

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7565 SENATE LABOR & COMMERCE

EXAMPLES OF RESPONSE ACTION CONTRACTOR (RAC) LIABILITY
UNDER CURRENT LAW AND PROPOSED BILL
SENATE OIL AND GAS COMMITTEE, APRIL 11, 1991

<u>Type of Incident</u>	<u>Example of Damage</u>	<u>Standard for Liability</u>		<u>Who Pays for Damage</u>	
		<u>Current Law</u>	<u>Proposed Law</u>	<u>Current Law</u>	<u>Proposed Law</u>
Major RAC (Alyeska; CISPRI; Clean Seas) substantially deviates from C-plan by not having proper equipment; hatchery oiled.	Hatchery ruined	Simple negligence (Possibly strict liability).	Simple negligence (RAC not immune if substantially deviates from C-plan).	Tanker owner; Owner of oil; RAC	Tanker owner; Owner of oil; RAC
RAC accidentally loses boom in high seas (assume there is some negligence).	Hatchery ruined	Simple negligence	Gross negligence	Tanker owner; Owner of oil; RAC	Tanker owner; Owner of oil.
RAC, authorized under C-plan to use dispersants in Area A but not B, decides to use in Area B anyway.	Natural resources damage	Simple negligence (Possibly strict liability)	Simple negligence (RAC not immune if substantially deviates from C-plan)	Tanker owner; Owner of oil; RAC	Tanker owner; Owner of oil; RAC
Above facts, but dispersant accidentally blows into Area B.	Natural resources damage	Simple negligence	Gross negligence	Tanker owner; Owner of oil; Possibly RAC	Tanker owner; Owner of oil.
Above facts, on-scene coordinator orders RAC to use dispersant in Area B.	Natural resources damage	Simple negligence (Possibly strict liability)	Gross negligence (immunity not lost if orders of OSC).	Tanker owner; Owner of oil; Possibly RAC	Tanker owner; Owner of oil.

<u>Type of Incident</u>	<u>Example of Damage</u>	<u>Standard for Liability</u>		<u>Who Pays for Damage</u>	
		<u>Current Law</u>	<u>Proposed Law</u>	<u>Current Law</u>	<u>Proposed Law</u>
Volunteer mistakenly turns off power in bird drying facility.	Birds die	Simple negligence	Gross negligence	Tanker owner; Owner of oil; Volunteer.	Tanker owner; Owner of oil.
RAC employee rams fishing vessel.	Fishing vessel sinks	Simple negligence	Simple negligence (RAC not immune when property damage not caused by oil.)	RAC Spiller/owner if "foreseeable consequence" of spill/response.	RAC Spiller/owner if "foreseeable consequence" of spill/response.
Skipper of fishing boat (above) goes down with boat.	Skipper killed	Simple negligence	Simple negligence (RAC not immune if personal injury or death)	RAC Spiller/owner if "foreseeable consequence" of spill/response.	RAC Spiller/owner if "foreseeable consequence" of spill/response.

CAVEAT: This table is intended only to give a sense of how the liability provisions of current law and the proposed law would probably work in certain circumstances. Actual litigation in many of the above examples would depend on the particular facts, and might include legal arguments not dealt with here.

CS FOR HOUSE BILL NO. 196 (RESOURCES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 3/13/91
Referred: Judiciary, Finance

Sponsor(s): HOUSE SPECIAL COMMITTEE ON OIL AND GAS

A BILL

FOR AN ACT ENTITLED

1 "An Act limiting civil liability for acts or omissions of an oil spill response action contractor
2 and establishing strict liability on responsible parties for certain acts or omissions of a
3 response action contractor; amending the definitions of 'response action' and 'response
4 action contractor'; and providing for an effective date."

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

6

7

8 *Sec. 1. AS 46.03.822(a) is amended to read:

9 (a) Notwithstanding any other provision or rule of law and subject only to the
10 defenses set out in (b) of this section and the exception set out in (i) of this section, the
11 following persons are strictly liable, jointly and severally, for damages [TO PERSONS OR
12 PROPERTY, WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE

1 NATURAL RESOURCES OF THE STATE OR A MUNICIPALITY,] and for the costs
2 of response, containment, removal, or remedial action incurred by the state or a
3 municipality, resulting from an unpermitted release of a hazardous substance or, with respect
4 to response costs, the substantial threat of an unpermitted release of a hazardous substance:

5 (1) the owner of, and the persons having control over, the hazardous
6 substance at the time of the release or threatened release; this paragraph does not apply to
7 a consumer product in consumer use;

8 (2) the owner and the operator of a vessel or facility, from which there is
9 a release, or a threatened release that causes the incurrence of response costs, of a
10 hazardous substance;

11 (3) any person who at the time of disposal of any hazardous substance
12 owned or operated any facility or vessel at which the hazardous substances were disposed
13 of, from which there is a release, or a threatened release that causes the incurrence of
14 response costs, of a hazardous substance;

15 (4) any person who by contract, agreement, or otherwise arranged for
16 disposal or treatment, or arranged with a transporter for transport for disposal or treatment,
17 of hazardous substances owned or possessed by the person, other than domestic sewage, or
18 by any other party or entity, at any facility or vessel owned or operated by another party or
19 entity and containing hazardous substances, from which there is a release, or a threatened
20 release that causes the incurrence of response costs, of a hazardous substance;

1 (5) any person who accepts or accepted any hazardous substances, other
2 than refined oil, for transport to disposal or treatment facilities, vessels or sites selected by
3 the person, from which there is a release, or a threatened release that causes the incurrence
4 of response costs, of a hazardous substance.

5 *Sec. 2. AS 46.03.822 is amended by adding a new subsection to read:

6 (k) In this section, "damages" includes damage to persons or to public or private
7 property, damage to the natural resources of the state or a municipality, and damage caused
8 by acts or omissions of a response action contractor for which the response action contractor
9 is not liable under AS 46.03.823 or 46.03.825.

10 *Sec. 3. AS 46.03.823(a) is amended to read:

11 (a) A person who is a response action contractor with respect to a release or
12 threatened release of a hazardous substance other than oil whose acts or omissions are not
13 contrary to a response plan or order by a state or federal agency having jurisdiction over the
14 release or threatened release is not civilly liable for injuries, costs, damages, expenses, or
15 other liability that results from the release or threatened release unless the release or
16 threatened release is caused by an act or omission of the response action contractor that is
17 negligent or grossly negligent or constitutes intentional misconduct. To show negligence by
18 a response action contractor, a claimant must show that the acts or omissions of the
19 contractor under the response action contract were not in accordance with generally
20 accepted professional standards and practices at the time the response action services were
21 performed.

1 *Sec. 4. AS 46.03 is amended by adding a new section to read:

2 Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person
3 who is a response action contractor with respect to a release or threatened release of oil
4 whose act or omission is not contrary to an order of the federal or state on-scene
5 coordinator is not civilly liable for injuries, costs, damages, expenses, or other liability that
6 results from the release or threatened release, or from the response action contractor's act
7 or omission in response to the release or threatened release, unless the person bringing a
8 claim against the response action contractor proves by a preponderance of the evidence that

9 (1) the response action contractor would have been liable for the release
10 or threatened release under AS 46.08.822 even if that contractor had not carried out a
11 response action with respect to the release or threatened release;

12 (2) the response action contractor acted with gross negligence or intentional
13 misconduct; or

14 (3) the response action contractor, without approval by the federal or state
15 on-scene coordinator, substantially deviated from an oil spill contingency plan previously
16 approved under AS 46.04.030, and the plan was either prepared by that contractor for a
17 party responsible for the release under AS 46.03.822 or that contractor previously agreed
18 to comply with the terms of that plan in its contract with parties responsible for the release
19 under AS 46.03.822.

20 (b) The limitation on liability of (a) of this section does not apply to

21 (1) an action for personal injury or wrongful death:

1 (2) an action for damages to tangible personal property not caused by oil;
2 and

3 (3) acts or omissions which occur more than 30 days after the release.

4 (c) If an oil spill response action contractor's liability is not limited under (a)-(b)
5 of this section, that contractor is civilly liable for injuries, costs, damages, expenses, or other
6 liability that results from the release or threatened release, or from the response action
7 contractor's act or omission in response to the release or threatened release. if the response
8 action contractor acted with simple or gross negligence, or intentional misconduct.

9 (d) In this section, "response action" means an action taken during mitigation,
10 cleanup or removal of an oil release or threatened oil release.

11 *Sec. 5. AS 46.03.826 is amended by adding new paragraphs to read:

12 (14) "response action contract" means a written contract or agreement to
13 provide response action with respect to a release or threatened release of a hazardous
14 substance entered into by a person with

15 (A) the department;

16 (B) another person who has entered into an agreement with the
17 department that provides for response action subject to the department's oversight
18 and control;

19 (C) a federal agency with jurisdiction over the release or threatened
20 release; or

1 (D) another person potentially liable for the release or threatened
2 release under state or federal law;

3 (15) "response action contractor" means

4 (A) a person who enters into a response action contract with respect
5 to a release or threatened release of a hazardous substance and who is carrying out
6 the contract, including a cooperative organization formed to maintain and supply
7 response equipment and materials that enters into a response action contract relating
8 to a release or threatened release;

9 (B) a person who is retained or hired by and is under the control of
10 a person described in (A) of this paragraph to provide services related to the
11 response action contract; and

12 (C) a person who acts as a volunteer and is engaged in a response
13 action.

14 *Sec. 6. AS 46.03.823(g)(2) and (3) are repealed.

15 *Sec. 7. The department shall review the entire subject of response action contractor
16 liability, and report to the legislature prior to January 15, 1992 as to whether any further
17 *modifications as to rules of*
~~limitations on liability~~ are required, and whether the present laws which require shippers and
18 owners to file contingency plans and to contract with response action contractors to carry
19 out the plans are adequate to protect the public in the event of an oil spill.

20 *Sec. 8. This Act takes effect immediately under AS 01.10.070(c).



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: ALYESKA Fax: 265-8983

Attn: MICHAEL WILLIAMS Phone: 265-8544

Transmitted by: ROD MOURANT Date: _____

Re: RESPONSE CONTRACTOR LIABILITY

Comments: THIS WILL BE CONSIDERED FOR
INTRODUCTION AT THE APRIL 11TH

046 MEETING.

SEC. 7. STUDY - COTTAN WOULD PREFER
STUDY BY LEGISLATURE NOT DEC.

Number of Pages: 7 Including Cover Sheet.



GUEST AT THE PLAZA
ROOM 15-148



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: LOEWS LENFANT PLAZA Fax: (202) 646-4456

Attn: SENATOR DRUE PEARCE Phone: _____

Transmitted by: ROD Date: 4-8-91

Re: RESPONSE CONTRACTOR LIABILITY (DRAFT)

Comments: THIS IS CURRENT DRAFT. ONLY

CONCERN SEEMS TO REGARD SEC 7 POTTING

STUDY AT DEC. COTTON'S OFFICE WOULD

PREFER LEGISLATIVE STUDY BUT DON'T KNOW

HOW TO PULL IT OFF.

REINHARDT SAYS TESORO IS HAPPY WITH THIS

VERSION. IT VARIES GREATLY FROM EARLY

DRAFT. HE CREDITS SAM PERSONALLY WITH

THIS VERSION.

Number of Pages: 7 Including Cover Sheet.





Oil Reform Alliance

ORA/UFA JOINT POSITION PAPER

ON HB196

by Riki Ott

The Oil Reform Alliance and United Fishermen of Alaska are strongly opposed to the intent of HB196. We think a bill that reduces the state's liability standards for response action contractors (RACs) is both unnecessary and undesirable.

Our biggest concern with HB196 is that it weakens laws passed only last year, laws designed to strengthen oil spill prevention and response incentives. Alaska's current liability standard offers more protection to the public than the federal government's standard of gross negligence. The right of states to set higher standards than the federal government is a key provision of the Oil Pollution Act of 1990 (OPA90) and this right should not be dismissed lightly.

If HB196 is viewed from the perspective of fishermen and communities as victims, the inadequacies of this bill become apparent. HB196 effectively places another hurdle across the path of victims trying to get compensation for damages caused by a catastrophic oil spill. Further, it shifts the liability of spill response from RACs to taxpayers.

It is questionable whether someone can assume another's liability. The spiller retains the right to argue that they are not liable. The burden of proof, under HB196, lies with the "person bringing a claim against the RAC" (CS HB196 pg. 6, lines 19-20). Until the case is settled in a court of law, the victim remains uncompensated.

Arguments in favor of this bill state that Alaska's legal atmosphere and liability exposures that discourage new cleanup contractors from entering the state. But factually, the number of RACs has increased significantly since Exxon Valdez spill. In Alaska, RACs could also get the same cover of protection that they seek in HB196 by indemnification through contingency plans.

Tesoro's plea for immunity from Alaska's liability standards does not stem from a problem with existing law; rather, it stems from Alyeska's requirement of a one billion dollar direct action bond from all parties regardless of size. Last session countless hours were spent tailoring HB567 for both large and small operators. If Alyeska restructured its bonding requirement, Tesoro's problems evaporate.

Conoco's testimony of their recent response to a spill with an unknown responsible party is misleading. Conoco implied that "volunteer" response, in cases where the spiller is either unknown or insolvent, would be limited in the future unless RACs were immunized.

However under existing law, if the spiller is unknown or insolvent, the state assumes control of the cleanup - and reimburses RACs for reasonable expenses. It is important to realize that Conoco did respond to a spill with an unknown responsible party under existing law with existing liability standards.

