

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 20, 2002

1:08 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Scott Ogan, Vice Chair
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 281

"An Act relating to civil liability for providing alcoholic beverages to a person under 21 years of age; and providing for an effective date."

- HEARD AND HELD

HOUSE JOINT RESOLUTION NO. 25

Proposing an amendment to the Constitution of the State of Alaska relating to initiative and referendum petitions.

- HEARD AND HELD

HOUSE BILL NO. 213

"An Act relating to initiative and referendum petitions; and providing for an effective date."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 281

SHORT TITLE: CIVIL LIABILITY FOR PROVIDING ALCOHOL

SPONSOR(S): REPRESENTATIVE(S) MEYER

Jrn-Date	Jrn-Page	Action
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01/14/02	1948	(H)	PREFILE RELEASED 1/4/02
01/14/02	1948	(H)	READ THE FIRST TIME - REFERRALS
01/14/02	1948	(H)	L&C, JUD
02/11/02	2209	(H)	COSPONSOR(S): DYSON
02/11/02		(H)	L&C AT 3:15 PM CAPITOL 17
02/11/02		(H)	Moved Out of Committee MINUTE(L&C)
02/13/02	2222	(H)	L&C RPT 5DP 1NR
02/13/02	2222	(H)	DP: ROKEBERG, MEYER, KOTT, HALCRO,
02/13/02	2222	(H)	MURKOWSKI; NR: CRAWFORD
02/13/02	2222	(H)	FN1: ZERO(H.L&C)
02/20/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HJR 25

SHORT TITLE:CONST AM: INITIATIVE/REFERENDUM PETITIONS

SPONSOR(S): REPRESENTATIVE(S)WILLIAMS

Jrn-Date	Jrn-Page		Action
03/26/01	0728	(H)	READ THE FIRST TIME - REFERRALS
03/26/01	0728	(H)	STA, JUD, FIN
04/24/01		(H)	STA AT 8:00 AM CAPITOL 102
04/24/01		(H)	Bill Postponed
04/26/01	1256	(H)	COSPONSOR(S): WILSON
04/26/01		(H)	STA AT 8:00 AM CAPITOL 102
04/26/01		(H)	Scheduled But Not Heard
04/26/01		(H)	MINUTE(STA)
04/28/01		(H)	STA AT 9:00 AM CAPITOL 102
04/28/01		(H)	<Bill Postponed>
02/07/02		(H)	STA AT 8:00 AM CAPITOL 102
02/07/02		(H)	Moved Out of Committee MINUTE(STA)
02/08/02	2176	(H)	STA RPT 5DP 2DNP
02/08/02	2176	(H)	DP: WILSON, STEVENS, JAMES, FATE,
02/08/02	2176	(H)	COGHILL; DNP: CRAWFORD, HAYES
02/08/02	2177	(H)	FN1: (GOV)
02/08/02	2177	(H)	REFERRED TO JUDICIARY
02/20/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 213

SHORT TITLE:INITIATIVE/REFERENDUM PETITIONS

SPONSOR(S): REPRESENTATIVE(S)WILLIAMS

Jrn-Date	Jrn-Page		Action
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03/26/01	0729	(H)	READ THE FIRST TIME - REFERRALS
03/26/01	0729	(H)	STA, JUD, FIN
04/24/01		(H)	STA AT 8:00 AM CAPITOL 102
04/24/01		(H)	Bill Postponed
04/26/01	1257	(H)	COSPONSOR(S): WILSON
04/26/01		(H)	STA AT 8:00 AM CAPITOL 102
04/26/01		(H)	Heard & Held
04/26/01		(H)	MINUTE(STA)
04/28/01		(H)	STA AT 9:00 AM CAPITOL 102
04/28/01		(H)	<Bill Postponed>
02/07/02		(H)	STA AT 8:00 AM CAPITOL 102
02/07/02		(H)	Moved Out of Committee MINUTE(STA)
02/08/02	2178	(H)	STA RPT 5DP 1DNP 1NR
02/08/02	2178	(H)	DP: WILSON, STEVENS, JAMES, FATE,
02/08/02	2178	(H)	COGHILL; DNP: CRAWFORD; NR: HAYES
02/08/02	2178	(H)	FN1: ZERO(GOV)
02/08/02	2178	(H)	REFERRED TO JUDICIARY
02/20/02		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

PAMELA WATTS, Executive Director
Governor's Advisory Board on Alcoholism and Drug Abuse
Office of the Commissioner
Department of Health and Social Services (DHSS)
3290 Nowell Avenue
Juneau, Alaska 99801
POSITION STATEMENT: Testified in support of HB 281.

CINDY CASHEN
Juneau Chapter
Mothers Against Drunk Driving (MADD)
211 4th Street, Suite 102
Juneau, Alaska 99801
POSITION STATEMENT: Testified in support of HB 281.

DONNA GARNER, Executive Director
Victims for Justice
1057 West Fireweed Lane, Suite 101
Anchorage, Alaska 99503
POSITION STATEMENT: Testified in support of HB 281.

MIKE FORD, Attorney

Legislative Counsel
Legal and Research Services Division
Legislative Affairs Agency
Terry Miller Building, Room 329
Juneau, Alaska 99801

POSITION STATEMENT: Spoke as the drafter of HB 281 and responded to questions.

RANDY RUARO, Staff
to Representative William "Bill" Williams
Alaska State Legislature
Capitol Building, Room 515
Juneau, Alaska 99801

POSITION STATEMENT: Presented HB 213 and HJR 25 on behalf of the sponsor, Representative Williams.

KATHERINE M. NELSON
PO Box 233146
Anchorage, Alaska 99523

POSITION STATEMENT: Testified in opposition to HB 213 and HJR 25.

ALVIN ANDERS, Chair
Alaska Libertarian Party
810 West 10th Avenue
Anchorage, Alaska 99501

POSITION STATEMENT: Testified in opposition to HB 213 and HJR 25, and provided remarks on behalf of Kenneth P. Jacobus.

KAREN BRETZ, Alaskans for Efficient Government
PO Box 91457
Anchorage, Alaska 99509

POSITION STATEMENT: Testified in opposition to HB 213 and HJR 25.

UWE KALENKA, Alaskans for Efficient Government
PO Box 92824
Anchorage, Alaska 99509

POSITION STATEMENT: Testified in opposition to HB 213 and HJR 25.

MICHELE KECK
PO Box 103424
Anchorage, Alaska 99510

POSITION STATEMENT: Testified in opposition to HB 213 and HJR 25.

RYAN R. KENNEDY, Chairman
Anchorage Citizens for Taxi Reform
3400 West 30th Avenue
Anchorage, Alaska 99517

POSITION STATEMENT: Testified in opposition to HB 213 and HJR 25.

