska Credit Union League Statement in Support of CS for SB 154

There are 18 credit unions in Alaska (16 federally chartered, 2 state chartered) and all are members of the Alaska Credit Union League, a trade association dedicated to protecting and serving the interests of Alaska's credit unions and the members who own them.

Some 338,000 Alaskans are currently members of these 18 credit unions. Obviously, credit unions are considered by Alaskans to be among the safest financial institutions in the marketplace.

However, in today's economic climate, the financial services industry and its regulators are very concerned about real estate loan losses. From a lender's standpoint, the factor which creates the greatest potential for loss is not market risk or credit risk but the risk associated with environmental contamination. Under state law, a lender can be held strictly liable for the cost of clean up of contaminated properties- regardless of who contaminated the property. The current owner (which a lender becomes through the foreclosure process) is financially responsible for clean up and damages.

There is no way to guarantee that during the term of the loan the property value will not be impaired by contamination. If the individual owner is not financially capable of cleaning up a property, the state can file a lien superior to a pre-existing lender's lien. This situation has curtailed and eliminated sources of credit for real estate lending (this includes business loans secured by real estate, home equity loans and loans for the improvement and purchase of homes).

In fact, Alaska USA Federal Credit Union discontinued granting real estate loans in October of 1989 because of losses and potential losses incurred or threatened under the strict liability provisions of state law. Prior to that time, the credit union granted \$50 million in real estate loans each year. It is the position of the Alaska Credit Union League that the availability of credit for real estate related purposes is an essential part of the Alaska economy and that without the minimal changes proposed by CS for SB 154(Res) economic development will be adversely affected.





ALASKA CREDIT UNION LEAGUE

SUITE 650, 4000 CREDIT UNION DRIVE
ANCHORAGE, ALASKA 99503-6647
(907) 562-1255

Currently, prudent lending requires not only the traditional appraisal, title insurance, etc. but also site assessment for the detection of environmental contamination. If through the site assessment contamination is discovered, then the law requires it to be reported. If the contaminated real estate is ever to have economic value, it must be cleaned up. It makes good environmental sense to encourage lending because the lender as a third party must do site assessments and has great incentive (loss of loan and collateral) to do thorough assessments to identify contaminated or potentially contaminated properties that might otherwise go undetected and unreported for years.

The changes to existing law proposed by CS of SB 154 (Res) will encourage the more active involvement of financial institutions in real estate lending by limiting (not eliminating) liability of financial institutions that have acquired contaminated facilities or vessels through foreclosure or trust agreements. We believe it is in the best interest of the environment, the economy, and the people of the State of Alaska that SB 154 become law this session.



Box 670232
CHUGIAK
AK 99569
15 JAN 1992

SEN. RICK HALFORD
P.O. BOX V
STATE CAPITOL
JUNEAU
AK 99801

DEAR SEN. HALFORD.

THANKS FOR YOUR LETTER OF CONCERN AND OFFER OF HELP
OF 20 DEC. 1991 REGARDING THE BUILDING I RENT TO HOUSE
ALZHEIMER PATIENTS.

ACCORDING TO THE LETTER SENT BY THE FIRE MARSHAL, MR. OXFORD, HE CAN NOT ISSUE A WRIVER I REQUESTED. I CONTACTED HIM IN SEPTEMBER AND ASKED IF HE WOULD WRIVER THE REGULATION UNTIL APRIL IF I INSTALLED AN EGRESS WINDOW IN THE LARGEST ROOM THEN AND THE OTHER ROOMS BY 1 APRIL. HE TOLD ME TO INSTALL THE ONE WINDOW AND WRITE TO HIM. I DID BUT HE DECLINED TO ISSUE THE WRIVER. YOUR STAFF HAS COPIES OF THIS CORRESPONDENCE

THE ORGANIZATION THAT OPERATES THE CARE CENTER, "THE SOURCE", HAS BEEN ISSUED A LICENSE BUT WAS TOLD THAT, "IF THERE IS A FIRE HERE, SOMEONE IS GOING TO SAIL."