Liability protection for small RACs, such as fishermen or communities, can be achieved through contractual indemnification. The problem with strict liability as perceived by Tesoro, Conoco, and even the community RACs simply does not exist.

Alaska's strict liability standard was watered down in 1989 by the legislature so RACs would be liable for injuries caused by their own response actions only if they were negligent or engaged in intentional misconduct. Under existing law, to show negligence by a RAC, a claimant must show that the acts or omissions of the contractor under the response action contract was not in accordance with generally accepted professional standard and practices at the time their response action services were performed (AS 46.09.823(a)).

Existing law provides ample protection for RACs and marginal protection for the public. To further weaken the state's liability standard would be a grave and regrettable step away from the lessons learned from the Exxon Valdez spill.



UNITED FISHERMEN OF ALASKA

Greg Seider
Executive Director

211 4th Street, Suite 112 (907) 586-2820
Juneau, AK 99801 Within Alaska: 1-800-478-FISH
Fax# (907) 463 2545

February 27, 1991

Drue -

Met with Al Hastings of Conoco today to discuss tanker liability. Has concern over Alyeska's billion dollar bond requirement, its affect on Alaska's tax revenue, affect on Tesoro processing plant and affect on transport tanker competition.

Attached is proposed legislation that Hudson evidently will introduce as H O&G bill. Is meeting with Cotten tomorrow on same topic. Would like your assistance.

I knew this was coming.

Rod

Gene Burden taking lead.

I will support - but keep quiet -
Sam needs to be out front
if they can get him there.

Hudson will have FR1 AFTERNOON



Interoffice Communication

To D. L. Bowler
 From J. S. Haley
 Date February 26, 1991
 Subject Increased Cost to Milne Point Unit due to Alyeska's Oil Spill Response Service Agreement

Pursuant to a request from your office we have attempted to develop the additional costs to Conoco, the Overriding Royalty Interest Owners and the State of Alaska for Milne Point Unit production as a result of Alyeska's Oil Spill Response Agreement. The weighted average additional costs (which reduces the net-back value by an equal amount) are estimated, as follows:

	<u>Increased costs/ (Reduced Net Back to Unit)</u>
February 1991	\$3.69/Bbl
March 1991	\$0.39/Bbl
April 1991	\$0.10/Bbl*

*This number is not expected to continue in the future as it reflects a cycle in the markets that may not often be repeated. We expect this number to be higher in May and thereafter even under existing sales arrangements.

The above figures represent the volume weighted increased costs. These numbers represent our best estimate of the increased costs based on current contracts, some of which are tenuous at best, given the circumstances. We have been fortunate in selling our March and April production under terms that closely approximate pre-November 1990 sales. However, if we lost our best surviving market the cost per barrel could increase \$4.00 to \$5.00 per barrel or more over pre-November sales contracts. Our current market is very precarious and may be viewed as only a 30 day arrangement. Thus, it is imperative that we get some relief from the Alaska legislature to have any assurances that net-backs for Milne Point Unit crude are not significantly reduced because of implementation of Alyeska's Oil Spill Response Service Agreement.

The State of Alaska stands to share improved net-backs by the passage of the "Good Samaritan" law for companies shipping oil through Prince William Sound.

J.S. Haley
 JSH:ft
 cc: J. R. Svervold
 J. R. Heinzer

FACT SHEET ON OIL SPILL

CLEANUP CONTRACTOR LIABILITY LEGISLATION

1. What the legislation does.

When a cleanup contractor responds to an oil spill emergency, it must make snap judgments in a crisis atmosphere. Under current Alaska law, the contractor is held to a much higher standard than responders under the federal Oil Pollution Act of 1990 and the laws of other large coastal states. The result is that the Alaska responder is an easy target for lawsuits, which makes some cleanup organizations reluctant to enter Alaska. Moreover, this liability exposure causes even existing cleanup contractors to spend inordinate time and resources in obtaining legal advice and clearances from state and federal authorities before responding to a spill.

This bill would partially limit the liability of innocent oil spill cleanup contractors. Cleanup contractors would continue to be liable for gross negligence, willful misconduct, personal injuries and death; however, they would be excused from the prospect of strict liability and simple negligence claims, as long as the contractor acts in good faith.

2. Who does this bill apply to?

The bill applies only to innocent spill response contractors -- that is, those who had no involvement in the spill itself.

3. Is this concept something new or untried?

This bill merely conforms Alaska law to federal law, and the laws of a growing number of coastal states (such as Washington, Virginia, Florida, Hawaii and California). The concept of limiting liability is not new in Alaska law, as evidenced by similar statutory limits on the liability of people responding to other kinds of emergencies and disasters in the state.

4. Does the bill somehow lessen the spiller's liability?

No. To the contrary, the bill makes it absolutely clear that the spiller's liability for damages includes those damages caused by those cleanup contractor's actions for which liability is limited under the bill.

5. Does the bill somehow affect a contingency plan holder's responsibility to maintain cleanup equipment?

Absolutely not. Alaska law is very tough in its requirements for oil spill contingency plan approval, and the plan holder is liable for penalties and damages if it does not respond to a spill in accordance with the promises made in that plan. This bill does nothing to change that.

6. Doesn't Alaska law already provide some protection for cleanup contractors?

Unfortunately, Alaska law actually encourages litigation against the cleanup contractor. Not only does it provide no limitation for negligence suits, it provides that, in many circumstances, a cleanup contractor will be strictly liable -- that is, without any fault on its part whatsoever -- for any damage that results from its cleanup actions. Imagine how firemen would react if they were liable for any damage caused by their firefighting, even if they did nothing wrong?

7. Isn't this a complicated problem that needs more study?

No. The question, in fact, is very simple:

WHO SHOULD PAY FOR SPILL DAMAGES:

THE SPILLER. OR THE CLEANUP CONTRACTOR?

THIS BILL
MAKES IT CLEAR THAT THE SPILLER IS RESPONSIBLE FOR ANY LIABILITY
EXCUSED FROM THE CLEANUP CONTRACTOR.

Moreover, this bill does nothing that hasn't already been done, in the same way, by Congress and other coastal states.

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for actions of a response action contractor; and
2 providing for an effective date."

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

4 * Section 1. AS 46.03.822(a) is amended to read:

5 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
6 set out in (b) of this section and the exception set out in (i) of this section, the following persons
7 are strictly liable, jointly and severally, for damages [TO PERSONS OR PROPERTY,
8 WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL
9 RESOURCES OF THE STATE OR A MUNICIPALITY,] and for the costs of response,
10 containment, removal, or remedial action incurred by the state or a municipality, resulting from
11 an unpermitted release of a hazardous substance or, with respect to response costs, the substantial
12 threat of an unpermitted release of a hazardous substance:

13 (1) the owner of, and the person having control over, the hazardous substance at
14 the time of the release or threatened release; this paragraph does not apply to a consumer product

1 in consumer use;

2 (2) the owner and the operator of a vessel or facility, from which there is a
3 release, or a threatened release that causes the incurrence of response costs, of a hazardous
4 substance;

5 (3) any person who at the time of disposal of any hazardous substance owned or
6 operated any facility or vessel at which the hazardous substances were disposed of, from which
7 there is a release, or a threatened release that causes the incurrence of response costs, of a
8 hazardous substance;

9 (4) any person who by contract, agreement, or otherwise arranged for disposal or
10 treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous
11 substances owned or possessed by the person, other than domestic sewage, or by any other party
12 or entity, at any facility or vessel owned or operated by another party or entity and containing
13 hazardous substances, from which there is a release, or a threatened release that causes the
14 incurrence of response costs, of a hazardous substance;

15 (5) any person who accepts or accepted any hazardous substances, other than
16 refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person,
17 from which there is a release, or a threatened release that causes the incurrence of response costs,
18 of a hazardous substance.

19 * Sec. 2. AS 46.03.822 is amended by adding a new subsection to read:

20 (k) In this section, "damages" includes damage to persons or to public or private
21 property, damage to the natural resources of the state or a municipality, and damage caused by
22 a response action contractor for which the response action contractor is not liable under
23 AS 46.03.823 or 46.03.825.

24 * Sec. 3. AS 46.03.823(a) is amended to read:

25 (a) A person who is a response action contractor with respect to a release or threatened
26 release of a hazardous substance other than oil whose acts or omissions are not contrary to a
27 response plan or order by a state or federal agency having jurisdiction over the release or
28 threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that
29 results from the release or threatened release unless the release or threatened release is caused
30 by an act or omission of the response action contractor that is negligent or grossly negligent or
31 constitutes intentional misconduct. To show negligence by a response action contractor, a

1 claimant must show that the acts or omissions of the contractor under the response action contract
2 were not in accordance with generally accepted professional standards and practices at the time
3 the response action services were performed.

4 * Sec. 4. AS 46.03 is amended by adding a new section to read:

5 Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person who
6 is a response action contractor with respect to a release or threatened release of oil whose acts
7 or omissions are not contrary to a response plan or order by a state or federal agency having
8 jurisdiction over the release or threatened release of oil is not civilly liable for injuries, costs,
9 damages, expenses, or other liability that results from the release or threatened release, or from
10 the response action contractor's acts or omissions in response to the release or threatened release,
11 unless the person bringing a claim against the response action contractor proves by a
12 preponderance of the evidence that

13 (1) the response action contractor would have been liable for the release or
14 threatened release under state or federal law even if that contractor had not carried out a response
15 action with respect to the release or threatened release; or

16 (2) the response action contractor acted with gross negligence or intentional
17 misconduct.

18 (b) The limitation on liability contained in (a) of this section does not apply to an action
19 for personal injury or death.

20 * Sec. 5. AS 46.03.826 is amended by adding new paragraphs to read:

21 (14) "response action" means an action taken in connection with the mitigation
22 or cleanup of a hazardous substance release or threatened release, including investigation,
23 evaluation, plan development, mapping and surveying, engineering, design and construction,
24 removal, and equipment provision;

25 (15) "response action contract" means a written contract or agreement to provide
26 response action with respect to a release or threatened release of a hazardous substance entered
27 into by a person with

28 (A) the department;

29 (B) another person who has entered into an agreement with the department
30 that provides for response action subject to the department's oversight and control;

31 (C) a federal agency with jurisdiction over the release or threatened

1 release; or

2 (D) another person potentially liable for the release or threatened release
3 under state or federal law;

4 (16) "response action contractor" means

5 (A) a person who enters into a response action contract with respect to a
6 release or threatened release of a hazardous substance and who is carrying out the
7 contract, including a cooperative organization formed to maintain and supply response
8 equipment and materials that enters into a response action contract relating to a release
9 or threatened release; and

10 (B) a person who is retained or hired by and is under the control of a
11 person described in (A) of this paragraph to provide services related to the response
12 action contract;

13 * Sec. 6. AS 46.03.823(g) is repealed.

14 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

FEB 22 1991



Rod

W. Gene Burden
Vice President
Administration & Government Relations

February 22, 1991

Members of the Senate Oil & Gas Committee
Senators:
Sam Cotten, Chair
Drue Pearce, Vice-Chairman
Bettye M. Fahrenkamp
Lyman Hoffman
Dick Shultz

Dear Senators:

The enclosed draft legislation concerning the liability of innocent oil spill clean up contractors is Tesoro Alaska's principal legislative priority this year. Tesoro Alaska respectfully requests that the legislation be introduced as a Senate Oil and Gas Committee bill, and considered by the committee at its very earliest convenience. Enactment of this legislation is critical for two reasons:

1. Alaska's current liability laws threaten to embroil oil spill cleanup contractors in litigation arising from an oil spill, even though that contractor had no involvement in the spill itself. This creates a strong disincentive for businesses to enter the oil spill cleanup business. Compounding Alaska's problem in attracting new cleanup capability is the fact that the United States Congress and the legislatures of numerous coastal states, have already enacted legislation curing this liability problem; and

2. Alaska's unreasonable liability laws have caused Tesoro and others particular problems arising from the difficulties in obtaining standby oil spill cleanup services under terms that Tesoro and others can meet. Unless this legislation is enacted this session, the liability issue may affect Tesoro's ability to obtain ANS crude oil from Prince William Sound, and interrupt its ability to provide supply of refined products to Alaska.

The threat of becoming embroiled in prolonged and costly litigation is a major concern and impediment to marshalling all the organizations we would like to see available to assist in response to a major spill. This is true whether the organization is large (like the Marine Spill Response Corporation), small (co-ops, subcontractors and suppliers) or new (i.e., the recently-formed Cook Inlet Spill Prevention and Response, Inc. ("CISPRI")). Existing Alaska cleanup organizations presently face the prospect

of delays in response time caused by the inordinate time and resources lost in obtaining legal advice and clearances from state and federal authorities before responding to even minor spills.

The proposed legislation is similar to that now found in Florida, Virginia, Hawaii, and in the federal Oil Pollution Act of 1990. California's 1990 legislation is similar, providing a limitation of liability for 60, and in some cases 90 days after a spill. In the past week, the State of Delaware enacted similar legislation, and the Senates of Georgia and Mississippi unanimously passed similar bills. Under these laws, the responder is not liable for damages arising from their cleanup actions unless they act with gross negligence or willful misconduct, or cause personal injury or death. The proposed Alaska legislation expressly confers liability to the responsible parties for any damages resulting from the oil spill cleanup efforts that are not subject to liability to the response action contractor. And like these other laws, limited liability would attach only to contractors that had no involvement in the spill itself.

The public policy reasons for granting such limited immunity are similar to those that prompted other good samaritan immunity for organizations like fire and police departments, medical personnel, and others. There is a need to insure that highly trained personnel remain willing to respond without hesitation despite adverse, or even dangerous circumstances and that they promptly make the difficult decisions such a response demands.