SUSAN E. SCHRADER, Alaska Conservation Voters
PO Box 22151
Juneau, Alaska 99802

POSITION STATEMENT: Testified in opposition to HB 213 and HJR 25.

GAIL FENUMIAI, Election Program Specialist
Central Office
Division of Elections
Office of the Lieutenant Governor
PO Box 110017

Juneau, Alaska 99811-0017
POSITION STATEMENT: Responded to questions during discussion of HB 213 and HJR 25.

MATT WILLIAMS, Officer
Anchorage Police Department (APD)
74201 Sunview Drive
Anchorage, Alaska 99515

POSITION STATEMENT: Testified in support of HB 281.

MARTI GREESON, Executive Director
Anchorage Chapter
Mothers Against Drunk Driving (MADD)
3600 Arctic Boulevard, Suite 3
Anchorage, Alaska 99503

POSITION STATEMENT: Testified in support of HB 281.

CATHIE MAURO
2730 West 80th Avenue
Anchorage, Alaska 99502

POSITION STATEMENT: During discussion of HB 281, described some of the costs she has incurred, and offered her support of HB 281.

ACTION NARRATIVE

TAPE 02-19, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:08 p.m. Representatives Rokeberg, Ogan, Coghill, Meyer, and Berkowitz were present at the call to order. Representatives James and Kookesh arrived as the meeting was in progress.

HB 281 - CIVIL LIABILITY FOR PROVIDING ALCOHOL

Number 0057

CHAIR ROKEBERG announced that the first order of business would be HOUSE BILL NO. 281, "An Act relating to civil liability for providing alcoholic beverages to a person under 21 years of age; and providing for an effective date."

Number 0069

REPRESENTATIVE MEYER, sponsor, noted that in Alaska as well as across the nation, underage drinking is a significant problem. He said that according to a study conducted in 2000, "people who begin drinking before age 15 are four times as likely to develop alcohol dependence, and more than twice as likely to develop alcohol abuse, than those who delay drinking until the legal age of 21." He added that statistics related to [fatal auto accidents] climb when a drunken teenager gets behind the wheel of a car. He remarked that the tragedy last July, which took the lives of three teenagers and police officer Justin Wollam, has highlighted the problems of underage drinking, drinking and driving, and adults providing alcohol to minors.

REPRESENTATIVE MEYER explained that under HB 281, an adult who knowingly furnishes alcohol to a person under the age of 21 can be held civilly liable for the resulting damages. Under current statute, he noted, licensees who knowingly sell alcohol to a minor can be held civilly liable for damages if it's determined that the alcohol is a substantial factor in causing injury or damage. Therefore, he observed, HB 281 holds the general public to the same high standard to which liquor establishments are held. Relaying that 30 other states currently have similar liability provisions in law, he opined that although such laws alone do not eliminate underage drinking or access to alcohol, they do help deter adults from furnishing alcohol to minors. He posited that passage of HB 281 would send a message that "we do not want our kids to have alcohol," and would provide civil recourse for victims' families.

Number 0325

PAMELA WATTS, Executive Director, Governor's Advisory Board on Alcoholism and Drug Abuse ("Advisory Board"), Office of the Commissioner, Department of Health and Social Services (DHSS), spoke in support of HB 281. She said that the Advisory Board appreciates Representative Meyer's recognition of the seriousness of underage drinking in Alaska, and of the need to hold adults who furnish alcohol to persons under 21 accountable for the damages that result from underage drinking. She noted that the Advisory Board believes that many adult Alaskans who provide alcohol to underage drinkers simply fail to realize the potential life-threatening problems associated with providing that alcohol. She opined that knowing that they might be civilly liable for any resulting damages might cause those adults to pause and reconsider before providing alcohol to underage drinkers.

MS. WATTS noted that family and peers can also influence underage-drinking behavior, either actively, by explicitly discouraging use, or passively, by providing models of drinking behavior. She relayed, for example, that a Columbia University study reports that adolescents whose fathers have more than two drinks a day have a 71 percent greater risk of substance abuse. She also relayed that 95 percent of violent crime on college campuses is alcohol related and 90 percent of "college rapes" involve alcohol use by the victim and/or the assailant. She noted that suicide among Alaskan youth is a very serious problem, and that alcohol use among adolescents has been associated with considering, planning, attempting, and completing suicide.

Number 0472

MS. WATTS, after acknowledging that prevention programs are working, also stated:

We need your continued support and advocacy to encourage activities and initiatives that will change community standards and emphasize healthy lifestyles. We need to develop sufficient resources to meet community needs for appropriate levels of intervention and treatment for the underage population identified as having alcohol or other drug problems. But the bottom line here is that adults who provide alcohol to underage drinkers assume a heavy responsibility; this legislation makes clear what that responsibility is and the consequences associated with it. The

[Governor's] Advisory Board on Alcoholism and Drug Abuse encourages your wholehearted support of this legislation.

REPRESENTATIVE BERKOWITZ asked whether there is any outreach program designed to educate the public that proposals such as HB 281 are in the works.

MS. WATTS said having such an outreach program would be an excellent idea, and opined that it should be part of a comprehensive prevention/education plan. In response to a question, she explained that while the Advisory Board writes the state plan for prevention and education, it is the Division of Alcoholism and Drug Abuse (DADA) that implements and oversees that plan.

REPRESENTATIVE BERKOWITZ asked: "In your opinion, is that plan currently funded adequately?"

MS. WATTS responded:

I don't believe that we have adequate resources to get the message out to people to the extent necessary to be as effective as it could be, and we certainly also don't have adequate resources for [treatment services for underage drinkers], both on an outpatient and a residential basis.

REPRESENTATIVE BERKOWITZ: "So it would be fair to say, based on what you have just told me, that if this legislature were truly interested and committed to reducing problems associated with alcohol, we would increase funding to those areas and those concerns."

MS. WATTS said: "That's correct."

REPRESENTATIVE MEYER mentioned that there is other legislation that would allow for a \$100 fine to be assessed against everyone convicted of driving while intoxicated (DWI), with that money then going to various [law] enforcement agencies for the purpose of purchasing new equipment.

Number 0708

CINDY CASHEN, Juneau Chapter, Mothers Against Drunk Driving (MADD), noted that in addition to being a member of MADD, she is also a "victim of drunk driving." She offered her condolences

to the families of those killed in the aforementioned July tragedy. She explained that when a drunk driver killed her father a year ago, she had to go through the same experience, and she noted that such an experience ages a person. She opined that HB 281 will serve as a deterrent, and stated that MADD supports this bill because "we feel that there will be, in the future, people who might have been killed by drunk driving who will remain alive; we'll never know who those people are but they will have invisible wings on them, so to speak - they will still be alive" - because of the effects of HB 281. She encouraged the committee to pass HB 281 and she thanked Representative Meyer for offering it.

