

HB

435

(7) B

HOUSE COMMITTEE REPORT

Date Referred: February 21, 1992

FURTHER REFERRALS:

5-2-92
pls

Date of Committee Action: 4/29/92

The JUDICIARY Committee considered:

HB 435

HOUSE BILL NO. 435

REINSTATED AND SUCCESSOR NATIVE CORP.

"An Act relating to the involuntary dissolution of Native corporations; and providing for an effective date."

RECOMMENDATIONS:

be replaced with as HB 435 (Jud)

the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) Commerce 2/21/92

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		<u>Dave Donley</u>		<input checked="" type="checkbox"/>	
		<u>Tom Lambert</u>		<input checked="" type="checkbox"/>	
		<u>Mark Rowley</u>		<input checked="" type="checkbox"/>	
		<u>Ferry Martin</u>		<input checked="" type="checkbox"/>	
		<u>Mike Miller</u>		<input checked="" type="checkbox"/>	
		<u>John Ellis</u>		<input checked="" type="checkbox"/>	
		<u>Henry Pat Varnell</u>			<input checked="" type="checkbox"/>

Dave Donley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 435

Revision Date: _____
 Title: An Act relating to involuntary dissolution
of Native corporations
 Sponsor: Representative Foster
 Requestor: _____

Department Affected: Commerce & Econ. Dev.
 BRU: Banking, Securities & Corporations
 Component: _____

COMPONENT SERIAL NO.

1	2	3	3
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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 RESOURCE:	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.)

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521
 Division: Banking, Securities & Corporations Date: _____
 Approved by Commissioner: Glenn A. Olds *Glenn A. Olds*
 Agency: Department of Commerce & Economic Development Date: 2-10-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legls. Ofc., and Impacted Agency(ies).
 Page 1 of 1

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 435

Revision Date: _____
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of Native corporations
 Sponsor: Representative Foster
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Department Affected: Commerce & Econ. Dev.
 BRU: Banking, Securities & Corporations
 Component: _____

COMPONENT SERIAL NO.

1	2	3	3
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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
REVENUE FUND RESOURCE:	0	0	0	0	0	0

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.)

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521
 Division: Banking, Securities & Corporations Date: _____
 Approved by Commissioner: Glenn A. Olds *Glenn A. Olds*
 Agency: Department of Commerce & Economic Development Date: 2-10-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legls. Ofc., and Impacted Agency(ies).
 Page 1 of 1

Alaska State Legislature

REPRESENTATIVE
RICHARD FOSTER
BOX 1028
NOME, ALASKA 99762



PO. BOX V
JUNEAU, AK 99811
(907) 465-3789

House of Representatives

TO: HOUSE JUDICIARY COMMITTEE
FROM: REPRESENTATIVE RICHARD FOSTER
SUBJECT: HOUSE BILL 435

HB 435 arose from a request for help from the Village of Hamilton. It's Native Corporation, Nunapiglluraq Inc., was involuntarily dissolved in 1989, due to its failure to submit a biennial report. The dissolution was not discovered until the corporation attempted to make a land transaction late last year.

Subsequent enquiries by my office discovered such dissolutions are not uncommon. In fact, at this time in the State of Alaska, 10 corporations have been involuntarily dissolved; 7 corporations have been dissolved but are still within the two year reinstatement period; and 23 are facing dissolution. In all probability, most of these are unaware of the change in status.

The problem appears to be a breakdown in communications. In most cases, corporations have failed to notify the State of changes to management and address. As a result, filing reminders and notices warning of dissolution have failed to reach the correct authorities.

HB435 gives the above mentioned corporations a one year "window" in which to file for reinstatement. They will be required to pay all fees and fines incurred during the lapse.

A similar bill was introduced in 1982. It was adopted as a temporary act. A copy will be provided in the committee packages.

In addition, I have engaged the support of the Alaska Federation of Natives. The Federation will inform all affected corporations of this "window", and assist them with the reinstatement requirements. It will also oversee future corporation filings and keep an updated list of managements.

I hope you will assist me in scheduling HB 435 for hearing as soon as possible.