The importance of this legislation also directly relates to Tesoro's ability to maintain response action contractor services in Prince William Sound and uninterrupted manufacturing operations at our Kenai refinery. Tesoro manufactures a full range of petroleum products and relies almost exclusively on ANS as a feed stock (approximately 85-90% of our crude oil is ANS). There are no known viable crude oil supply options available to Tesoro at this time should we no longer be able to transport ANS to our refinery.

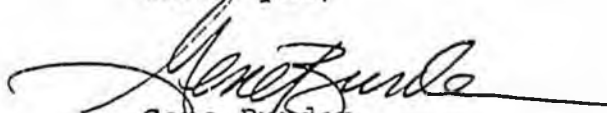
Alyeska is the only entity with the spill response capabilities necessary for our tanker to maintain the required contingency plan for operation in Prince William Sound. However, because of Alyeska's potential liability for a spill from an unrelated Tesoro-chartered tanker, Alyeska proposes to make cleanup services available only under terms that Tesoro cannot meet. Alyeska is requiring \$1 billion in "direct action" financial responsibility as a condition for a term agreement that provides these services. The direct action requirement means that the financial responsibility provided must be of a nature that would enable Alyeska to seek reimbursement directly from the source of the financial responsibility without having to initiate a claim, or action against Tesoro.

Tesoro has a net worth of approximately \$200 million. Although we have put together \$1 billion of insurance in coordination with our vessel's operator, the insurance is comprised of Protection & Indemnity Club (P & I Club) insurance that does not extend direct action to a potential claimant. There is no such "direct action" insurance to be found at these levels, and we are unable to otherwise meet Alyeska's condition. We have obtained an agreement good until June 30, 1991 with Alyeska for response services and are seeking a means to resolve this problem before that date.

If the proposed legislation is enacted, we believe we will be able to achieve a negotiated arrangement for spill response services that Alyeska and Tesoro can accept. If we do not obtain such an agreement, or if we fail to obtain legislative action on this matter, we face, at best, long and expensive litigation with Alyeska over their requirements with uncertain results, and at worst an interruption of our ability to operate the Kenai Refinery.

Tesoro appreciates your review of the proposed bill and encourages you to introduce the legislation as a Senate Oil and Gas Committee bill. We will make personnel and counsel available at your convenience to discuss any issues or questions.

Thank you,



Gene Burden

Vice President - Administration
& Government Affairs

Enclosures

IN THE HOUSE

BY

HOUSE BILL NO. ____

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An act relating to civil liability for the good faith response actions of a response action contractor for oil spills that were not caused by that contractor, and providing an effective date."

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

* Section 1. AS 46.03.822(a) is amended to read:

Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS SUBSTANCES. (a) Notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section and the exception set out in (i) of this section, the following persons are strictly liable, jointly and severally, for damages to persons or property, whether public or private, including damage to the natural resources of the state or a municipality[,] : damage caused by a response action contractor for which the response action contractor is not liable under AS 46.03.823 or AS 46.03.825; and for the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

(1) the owner of, and the person having control over, the hazardous substance at the time of the release or threatened release; this paragraph does not apply to a consumer product in consumer use;

(2) the owner and the operator of a vessel or facility, from which there is a release, or a threatened release, that causes the incurrence of response costs, of a hazardous substance;

(3) any person who at the time of disposal of any hazardous substance owned or operated any facility or vessel at which the hazardous substances were disposed of, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(4) 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 the person, other than domestic sewage, or by any other party or entity, at any facility or vessel owned or operated by another party or entity and containing hazardous substances, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(5) any person who accepts or accepted any hazardous substances, other than refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance.

* Section 2. AS 46.03.823(a) is amended to read:

(a) A person who is a response action contractor with respect to a release or threatened release of a hazardous substance other than oil whose acts or omissions are not contrary to a response plan or order by a state or federal agency having jurisdiction over the release or threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the release or threatened release unless the release or threatened release is caused by an act or omission of the response action contractor that is negligent or grossly negligent or constitutes intentional misconduct. To show negligence by a response action contractor, a claimant must show that the acts or omissions of the contractor under the response action contract were not in accordance with generally accepted professional standards and practices at the time the response action services were performed.

*** Sec. 3.** AS 46.03 is amended by adding a new section to read:

Sec. AS 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person who is a response action contractor with respect to a release or threatened release of oil is not liable for injuries, costs, damages, expenses or other liability that results from the release or threatened release, or from the response action contractor's acts or omissions in response to the release or threatened release, unless the person bringing a claim against the response action contractor proves by a preponderance of the evidence that:

(1) the response action contractor would have been liable for the release or threatened release under state or federal law even if that contractor had not carried out a response action with respect to the release or threatened release; or

(2) the response action contractor acted with gross negligence or intentional misconduct.

(b) The liability limitation of (a) of this section does not apply to an action for personal injury or death.

(c) As used in this section:

(1) "response action contract" has the same meaning as in AS 46.03.823(g)(2);

and

(2) "response action contractor" has the same meaning as in AS 46.03.823(g)(3).

*** Sec. 3.** This Act taken effect immediately in accordance with AS 01.10.070(a).

fixed

Rod
Drew said to give
to you



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: VCPA / Petro Star Fax: 563-1381 / 349-5496
Attn: Rex Huntkin / Walt Schlofeldt Phone: 562-3700 / 488-9057
VCPA ASRC PS FAX

Transmitted by: Senator Drue Pearce Date: 4.11.91

Re: Response Action Contractor Liability

Comments: This bill is being considered for introduction
by Senate Oil & Gas Committee. It will limit response
action liability in oil spills. Senator Pearce suggest
your organization get involved in the process because
it will directly impact your organization.
She is also wondering if you have fully considered
your liability.

*

cc: CONRAD BAGNE / ASRC

Number of Pages: 13 Including Cover Sheet.





Oil Reform Alliance

ORA/UFA JOINT POSITION PAPER

ON HB196

by Riki Ott

The Oil Reform Alliance and United Fishermen of Alaska are strongly opposed to the intent of HB196. We think a bill that reduces the state's liability standards for response action contractors (RACs) is both unnecessary and undesirable.

Our biggest concern with HB196 is that it weakens laws passed only last year, laws designed to strengthen oil spill prevention and response incentives. Alaska's current liability standard offers more protection to the public than the federal government's standard of gross negligence. The right of states to set higher standards than the federal government is a key provision of the Oil Pollution Act of 1990 (OPA90) and this right should not be dismissed lightly.

If HB196 is viewed from the perspective of fishermen and communities as victims, the inadequacies of this bill become apparent. HB196 effectively places another hurdle across the path of victims trying to get compensation for damages caused by a catastrophic oil spill. Further, it shifts the liability of spill response from RACs to taxpayers.

It is questionable whether someone can assume another's liability. The spiller retains the right to argue that they are not liable. The burden of proof, under HB196, lies with the "person bringing a claim against the RAC" (CS HB196 pg. 6, lines 19-20). Until the case is settled in a court of law, the victim remains uncompensated.

Arguments in favor of this bill state that Alaska's legal atmosphere and liability exposures that discourage new cleanup contractors from entering the state. But factually, the number of RACs has increased significantly since Exxon Valdez spill. In Alaska, RACs could also get the same cover of protection that they seek in HB196 by indemnification through contingency plans.

Tesoro's plea for immunity from Alaska's liability standards does not stem from a problem with existing law; rather, it stems from Alyeska's requirement of a one billion dollar direct action bond from all parties regardless of size. Last session countless hours were spent tailoring HB567 for both large and small operators. If Alyeska restructured its bonding requirement, Tesoro's problems evaporate.

Conoco's testimony of their recent response to a spill with an unknown responsible party is misleading. Conoco implied that "volunteer" response, in cases where the spiller is either unknown or insolvent, would be limited in the future unless RACs were immunized.

However under existing law, if the spiller is unknown or insolvent, the state assumes control of the cleanup - and reimburses RACs for reasonable expenses. It is important to realize that Conoco did respond to a spill with an unknown responsible party under existing law with existing liability standards.

Liability protection for small RACs, such as fishermen or communities, can be achieved through contractual indemnification. The problem with strict liability as perceived by Tesoro, Conoco, and even the community RACs simply does not exist.

Alaska's strict liability standard was watered down in 1989 by the legislature so RACs would be liable for injuries caused by their own response actions only if they were negligent or engaged in intentional misconduct. Under existing law, to show negligence by a RAC, a claimant must show that the acts or omissions of the contractor under the response action contract was not in accordance with generally accepted professional standard and practices at the time their response action services were performed (AS 46.03.823(a)).

Existing law provides ample protection for RACs and marginal protection for the public. To further weaken the state's liability standard would be a grave and regrettable step away from the lessons learned from the Exxon Valdez spill.



UNITED FISHERMEN OF ALASKA

Greg Seider
Executive Director

211 4th Street, Suite 112
Juneau, AK 99801

(907) 586-2620
Within Alaska 1-800-478-FISH
Fax# (907) 463-2545

Alaska State Legislature

Senate Committee on Oil and Gas

Senator Sam Cotten, Chairman
Senator Drue Pearce, Vice-Chairman
Senator Bettye Fahrenkamp
Senator Lyman F. Hoffman
Senator Dick Shultz



P. O. Box V, State Capital
Juneau, AK 99811
(907) 465-3711

April 8, 1991

To: Members, Senate Oil and Gas Committee

From: Sam Cotten, Chair

Attached is a draft bill on the subject of response action contractor liability that the committee will be reviewing on Thursday morning. The draft was put together by the proponents of the legislation (specifically, Tesoro and Conoco) with input from the Regional Citizen's Advisory Council.

The last section of the bill sets up a procedure for interim review of the issue, with a report to the legislature at the beginning of the next session. The structure of this review is left open, for the legislature to set up.

Introduced by: Brown

R015

KENAI PENINSULA CAUCUS

RESOLUTION NO. 91-5

A RESOLUTION OF THE KENAI PENINSULA CAUCUS CONCERNING "OIL SPILL RESPONDER'S LIMITED IMMUNITY."

WHEREAS, it is in the interest of the citizens of the State of Alaska and the Kenai Peninsula Borough to ensure that qualified, highly trained oil spill response organizations are in place and ready to respond to all spills; and,

WHEREAS, the success of a spill response organization depends upon spill response contractors as well as countless fishermen, subcontractors, and other part-time professionals and specialists who must be prepared on an emergency basis to act swiftly and unhesitantly in the face of adverse circumstances and often with far less than complete information; and,

WHEREAS, these responders will be deterred from performing clean-up activities on behalf of the person or persons actually responsible for the spill if they are unduly exposed to unlimited liability in the course of their response activities.

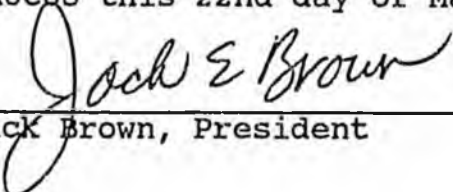
NOW, THEREFORE BE IT RESOLVED by the Kenai Peninsula Caucus that the spill response contractors, including fishermen, subcontractors and part-time professionals and specialists, who perform in response to an oil spill to be best of their abilities and following the directions of recognized state and federal authorities, should be afforded limited immunity from lawsuits arising as a consequence of their response activities; and,

BE IT FURTHER RESOLVED, that the Kenai Peninsula Caucus supports and encourages Alaska State legislation which grants any person who responds to an oil spill, caused by another, immunity from liability from all costs and damages except in cases where the responder acts with gross negligence or willful misconduct, or causes personal injury or wrongful death; and,

FURTHER BE IT RESOLVED, where limitations on immunity are granted to responders, it is important that victims be fully protected and compensated for damages, and the party responsible for the spill in the first instance shall be liable for any damages caused by responder's simple negligence.

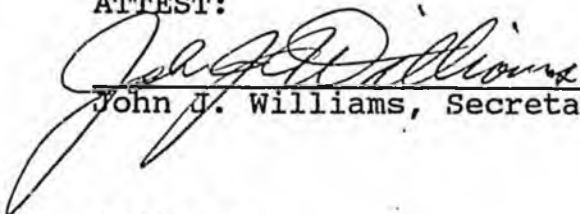
COPIES of this Resolution shall be transmitted to the Honorable Walter Hickel, Governor of the State of Alaska; and members of the Alaska House and Senate Resource Committees and Special Committees on Oil and Gas.

PASSED BY THE KENAI PENINSULA CAUCUS this 22nd day of March, 1991.