Number 0797

DONNA GARNER, Executive Director, Victims for Justice, testified via teleconference in support of HB 281. She noted that for the victim and the victim's family, there are always casualties, whether it's from property loss, loss of life, or medical bills. She mentioned that the aftermath of such an incident as occurred last July, for example, involves years of counseling, so from a financial standpoint, victims and their families are victimized all over again. She opined that holding the offender accountable is necessary for the healing of the victim, and that HB 281 would give additional closure from the victim's point of view. She mentioned that she has teenagers of her own and, thus, has a lot of teenagers coming in and out of her home, and she has noticed that kids really do consider drinking to be a rite of passage: "You find an adult, you score, and you bring home alcohol." Therefore, she opined, it really is necessary to send the message that this activity is not going to be tolerated.

REPRESENTATIVE BERKOWITZ noted that strict liability is somewhat unusual in tort law, and asked for an explanation of what it means and for a description of other possible alternatives.

Number 0976

MIKE FORD, Attorney, Legislative Counsel, Legal and Research Services Division, Legislative Affairs Agency, confirmed that strict liability is unusual with regard to tort law, and explained that what it really does is remove one of the components that must normally be shown in order to collect civil damages. By including a "strictly liable provision," in order to make someone liable for civil damages, it will not be necessary to show that he/she was negligent or that his/her

actions fell below the standard of a reasonable person. In response to a question, he indicated that the fact that a person committed the act is enough [to establish liability]. He noted that there are already similar provisions in law, referring to commercial fishing offenses as an example: "If you drift into a closed area, whether you intended to or not, you're liable."

CHAIR ROKEBERG asked whether the hosts of a large social gathering could be held strictly liable if underage guests consumed alcohol at that gathering.

MR. FORD, in response, explained that currently, civil liability only applies to "people who are licensed," so if a person is not licensed [to distribute alcohol], then he/she can not be held civilly liable for what happens as a result of providing alcohol to another person. He added, however, that it is still a crime under AS 04.16.051 to provide alcohol to a minor. He pointed out that HB 281 would change the existing law pertaining to civil liability to say that if a person, regardless of whether he/she is a licensee, provides alcohol to a minor, then that person could be held civilly liable. So, yes, he answered, the host of social gathering could be held civilly liable under HB 281. He did note that it is not a violation of existing law to provide alcohol to one's own child.

REPRESENTATIVE OGAN surmised, then, that strict liability means that it does not have to be proven that the person providing alcohol to someone underage has "a culpable mental state." He asked whether there is any insurance available such as homeowner's insurance, for example, that would protect the social host who might be held civilly liable under HB 281.

MR. FORD said he did not know "what the typical homeowner's policy would do in this situation."

REPRESENTATIVE MEYER pointed out that a key term in HB 281 is "knowingly", which is a fairly high standard; therefore, the host would have to know that he/she is serving alcohol to someone underage.

Number 1312

MR. FORD confirmed this, both that there is a requirement of knowledge on the part of the person providing the alcohol, and that "knowingly" is a fairly high standard.

REPRESENTATIVE MEYER asked whether changing the language from "strictly liable" to "civilly liable" would change the standard.

MR. FORD confirmed that such a change would provide for a different standard. He elaborated:

If you did that, you're going to be requiring them to show different elements in order to collect these civil damages. One of the elements they'd have to show is that the person acted below the reasonable man's standard, and the court would determine that, case by case.

REPRESENTATIVE MEYER asked: "Do we really need to do something like that since we have the word 'knowingly' in the bill?"

MR. FORD replied that changing it to a civil liability standard would simply be adopting a different approach.

CHAIR ROKEBERG asked Mr. Ford to describe the differences in civil liability standards.

MR. FORD explained:

Strict liability is when negligence is not a part of the configuration of what you need to show. Once you go into negligence, you can have different forms of negligence. You can have an act that is grossly negligent; that could be your standard. In other words, to collect damages, you have to show that the act is beyond what is normally a negligent act. You could have simple negligence. There are other standards, which sometimes get lumped together; probably the highest one would be an intentional act, where you intentionally cause someone harm. Intentional, gross, simple negligence or -- well, gross - or reckless - simple negligence; those are probably the ones that are most commonly used.

REPRESENTATIVE COGHILL recounted that he has been to weddings and other family gatherings where alcohol was furnished but not strictly monitored. He asked whether the host would still be held strictly liable if he/she does not maintain control over who consumes it.

MR. FORD surmised that it would be up to a court to interpret such a situation, adding that he is not aware of any cases that

have dealt with that particular question. He opined that one reason why the legislature, to date, has eliminated civil liability for providing alcohol - except for people who are licensed - is because of these issues. "When do you cross that line from ... providing alcohol to simply having it on your premises and someone gets access to it," he pondered. He added that he would research that issue and look for any case law pertinent to it. In response to questions, he reiterated that currently, only licensees can be civilly liable.

Number 1546

REPRESENTATIVE OGAN asked if the language being added, beginning on page 1, line 13, pertains to bootleggers.

MR. FORD explained that that language is simply a technical amendment. "I had to separate some language out in order to incorporate the new language; it makes no change to existing law," he added.

REPRESENTATIVE BERKOWITZ noted that the first amendment he ever passed was to make bootleggers civilly liable for the cost of their prosecution, adding that to date, that provision has not been used.

CHAIR ROKEBERG read a portion from the Notes to Decisions section of AS 04.21.020:

Nonlicensees illegally furnishing liquor to minors. - Given the plain language of this section and the absence of convincing contrary legislative history, the court cannot by statutory interpretation construe this section to be inapplicable to nonlicensees who illegally furnish liquor to minors. Chokwak v. Worley, 912 P.2d 1248 (Alaska 1996).

He asked for an interpretation of this reference to inapplicability.

MR. FORD said: "What there saying is [that] they can't read a civil liability provision into law when the law says there isn't one."

REPRESENTATIVE BERKOWITZ said that according to his recollection, the Chokwak case involved an [underage] plaintiff who got drunk, got in an accident and was injured, and then sued

the host of the party. He asked if that case could have been pursued for civil [damages] under existing statute.

MR. FORD initially indicated that it could not but added that he would research that case for a definitive answer.

CHAIR ROKEBERG noted that he shared some of the concerns expressed about the strict liability standard.

REPRESENTATIVE BERKOWITZ expressed a willingness to accept a negligent standard instead, adding that he thinks it is the appropriate standard.

Number 1795

CHAIR ROKEBERG announced that HB 281 would be set aside. [It was taken up again following the hearing on HJR 25 and HB 213.]