FOR ME TO INSTALL THESE WINDOWS WOULD BE A FINANCIAL AND PHYSICAL DRAIN. MY WIFE AND I WORKED TWO MONTHS LAST SUMMER AND SPENT \$12,000 RENOVATING THE BUILDING. IN SEPT I RETIRED EARLY BECAUSE OF MY HEALTH. I HAVE TALKED TO THE DIRECTOR OF "THE SOURCE" AND WE HAVE

AGREED TO RUN THE RISK OF VAIL TIME AND I
WILL INSTALL THE WINDOWS WHEN THE WEATHER WARMS
AND FINANCES IMPROVE. FOUR OF THE WINDOWS WOULD
COST ABOUT \$500 + EACH. A FIFTH WINDOW, IF THE
FIRE MARSHAL INSISTS IS BELOW GRADE AND WOULD
PROBABLY COST BETTER THAN \$2,500.

THIS BUILDING WAS OPERATED AS A GROUP FOSTER HOME
FROM 1968 TO 1972 AND AS A CHILD DAY CARE CENTER
FROM 1984 TO 1991. THERE WERE NEVER ANY PROBLEMS
BEFORE.

THANKS FOR YOUR CONCERN

SINCERELY

R. C. Cromwell

R. C. CROMWELL, JR.

West's Federal Forms

Actions by United States or officers thereof, see §§ 1069 to 1072.
 Fine, see § 7535.

Jurisdiction and venue in district courts, matters pertaining to, see § 1000 et seq.

Library References

Health and Environment 25.5(5, 10), 25.6(3, 9), 25.7(3, 24), C.J.S. Health and Environment §§ 91 et seq., 103 to 116, 131, 139, 140 et seq., 150 et seq.

Notes of Decisions

- Complaint
 - Generally 4
 - Necessary allegations 5
- Construction with Executive Order 1
- Crossing of state lines 2
- Persons liable 3

disposal site. U. S. v. Reilly Tar & Chemical Corp., D.C.Minn.1982, 546 F.Supp. 1100.

This section conferring upon Environmental Protection Agency the authority to seek emergency injunctive relief when presented with evidence of an imminent and substantial endangerment to the public health could not be used to confer liability on nonnegligent past off-site generators of hazardous wastes. U. S. v. Wade, D.C.Pa.1982, 546 F.Supp. 785.

1. Construction with Executive Order

Section 3(b) of Executive Order, set out as a note under section 9615 of this title, delegating to Administrator of Environmental Protection Agency functions vested in President by this section, providing that President's authority under this chapter to require Attorney General to commence litigation is retained by President, does not require specific presidential authorization to commence litigation under this section but merely defines roles of Administrator and Attorney General in bringing litigation. U. S. v. Reilly Tar & Chemical Corp., D.C.Minn.1982, 546 F.Supp. 1100.

4. Complaint—Generally

Complaints alleging that many of chemicals found in wastes disposed of by allegedly offending party were carcinogens and toxic, that such wastes were spilled, leaked and discharged directly into ground, that they there entered and continued to enter groundwater, that six wells had already been closed, and that contaminants would continue to move into drinking water for metropolitan area unless preventative measures were taken were sufficient to establish imminent and substantial endangerment to public health, welfare or environment so as to state claim under this section. U. S. v. Reilly Tar & Chemical Corp., D.C.Minn.1982, 546 F.Supp. 1100.

2. Crossing of state lines

This section is not limited to application only when hazardous wastes cross state lines; Congress did not intend this section to incorporate element of interstate effect required in federal common law nuisance actions. U. S. v. Reilly Tar & Chemical Corp., D.C.Minn. 1982, 546 F.Supp. 1100.

5. — Necessary allegations

Claim under this section need not contain allegation of specific presidential authorization for suit. U. S. v. Reilly Tar & Chemical Corp., D.C.Minn.1982, 546 F.Supp. 1100.

3. Persons liable

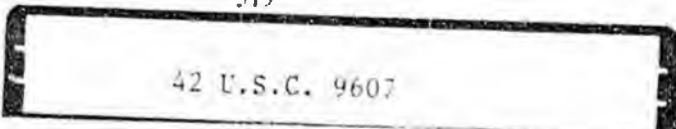
This section can, in appropriate circumstances, be invoked against prior owner of

§ 9607. Liability

(a) Covered persons; scope

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

- (1) the owner and operator of a vessel (otherwise subject to the jurisdiction of the United States) or a facility,



(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan; and

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release.

(b) Defenses

There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(4) any combination of the foregoing paragraphs.