Jack Brown, President

ATTEST:

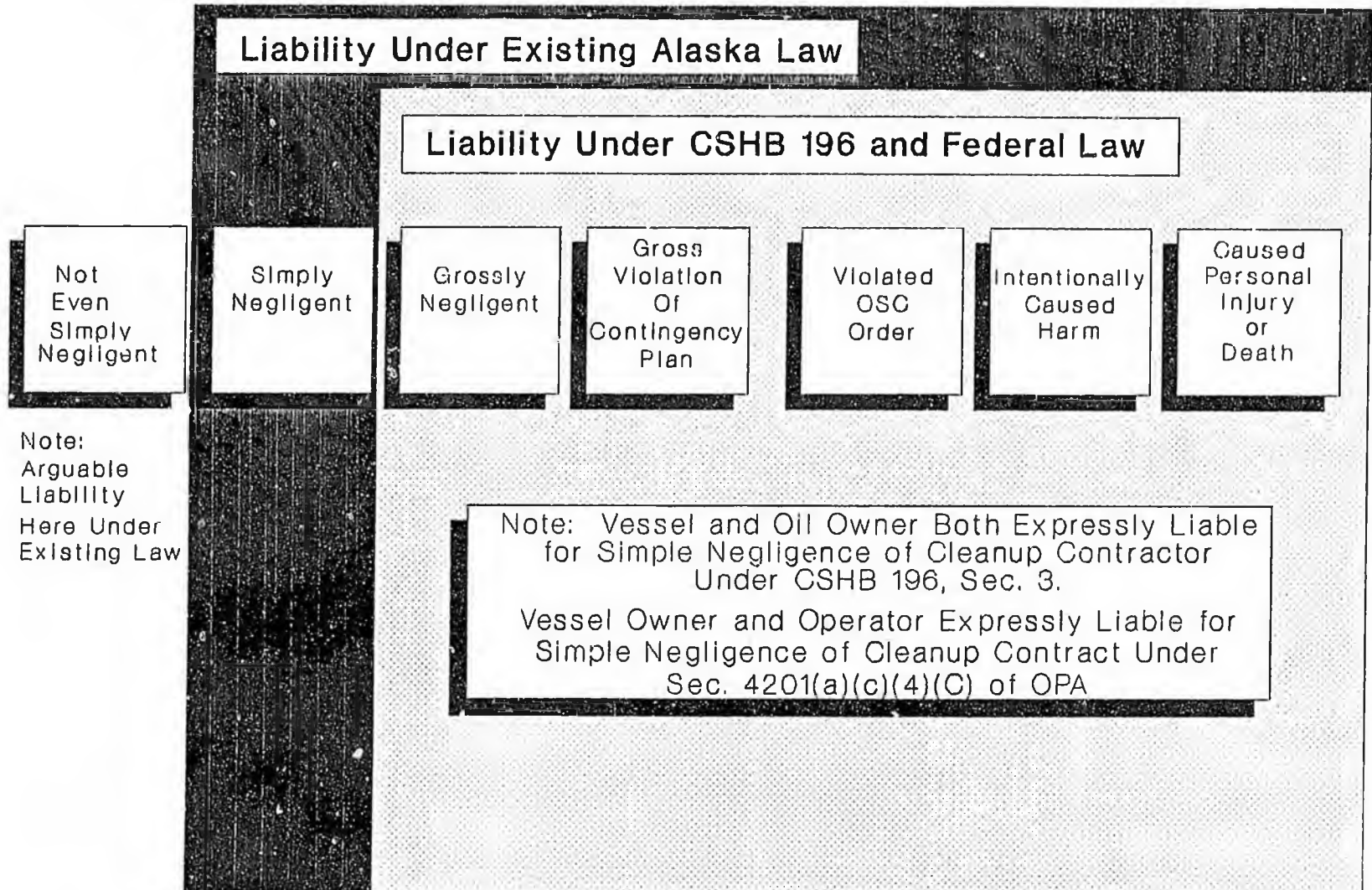


John J. Williams, Secretary

(3/8/91)

CLEANUP CONTRACTOR LIABILITY FOR DAMAGES CAUSED BY CLEANUP OPERATIONS

CSHB 196 and Federal Law vs. Existing Alaska Law



Simple Negligence:

"A person is negligent if he does not use reasonable care. Negligence may result from action or inaction. A person is negligent if he does not act as a reasonably careful person would act under similar circumstances. In this case you [the jury] must decide whether or not defendant used reasonable care under the circumstances."

...Wilson v. State, 669 P.2d 1292, 1295 (Alaska 1983)

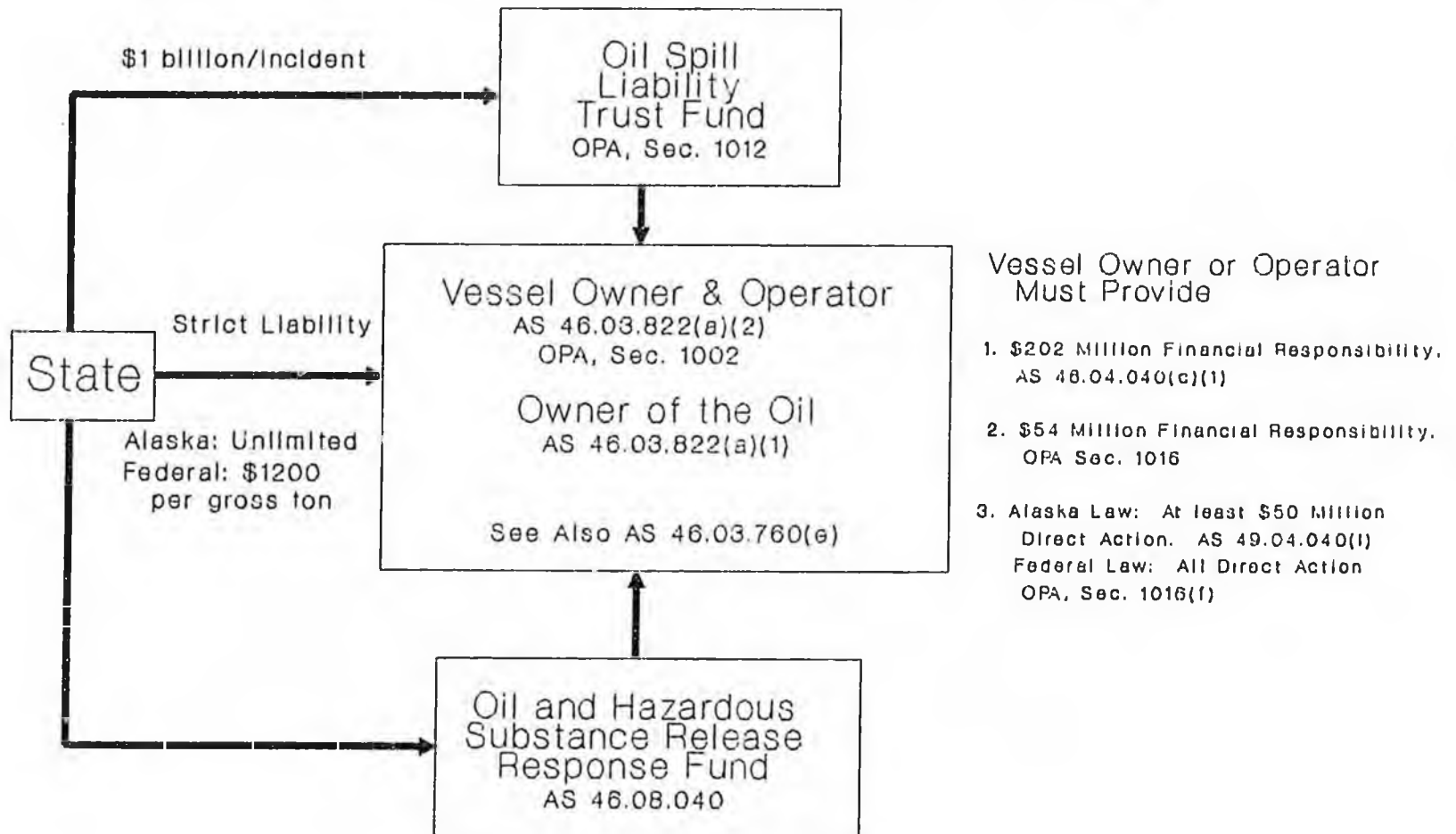
Gross Negligence:

"[M]ost courts consider that 'gross negligence' falls short of a reckless disregard of consequences, and differs from ordinary negligence only in degree, and not in kind...[i]t signifies more than ordinary inadvertence or inattention, but less than conscious indifference to consequences; and that it is, in other words, merely an extreme departure from the ordinary standard of care."

...Storrs v. Lutheran Hospitals, 661 P.2d 632, 634, n. 1, (Alaska 1983)

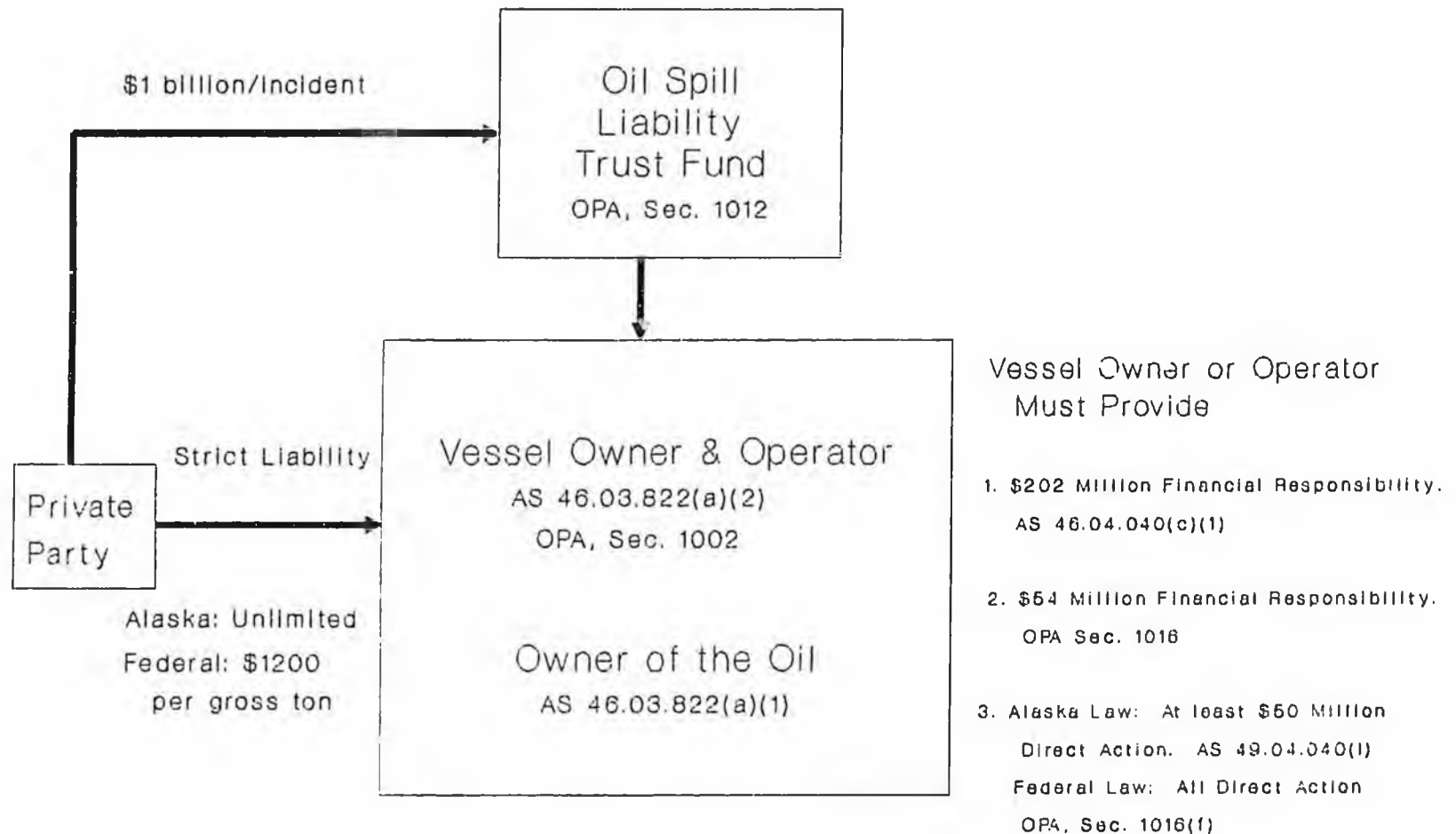
RECOVERY OF CLEANUP COSTS CRUDE SPILL FROM 90,000 DWT OIL TANKER

Under Both Existing Law and CSHB 196



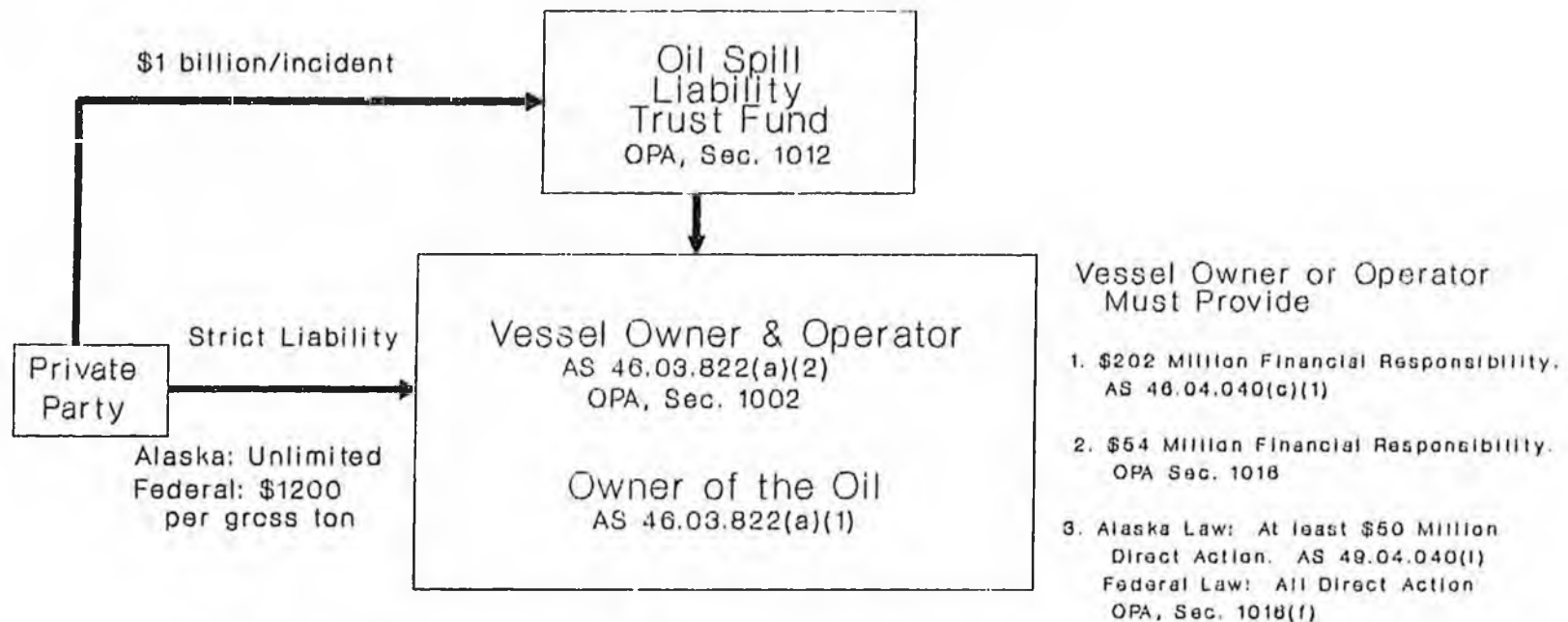
DAMAGE RECOVERY CRUDE SPILL FROM 90,000 DWT OIL TANKER

Under Both Existing Law and CSHB 196



DAMAGE RECOVERY FOR CLEANUP CONTRACTOR'S SIMPLE NEGLIGENCE*

Under CSHB 196



Note: Vessel and Oil Owner Both Expressly Liable for Simple Negligence of Cleanup Contractor Under CSHB 196, Sec. 3.