HJR 25 - CONST AM: INITIATIVE/REFERENDUM PETITIONS
HB 213 - INITIATIVE/REFERENDUM PETITIONS

Number 1799

CHAIR ROKEBERG announced that the committee would next hear both HOUSE JOINT RESOLUTION NO. 25, Proposing an amendment to the Constitution of the State of Alaska relating to initiative and referendum petitions; and HOUSE BILL NO. 213, "An Act relating to initiative and referendum petitions; and providing for an effective date."

Number 1820

RANDY RUARO, Staff to Representative William "Bill" Williams, Alaska State Legislature, on behalf of Representative Williams, sponsor, said that [HB 213 and HJR 25] adds to the initiative process a requirement that initiative sponsors gather signatures equal to 7 percent of the voters who voted in the preceding general election, in three-fourths - or 30 - of the 40 House districts, before the initiative is placed on the ballot. He offered that this change would guarantee that before an initiative reaches the ballot, there is "some baseline minimal showing of statewide support." He said that the sponsor believes that this is good public policy. He noted that of the 23 states that have some form of the initiative process, a majority of them have adopted "geographic signature requirements."

MR. RUARO said that Washington State has legislation pending that would impose an 11 percent geographic signature requirement. Arkansas, Missouri, Nebraska, and Ohio have a 5 percent geographic signature requirement. Idaho has a 6 percent geographic signature requirement. Florida has an 8 percent geographic signature requirement. Montana, Nevada, and Utah have a 10 percent geographic signature requirement. Wyoming has a 15 percent geographic signature requirement. Massachusetts has a 20 percent geographic signature requirement. And Maine has a little different requirement in that not more than 25 percent of the signatures can come from any one district. He pointed out that the 7 percent requirement, as proposed by [HB 213 and HJR 25], tends to "weigh in on the lower end of the scale" in comparison to some other states. In conclusion, he urged members to support [HB 213 and HJR 25].

REPRESENTATIVE BERKOWITZ asked: "What is the problem we're trying to fix?"

MR. RUARO indicated that although it may not necessarily be a "problem," there is a perception that the debates surrounding initiatives need to be expanded [beyond the large population centers]. He did acknowledge, however, that in members' packets there is a handout indicating that for one recent initiative, in at least 24 House districts, enough signatures - over 7 percent - were gathered. "So, even with the current process, it seems like there is some gathering of statewide support; this just formalizes it, I guess," he added.

Number 1992

REPRESENTATIVE BERKOWITZ, to illustrate the problem that he sees with [HB 213 and HJR 25], noted that the Idaho requirement cited by Mr. Ruaro has been overturned by the [U.S. District Court - District of Idaho] November 2001 Idaho Coalition United et al. v. Pete T. Cenarrusa decision. Representative Berkowitz also noted that the Cenarrusa decision cited a U.S. Supreme Court case, Moore v. Ogilvie, 394 U.S. 814 (1969), which said:

[It is] no answer to the argument under the Equal Protection Clause that this law was designed to require statewide support for launching a new political party rather than support from a few localities. This law applies a rigid, arbitrary formula to sparsely settled counties and populous counties alike, contrary to the constitutional ... theme of equality among citizens in the exercise of

their political rights. The idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government.

REPRESENTATIVE BERKOWITZ mentioned that the Moore v. Ogilvie case was also cited in the 2000 U.S. Supreme Court case, Bush v. Gore, which said: "... we invalidated a county-based procedure that diluted the influence of citizens in larger counties in the nominating process." Therefore, Representative Berkowitz surmised, "we're in a legal posture now where the U.S. Supreme Court is, at the very least, hostile to the notion that we can [institute] geographically based requirements for initiatives." He asked Mr. Ruaro to comment.

MR. RUARO noted that he did come across the Cenarrusa case, but his research indicated that that case is under appeal and that the "attorney for the state of Idaho" has expressed confidence in being able to overturn that decision. He relayed that the attorney said that the court misread Moore v. Ogilvie and that it dealt with a geographic requirement for a specific number of voters - 200 signatures from each of at least 50 of that state's 102 counties; thus, by having a set number, if a district had less than that required number of voters in it, too large a percentage of signatures must be gathered.

MR. RUARO pointed out that in contrast, [HB 213 and HJR 25] requires a percentage of signatures and not a set number. Thus, he added, "there is no dilution; if you have 1,000 voters in a rural district you need 7 percent, if you have 10,000 [voters] in an urban [district] you need 7 percent, so there's no weighting of the voters' rights differently, it remains a constant percentage in each district."

REPRESENTATIVE BERKOWITZ said that he is interested in finding out, from those who are supportive of [HB 213 and HJR 25], why they feel this sort of change is necessary. He said that understanding that reasoning could assist him in developing a solution to the perceived problem.

CHAIR ROKEBERG posited that it might be based on "Alaskan political sectionalism," an issue about which he'd written his senior thesis.

Number 2196

KATHERINE M. NELSON testified via teleconference, noting that she collects a lot of signatures on a statewide basis for a variety of petitions, said that increasing the amount of signatures per district could hurt many of the petitions. She mentioned that she did not think it is fair to increase the number signatures required because it increases the likelihood that the petitions will be disqualified.

Number 2260

ALVIN ANDERS, Chair, Alaska Libertarian Party, testified via teleconference, and indicated he would be entering into the record some remarks made by Kenneth P. Jacobus, who was unable to attend this meeting but who has testified at previous hearings on [HB 213 and HJR 25]:

There is no reason that Republicans should lead the charge to deprive the voters of Alaska of their rights to initiative. In particular, [if] we - speaking as [a] Republican - want to elect a Republican governor at the next election and retain Republican seats in the newly reapportioned legislature, we cannot have a proposed constitutional amendment on the ballot that could allow our opponents to argue that Republicans want to deprive the voters of Alaska of their initiative rights.

MR. ANDERS, speaking on his own behalf, said that in addition to being the chair of the Alaska Libertarian Party, he is the chair of "Anchorage Citizens for Implementing Medical Marijuana"; is the past chair and the current treasurer of "Freedom in Alaska"; and has worked on numerous initiatives in the state. He said that [HB 213 and HJR 25] would make it extremely difficult and expensive for "initiatives to proceed." He noted that supporters of the change proposed by [HB 213 and HJR 25] have conceded the point that it is not really necessary, since it has been demonstrated that there is already statewide support of initiatives that get placed on the ballot.

MR. ANDERS recounted that with regard to the initiatives that he has worked on, "we're always getting initiatives [out to] all parts of the state, we've flown people to Kodiak, I've flown to Kodiak on my own expense, [and] we've had people fly out to Sitka [and] to Cordova." But most of the signatures, under current law, can be gathered by attending the various fairs from Fairbanks to Ninilchik. Changing the signature requirement to 7 percent in 30 districts means that if one lives in Ketchikan,

Bethel, or Nome and wants to put an initiative on the ballot, it would no longer be possible to do so by spending a summer in Anchorage or Wasilla working the fair circuit.