Alaska State Legislature

REPRESENTATIVE
RICHARD FOSTER
BOX 1028
NOME, ALASKA 99762

P.O. BOX V
JUNEAU, AK 99811
(907) 465-3789



House of Representatives

TO: HOUSE LABOUR & COMMERCE COMMITTEE
FROM: REPRESENTATIVE RICHARD FOSTER
SUBJECT: HOUSE BILL 435

HB 435 arose from a request for help from the Village of Hamilton. It's Native Corporation, Nunapiglluraq Inc., was involuntarily dissolved in 1989, due to its failure to submit a biennial report. The dissolution was not discovered until the corporation attempted to make a land transaction late last year.

Subsequent enquiries by my office discovered such dissolutions are not uncommon. In fact, at this time in the State of Alaska, 10 corporations have been involuntarily dissolved; 7 corporations have been dissolved but are still within the two year reinstatement period; and 23 are facing dissolution. In all probability, most of these are unaware of the change in status.

The problem appears to be a breakdown in communications. In most cases, corporations have failed to notify the State of changes to management and address. As a result, filing reminders and notices warning of dissolution have failed to reach the correct authorities.

HB435 gives the above mentioned corporations a one year "window" in which to file for reinstatement. They will be required to pay all fees and fines incurred during the lapse.

A similar bill was introduced in 1982. It was adopted as a temporary act. A copy is provided in your packages.

In addition, I have engaged the support of the Alaska Federation of Natives. The Federation will inform all affected corporations of this "window", and assist them with the reinstatement requirements. It will also oversee future corporation filings and keep an updated list of managements.

Present today to testify on the bill's behalf are Michael Monagle of the Division of Banking, Securities and Corporations within the Department of Commerce and Economic Development, and Terri Bannister of Legislative Legal Services. On teleconference from Anchorage are Nunapiglluraq Corporation Attorney, Jerald Reichlin; and Lawrence Kimball of the Alaska Federation of Natives.

Your packages provide a fiscal note and an overview from D.C.E.D. Commissioner, Glenn Olds.

I hope you will support me in voting favorably for HB435.

Alaska State Legislature



REPRESENTATIVE
RICHARD FOSTER
BOX 1028
NOME, ALASKA 99762

PO. BOX V
JUNEAU, AK 99811

(907) 465-3789

House of Representatives

HOUSE BILL 435 TESTIMONY PARTICIPANTS

JUNEAU:

Michael Monagle, *Division of Banking, Securities & Corporations*
Department of Commerce & Economic Development

Terri Bannister, *Division of Legal Services*
Legislative Affairs Agency

ANCHORAGE:

Lawrence Kimball, *Alaska Federation of Natives*

Jerald Reichlin, *Legal Counsel*
Nunapiglluraq Incorporated

HB 435: An Act relating to the involuntary dissolution of Native corporations; and providing for an effective date.

The Department of Commerce and Economic Development, Division of Banking, Securities and Corporations, has no objection to the proposed legislation.

The department supports this legislation in recognition that corporate status for Native villages and regions is specifically called for in the terms and conditions of the Alaska Native Claims Settlement Act. The department acknowledges the unique inalienability of the ownership of Native Alaskans as shareholders in Native corporations.

The department concurs that corporations affected by HB 435 should pay the appropriate fees that would have been effective had they not allowed themselves to become delinquent, plus any penalties allowable under AS 10.06.633(e).

The department encourages the involvement of the regional corporations and other Native associations, such as the Alaskan Federation of Natives, in assisting the smaller village corporations in meeting their filing requirements.