Vessel Owner and Operator Expressly Liable for Simple Negligence of Cleanup Contractor Under Sec. 4201(a)(c)(4)(C) of OPA.

*Based on a Crude Spill From 90,000 DWT Oil Tanker

ENDORSEMENTS OF CLEANUP CONTRACTOR LIMITED LIABILITY

Be it further resolved, that the Pacific Fisheries Legislative Task Force supports and encourages state and federal legislation which grants any person who responds to an oil spill, caused by another, immunity from liability from all costs and damages except in cases where the responder acts with gross negligence or willful misconduct, or causes personal injury or wrongful death.

...Pacific Fisheries Legislative Task Force, June 16, 1990 (Sitka)
Alaska Delegates: Sen. Eliason
Sen. Zharoff
Rep. Davidson
Rep. Navarre

In particular, I support the need for limited immunity for all oil spill responders other than liable parties, to the extent that it may be necessary to encourage such persons to take action promptly. Prompt action after a spill is essential to protect the marine environment of California from oil pollution.

As you know, the Oil Pollution Act of 1990 (P.L. 101-380) was signed by the President on August 18th. That Act provides limited federal immunity for all oil spill responders.

A law that does not address responder's concern about liability exposure, causing them to hesitate in responding to spills, would be counterproductive.

Oil spill response is not an exact science. Decisions often must be made with incomplete and sometimes conflicting information. Moreover, the operational environment is unpredictable. Liability standards must take those factors into account if effective programs are to be put in place.

...United States Coast Guard, August 28, 1990

Because unnecessary impediments to expeditious oil spill response should be minimized, we support the concept of immunizing spill responders by passing through their liability to the spiller, under the following conditions: none of the spiller's original liability is in anyway reduced, and there are adequate assurances that all damages will be paid, and that the injured parties can be made whole.

...The California Sierra Club, April 21, 1990

MORE ENDORSEMENTS OF CLEANUP CONTRACTORS LIMITED LIABILITY

Cleanup firms are willing to accept legal responsibility for willful misconduct, personal injury or wrongful death. They need protection from simple negligence because they must make quick decisions under difficult circumstances. Sometimes they may guess wrong. In most cases, they are not acting on their own, but under Coast Guard authority. The federal government, however, is protected in such circumstances from those seeking targets from which to recoup losses. Cleanup groups are not.

...The San Francisco Examiner, June 10, 1990

Right now, oil spill teams can be sued just for showing up to fight the damage. for events that occur in the chaos of a recovery effort. For the land that is damaged as a result. And the price tag can run into the billions...

We urgently need your help to pass Good Samaritan liability protection for our efforts. We believe our work deserves the same immunity from lawsuits as a doctor who stops to help a heart attack victim on the street. Indeed, we stop everything to help an injured Earth when she needs it.

...International Bird Rescue Research Center, et al., August 1990

Should qualified immunity not be granted to responder as outlined in the bill, FORT has no chance of succeeding. I cannot ask the men and women who have voluntarily trained and been certified in oil spill recovery to participate if the possibility of a lawsuit hangs over their heads when they are cleaning up someone else's spill.

...Ventura County Commercial Fishermen's Association, May 4, 1990

IF SHE'S NOT A GOOD SAMARITAN, JUST WHO IS?

The men and women who respond to an oil spill crisis are willing to accept many dangers. Good Samaritans in every sense of the word, they risk uncertain seas, fire and exposure.

But there's one risk that's truly unacceptable. A crippling lawsuit against the recovery team itself. Yet, because of an odd quirk in the law, that's a real possibility.

Right now, oil spill teams can be sued just for showing up to fight the damage. For events that occur in the chaos of a recovery effort. For the land that is damaged as a result. And the price tag can run into the billions.

Is this reasonable? The Congress of the United States doesn't think so. The California State Senate doesn't think so. In fact, only one group wants to be able to make the people fighting the oil spill pay for the spill itself. The California Trial Lawyers Association.

This powerful special interest group has managed to block the final steps in enacting Good Samaritan protection for oil recovery teams. Why? For the oldest reason of all—they want the fees.

Senator Barry Keene and Assemblyman Ted Lempert are working overtime to protect California's coastline. And we have a major interest in their efforts. We are the people who fight oil spills. Some of us do so to protect our fishing grounds. Some to save innocent wildlife. Others, as part of a responsible petroleum industry. We believe that whoever *spills* the oil should be liable for the costs—not the people who clean it up.



We urgently need your help to pass Good Samaritan liability protection for our efforts. We believe our work deserves the same immunity from lawsuits as a doctor who stops to help a heart attack victim on the street. Indeed, we stop everything to help an injured Earth when she needs it.

Please send in the coupons below and tell the California State Assembly to pass SB 2040 authored by Senator Barry Keene. It's the only way to keep some very Good Samaritans on the job.

Join Us In Saying NO To The Trial Lawyers, Yes on SB 2040.

CALL US.

We will send a FREE magnet in your name to your State Assembly member.

CALL TOLL FREE.

1-800-325-6000.

Ask for Operator 9752.

This is not for Western Union Service.

WRITE US.

Fill out this coupon and send it to us:

YES! I support Senate Bill 2040 (Keene) and protection for California's oil spill recovery teams. Please add my name to the list of people who want to say yes to the environment.

NAME _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____

Return to: International Bird Rescue Research Center
1223 9th Street, Suite 200
Sacramento, CA 95814

OR, TELL 'EM YOURSELF.

Please Mr. Speaker:
Don't let the trial lawyers keep oil recovery teams off the beach. Please pass the U.S. Congress and the California State Senate by enacting Senate Bill 2040 (Keene).

NAME _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____

Send to: Hon. Willie L. Brown, Jr. State Capitol, Sacramento, CA 95814

SPONSORED BY
International Bird Rescue Research Center
Clean Bay • Clean Coastal Waters • Clean Seas
Ventura County Commercial Fishermen's Association
Marine Spill Response Corporation

Ventura County Commercial Fishermen's Association
SERVING COMMERCIAL FISHERMEN SINCE 1987

V.C.C.F.A. • 1567 SPINNAKER DRIVE • STE. 203-199 • VENTURA, CALIF. 93001
(805) 985-9705

Honorable George Deukmejian
Governor of California
State Capital First Floor
Sacramento, CA. 95814

May 4, 1990

Dear Governor Deukmejian,

Ventura County Commercial Fishermen's Association (VCCFA) has developed the Fishermen's Oil Response Team (FORT). As you are aware this resource of certified commercial fishermen is designed to be called upon by clean up coordinators during an emergency. FORT would provide additional manpower, vessels, and aircraft as needed to respond within the first hours of an oil spill emergency not days later.

I have received information that California Trial Lawyers Association wishes to change the wording of SB-2040. Instead of providing qualified immunity for spill respondents, they prefer to negotiate indemnification of said respondents.

Please let me know your viewpoint on this important issue. Should qualified immunity not be granted to responders as outline in the bill, FORT has no chance of succeeding. I cannot ask the men and women who have voluntarily trained and been certified in oil spill recovery to participate if the possibility of a lawsuit hangs over their heads when they are cleaning up someone else's spill.

Because of the sensitive Channel Islands and nearby coastal region our association supports FORT's defensive capabilities towards oil spill recovery. I shudder at the thought of a "VALOEZ" type spill encircling the islands while bureaucrats negotiate indemnity clauses.

Your support is welcome. Enclosed is our newsletter and I would appreciate your subscription.

Sincerely,

Brian Janison

GROSS NEGLIGENCE STANDARD FOR CLEANUP CONTRACTORS



- Enacted



- Passed Both Houses

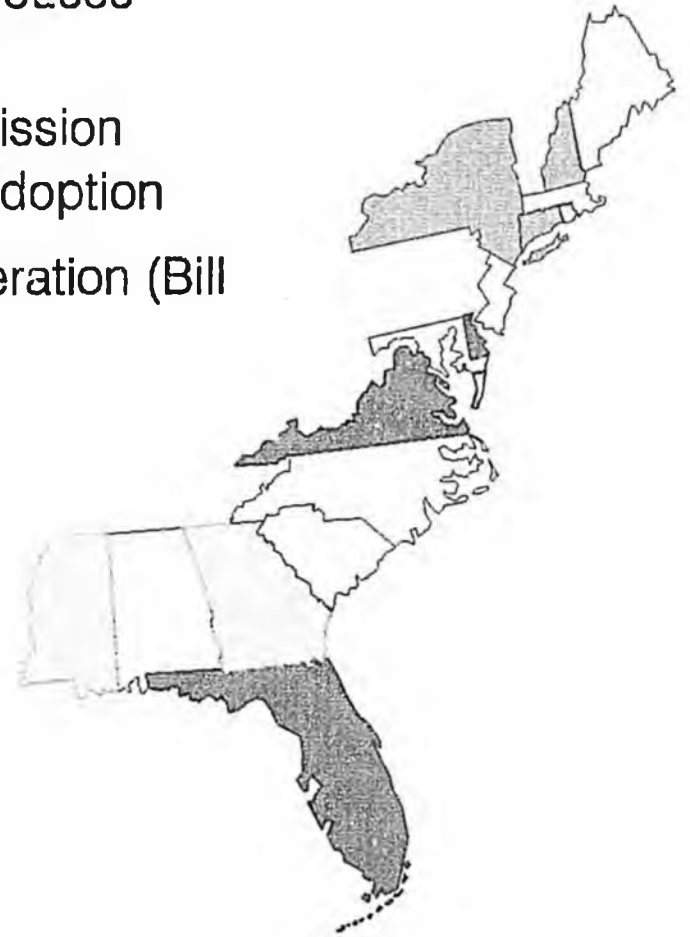
- Special Commission
Recommends Adoption



- Active Consideration (Bill
Introduced)



- No Activity



S B

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Senator Rick Uehling


Downtown, Elmendorf, Northeast Anchorage



Senate Finance Committee
International Trade & Tourism Committee
State Affairs Committee

MEMORANDUM

TO: Senator Drue Pearce, Chair
Senate Labor and Commerce Committee

FROM: Senator Rick Uehling 

DATE: April 30, 1991

RE: SB 273, an Act relating to the establishment of a peer review committee by the Board of Chiropractic Examiners.

I would appreciate your assistance in scheduling SB 273, an Act relating to the establishment of a peer review committee by the Board of Chiropractic Examiners, for a hearing before the Senate Labor and Commerce Committee at the earliest possible time.

SB 273 would establish a peer review committee to review complaints concerning the reasonableness of care provided, fees charged, or costs for services rendered by a licensee to a patient. The results of the peer review committee would not be binding upon the Board of Chiropractic Examiners.

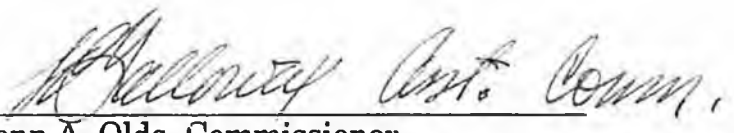
Please contact Bryan Butcher in my office at 465-4821 if you have any questions.

SB 273: "An Act relating to the establishment of a Peer Review Committee by the Board of Chiropractic Examiners."

The department supports SB 273 because it affords the public the right to have grievances aired without the expense and time required by the court system. It further assures the responding chiropractor, against whom a complaint was lodged, that (s)he will be reviewed by those with the appropriate background.

There is a lack in the legislation to compel the respondent to honor the request. To facilitate cases being reviewed by a committee, it is suggested that there be a provision that the responding chiropractor be responsible for mailing the case records to each of the peer review committee members.

Finally, to eliminate nuisance complaints and to reduce some of the costs in administering such a program, it is suggested that a nominal fee of \$50.00 be required in filing a complaint. This fee would be used to cover the cost of long distance calls and return mailing costs by the members of the committee.



Glenn A. Olds, Commissioner

Date: 5-6-91

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 273

Revision Date: _____ Department Affected: Commerce & Economic Dev.
 Title: Relating to the establishment of BRU: Occupational Licensing
a peer review committee... Component: Administration
 Sponsor: Senator Uehling
 Requestor: Senate Labor & Commerce COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

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						
---------	--	--	--	--	--	--

REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
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.)