Number 2372

MR. ANDERS said that under the change proposed by [HB 213 and HJR 25], a person would have to fly into 30 out of 40 House districts and gather anywhere from 700 to 1,000 signatures per district; this represents a 200 to 700 percent increase over the current requirements. He observed that it has not been demonstrated that the change proposed by [HB 213 and HJR 25] is necessary, that it solves any problems, or that it guarantees that communities will become more involved in the initiative process. He pointed out that Alaska already has a "geographic distribution requirement, and signatures are already gathered from throughout the state.

MR. ANDERS, referring to testimony regarding other states that have geographic signature requirements, said that these other states, with "more draconian distribution requirements," also have better road systems; "I can drive to every county in every one of those states ... listed." If the State of Alaska is willing to build roads to [all of its districts] throughout the state, then perhaps that requirement would make sense, he added. He pointed out that there are ways to make [the initiative process] more accessible to "far-flung communities," and would save the legislature money at the same time:

That ... is very easily done by simply getting rid of the petition booklets, that the state prints at great cost to the taxpayers, and making the petitions one page, with no certificate statement required - they're already certified if the people signing the petition are registered voters - ... that could be loaded up on the Internet, downloaded [via] 'Adobe Access Files,' and signed anywhere in the state and mailed back in. So, if you want to make the initiative process more inclusive and ... save the taxpayers money at the same time, get rid of the petition booklets, allow us to circulate a one-page petition like we do for municipal petitions, and ... return to the days when we had a grace period.

... If I lived in Nome and I, at my own expense, go out and gather 30,000 to 40,000 signatures - like the folks did on the minimum-wage initiative - and then

come up just a few signatures short, [only] to have to do it again the next year, there aren't many people that have the resources that the [American Federation of Labor and Congress of Industrial Organizations] (AFL-CIO) had that could put an initiative on the ballot. We would have had the minimum-wage initiative on the ballot two years ago if you had not changed the grace period. So, [Representative] Williams's initiative is not necessary, there's been no testimony given that demonstrates that it is necessary, it doesn't correct any harm, and, in fact, it creates great damage.

MR. ANDERS, in response to questions, indicated he has not received any compensation for gathering signatures for the many initiatives that he has been involved with, among them the "hemp initiative, ... term-limits initiative, move-the-legislature [initiative, and the tax-cap initiative]."

TAPE 02-19, SIDE B
Number 2498

MR. ANDERS added that typically, he is the one that pays others to help him gather signatures. Referring to another issue with which he has concerns and that he hopes the legislature will correct, he said:

Currently, we have an unconstitutional, undemocratic, unrepblican requirement that you can pay \$1 per signature. This violates peoples' free-speech rights and it's counter to the spirit of free enterprise; it's just absolutely silly. And what we do, as citizens putting initiatives on the ballot -- I hate to hurt your feelings, but it's far more important than what you folks are doing in Juneau. People, when they hear our initiative, ... get a chance to decide whether ... they support it, and then, when and if it makes it on the ballot, they [again] get to decide if they support it.

Many a time, we've gone to legislators and [asked], "Hey, why did you vote for this bill?" And then we find out later [that] they didn't even have a chance to read it because it was so large. And, moreover, oftentimes people complain that these bills ... are written by lobbyists and passed by legislators who don't even read them; [legislators] have their staff

read them and report on them. Citizens that sign these petitions and vote on these issues -- these issues are debated, they're issues that the legislature won't touch, and the citizens feel it's absolutely their only recourse, ... to petition their government.

MR. ANDERS continued:

So all we're doing by passing [Representative] Williams's bills is costing the state more money and creating a court battle that the state's going to have to resolve, because it's going to go to the supreme court. ... And, moreover, it just makes bad will for the Republicans with the electorate. Now, if this is something Republicans want to champion at this time, that's okay with me, but we'll be having plenty of Libertarians on the ballot for people to choose less government without having to go for somebody that supports less government and less individual liberty and less democracy.

Number 2404

CHAIR ROKEBERG said that while he does support the constitutional right of the people of Alaska to enter into the initiative process, he would point out that the "legislature continually has to rewrite or readjust the bad drafting in every initiative petition that's come along in the last eight years." He opined that even those petitions that were sponsored by Mr. Jacobus were poorly drafted because of a lack of proper legal counsel to assist with the drafting.

MR. ANDERS said he would pass the comments regarding the drafting of initiatives on to Mr. Jacobus. Mr. Anders mentioned that Senator Ellis assisted him with his initiative pertaining to same-day voter registration by having the Legislative Affairs Agency draft it. He suggested that perhaps Chair Rokeberg's concern regarding bad draftsmanship of initiative petitions could be remedied during the approval process by having all petitions reviewed and redrafted by the legislative Affairs Agency. He noted that sometimes, when the legislature "corrected" what it considered to be a badly written petition, the voters did not look upon that correction favorably.

REPRESENTATIVE OGAN asked whether "people read the bills when they sign these petitions?"

MR. ANDERS relayed that often, when people are first approached to sign a petition, they won't sign it at that time; instead, they will take the informational pamphlets home for later review. Then, when people are subsequently approached, they will sign the petitions, particularly if it is an issue that receives widespread media debate. He noted that initiative petitions that do not get a lot of media coverage often don't get a lot of signatures either. He opined that many bills proposed by the legislature do not receive a lot of public comment, and suggested that perhaps all legislation should be subject to voter approval after passage by the legislature. In this way, he posited, the public would become more informed and more involved in the process.

CHAIR ROKEBERG remarked that if the "fourth estate" in Alaska were doing a better job, there would be better publicity about legislation.

Number 2230

REPRESENTATIVE OGAN referred to the billboard-petition issue, and said:

There was blatant lies in that drive. I remember they had on TV [an ad that] said, "Billboards: hundreds of them, thousands of them, as far as the eye can see." And they had this graphic cartoon ... of billboards popping up ... along the sides of the roads. [But] ... billboards were illegal in this state. ... So I guess one of the things that I have problems with ... is [that] there's a lack of accountability and honest advertising in these things.

And the people that I've been approached [by] to sign petitions are obviously getting paid. They're hustling signatures; they don't really know what the issue is. They're approaching you with a sound bite of, [for example], "Do you want to make it illegal to shoot wolves from airplanes?" ... I was approached with that, ... and that was already illegal, and what they were banning was shooting wolves while airborne on the same day, but you actually have to land.... So, ... what do you do [to] police your people to make sure that they're representing these initiatives honestly?