(c) Determination of amounts

(1) Except as provided in paragraph (2) of this subsection, the liability under this section of an owner or operator or other responsible person for each release of a hazardous substance or incident involving release of a hazardous substance shall not exceed—

(A) for any vessel which carries any hazardous substance as cargo or residue, \$300 per gross ton, or \$5,000,000, whichever is greater;

(B) for any other vessel, \$300 per gross ton, or \$500,000, whichever is greater;

(C) for any motor vehicle, aircraft, pipeline (as defined in the Hazardous Liquid Pipeline Safety Act of 1979 [49 U.S.C.A. § 2001 et seq.]), or rolling stock, \$50,000,000 or such lesser amount as the President shall establish by regulation, but in no event less than \$5,000,000 (or, for releases of hazardous substances as defined in section 9601(14)(A) of this title into the navigable waters, \$8,000,000). Such regulations shall take into account the size, type, location, storage, and handling capacity and other matters relating to the likelihood of release in each such class and to the economic impact of such limits on each such class; or

(D) for any facility other than those specified in subparagraph (C) of this paragraph, the total of all costs of response plus \$50,000,000 for any damages under this subchapter.

(2) Notwithstanding the limitations in paragraph (1) of this subsection, the liability of an owner or operator or other responsible person under this section shall be the full and total costs of response and damages, if (A)(i) the release or threat of release of a hazardous substance was the result of willful misconduct or willful negligence within the privity or knowledge of such person, or (ii) the primary cause of the release was a violation (within the privity or knowledge of such person) of applicable safety, construction, or operating standards or regulations; or (B) such person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with response activities under the national contingency plan with respect to regulated carriers subject to the provisions of Title 49 or vessels subject to the provisions of Title 33 or 46, subparagraph (A)(ii) of this paragraph shall be deemed to refer to Federal standards or regulations.

(3) If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 9604 or 9606 of this title, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action. The President is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to any costs recovered from such person pursuant to section

9612(c) of this title. Any moneys received by the United States pursuant to this subsection shall be deposited in the Fund.

(d) Activities pursuant to national contingency plan

No person shall be liable under this subchapter for damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the national contingency plan or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. This subsection shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(e) Indemnification, hold harmless, etc., agreements or conveyances; subrogation rights

(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this subchapter, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(f) Actions involving natural resources; maintenance, scope, etc.

In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) of this section liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State: *Provided, however,* That no liability to the United States or State shall be imposed under subparagraph (C) of subsection (a) of this section, where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources. There shall be

no recovery under the authority of subparagraph (C) of subsection (a) of this section where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before December 11, 1980.

(g) Applicability to Federal Government branches

Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under this section.

(h) Owner or operator of vessel

The owner or operator of a vessel shall be liable in accordance with this section and as provided under section 9614 of this title notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff).

(i) Application of registered pesticide product

No person (including the United States or any State) may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C.A. § 136 et seq.]. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

(j) Obligations or liability pursuant to federally permitted release

Recovery by any person (including the United States or any State) for response costs or damages resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance. In addition, costs of response incurred by the Federal Government in connection with a discharge specified in section 9601(10)(B) or (C) of this title shall be recoverable in an action brought under section 1319(b) of Title 33.

(k) Transfer to, and assumption by, Post-closure Liability Fund of liability of owner or operator of hazardous waste disposal facility in receipt of permit under applicable solid waste disposal law; time, criteria applicable, procedures, etc.; monitoring costs; reports

(l) The liability established by this section or any other law for the owner or operator of a hazardous waste disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act [42 U.S.C.A. § 6921

et seq.], shall be transferred to and assumed by the Post-closure Liability Fund established by section 9641 of this title when—

(A) such facility and the owner and operator thereof has complied with the requirements of subtitle C of the Solid Waste Disposal Act [42 U.S.C.A. § 6921 et seq.] and regulations issued thereunder, which may affect the performance of such facility after closure; and

(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur.

(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notifies the Administrator of the Environmental Protection Agency (and the State where it has an authorized program under section 3006(b) of the Solid Waste Disposal Act [42 U.S.C.A. § 6926(b)]) that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency or such State determines that any such facility has not complied with all the conditions imposed by this subsection or that insufficient information has been provided to demonstrate such compliance, the Administrator or such State shall so notify the owner and operator of such facility and the administrator of the Fund established by section 9641 of this title, and the owner and operator of such facility shall continue to be liable with respect to such facility under this section and other law until such time as the Administrator and such State determines that such facility has complied with all conditions imposed by this subsection. A determination by the Administrator or such State that a facility has not complied with all conditions imposed by this subsection or that insufficient information has been supplied to demonstrate compliance, shall be a final administrative action for purposes of judicial review. A request for additional information shall state in specific terms the data required.