Glenn A. Olds, Commissioner

Date: 2.10.92

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES AND CORPORATIONS

January 24, 1992

WALTER J. HICKEL, GOVERNOR

P.O. BOX 110907
 JUNEAU, ALASKA 99811-0907
 Banking & Securities: (907) 465-2834
 Corporation Section: (907) 465-2630

ANCHORAGE
 Corporation Information: (907) 563-2161

Post-It [®] brand fax transmittal memo 7671		# of pages	2
To	Martha Stewart	From	Mike Morrill
Co.	Sen Adams Off.	Co.	Corps Section
Dept.		Phone #	2570
Fax #	463-4867	Fax #	3257

Martha Stewart
 Senator Al Adams
 P.O. Box V
 Juneau, AK 99811

Dear Ms. Stewart:

RE: Reinstatement of ANSCA corporations

As conveyed by Larry Carroll, I have reviewed the proposed legislation and have no objections to the bill as drafted. As soon as a final draft is prepared we will prepare a position paper in support of the bill.

We would like to have some commentary entered into record encouraging the AFN and the regional native corporations to take a more active role in assisting the village corporations in meeting their reporting requirements.

The following native corporations would be subject to the proposed bill:

Atxam Corporation-	Involuntarily Dissolved	10/13/89
Tthteet'Aii, Inc.	" "	10/13/89
Nunapiglluraq Corporation	" "	10/13/89
Kugkaktlik, Ltd.	" "	10/13/89
Oscarville Native Corporation	" "	10/13/89
Tulkisarmute, Inc.	" "	10/13/89
Neets'ai Corporation	" "	12/02/81
Venetie Indian Corporation	" "	12/02/81
Kitoi, Inc.	" "	05/20/90
Nunivak Limited	" "	10/13/89

To illustrate the filing problem that the native corporations have, the following is a list of corporations which are either dissolved but within the reinstatement period, or active corporations not currently in compliance.

Newtok Corporation, Inc.	Involuntarily Dissolved	10/14/91
Cully Corporation	" "	10/14/91
Togiak Natives, Ltd.	" "	10/14/91
Twin Hills Native Corporation	" "	10/14/91
White Mountain Native Corp	" "	10/14/91
Ohog Incorporated	" "	10/14/91
The Grouse Creek Corporation	" "	10/14/91

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES AND CORPORATIONS

WALTER J. HICKEL, GOVERNOR

P.O. BOX 110807

JUNEAU, ALASKA 99811-0807

Banking & Securities: (907) 465-2534

Corporation Section: (907) 465-2330

ANCHORAGE

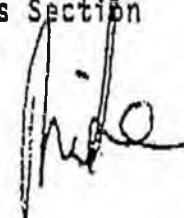
Corporation Information: (907) 583-2161

The following corporations are not dissolved, but they are not in compliance with the statutory reporting requirements. If they become six months delinquent, they too will become involuntarily dissolved.

Corporation Name	Scheduled dissolution date
Belkofski Corporation	08/01/92
Brevig Mission Native Corp	" " " 08/01/92
Chenega Corporation	" " " 08/01/92
Eklutna, Inc.	" " " 08/01/92
Isanotski Corporation	" " " "
Mendas Chax-aq Native Corp	" " " "
Gana-A' Yoo, Limited	" " " "
The King Cove Corporation	" " " "
Paimiut Corporation	" " " "
Pitka's Point Native Corporation	" " " "
Seldovia Native Association, Inc.	" " " "
Tanacross, Inc.	" " " "
Klukwan Corporation	" " " "
Gold Belt Incorporated	" " " "
Shee Atika, Inc.	" " " "
The Aleut Corporation	" " " "
Arctic Slope Native Corporation	" " " "
Koniag, Inc.	" " " "
Bristol Bay Native Corporation	" " " "
Calista Corporation	" " " "
Chugach Corporation	" " " "
Cook Inlet Region Inc	" " " "
Sealaska Corporation	" " " "

Please feel free to give me a call if you have any questions regarding this list.

Michael Monagle, Supervisor
Corporations Section



Alaska State Legislature

Senate District L
Al Adams



Official Business

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

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

January 24, 1992

Julie Kitka, President
Alaska Federation of Natives
1577 C Street, Suite 100
Anchorage, Alaska 99501

Dear Julie:

This session I will introduce legislation pertaining to Native corporations that have been involuntarily dissolved. This is being done on behalf of Nunapigiuraq Corporation in my district. Apparently if corporations fail to file information with the Department of Commerce past a two year window for delinquent filings, the corporation is dissolved, at least in the state's bureaucratic mind.