Number 2157

MR. ANDERS said that that is a good point. He noted that the two examples Representative Ogan mentioned are two initiatives that he could have been paid to circulate, but he refused to do so because he disagreed with them. So, just like people will refuse to sign a petition because they disagree with it, many people will refuse to circulate a petition for the same reason. He said that the people who are good circulators are able to honestly and accurately represent the [petition]. He said he has had people tell him that they'd sign any petition, regardless of the issue, simply because they are huge champions of the initiative process and they feel that people have a right to decide these issues. With regard to the issue of whether the advertising is honest, he said that that is the burden of the opposition: to point out the flaws. He acknowledged that the billboard [initiative] advertising, which was very effective and very clever, "was able to carry the day." He remarked that it seems he is often in alliance with other initiative groups, not because he supports their causes, but because he and they all support the initiative process.

REPRESENTATIVE OGAN asked Mr. Anders whether he thinks that rural Alaskans should be disenfranchised from the process.

MR. ANDERS said absolutely not; that is why he is opposed to the change proposed by [HB 213 and HJR 25], because that is exactly what it would do. It would not only disenfranchise rural Alaskans but all Alaskans, he opined.

REPRESENTATIVE OGAN said he disagrees; [HB 213 and HJR 25] seem to give all Alaskans, not just urban Alaskans, the ability to drive the "petition process."

MR. ANDERS argued that such a change would not make it easier for people in rural Alaska to put issues before the voters; if that is the goal, his suggestion regarding placing initiative petitions on the Internet is a better solution. The change proposed by [HB 213 and HJR 25] would make it even more expensive than it currently is for someone from rural Alaska to put something on the ballot, he opined.

CHAIR ROKEBERG pointed out that if the change proposed by [HB 213 and HJR 25] is adopted by the legislature, the voters will have a chance to vote on that change as well.

Number 2014

KAREN BRETZ, Alaskans for Efficient Government, testified via teleconference. She explained that Alaskans for Efficient Government is the organization that sponsored the tax-cap initiative and the ballot initiative to move the Alaska State Legislature from Juneau to the Matanuska-Susitna Valley ("Mat-Su Valley"). She reminded the committee that the initiative process is guaranteed to Alaskan citizens by the Alaska State Constitution, and opined that HB 213 and HJR 25 limit the constitutional rights of Alaskan citizens to petition the government. She continued:

You, the members of the legislature, are our elected representatives. If the electorate believes that the legislature is not addressing certain issues, the electorate has the power to take matters in its own hands and place issues on the ballot through the petition process. The petition process serves as an important safety valve for the people. The resolution proposes to force us to vote on whether our constitutional rights should be limited. This is unacceptable.

If passed, this bill and resolution will further alienate the electorate. From the experiences of Mr. Kalenka and myself collecting signatures to make the legislature more accessible, I tell you, the electorate is already jaded and disillusioned. They want their voices to be heard more clearly, not muffled. And I will also add that Mr. Kalenka and I were not paid to collect signatures [for] the legislative-move initiative or for the tax cap. In fact, we spent a great deal of our own money and time to place those issues on the ballot.

MS. BRETZ continued:

One argument presented in favor of the bill and the resolution is that they will give more power to the rural communities. This isn't necessary; rural communities already have the opportunity to vote on all proposed [initiatives and referendums], just like everyone else in the state does. The proposed restrictions will increase the cost and work necessary to put an issue on the ballot; they will prevent regular citizens from participating in the initiative process. Only well-funded special interest groups

will be able to place issues on the ballot. Those well-funded special interest groups, in effect, will be able to buy a place on the ballot, while regular citizens will not be able to get their issues heard. On behalf of the voters of Alaska, I urge you to not pass [HB 213 and HJR 25] out of your committee. Thank you.

CHAIR ROKEBERG noted that currently, two-thirds of the House districts have to be represented, whereas the change proposed by [HB 213 and HJR 25] will only raise that number by three or four districts. He asked: "Is it the 7 percent that troubles you?"

MS. BRETZ said: "The entire bill troubles me; the spirit of the bill is restricting the rights of the people to petition the government, and I'm disturbed that the legislature is trying to restrict that [right]."

Number 1855

UWE KALENKA, Alaskans for Efficient Government, testified via teleconference, and said simply that [HB 213 and HJR 25] are ill-conceived, are ill-advised, and should not pass out of committee. [The proposed legislation] tampers with the peoples' constitutional rights, he opined, and violates the spirit of the [Alaska State] Constitution.

Number 1796

MICHELE KECK testified via teleconference, and said she has worked on several initiatives as a consultant and an organizer. She opined that [HB 213 and HJR 25] wouldn't solve the perceived problem that the sponsor is trying to fix. Making the signature phase harder is not going to make it fairer to the smaller communities; it's just going to make it harder for them to get things on the ballot. In the signature phase, she observed, people sign mostly just so that things will appear on the ballot, not necessarily because they support or oppose any given issue. She elaborated: "Out gathering signatures, you'll hear time and time again, 'I'm not sure if I'll agree, but, sure, I'll sign just to get it on the ballot and vote on it.'" And the reason people do this, she surmised, is because they support the initiative process; they want to have the debate, and decide and vote on the issues, themselves. She posited that the public does not want what they perceive to be a restriction on the initiative process.

MS. KECK said that [HB 213 and HJR 25] would raise the costs of initiatives, which will make it more prohibitive for the smaller communities in rural Alaska to participate; therefore, the people with less money - the average citizens and the average groups - will be limited in their ability to participate. She opined that the ability to participate in the initiative process will shift into the hands of professional signature gatherers and outside organizations with a lot of money to "pull these things off." She also opined that the 7-percent-from-each-district requirement is much too high; currently, there is a statewide 10 percent requirement, which averages out to about 22,000 signatures. She noted, however, that in reality, to put an issue on the ballot, 35,000 to 40,000 signatures must be gathered; therefore, raising the requirement to 7 percent would actually have the effect of requiring signatures from about 12 percent of a district's registered voters.

Number 1684

MS. KECK offered that if the goal is to make the initiative process more accessible to rural Alaska, "we should do things like allow petitions on the e-mail, or make it easier for people in rural communities to sign," since access in Alaska is limited. To have a good initiative campaign, she explained, "you do need to go out and get support from all sorts of people around the state"; people involved with Anchorage-based petitions make an effort to go out to the airport and to the state fairs to talk with people who live outside the Anchorage community, because without statewide support, the initiative won't succeed.

MS. KECK, on the issues of honest advertising, drafting problems, and sound bites, said that those issues are separate from, and will not be addressed by, making the signature requirement harder. She stated that the initiative process is already hard enough, and that the reason there are problems with people gathering signatures on the street is that there is a lot of pressure to get so many signatures in a short period of time. She said: "We don't need the process made harder." If any changes occur, they should be ones that make it easier for people to participate. She suggested that one only has to look at the number of initiatives filed, as compared to the number that actually make it on the ballot, to see that the initiative process is not out of control and should be left alone.