(3) In addition to the assumption of liability of owners and operators under paragraph (1) of this subsection, the Post-closure Liability Fund established by section 9641 of this title may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period of monitoring required by regulations under subtitle C of the Solid Waste Disposal Act [42 U.S.C.A. § 6921 et seq.] for hazardous waste disposal facilities meeting the conditions of paragraph (1) of this subsection.

(4)(A) Not later than one year after December 11, 1980, the Secretary of the Treasury shall conduct a study and shall submit a report thereon to the Congress on the feasibility of establishing or qualifying an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. Such study shall include a specification of adequate and realistic minimum standards to assure that any such privately placed insurance will carry out the purposes of this subsection in a reliable, enforceable, and practical manner. Such a

study shall include an examination of the public and private incentives, programs, and actions necessary to make privately placed insurance a practical and effective option to the financing system for the Post-closure Liability Fund provided in subchapter II of this chapter.

(B) Not later than eighteen months after December 11, 1980, and after a public hearing, the President shall by rule determine whether or not it is feasible to establish or qualify an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. If the President determines the establishment or qualification of such a system would be infeasible, he shall promptly publish an explanation of the reasons for such a determination. If the President determines the establishment or qualification of such a system would be feasible, he shall promptly publish notice of such determination. Not later than six months after an affirmative determination under the preceding sentence and after a public hearing, the President shall by rule promulgate adequate and realistic minimum standards which must be met by any such privately placed insurance, taking into account the purposes of this chapter and this subsection. Such rules shall also specify reasonably expeditious procedures by which privately placed insurance plans can qualify as meeting such minimum standards.

(C) In the event any privately placed insurance plan qualifies under subparagraph (B), any person enrolled in, and complying with the terms of, such plan shall be excluded from the provisions of paragraphs (1), (2), and (3) of this subsection and exempt from the requirements to pay any tax or fee to the Post-closure Liability Fund under subchapter II of this chapter.

(D) The President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph.

(Pub.L. 96-510, Title I, § 107, Dec. 11, 1980, 94 Stat. 2781.)

Historical Note

References in Text. The Hazardous Liquid Pipeline Safety Act of 1979, referred to in subsec. (c)(1), is Title II of Pub.L. 96-129, Nov. 30, 1979, 93 Stat. 1003, which is classified principally to chapter 29 (section 2001 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 49 and Tables volume.

This chapter, referred to in subsecs. (g) and (k)(4)(B), was in the original, "this Act", meaning Pub.L. 96-510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables volume.

Act of March 3, 1851 (46 U.S.C. 183f), referred to in subsec. (h), is Act Mar. 3, 1851, c. 43, 9 Stat. 635, which was incorporated into the Revised Statutes as R.S. §§ 4282 to

4287 and 4289, and is classified to sections 182, 183, and 184 to 188 of Title 46, Shipping.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (j), is Act June 25, 1947, c. 125, as amended generally by Pub.L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (section 136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables volume.

The Solid Waste Disposal Act, referred to in subsec. (k)(1) and (3), is Title II of Pub.L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub.L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter II (section 6921 et seq.) of chapter 52 of this title. For complete classification of this Act to the Code, see

Short Title note set out under section 6901 of this title and Tables volume.

Subchapter II of this chapter, referred to in subsec. (k)(4)(A) and (C), was in the original, "Title II of this Act", meaning Title II of Pub.L. 96-510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4651, 4662, 4681, and 4682 of Title 26, Internal Revenue Code. For complete classification of Title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables volume.

Delegation of Functions. Functions of the President under subsec. (c)(1)(C) of this section delegated to the Secretary of Transportation, see section 4(a) of Ex.Ord. No. 12316, Aug. 14, 1981, 46 F.R. 42233, set out as a note under section 9615 of this title.

Functions of the President under subsec. (c)(3) of this section delegated to the Secretary of the Department in which the Coast Guard is operating, with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors, with authority to redelegate, see sections 4(b) and 8(f) of Ex.Ord. No. 12316, set out as a note under section 9615 of this title.