In seeking information from the Department of Commerce about other corporation's that might be affected, I was provided with the enclosed list. I am writing to determine if there is anything the Alaska Federation of Natives can do to assist these corporations in completing their filing.

The bill which will be introduced January 27th is enclosed for your review. It is similar to a bill that passed in 1982 that created a one year window period for these involuntarily dissolved ANCSA corporations to become reinstated. I expect the bill to pass but am concerned about the remaining corporations who might have no knowledge of this opportunity.

At a minimum, if I were provided with the names and addresses of those corporations in my Senate district I would be glad to assist them. I would also appreciate a brief letter of support from AFN to augment passage of the bill.

I appreciate any efforts you can extend in this matter and as always, it is a pleasure working with you.

Sincerely,

Senator Al Adams

H B

4 3 6

FISCAL NOTE

BILL NO. CSHB 436 (L&C)

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____

Title: An Act relating to a person under age 21 soliciting . . .

Department Affected: Administration

BRU: Office of Public Advocacy

Component: Office of Public Advocacy

Sponsor: C. Davis

Requestor: _____

COMPONENT SERIAL NO.

		4	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None.

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy

Phone: 279-7541
Date: April 8, 1992

Approved by Commissioner: Nancy Bear Usura
Agency: Administration

Date: 4/20/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 436 (L&C)

Revision Date: _____

Department Affected: Administration

Title: An Act relating to a person under age 21 soliciting . . .

BRU: Public Defender

Sponsor: C. Davis

Component: Public Defender

Requestor: _____

COMPONENT SERIAL NO.

1	6	3	1
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Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL	*	*	*	*	*	*
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REVENUE FUND SOURCE:	*	*	*	*	*	*
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	*	*	*	*	*	*
PART-TIME	*	*	*	*	*	*
TEMPORARY	*	*	*	*	*	*

Estimate of current year impact: None.

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John F. Salemi

Phone: 279-7541

Division: Public Defender

Date: April 8, 1992

Approved by Commissioner: Nancy Bear Usura

Agency: Administration

Date: 4/20/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 436 (L&C)

ANALYSIS: (continued)

This bill would make it a class C felony offense to furnish or deliver alcohol to a person under 21 years of age when acting with criminal negligence.

The fiscal impact of this bill would be significant, particularly in rural areas and smaller communities where it is easier to trace the path of alcohol. Phone calls to the outer offices revealed the following estimates with regard to numbers of furnishing alcohol charges in the last 12 months: Bethel--30; Kotzebue--5; Juneau--7; Kenai--3; Homer--12 plus a new sting operation on stores, numbers uncertain; Barrow--2-3; Anchorage--rare, Dillingham--1-2 per month; Nome--9. More serious consequences translates into more trials, more investigation, and more attorney time.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. H.B. 436

Revision Date: _____ Department Affected: Department of Corrections
 Title: "An Act relating to the penalty for providing alcohol to a minor." BRU: Statewide Operations
 Sponsor: Rep. C. Davis Component: Various
 Requestor: House Labor & Commerce COMPONENT SERIAL NO.

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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	54.0	54.0	54.0	54.0	54.0	54.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	54.0	54.0	54.0	54.0	54.0	54.0

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	54.0	54.0	54.0	54.0	54.0	54.0
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL	54.0	54.0	54.0	54.0	54.0	54.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)
 Please see the attached Analysis.

Prepared By: Diane Schenker, Legislative Liaison Phone: 465-3376
 Division: Office of the Commissioner Date: 03/06/92
 Approved by Commissioner: Lloyd Hames, Commissioner
 Agency: Department of Corrections Date: 03/06/92

CONTINUATION OF FISCAL ANALYSIS

HB 436: An Act relating to the penalty for providing alcoholic beverages to a person under the age of 21; and providing for an effective date.

The bill would make it a Class C felony to provide alcohol to a person under age 21, if done with criminal negligence. Under current statutes, furnishing alcohol to a minor is a Class A misdemeanor.