CHAIR ROKEBERG, referring to Ms. Keck's statement that passage of [HB 213 and HJR 25] would, in actuality, require that about

12 percent of a district's registered voters sign a petition, asked whether this is because some of the signatures are illegible or because petitions are signed by people who are not registered voters.

MS. KECK explained that petitioners ask people whether they are registered to vote before they are allowed to sign, but pointed out that because many people are in a hurry when they sign the petition, oftentimes what is hurriedly written on the petition does not appear to match what the Division of Elections has, and so those names gets thrown out. She noted that when address information no longer matches what the Division of Election has, those names also get thrown out, as do names in which use of a middle initial does not match. Because of these and other reasons, many names are thrown out, she said, remarking that there is no way to verify that a signature will be considered valid and thus count towards fulfilling the requirement.

Number 1515

RYAN KENNEDY, Chairman, Anchorage Citizens for Taxi Reform, testified via teleconference, and after noting that he is a loyal Republican, said that he feels that there are a lot of problems with [HB 213 and HJR 25]. He opined that [HB 213 and HJR 25] would be introducing a "federal character" into the initiative process, adding that he does not see any reason to make such a change. He pointed out that the governor is elected by a simple majority of votes and does not have to garner a certain number of votes according to a geographical requirement. So why should the initiative process be any different, he asked. He opined that the only reason to adopt [HB 213 and HJR 25] is to make the current initiative process more difficult, and aside from that, there is no compelling reason for adopting this legislation.

MR. KENNEDY noted that although citizens have a constitutional right to petition the government, adoption of [HB 213 and HJR 25] would simply be piling more restrictions onto the initiative process. He recounted that during the signature phase of the initiative that he was involved with, although he could collect signatures at the airport, he had to first be issued a permit and then was limited to a certain area and certain times. He also recounted that when he was filing for the permit, he was told that if the issuing agency did not agree with the subject of his initiative, he would not be issued the permit that would allow him to gather signatures at the airport.

MR. KENNEDY noted that although the issuing agency later apologized for that statement and agreed that it did not have the right to limit Mr. Kennedy's right to petition his government, his point is that [HB 213 and HJR 25] are merely an attempt to limit his right to petition and make it more difficult. Pretty soon, the only people who will be able to sponsor initiatives are those with "vested interests," whereas the whole point of the initiative process, he posited, is to circumvent powerful special interest groups and the political pressures that they bring to bear on the legislature.

Number 1261

SUSAN E. SCHRADER, Alaska Conservation Voters (ACV), after noting that the ACV is a coalition of 34 environmental organizations with a combined membership of about 35,000 Alaskan voters, said that the ACV has always opposed any measures that would restrict the initiative process. She said that she agrees with many of the comments made by previous speakers opposed to [HB 213 and HJR 25]. She continued:

I did want to point out two pieces of factual information that you might want to consider. And that is ... that Alaskan voters have spoken recently in two instances on the issue of restricting the initiative process. One, you will recall, was Ballot Measure 1, which was the ballot in November of 2000, and that was a proposed amendment to the [Alaska State] Constitution to restrict the initiative process so it could not be used to address wildlife issues. ... I'd like to remind you that that ballot measure failed overwhelmingly by 65 percent; in District 5, 74 percent of the voters voted it down.

And I believe this was not so much an issue of voting for or against wolf control, this was an issue voting for or against limiting people's ability to use the initiative process - essentially what Alaskan voters would be addressing if [HJR 25] makes it to the ballot. In District 11, 65 percent voted no; in District 13, 70 percent voted no; in District 19, 66 percent voted no; in District 27, 61 percent voted no; in District 32, 59 percent [voted no]; and in District 34, 60 percent of the voters voted, "No, we do not want our rights to use the initiative process restricted."

And then the other piece of information [that] I believe ... was attached to our position paper ... was a poll that Alaska Conservation Alliance had Ivan Moore (ph) run in January. ... There was one question in that poll that simply asked, "Do you favor or oppose measures that limit citizen ballot initiatives?" And overwhelmingly, again, 75 percent of those polled, in this Ivan Moore poll, said that they oppose such measures. So, I just want you to have that information; my prediction would be, if these measures did make it to ballot, that once again Alaskan voters will overwhelmingly turn it down. But that is certainly in your hands, whether or not you want to put it on the ballot.

REPRESENTATIVE COGHILL asked how many votes it would take to fulfill a 7 percent requirement.

Number 1649

GAIL FENUMIAI, Election Program Specialist, Central Office, Division of Elections, Office of the Lieutenant Governor, referred members to a spreadsheet provided by the division. She explained that the spreadsheet lists, by House district, the number of registered voters, the number of people who voted in the 2000 general election, and 7 percent of that number who voted. She noted that the 7-percent figure is dependent on the voter turnout in each district and ranges between 217 and [730]. She also noted that in members' packets is a multi-page spreadsheet detailing how many signatures were verified for each petition over the last several years, and what the 7 percent requirement would have been had the change proposed by [HB 213 and HJR 25] been in effect at that time. She reminded members that currently, 10 percent is required statewide, from 27 out of 40 House districts. In response to a question, she confirmed that one of the changes proposed by [HB 213 and HJR 25] would require that 30 out of 40 House districts be represented.

CHAIR ROKEBERG mentioned he does have concerns regarding the information that Representative Berkowitz presented, and asked that the case citations be provided to the committee. Chair Rokeberg closed the public hearing on HJR 25, and asked Mr. Ruaro to state for the record what the purpose of HB 213 is.

MR. RUARO explained that HB 213 merely provides conforming amendments to the statute should HJR 25 be adopted at the next general election.

Number 0837

CHAIR ROKEBERG closed the public hearing on HB 213, and announced that HB 213 and HJR 25 would be held over.

HB 281 - CIVIL LIABILITY FOR PROVIDING ALCOHOL

Number 0833

CHAIR ROKEBERG announced that the committee would return to the hearing on HOUSE BILL NO. 281, "An Act relating to civil liability for providing alcoholic beverages to a person under 21 years of age; and providing for an effective date."

Number 0800

MATT WILLIAMS, Officer, Anchorage Police Department (APD), testified via teleconference in support of HB 281. He said that the APD feels very strongly that having this sort of recourse available to victims of alcohol-related violence is essential in helping people get through difficult situations. Providing for the same "amount of liability" for all parties, regardless of whether they are licensees, closes the loophole for private citizens who furnish alcohol to minors. He noted that the statements which he made in the House Labor and Commerce Standing Committee are still applicable, and that the APD supports passage of HB 281.

REPRESENTATIVE MEYER asked Mr. Williams whether he had any indication of how often adults provide alcohol to minors.