Functions of the President under subsec. (c)(3) of this title, subject to certain specific delegations, delegated to the Administrator of the Environmental Protection Agency, with authority to redelegate, see sections 4(c) and 8(f) of Ex.Ord. No. 12316, set out as a note under section 9615 of this title.

Functions of the President under subsec. (f) of this section delegated to each of the Federal trustees for natural resources, as designated by section 1(d) of Ex.Ord. No. 12316 (the Secretaries of Defense, Interior, Agriculture, and Commerce) for resources under their trusteeship, see section 4(d) of Ex.Ord. No. 12316, set out as a note under section 9615 of this title.

Functions of the President under subsec. (k)(4)(B) of this section delegated to the Secretary of the Treasury, with the Administrator of the Environmental Protection Agency to provide such technical information and assistance as the Administrator has available, see section 5(a) of Ex.Ord. No. 12316, set out as a note under section 9615 of this title.

Legislative History. For legislative history and purpose of Pub.L. 96-510, see 1980 U.S. Code Cong. and Adm. News, p. 6119.

Library References

Health and Environment § 25.7(23).

C.J.S. Health and Environment §§ 113, 150

Notes of Decisions

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3. Prerequisites for maintaining action

State's claim for natural resources damages was not premature on ground that regulations required by section 9651 of this title for assessment of natural resources damages resulting from release of hazardous substances had not been promulgated and that administrative procedures called for by section 9611 of this title with respect to assessment of natural resources damages had not yet been established. *U. S. v. Reilly Tar & Chemical Corp.*, D.C. Minn. 1982, 546 F.Supp. 1100.

Congress did not intend final adoption of revisions to national contingency plan to be prerequisite for bringing suit to recover response costs under this section. *Id.*

1. Construction with other laws

Liability for response costs under this section is independent of authorized uses of response fund under section 9611 of this title and of cooperative agreement called for by section 9604(c)(3) of this title which prohibits President from taking "remedial" actions unless cooperative agreement between President and affected state has been entered into. *U. S. v. Reilly Tar & Chemical Corp.*, D.C. Minn. 1982, 546 F.Supp. 1100.

2. Strict liability

Legislative history clearly establishes Congress' understanding that it was incorporating a standard of strict liability under this chapter. *City of Philadelphia v. Stepan Chemical Co.*, D.C. Pa. 1982, 544 F.Supp. 1135.

4. Removal of actions

Complaint which alleged that hazardous waste disposal facility was a nuisance and which complained of "stinking, obnoxious, nauseating, repugnant, burning chemical fumes and odors," none of which are specifically included within the definition of hazardous substances contained in this chapter, was

not brought under this chapter and thus could not be removed to federal court on the basis of federal question jurisdiction. *McCastle v. Rollins Environmental Services*, D.C. La. 1981, 514 F.Supp. 936.

5. Defenses

Liability for specified response costs under this section is absolute, subject only to defenses of acts of God, acts of war, and certain acts or omissions of third parties. *U. S. v. Reilly Tar & Chemical Corp.*, D.C. Minn. 1982, 546 F.Supp. 1100.

Fact that city was owner of landfill at which hazardous wastes were illegally dumped and might have been liable to federal or state governments had those entities commenced the cleanup did not preclude city from maintaining action under this chapter against the generators of the hazardous waste, where city was not operating a hazardous waste disposal facility on the premises, did not voluntarily permit the placement of hazardous substance thereon, and had undertaken to clean up the ensuing damage. *City of Philadelphia v. Stepan Chemical Co.*, D.C. Pa. 1982, 544 F.Supp. 1135.

§ 9608. Financial responsibility

(a) Establishment and maintenance by owner or operator of vessel; amount; failure to obtain certification of compliance

(1) The owner or operator of each vessel (except a nonself-propelled barge that does not carry hazardous substances as cargo) over three hundred gross tons that uses any port or place in the United States or the navigable waters or any offshore facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility of \$300 per gross ton (or for a vessel carrying hazardous substances as cargo, or \$5,000,000, whichever is greater). Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 91 of Title 46 of any vessel subject to this subsection that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary of Transportation, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(b) Establishment and maintenance by owner or operator of production etc., facilities; amount; adjustment; consolidated form of responsibility; coverage of motor carriers

(1) Beginning not earlier than five years after December 11, 1980, the President shall promulgate requirements (for facilities in addition to those