Incarceration costs: A "snapshot" profile of offenders incarcerated on December 31, 1991 showed one prisoner whose most serious offense was furnishing alcohol to a minor. A study by the Alaska Judicial Council on mean sentence lengths (1984-1987) indicates that the mean sentence length for those incarcerated for this offense is 1.5 months, or 45 bed-days. The same study indicates that the lowest mean sentence length for any Class C felony under the same category of "other offenses" (as opposed to violent, property, substance abuse, sexual, etc.) was 7.5 months, or 225 bed-days. Thus it is assumed that raising the offense from a misdemeanor to a felony would require 180 additional bed-days per conviction. Subtracting one third of the sentence for statutory good time, this would result in an increase of 120 bed-days per offense. If such offenders could be housed in contract community residential center beds at an average statewide cost of about \$45 per day, this would cost approximately \$5,400 per offense.

The Department of Corrections has requested information from the Department of Law, the Alaska Judicial Council, and the Department of Public Safety on the number of convictions for this offense each year. This information is not available at present. The Department of Corrections has no record of most such offenses since the Department does not supervise misdemeanants on probation and many misdemeanants do not receive a sentence involving incarceration. It is assumed that there are at least 10 such offenses per year. Should information become available indicating there are more or fewer such offenses, this fiscal note will be revised.

Ten convictions per year at an additional cost of approximately \$5,400 would cost \$54,000 per year in contractual costs for community residential beds.

Further impact on the Department will result from changing the offense from a misdemeanor to a felony. Second-time felony offenders will be subject to presumptive sentencing, thus increasing the number of incarceration days per year by increasing sentence length for second offenders. Since the number of second-time offenders cannot be predicted, this impact cannot be measured.

CONTINUATION OF FISCAL ANALYSIS--HB 436

Community Corrections costs: With extremely rare exceptions, the Department does not complete presentence investigation reports for misdemeanants, but is required to do so for felons. A presentence investigation report requires approximately 18 hours of work by a probation officer. Ten additional reports would require 180 additional hours, or approximately 5 weeks of work by probation staff.

Also with extremely rare exceptions, the Department does not supervise misdemeanor probationers. The Department is required to supervise felons during the probation period imposed by a court following or in lieu of incarceration, as well as during the period of mandatory good time following release from incarceration. An initial intake appointment requires approximately 3.8 hours of work by a probation officer. Ten additional cases would require 38 additional hours of intake per year, or one additional week.

Assuming these offenders would require the minimum level of supervision required for an active case, each case would require approximately .8 hours per month of work by a probation officer. Ten cases would require 8 hours per month, or 96 hours per year, or 2.6 weeks per year.

If only ten cases occur each year, an additional 8.6 weeks of work would be required by probation staff. (8.6 weeks or 322.5 hours at \$18.04 per hour for a beginning probation officer = \$5,818 per year.) Since this amount of work would not be sufficient to justify the addition of a probation officer position, the additional workload will have to be absorbed by current staff by lessening the amount of time spent on other felony cases currently handled by Community Corrections.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 436

Revision Date: _____
 Title: "An Act relating to the penalty for providing alcoholic beverages to a person under the age of 21."
 Sponsor: C. Davis
 Requestor: House Labor and Commerce

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency

COMPONENT SERIAL NO.

1	6	3	1
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Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:
----------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	.	.	.	.	.	.
PART-TIME						
TEMPORARY	.	.	.	.	.	.

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 Precise fiscal impact unknown. See attached.

Prepared by: John Salemi, Public Defender
 Division: Public Defender Agency

Phone: 279-7541
 Date: February 14, 1992

Approved by Commissioner: Nancy Bear Usera
 Agency: Administration

Date: 3/2/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 436

ANALYSIS: (continued)

This bill would make it a class C felony offense to furnish or deliver alcohol to a person under 21 years of age when acting with criminal negligence.