SB 273 authorizes the Board of Chiropractic Examiners to utilize a peer review committee to review certain types of complaints. The department anticipates the administrative costs to be minimal; and that any administrative cost will be offset by an application fee to utilize the peer review process.

Prepared By: Jennifer Strickler, Admin. Officer Phone: 465-2144
 Division: Occupational Licensing Date: May 2, 1991
 Approved by Commissioner: Glenn A. Olds
 Agency: Commerce and Economic Development Date: 5-2-91

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

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 4/29/91

FURTHER: Finance

Date of 5-Day Notice: 5-2-91
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: _____

L&C Committee considered SB 273

Establishment of a peer review committee by the Board of Chiropractic Examiners.

and recommended:

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

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) _____

zero fiscal note(s) COMMERCE/5-2-91

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

[Signature]
[Signature]
[Signature]

[Signature]
Chair: Signature and Recommendation



COMMUNITY CHIROPRACTIC CLINIC

550 EAST TUDOR ROAD
ANCHORAGE, ALASKA 99503
TELEPHONE (907) 582-6388



May 6, 1991

Mr. Cliff Groh
The Office of Rep. David Finkelstein
State Capitol Building
Juneau, Alaska 99811

Ref: HB 293
Chiropractic Peer Review

Dear Mr. Groh:

Thanks for taking the time to meet with me the other day. Your suggestions and comments were right on target, and your insight has been most appreciated and helpful.

To follow up, I would like to cover a few areas of possible questions regarding this peer review bill. Firstly, the need has arisen for the Board of Examiners to provide information regarding the appropriateness of chiropractic services that they are currently unable to provide. The Board has statutory authority to discipline, or to determine if care is within the scope of chiropractic practice, but not to determine if accepted care is reasonable or appropriately applied. This would essentially be one more service the Board could provide.

Secondly, we feel that there would be no fiscal impact to the State. The way we envision that the mechanism would work would be that the review would be conducted by mail, with a copy of the complete file provided to each peer review member. Each of the reviewing doctors would then provide a report to the chairman, who would author a summary report to the parties involved and to the Board. The members of the committee would not have to meet, thereby avoiding the costs of travel and per diem. Postage would be defrayed by an application fee as determined by the Board.

And thirdly, there is a question regarding fee review and anti-trust constraints. This is a real concern. The Board (and others) are being asked with increasing frequency to determine UCR (usual, customary and reasonable) fees. In fact, the Workers' Compensation Board currently mandates UCR's. Whether we like it or not, fee review is coming and the mechanism needs to be in place. The Board is the perfect place to do that as it is under the purview and scrutiny of the State. We feel that fee review under any other authority would have a greater tendency for bias and should be left to the Board.

Again, thank you for your time and consideration. I thoroughly enjoyed my visit to Juneau, and look forward to visiting again. If I can provide any additional information, please do not hesitate to contact me at your convenience.

Warmest personal regards,



David J. Mulholland, D.C.
Peer Review Chairman
Alaska Chiropractic Society

DJM:ar

S B

2 9 0



JAN 29 1992

**OFFICE OF THE TREASURER
DEPARTMENT OF INSURANCE**

The Capitol, Tallahassee, Florida 32399-0300

TOM GALLAGHER

TREASURER
INSURANCE COMMISSIONER
FIRE MARSHAL

FOR IMMEDIATE RELEASE
January 27, 1992

CONTACT:
Jill Chamberlin
Press Secretary
The Capitol, PL-11
Tallahassee, FL 32399-0300
904/922-3108 ext.2840

**"HEALTHY KIDS" SET FOR VOLUSIA COUNTY; EFFORTS SEEK TO
OFFER HEALTH CARE TO 10,000 CHILDREN**

TALLAHASSEE -- "Healthy Kids," the state initiative to offer school children health care benefits and preventive health care, kicks off Feb. 1 in Volusia County, State Treasurer Tom Gallagher and Education Commissioner Betty Castor announced today.

The program is under the direction of the Florida Healthy Kids Corp., created in 1990 by the Florida Legislature, and believed to be the first of its kind in the nation. Gallagher and Castor first announced the program in 1990 and plan to take it to all of Florida's 67 counties.

The pilot program in Volusia County will enroll as many as 10,000 uninsured school children age five to 19. Eligibility requirements include that the children are uninsured and do not qualify for Medicaid or other public programs.

"This first-of-its-kind program will provide children with the health care they so need and deserve to succeed in school," Castor said.

-More-

"Healthy Kids" is offering comprehensive, 24-hour health coverage and will emphasize the importance of preventive care, including medical checkups, eye exams and immunizations. Also covered are prescription medicines, hospital care, emergency services, eyeglasses, surgery and physician office visits. Medical service will be through Florida Health Care Plan, a local health maintenance organization (HMO). Some small co-payments may apply.

The Florida Healthy Kids Corp., a non-profit organization, was created in response to the health needs of Florida's school children, and established with state appropriations.

Gallagher said the program "is an encouraging example of how government is responding to the soaring health care costs that Florida and the nation are experiencing."

The school enrollment-based family health insurance concept of "Healthy Kids" will provide free and reduced-price health insurance to children, based on family income. The cost of the insurance coverage will range from zero to \$60 per month. The coverage will be available to families with children who have no insurance and are enrolled in school.

Potential benefits:

- Healthy children tend to perform better in school.
- Access to health care and insurance will be an incentive to remain in school.

• With access to health care, many children will be healthier and will have fewer sick days from school.

For more information, Volusia parents should contact the Florida Healthy Kids Corp. at 800/367-3253 or their child's school.

DATE: 5/13/91

FURTHER: HESS
Finance

Date of 5-Day Notice: 1/29/92
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 1/29/92

L&C Committee considered SB 290

Access for children to preventive health services; efd.

and recommended:

replace with _____ CS SB 290 (LTC) same title
 attached amendment(s) new title

_____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) _____

zero fiscal note(s) _____
DCED / 2-7-92

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Haley Craft

1/10/92 - 10 Pass
Chair: Signature and Recommendation

Draft CSSB 290 (7-LS1341\D)

Alaska Healthy Kids Corporation

February 12, 1992

This draft addresses concerns expressed by the Department of Commerce and Economic Development.

- I. Page 2, lines 6 - 7: Replaces the director of the Division of Insurance with the commissioner of HSS on the corporation's Board of Directors.

The Division of Insurance viewed its membership on a board implementing a health care program as conflicting with its role as regulator of the insurance industry.

This change remedies that perceived problem.

- II. Page 2, lines 21 - 22: Requires director of the Division of Insurance to serve as a consultant to the board.

- III. Page 2, line 29: Adds "consultants" to list of those who would not be held liable for actions taken in good faith in the performance of the powers and duties of the corporation.

- IV. Deleted item (c) on page 4, lines 17 - 19, of the original bill. This section required DCED to supervise liquidation or dissolution of the corporation.

The department viewed this section as conflicting with federal bankruptcy laws. According to the director of the Division of Insurance, this section of the original bill is not needed since state law already addresses the dissolution of public corporations.

CS FOR SENATE BILL NO. 290 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR COLLINS

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to access for children to preventive health services; and providing for
2 an effective date."

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

4 * Section 1. LEGISLATIVE INTENT. The legislature finds that increased access to health care
5 services could improve children's health and reduce the incidence and costs of childhood illness and
6 disabilities among children in the state. Many children do not have preventive services available or
7 funded and, for those who do, lack of access is a restriction to getting service. It is the intent of the
8 legislature that a nonprofit corporation be organized to facilitate a program to bring preventive health
9 care services to children, if necessary, through the use of school facilities when more appropriate sites
10 are unavailable, and to provide comprehensive health insurance coverage to children. A goal for the
11 corporation is to cooperate with existing preventive service programs funded by the public or the private
12 sector.

13 * Sec. 2. AS 18 is amended by adding a new chapter to read:

14 CHAPTER 27. ALASKA HEALTHY KIDS CORPORATION.

1 Sec. 18.27.010. CREATION OF CORPORATION. There is created the Alaska Healthy
2 Kids Corporation, a nonprofit public corporation and government instrumentality in the
3 Department of Health and Social Services, but having a legal existence independent and separate
4 from the state.

5 Sec. 18.27.020. BOARD OF DIRECTORS. (a) The corporation shall operate subject
6 to the supervision and approval of a board of directors chaired by the commissioner of health and
7 social services or a designee of the commissioner, and composed of 10 other members selected
8 by the governor for three-year terms of office as follows:

9 (1) one member from among three persons nominated by the Alaska Council of
10 School Administrators;

11 (2) one member from among three persons nominated by the Association of
12 Alaska School Boards;

13 (3) one member who is an employee of the Department of Education;

14 (4) two members from among five members nominated by the Alaska chapter of
15 the American Medical Association;

16 (5) one member representing hospitals in the state;

17 (6) two members who are representatives of authorized health care insurers or
18 subscribers' groups who do business in the state;

19 (7) two members who are employees of the Department of Health and Social
20 Services.

21 (b) The director of the division of insurance in the Department of Commerce and
22 Economic Development shall serve as a consultant to the board when requested by the board.

23 (c) Members of the board of directors serve at the pleasure of the governor. The board
24 shall appoint an executive director who is responsible for other staff authorized by the board.

25 (d) Board members who are not state employees do not receive compensation but are
26 entitled to per diem and travel expenses as provided for members of boards and commissions
27 under AS 39.20.180.

28 (e) There is no liability on the part of, and a cause of action may not arise against, a
29 member of the board of directors, or its employees, consultants, or agents, for an action they take
30 in the good faith performance of their powers and duties under this chapter.

31 Sec. 18.27.030. POWERS AND DUTIES. (a) The corporation shall phase in a program

1 to

2 (1) organize school children groups to facilitate the provision of preventive health
3 care services to children and to provide comprehensive health insurance coverage to children and
4 their family members;

5 (2) arrange for the collection of family or employer payments or premiums, in
6 an amount to be determined by the board of directors, from all participant families or employers
7 to provide for payment for preventive health care services or premiums for comprehensive
8 insurance coverage and for the actual or estimated administrative expenses incurred during the
9 period for which family or employer payments are made;

10 (3) establish the administrative and accounting procedures for the operation of the
11 corporation;

12 (4) establish, with consultation from appropriate professional organizations,
13 standards for preventive health services and providers and comprehensive insurance benefits
14 appropriate to children and their family members;

15 (5) establish eligibility criteria that children and their family members must meet
16 in order to participate in the program;

17 (6) establish procedures under which applicants to and participants in the program
18 may have grievances reviewed by an impartial body and reported to the board of directors of the
19 corporation;

20 (7) establish participation criteria and, if appropriate, contract with an authorized
21 insurer to provide administrative services to the corporation;

22 (8) contract with authorized insurers, or any provider of health care services
23 meeting standards established by the corporation, for the provision of comprehensive insurance
24 coverage and preventive health care services to participants; and

25 (9) develop and implement a plan to publicize the corporation, the eligibility
26 requirements of the program, and the procedures for enrollment in the program and to maintain
27 public awareness of the corporation and the program.

28 (b) The corporation may

29 (1) employ staff necessary to properly administer the corporation;

30 (2) as appropriate, enter into contracts with school districts or other agencies to
31 provide on site information, enrollment, and other services necessary to the operation of the

1 corporation;

2 (3) accept grants, loans, or advances of money or property from a public or
3 private source for the purposes of this chapter;

4 (4) take other actions necessary to implement the purposes of the corporation.

5 Sec. 18.27.040. COVERAGE IS SECONDARY. Coverage under the corporation's
6 program is secondary to any other available private coverage held by the participant child or
7 family member. The corporation may establish procedures for coordinating benefits under this
8 program with benefits under other public and private coverage.

9 Sec. 18.27.050. LICENSING NOT REQUIRED; FISCAL OPERATION. (a) The
10 corporation is not considered an insurer. The officers, directors, and employees of the
11 corporation are not considered to be agents of an insurer. Neither the corporation nor an officer,
12 director, or employee of the corporation is subject to the licensing requirements of AS 21 or the
13 regulations of the Department of Commerce and Economic Development adopted under AS 21.
14 However, the division of insurance may require that a marketing representative used and
15 compensated by the corporation be appointed as a representative of the insurers or health services
16 providers with which the corporation contracts.

17 (b) The board is responsible for all corporate operations.

18 Sec. 18.27.060. THE ALASKA HEALTHY KIDS TRUST FUND. There is created the
19 Alaska healthy kids trust fund in the Department of Health and Social Services. It consists of
20 appropriations made to it. Money in the fund may be used only by the corporation.

21 Sec. 18.27.070. ACCESS TO RECORDS; CONFIDENTIALITY; PENALTIES. (a)
22 Notwithstanding any other laws to the contrary, the corporation shall have access to the medical
23 records of a student upon receipt of permission from a parent or guardian of the student. The
24 medical records may be maintained by state and local agencies. Confidential information
25 obtained by the corporation under this subsection shall remain confidential and is exempt from
26 public inspection and copying under AS 09.25.110 - 09.25.120. The corporation or the staff or
27 agents of the corporation may not release to a state or federal agency, to a private business or
28 person, or to another entity confidential information received under this subsection.

29 (b) A violation of this section is a class B misdemeanor.