MR. WILLIAMS said: "Quite a bit. Now, ... somebody being arrested, and somebody being prosecuted, and somebody being convicted - that's another story." But almost every night, he added, there are reports of kids waiting in [liquor store] parking lots and of kids approaching adults to buy alcohol for them. It is a big problem that needs to be addressed in some manner other than the criminal realm; private citizens need to be held to a standard that makes them more accountable, he opined. In response to questions regarding public awareness, he confirmed that "word gets around," and he relayed that it already has to some extent because of public announcements made during the Justin Wollam Substation dedication.

Number 0541

MARTI GREESON, Executive Director, Anchorage Chapter, Mothers Against Drunk Driving (MADD), said simply that MADD supports HB 281 as one of the tools that restores justice, and she noted that MADD is willing to work on the issue of public education.

Number 0457

CATHIE MAURO testified via teleconference and noted that when she first approached Representative Halcro in August, she was very concerned because the penalty for adults who provide alcohol to minors was still a misdemeanor, even when an ensuing accident results in death or injury. She relayed that at the time, she was not sure how she felt about the concept of imposing civil liabilities for that type of offense, but added that Representative Halcro assured her that the quickest way to get peoples' attention is through "their pocket books." She explained:

In going through this process - as a mother who lost her daughter, Heidi Weilbacher, in the accident July 9th, [2001] - I have come across things I have never, ever in my life thought I would come across as far as the expenses of just incredible stuff. There's ... the funeral expenses: the funeral home, the cemetery, the church, the flowers. And then to find out a month down the road, I need an estate attorney, and that's a \$2,000 down payment. I'm thinking, "Why do I need an estate attorney for a 14-year-old girl that had \$4.75 in her pocket?" This didn't make any sense to me, but then I found out I had to hire an insurance attorney also. This was another cost that blew me away. Then I found out that I had to run an ad in the Alaska Journal of Congress for three weeks straight about the death of my daughter, in case she owed anybody some money. That cost me another \$350.

It's these things that just keep cropping up that [are] just unbelievable to me. And now that the criminal has been sentenced, I will be able to get a copy of the police investigation report, which I have not been able to get until sentencing, ... [and] which was done just a little bit ago. ... For that report, it's going to cost me \$135. And this is just eight months into this; ... you see where I'm going: I (indisc.) this bill fully. And I will do anything for you [Representative Meyer], and the rest of the group,

to make this happen. I appreciate you waiting on us today, and your time and effort on this. Thank you.

Number 0212

REPRESENTATIVE MEYER told Ms. Mauro that the committee appreciates her testimony on this issue.

MS. MAURO thanked Representative Meyer for his support and encouragement.

CHAIR ROKEBERG noted that seven members of the Wollam family were observing the meeting from the Anchorage Legislative Information Office (LIO), and he extended the committee's condolences to the Wollam family for their loss. He also said:

Hopefully, the actions of the legislature and the people of the state of Alaska will reinforce their feelings that people care up here, and are seeking to right, as much as we can, the wrongs that have been foisted on them, and endeavor to keep other people from suffering as much as they have.

REPRESENTATIVE BERKOWITZ, in response to questions, said he would like to work with the sponsor to see if they could find a way of addressing the issues raised.

REPRESENTATIVE MEYER asked if it would be possible to change the standard from strictly liable to just [simple liability].

TAPE 02-20, SIDE A
Number 0001

MIKE FORD, Attorney, Legislative Counsel, Legal and Research Services Division, Legislative Affairs Agency, opined that it would be possible to craft HB 281 in such a way as to retain strict liability for licensees while providing for a negligent standard of civil liability for nonlicensees. He also said it would be possible to retain "knowingly" with such a change. He surmised that one of the prime reasons for this legislation is deterrence; "You want to deter people from giving alcohol to minors, and under either standard I think you would achieve that." Strict liability is usually reserved for only those things that have great social consequences, he explained. He referred to the example of an oil spill: "If you spill oil in our waters, you're liable whether you intended to do so or not, and that's an example of something that has grave consequences

to it, so we're just not even going to worry about your intent." He added, however, that "because the existing rule is no civil liability for nonlicensees," by going to a negligent standard, another exception is created, which, he posited, would deter people from providing alcohol to minors.

CHAIR ROKEBERG remarked, however, that the "elements of proof and so forth" would change significantly if the standard were changed to negligence.

MR. FORD agreed.

CHAIR ROKEBERG surmised, then, that if the defendant had a reasonable excuse, he/she might not be found negligent, because that would be harder to prove, whereas with a strict liability standard, such an excuse would not make any difference.

MR. FORD agreed. He also pointed out that by adopting even a negligent standard of civil liability for nonlicensees, it is more than is currently provided for in statute. He surmised that the question before the committee is whether to adopt a higher standard or a lower standard.

REPRESENTATIVE OGAN asked whether, under civil law, "knowingly" can be proven simply by a preponderance of the evidence, which, he opined, is a lower standard than under criminal law.

MR. FORD clarified that there are two parts to "this." One is, what does knowingly mean; there is a definition of knowingly in the statute. "But as to how you show that - correct - it's a preponderance issue"; it's not beyond a reasonable doubt as is required under criminal law, he added.

CHAIR ROKEBERG asked whether the changes proposed by HB 281 would still fall under Title 4 if the standard were changed to negligent.

MR. FORD said it would because Title 4 pertains to alcohol and crimes involving alcohol.

Number 0429

REPRESENTATIVE MEYER, referring again to the example of a family social gathering, reiterated that the key word is "knowingly". Adults at a party should be held liable if they knowingly allow access to alcohol or give alcohol to underage guests who then

leave the gathering and cause death, injury, or damage to property, he opined.

CHAIR ROKEBERG surmised that the adults, by allowing access, would be held negligent for failing to monitor the alcohol.

REPRESENTATIVE OGAN said he supports the intent of the sponsor, and suggested that if HB 281 were held over, a solution to the question of which standard to use could be arrived at expeditiously.

REPRESENTATIVE COGHILL opined that "strictly liable" gives no room for motive and yet "knowingly" is included in the language.

CHAIR ROKEBERG noted that he would like to hear from some personal injury attorneys regarding this issue.

REPRESENTATIVE JAMES noted that she has concerns about the tendency to blame someone for any ensuing tragedy but not hold that person responsible if nothing bad results from his/her actions.

REPRESENTATIVE MEYER said that while his original intention was to hold the general public to the same high standard as licensees, he had not yet checked into the issue of liability insurance.

Number 0790

CHAIR ROKEBERG announced that HB 281 would be held over, and suggested that the sponsor consult some personal injury attorneys on the issues of standards and personal liability insurance.

ADJOURNMENT

Number 0850

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:50 p.m.