The fiscal impact of this bill would be significant, particularly in rural areas and smaller communities where it is easier to trace the path of alcohol. Phone calls to the outer offices revealed the following estimates with regard to numbers of furnishing alcohol charges in the last 12 months: Bethel--30; Kotzebue--5; Juneau--7; Kenai--3; Homer--12 plus a new sting operation on stores, numbers uncertain; Barrow--2-3; Anchorage--rare, Dillingham--1-2 per month; Nome--9. More serious consequences translates into more trials, more investigation, and more attorney time.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 436

Revision Date: _____
Title: An Act relating to the penalty for providing alcoholic beverages to a person under 21.
Sponsor: Davis and Koponen
Requestor: House Labor and Commerce

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy

COMPONENT SERIAL NO.

		4	3
--	--	---	---

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None.

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy

Phone: 274-1684
Date: _____

Approved by Commissioner: Nancy Bear Usual
Agency: Administration

Date: 3/2/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 436

Revision Date: _____
Title: "...penalty for providing alcoholic beverages to a person under the age of 21..."
Sponsor: Representative C. Davis
Requestor: House Labor & Commerce

Department Affected: Department of Law
BRU: Prosecution
Component: All

COMPONENT SERIAL

--	--	--	--

Expenditures/Revenues: (Thousands of Dollars)

85 through 91

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

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director
Division: Administrative Services
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law

Phone: 465-3672
Date: March 9, 1992
Date: March 9, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 436

This bill amends AS 04.16.051 and AS 04.16.130(a) to raise the penalty for furnishing an alcoholic beverage to a person under the age of 21 years from a class A misdemeanor to a class C felony.

About 2,000 misdemeanor liquor violations are referred to the Department of Law for prosecution each year. Most of these are minor consuming complaints and about 10 percent, or 200 of these complaints, involve furnishing alcoholic beverages to minors. About one-half of this latter number of complaints, or 100, will include evidence sufficient enough to permit us to bring a felony prosecution.

Although bringing a felony prosecution is somewhat more time-consuming and costly than bringing a misdemeanor prosecution, when the work that will be caused by this bill is spread throughout the entire criminal division we cannot show a significant fiscal impact. However, in a time of substantially diminishing resources, such as now, we strongly caution against creating additional workload for our prosecutors. Any new workload can only be handled at the expense of decreasing prosecutorial efforts in other areas, such as violent crimes and drug trafficking.

ALASKA STATE LEGISLATURE

ELECTIVE DISTRICT 1

HYDER
KETCHIKAN
KUPREANOF
MEYERS CHUCK
PETERSBURG
SAXMAN
WRANGELL



HOME

P.O. BOX 5723
KETCHIKAN, AK 99901
PHONE 225-6304

DURING SESSION

P.O. BOX V
STATE CAPITOL BUILDING
JUNEAU, AK 99811
PHONE 465-3424

Representative Cheri L. Davis

MEMORANDUM

TO: Representative Dave Donley
FROM: Representative Cheri Davis *Cheri Davis*
DATE: March 27, 1992
RE: Scheduling of HB 436

Please accept this memorandum as my request for House Bill 436 to be heard in your committee.

House Bill 436 is legislation that would increase the penalty for providing alcoholic beverages to a person under the age of 21. Under current law, furnishing alcohol to a minor is a misdemeanor with a maximum penalty of 5 years in prison and a \$5,000 fine. The original legislation would have made furnishing a minor with alcohol a class "C" felony with a maximum penalty of 5 years in prison and a \$50,000 fine.

Before being passed out of Labor and Commerce, the original bill was amended to keep it a misdemeanor for the first offense and make it a felony on the second or subsequent offense. The labor and commerce CSHB 436 also would punish the minor who solicits the alcohol, making that act punishable as a misdemeanor.

Thank you.

ALASKA STATE LEGISLATURE

ELECTIVE DISTRICT 1

HYDER
KETCHIKAN
KUPREANOF
MEYERS CHUCK
PETERSBURG
SAXMAN
WRANGELL



IN KETCHIKAN

352 FRONT ST.
KETCHIKAN, AK 99901
PHONE 225-9449

DURING SESSION

P.O. BOX V
STATE CAPITOL BUILDING
JUNEAU, AK 99811
PHONE 465-3424

Representative Cheri L. Davis

SPONSOR STATEMENT HB 436

Mr. Chairman and members of the committee, I would like to thank you for hearing this bill today.