30 Sec. 18.27.080. DEFINITIONS. In this chapter,

31 (1) "board" means the board of directors of the corporation;

- 1 (2) "corporation" means the Alaska Healthy Kids Corporation.
- 2 * Sec. 3. Notwithstanding AS 18.27, as enacted by sec. 2 of this Act, the Alaska Healthy Kids
- 3 Corporation may not select more than four sites at which to implement its program without prior
- 4 approval of the legislature by law.
- 5 * Sec. 4. This Act takes effect July 1, 1992.

SENATE BILL 290 SECTIONAL ANALYSIS

"An Act relating to access for children to preventive health services; and providing for an effective date."

***Sec. 1. LEGISLATIVE INTENT.** Intent is to organize a nonprofit organization to facilitate a program to bring preventive health care services to children who are unable to access care. This may be through the use of school facilities. Corporation would cooperate with existing preventive service programs.

***Sec. 2.** AS 18 is amended by adding a new chapter.

CHAPTER 27. ALASKA HEALTHY KIDS CORPORATION.

Sec. 18.27.010. CREATION OF CORPORATION. Alaska Healthy Kids Corporation, nonprofit public corporation and government instrumentality, is created in the Department of Health & Social Services, but the corporation has a legal existence independent and separate from the State.

Sec. 18.27.020. BOARD OF DIRECTORS. Corporation operates under supervision and approval of an 11-member board. The chair is the director of the division of insurance. Other members serve three-year terms and at the pleasure of the governor.

Board appoints an executive director who is responsible for other staff authorized by board.

Board members only receive per diem and travel expenses.

No liability for board members for actions taken in good faith performance of their powers and duties.

Sec. 18.27.030. POWERS AND DUTIES. (a) Corporation will (1) organize school children groups to provide health insurance coverage to children and family members, (2) arrange for collection of premiums which include administrative coverage, (3) establish administrative procedures for operation, (4) establish standards for services and

benefits, (5) establish eligibility criteria for participation in program, (6) establish procedures for grievances by applicants and participants in program, (7) establish participation criteria, contract with authorized insurers or health care service provider to provide insurance coverage to participants, (9) develop and implement plan to publicize the corporation

(b) Corporation may (1) employ staff if necessary, (2) if appropriate, enter into contracts with school districts or other agencies to provide other services necessary to the operation of the corporation, (3) accept grants, loans, or advances of money or property from a public or private source, (4) take other actions necessary to implement purposes of corporation.

Sec. 18.27.040. COVERAGE IS SECONDARY. Coverage under the corporation's program is secondary to any other available private coverage held by the participant child or family member. Corporation may establish procedures for coordinating benefits under this program with benefits under other public and private coverage.

Sec. 18.27.050. LICENSING NOT REQUIRED; FISCAL OPERATION. (a) Corporation is not considered an insurer and officers, directors, and employees are not considered to be agents of an insurer; therefore not subject to licensing requirements. Division of insurance may require marketing representative used and compensated by the corporation be appointed as a representative of the insurers or health services providers with which the corporation contracts. (b) Board responsible for all corporate operations. (c) Division of insurance shall supervise liquidation or dissolution of the corporation.

Sec. 18.27.060. THE ALASKA HEALTHY KIDS TRUST FUND. Fund created in Department of Health and Social Services. Consists of funds appropriated to it. Money in fund may only be used by the corporation.

Sec. 18.27.070. ACCESS TO RECORDS; CONFIDENTIALITY;

PENALTIES. (a) Notwithstanding any other laws to the contrary, corporation shall have access to the medical records of a student upon receipt of permission from a parent or guardian of the student. Records may be maintained by state and local agencies. Confidential information obtained by the corporation under this subsection shall remain confidential. (b) Violation of this section is a class B misdemeanor.

Sec. 18.27.080. DEFINITIONS.

***Sec. 3.** Corporation may not select more than four sites at which to implement its program without prior approval of the legislature by law.

***Sec. 4.** Act effective July 1, 1992.

FISCAL NOTE

**STATE OF ALASKA
1992 LEGISLATIVE SESSION**

BILL NO. SB 290

Revision Date: 5/13/91 Department Affected: Commerce & Economic Dev.
 Title: Access for children to preventive health services BRU: Insurance
 Component: Operations
 Sponsor: Sen. Collins
 Requestor: _____ COMPONENT SERIAL NO.

0	3	5	4
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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 FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: _____

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

Prepared By: Joan Brown, Admin. Officer *J. Brown* Phone: 465-2597
 Division: Insurance Date: 1/31/92
 Approved by Commissioner: Glenn A. Olds, Commissioner *G. A. Olds*
 Agency: Commerce & Economic Development Date: 12-7-92

SB 290: "An Act relating to access for children to preventive health services; and providing for an effective date."

This department is not in favor of this bill as currently drafted. The principal objection is that the Director of Insurance is Chairman of the Board of Directors created in Section 2 of the bill (see 18.27.020(a)).

The role is in conflict with the Director of Insurance's regulatory role. The Director of Insurance regulates health care provision by insurers but does not perform a role in the direct or indirect provision of coverages.

We ask that the Director of Insurance be removed from the board established in this bill in order to avoid any appearance of conflict of interest, real or perceived.

A further difficulty with the bill appears in Section 2 (Sec. 18.27.050(c)) (Page 4, line 17). This subsection provides that a "noninsurer" be subject to AS 21 for liquidation and dissolution. It is our belief that this is in conflict with federal bankruptcy laws since the exception provided in the McCarran Ferguson Act (P.L. 15) cannot extend to other than an insurer.



Glenn A. Olds, Commissioner *GO*

Date: 2.7.92

Alaska State Legislature

During Session
P.O. Box V
Juneau, Alaska 99811
(907) 465-2828



During Interim
3111 C Street, Suite 510
Anchorage, Alaska 99503
(907) 561-2040

Senator Virginia Collins

Senate Bill 290

Alaska Healthy Kids Corporation

While children represent a low-risk health insurance pool, according to the Children's Defense Fund, nine to twelve million children have no health insurance.

Senate Bill 290 would give school children the opportunity to have low-cost health care coverage by placing them in one insurance pool. For years, universities have offered lower-cost group insurance to post-secondary students. SB 290 applies this concept to school children.

SB 290 is based on the Florida Healthy Kids Corporation which was created in 1990. The corporation has just started a pilot program in Volusia County that will offer as many as 10,000 uninsured school children, ages five to nineteen, health care benefits and preventive health care.

Like its Florida paradigm, SB 290 limits the program to no more than four pilot sites.

To be eligible for coverage under the program, a child must:

- ◆ not have had health insurance for six months;
- ◆ be five to nineteen years of age;
- ◆ be in grades K through 12; and,
- ◆ not be enrolled in Medicaid or other government-sponsored health programs.

The program would offer comprehensive health care coverage on a sliding fee scale using the national school lunch program criteria as a basis for determining cost.

Care would include regular check-ups, lab tests, physicals, and treatment of minor childhood illness. It would also provide coverage for specialists, hospital stays, and surgery.

SB 290 offers a solution to part of the current health care crisis by offering health care and preventive care to an uninsured segment of Alaskans.



JAN 29 1992

OFFICE OF THE TREASURER
DEPARTMENT OF INSURANCE

The Capitol, Tallahassee, Florida 32399-0300

TOM GALLAGHER
TREASURER
INSURANCE COMMISSIONER
FIRE MARSHAL

FOR IMMEDIATE RELEASE
January 27, 1992

CONTACT:
Jill Chamberlin
Press Secretary
The Capitol, PL-11
Tallahassee, FL 32399-0300
904/922-3108 ext.2840

"HEALTHY KIDS" SET FOR VOLUSIA COUNTY; EFFORTS SEEK TO
OFFER HEALTH CARE TO 10,000 CHILDREN

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"This first-of-its-kind program will provide children with the health care they so need and deserve to succeed in school," Castor said.

-More-

"Healthy Kids" is offering comprehensive, 24-hour health coverage and will emphasize the importance of preventive care, including medical checkups, eye exams and immunizations. Also covered are prescription medicines, hospital care, emergency services, eyeglasses, surgery and physician office visits. Medical service will be through Florida Health Care Plan, a local health maintenance organization (HMO). Some small co-payments may apply.

The Florida Healthy Kids Corp., a non-profit organization, was created in response to the health needs of Florida's school children, and established with state appropriations.

Gallagher said the program "is an encouraging example of how government is responding to the soaring health care costs that Florida and the nation are experiencing."

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Potential benefits:

- Healthy children tend to perform better in school.
- Access to health care and insurance will be an incentive to remain in school.

• With access to health care, many children will be healthier and will have fewer sick days from school.

For more information, Volusia parents should contact the Florida Healthy Kids Corp. at 800/367-3253 or their child's school.

Healthy Kids

What is HEALTHY KIDS?

A program of health insurance offering comprehensive health care coverage.

How does it work?

Your school district is used in the same manner as employers with large groups of employees. Generally, group insurance is cheaper than individual insurance.

What will it cover?

The program will offer comprehensive health care coverage. The care provided under this program includes regular check-ups, lab tests, physicals and minor childhood illnesses. It also provides coverage for specialists, hospital stays, and surgery.

Who can sign up?

Your child must:

- ♦ have no health insurance for 6 months
- ♦ be 5 to 19 years old
- ♦ be in grades K-12
- ♦ not be enrolled in Medicaid or other government sponsored health programs.

...continued on back

FLORIDA HEALTHY KIDS CORPORATION

345 S. Magnolia Drive, Suite E-17 • Tallahassee, Florida 32301 • 904/878-8566 • Fax: 904/878-3078

MONTHLY INCOME DETERMINES COST

FAMILY SIZE	GROSS MONTHLY INCOME	
2 People	\$0 - \$ 740	If you can find your family size and income here, then you pay nothing for coverage.*
3	0 - 928	
4	0 - 1117	
5	0 - 1305	
6	0 - 1493	

FAMILY SIZE	GROSS MONTHLY INCOME	
2 People	\$ 741 - \$ 962	If you can find your family size and income here, then your cost each month is \$3 for each child.*
3	929 - 1207	
4	1118 - 1452	
5	1306 - 1697	
6	1494 - 1942	

FAMILY SIZE	GROSS MONTHLY INCOME	
2 People	\$ 963 - \$1369	If you can find your family size and income here, then your cost each month is \$16 for each child.*
3	1208 - 1718	
4	1453 - 2066	
5	1698 - 2415	
6	1943 - 2763	

FAMILY SIZE	GROSS MONTHLY INCOME	
2 People	\$1370 & over	If you can find your family size and income here, then your cost each month is \$60 for each child.
3	1719 & over	
4	2067 & over	
5	2416 & over	
6	2764 & over	

GROSS MONTHLY INCOME INCLUDES:

- EARNINGS FROM WORK BEFORE DEDUCTIONS ARE MADE
- PENSIONS / RETIREMENT / SOCIAL SECURITY
- WELFARE / CHILD SUPPORT / ALIMONY
- ALL OTHER INCOME AVAILABLE TO PAY FOR HEALTH INSURANCE

* If your children are enrolled in the National School Lunch Program at school, you will be eligible for reduced price coverage. If you have not applied for the school lunch program and would like to, please contact your child's school.

If you are not able to locate your family size and/or income, please call Healthy Kids at 1-800-367-3253.

FLORIDA HEALTHY KIDS BENEFITS COVERAGE

The Florida Healthy Kids Program offers comprehensive healthcare benefits for your children including coverage of prescription medications and eye care services. To receive maximum benefit coverage, you must select one of the Florida Health Care Plan (FHCP) primary care physicians to direct all of your child's care. By selecting a primary care physician who will manage your child's healthcare needs, your personal costs will be kept to a minimum and you will feel secure in knowing a single trusted physician is managing your child's care.

Although a few services require a co-payment (a small fee paid for each visit or service), most healthcare services are covered at no charge. Services with no co-payment include:

- | | |
|--|--|
| <ul style="list-style-type: none"> ● Primary Care Office Visits ● Hospital Stays
(If authorized by Florida Health Care Plan) ● Surgeon Fees
(If authorized by Primary Care Physician) ● Vision Screening, Hearing Screening
(If provided by Primary Care Physician) ● Emergency Ambulance Services
(If life or limb threatening emergency) ● Podiatry Services
(Limited to Florida Health Care Plan Providers) | <ul style="list-style-type: none"> ● Specialist Office Visits ● Diagnostic Testing (Lab, X-rays, etc.) ● Outpatient Surgery
(If provided by Florida Health Care Plan) ● Maternity Care
(If authorized by Florida Health Care Plan) ● Chiropractic Services
(Some limits apply) ● Durable Medical Equipment
(If authorized by Florida Health Care Plan) |
|--|--|

Those services which require a small co-payment include:

<u>SERVICE</u>	<u>CO-PAYMENT</u>
● Prescription Medications (Up to a 31 day supply)	\$3
● Prescription Eyeglasses (Limit one pair every two years unless head size changes)	\$10
● Physical or Speech Therapy (24 sessions within 60 day period)	\$3
● Emergency Room Visits (No co-payment if sent by Primary Care Physician)	\$25
● Mental Health Outpatient Visits (Some limits apply)	\$10

Healthy Kids

Dear Parent:

Florida's first "Healthy Kids" program of comprehensive health insurance is coming to Volusia County.

Healthy Kids is a non-profit program set up by the Florida Legislature to provide health insurance for school children. Insurance coverage will be available to children 5-19 years of age who attend Kindergarten through 12th grade. Your children must also have been without health insurance for the last 6 months and not be covered by Medicaid or other public health insurance programs.

The cost to you will depend on the size of your family and the amount of your family's gross monthly income and will be on a sliding scale.

More details and enrollment forms will be sent home later this fall. If this health insurance program sounds interesting and you think you would like an application when they become available, please fill out the section below and return this letter to your child's school.

PLEASE SEND ME MORE INFORMATION ON THE HEALTHY KIDS PROGRAM:

Name:

FIRST

LAST

Address:

STREET NUMBER OR APARTMENT NUMBER

CITY

ST

ZIP

Phone Number: - -

AREA CODE

Number of Children:

Schools Attended:

FLORIDA HEALTHY KIDS CORPORATION

345 S. Magnolia Drive, Suite E-17 • Tallahassee, Florida 32301 • 904/878-8566 • Fax: 904/878-3078
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1991 INTERIM REPORT

Healthy kids

FLORIDA HEALTHY KIDS CORPORATION
345 S. Magnolia Drive, Suite E-17 • Tallahassee, Florida 32301 • ~~904-932-0135~~

This interim report is provided to the Governor, Insurance Commissioner, Commissioner of Education, Senate President, Speaker of the House of Representatives, Minority Leaders of the Senate and House of Representatives and other interested persons, by the Florida Healthy Kids Corporation and its Board of Directors as required by Chapter 90-199, Laws of Florida, the Healthy Kids Corporation Act.

BACKGROUND

By the Spring of 1990, it had become abundantly clear that Florida's children were in need. The signals observed were many. Pre-school immunizations were down, measles cases had increased 290%, utilization of wellness benefits provided by insurance was low, Florida school drop-out rates were at an all time high, and the number of children uninsured for health care in Florida rose to 27.7%

The Florida Departments of Education and Insurance in consultation with the Institute for Child Health Policy, University of Florida, urged the creation of the Florida Healthy Kids Corporation in response to the health needs of Florida's school children. The proposed Corporation was to be given two missions: One, to create a comprehensive insurance product for school children and two, to facilitate the provision of preventive care for all children. These two primary assignments were the foundation upon which the Corporation would operate.

While under consideration by the 1990 Florida Legislature, other parties became interested in what was being proposed. The University of Florida's Institute for Child Health Policy received grant funding from the Maternal and Child Health Bureau under the U.S. Public Health Service and from Robert Wood Johnson, a private foundation. These grants financed further study of the school enrollment based health insurance concept, first described in the New England Journal of Medicine in 1988. With this financing, the Institute began product research and development with Medimetrix Group of Cleveland, Ohio, a health care financing consultant. This early development provided a solid base from which the Florida Healthy Kids Corporation could launch its mission without hesitation.

THE CORPORATION

The Healthy Kids Corporation Act was passed by the Florida Legislature and signed into law to be effective July 1, 1990.

The Governor, Commissioner of Education and Insurance Commissioner named their appointees to the Healthy Kids Board of Directors and an organizational meeting was held on October 30. At that meeting an Executive Director was named and an office site approved. Healthy Kids opened its offices on November 1, 1990.

A federal grant provides subsidized premium for approximately 7,000 eligible children in one Healthy Kids pilot site.

THE GRANT

A joint proposal was prepared and forwarded to the Health Care Financing Administration by the Florida Medicaid Program, the Institute for Child Health Policy and Healthy Kids. This proposal called for the establishment of a demonstration site for the extension of the school enrollment based health insurance concept which would provide free and reduced price health insurance for school children based on eligibility for the school lunch program. The Florida program was selected and a cooperative agreement established which will bring up to seven million dollars in federal assistance over the next four years. State and private contributions are required to ensure the flow of these federal dollars. A mechanism which could provide some subsidy of premium for families with income exceeding 185% of poverty is also desired.

WHAT IS SCHOOL ENROLLMENT BASED HEALTH INSURANCE?

Traditionally, Americans have obtained individual and family health insurance coverage in one of three ways. Some have been covered by public

500,000 of Florida's school children are uninsured

programs, and some have paid directly for policies, but by far the largest number of people have obtained health coverage in the form of group insurance provided through their employers. Insurance programs for members of large employer groups have had the lowest prices. Because employers typically pay for coverage of workers rather than families, children as a group are disproportionately uninsured. It is estimated that approximately 500,000 of Florida's school children are uninsured. The chance of being uninsured is 37% higher for a child than an adult. In addition, a lack of insurance coverage translates directly to a lack of health care. Uninsured persons use medical care less often than do insured, and they are more likely than the insured to be in poorer health. In a recent study of Florida families with children, it was found that uninsured children had hospital lengths of stay nearly twice that of insured children.

An alternative is School Enrollment Based Health Insurance. To enhance access to health care for children, state school systems are used

School systems are used as grouping mechanisms

as grouping mechanisms for negotiating preventive care and comprehensive group health insurance policies. Coverage will be offered to all families with children enrolled in school. Policies are designed to accommodate the school child up to age 19, dependents, and non-school age siblings. Coverage could be extended to the parents of these children in the future.

THE SCHOOLS

During the first month of operation, 25 of Florida's 67 school districts expressed their interest and intent to prepare a proposal for consideration as a Healthy Kids pilot site. On January 24, 1991, the Healthy Kids Board of Directors selected the districts of Volusia, Hillsborough, Leon and Highlands as the first four Healthy Kids pilot sites. The first open enrollment held in Volusia County will be in the Fall of 1991. Other pilot sites will be implemented as funding becomes available.

Volusia County School System
Students: 48,141
Implementation: Fall 1991

Pilot Site

Those districts submitting proposals during this phase which were not selected, will be added when the cap on pilot sites can be increased. Those districts the Healthy Kids Board of Directors would like to extend this program to are Duval, Alachua, Collier, Lee, Pinellas and Dade counties.

In selected districts, the feasibility of delivering health care services to children at school sites will be tested. In many areas, transportation is difficult for the families of school children. Bringing health care providers to the school site may be the means necessary to provide access to medical care. This blends well with the Florida Department of Education's call for full service schools.

ALACHUA
COLLIER
DADE
DUVAL
HIGHLANDS
HILLSBOROUGH
LEE
LEON
PINELLAS
VOLUSIA

THE BENEFITS

The potential social benefits of this program are far reaching. Children with a more positive health status tend to perform better in school. As with insurance in the work place, access to health benefits will provide an incentive for staying in school. With access to better health care, many children are healthier and lose fewer days from school.

Better performance in school
Increased tendency to stay in school
Fewer sick days

Benefits

The Healthy Kids Corporation is a cooperative venture involving the Florida Departments of Insurance, Education and Health and Rehabilitative Services, local school districts, and the US Health Care Financing Administration, as well as private foundations and the Office of the Governor, State of Florida.

For more information call or write:

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NATIONAL ACADEMY FOR STATE HEALTH POLICY

PORTLAND, MAINE

Access and the Uninsured:

A Guide for States

Patricia A. Butler, J.D.
Boulder, Colorado

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Human Services Development Institute
Edmund S. Muskie Institute of Public Affairs
University of Southern Maine

Members, Steering Committee on the Uninsured
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April, 1991

With Support from the Health Resources and Services Administration, DHHS, and
The Pew Charitable Trusts, Philadelphia, Pennsylvania

See

Over the past several years, Congress has substantially expanded both mandatory and optional eligibility categories bringing, for the first time, some uniformity to income eligibility guidelines and starting the process of uncoupling Medicaid from welfare programs. These changes have, to date, been limited to certain particularly vulnerable groups like infants and pregnant women. In addition, Congress has authorized a series of state demonstrations that test new eligibility categories and sliding scale premium payments to permit persons with slightly higher incomes to enroll in Medicaid. Beyond this, states have acted on their own, without federal matching funds, to "piggy-back" access programs on Medicaid, using state-established eligibility criteria and state funds. These federally-sponsored and state-initiated changes to the Medicaid program are discussed below.

Medicaid Expansions and Changes

New Eligibility Criteria

Driven primarily by concern in Congress for the health of infants and children, the last several years have seen rapid expansions in both mandatory and optional eligibility categories for Medicaid. The improvement in infant mortality rates seen over the past several decades has apparently stalled, and the gap between rates for blacks and whites has not only remained distressingly large, but actually widened. Faced with convincing evidence that appropriate prenatal care can help prevent high risk and low birth weight babies, Congress moved to increase access for pregnant women and young children. Effective in 1990, Medicaid coverage became mandatory for pregnant women and children below age six whose household income was below 133 percent of the federal poverty level. Children in families with incomes below poverty up to age eight have also been made eligible without regard to categorical criteria, and those through age 18 will be phased in over the next twelve years. Starting in 1988, states also obtained the option to cover pregnant women and infants up to 185 percent of the federal poverty level. In addition, states were given the option of using presumptive eligibility for pregnant women and removing assets tests for pregnant women and children. Eligibility has also been extended to the elderly and disabled with incomes up to the federal poverty level.

Medicaid Demonstration Projects

In 1990, Congress authorized three Medicaid demonstration projects to extend eligibility, without regard to categorical requirements, to otherwise uninsured pregnant women and children up to age twenty below 185 percent of the poverty line. The federal authorization requires the participating states to impose sliding scale premium contributions for those above the poverty level, but prohibits contributions more than three percent of household income. Foreshadowing the OBRA 1990 requirement that Medicaid programs pay premiums and cost sharing for private group coverage when it is cost-effective to do so (see discussion, Chapter IV), these demonstrations also permit coordination with private, employer-based coverage. In 1991, Congress is authorizing a second, similar round of demonstrations, this time

extending eligibility to all persons, regardless of age or category, below 150 percent of the poverty line.

These demonstrations mark several departures for the Medicaid program. The use of sliding scale contributions for people in slightly higher income categories explores strategies that move Medicaid away from the "all or nothing" coverage approach that has resulted in rapid eligibility turnover. The use of non-traditional coverage options (excluding inpatient care, for example) by states with rich Medicaid benefits offers "compromise" coverage extending needed preventive and primary care services to broad population groups at low cost to the states. Further, these demonstrations mark new precedents in developing links to private sector coverage. To date, Medicaid programs in many states have been able to offer their recipients the choice (or, in some cases, the requirement) of enrollment in HMOs, a private sector health coverage option shared by many employer groups. In addition, several states (California, Minnesota, New York) have been enrolling Medicaid recipients in employment-based private insurance plans, when a review of the recipients' likely use of health services indicates that it is cost-effective to do so (see description of Medicaid "buy out" plans, Chapter IV). The new demonstrations differ in that indemnity insurers are being used to enroll recipients without regard to health status and that plans are being developed that merge Medicaid populations with other, somewhat higher income groups.

In the first round of demonstrations, awards were granted to Florida, Maine and Michigan, whose programs are described below. A request for proposals for the second round of demonstrations had not yet been issued when this report went to publication.

Florida

Florida is using the demonstration authority to set up a program of health coverage for children, organized around the school system. In this program, children will be subscribers for an insurance plan, administered by an insurer or HMO and underwritten by the state Medicaid agency. All school children within the demonstration school districts up to age twenty will be eligible to join, as will their siblings and dependents (in the case of teen parents). Parents and other family members will not be eligible. For children up to 133 percent of the federal poverty level, the premiums will be fully subsidized by the state; for those between 133 percent and 185 percent, the state will pay 72 percent of the premium. Those with incomes above this level can join at cost. These eligibility categories duplicate the eligibility criteria for the school lunch program, allowing a single determination process for both programs.

The program, called the Healthy Kids Corporation (HKC), offers two coverage options. A primary care services package covers all visits to primary care providers including screening exams, and routine, office-based lab tests. Children will be required to select a primary care physician who will provide or authorize all services. A comprehensive package adds specialty visits, diagnostic testing, outpatient surgery, limited outpatient mental health, and inpatient services. Prescription drugs at \$3.00 per prescription.

glasses and hearing aids are available through Medicaid approved purchasing programs. Organ transplants are not covered. Mental health visits require copayments and there is a \$25.00 copayment for emergency room use which is waived for true emergencies. There is no hospital deductible.

School children can elect to have the primary care package only, or the combined primary care and comprehensive package. Non-school-aged siblings and dependents are only eligible for the primary care package.

The program is being implemented and administered by a not-for-profit corporation, authorized and funded by the state legislature (\$87,000 for first year administrative expenses). This corporation which was founded expressly for the purpose of operating the Healthy Kids program, reports to a Board jointly appointed by the Governor, the Insurance Commissioner and the Education Commissioner. The Board includes representatives of provider groups, the Department of Education, the Medicaid agency, and other similarly interested parties.

The program is scheduled for implementation in September, 1991 in Voulousa County. It is currently seeking a commercial underwriter for the portion of the program serving children whose income is above Medicaid eligible levels. Seven thousand children are targeted for enrollment during the demonstration phase of the program.

Michigan

Michigan's demonstration encompasses a collaboration between the state's Medicaid agency and Blue Cross Blue Shield of Michigan. Under the auspices of this public/private partnership, Blue Cross Blue Shield is developing a Caring Foundation Plan (discussed generically in Chapter VII) to provide coverage to uninsured children under age 18 with incomes up to 185 percent of the federal poverty level. The program will be statewide and, if fully funded, will serve between 14,000 and 15,000 children.

All eligible children in a family will be enrolled simultaneously. The plan covers non-inpatient services, including well-child care. Prescription drugs are covered in full without co-payment. Outpatient substance abuse treatment is covered as well.

Eligible children enroll without premium payment and there is no cost-sharing. Providers are reimbursed at Blue Cross Blue Shield rate schedules. The projected medical services cost of the program is an average of \$29.50 per child, per month.

Under the terms of the demonstration, because this program is administered under the umbrella of the Medicaid agency, both state dollars and private donations for the program will be federally matched. Blue Cross Blue Shield of Michigan is contributing \$800,000 to fully support the administration of the program, and is undertaking a major fund-raising campaign in collaboration with the state, in which they anticipate generating \$1.5