House Bill 436 is legislation that would change the penalty for providing alcoholic beverages to a person under the age of 21. This bill was drafted after the tragic deaths of two teenagers in an alcohol related accident in Ketchikan. An accident which was preceded by a 23-year-old allegedly furnishing the minors with alcohol.

Under current law, furnishing alcohol to a minor is a misdemeanor with a maximum penalty of one year in prison and a \$5,000 fine.

This legislation would make furnishing a minor with alcohol a class "C" felony with a maximum penalty of 5 years in prison and \$50,000 fine.

HB 436 would be beneficial in one aspect of the battle against the high incidence of alcohol abuse in our state. Stiffening the penalty for significant violations may enhance the deterrent effect of the present laws and enforcement efforts.

Again I thank you for hearing this bill today, and would be glad to try and answer any questions you may have.

MAR 17 Rec'd

AMENDMENT

3

OFFERED IN THE HOUSE

BY REPRESENTATIVE BRUCKMAN

TO: HB 436

Page 1, line 1, after "relating to":

Insert "solicitation of another person to purchase alcohol by a person under age 21 and to"

Page 1, after line 3:

Insert a new bill section to read:

** Section 1. AS 04.16.020 is amended by adding a new subsection to read:

(c) A person under the age of 21 years may not solicit another person to purchase alcoholic beverages."

Page 1, line 4:

Delete "Section 1."

Insert "Sec. 2."

Renumber the following bill sections accordingly.

AMENDMENT

2

OFFERED IN THE HOUSE

TO: HB 436

BY THE HOUSE LABOR
AND COMMERCE COMMITTEE

Page 1, after line 11:

Insert a new bill section to read:

"* Sec. 3. AS 04.21.065(b) is amended to read:

(b) A warning sign required by (a) of this section must be at least 11 inches by 14 inches. The sign must read, in lettering at least one-half inch high and in contrasting colors, "WARNING: Drinking alcoholic beverages such as beer, wine, wine coolers, and distilled spirits or smoking cigarettes during pregnancy can cause birth defects. Also, a person who provides alcoholic beverages to a person under 21 years of age, if convicted under AS 04.16.051, could be imprisoned for up to five years and fined up to \$50,000." The license or permit holder shall display the signs in a manner that would make them conspicuous to a person who will be purchasing or consuming alcoholic beverages or smoking cigarettes on the licensed or designated premises."

Renumber the following bill section accordingly.

A M E N D M E N T /

OFFERED IN THE HOUSE

TO: HB 436

BY THE HOUSE LABOR

AND COMMERCE COMMITTEE

Page 1, line 5, after "section":

Insert "a second or subsequent time"

A M E N D M E N T 4

OFFERED IN THE HOUSE

BY REPRESENTATIVE CHOQUETTE

TO: HB 436

Page 1, line 2, after "21;":

Insert "to identification for purposes of civil liability for providing alcoholic beverages to another person; to identification for purposes of criminal liability for providing alcoholic beverages to a person under the age of 21;"

Page 1, after line 11:

Insert new bill sections to read:

"* Sec. 3. AS 04.21.020 is amended to read:

Sec. 04.21.020. CIVIL LIABILITY OF PERSONS PROVIDING ALCOHOLIC BEVERAGES. A person who provides alcoholic beverages to another person may not be held civilly liable for injuries resulting from the intoxication of that person unless the person who provides the alcoholic beverages holds a license authorized under AS 04.11.080 - 04.11.220, or is an agent or employee of such a licensee and

(1) the alcoholic beverages are provided to a person under the age of 21 years in violation of AS 04.16.051, unless the licensee, agent, or employee secures in good faith from the person a signed statement meeting the requirements of AS 04.21.050(a) or identification [, LIQUOR IDENTIFICATION CARD, OR DRIVER'S LICENSE] meeting the requirements of AS 04.21.050(a) or [AND] (b), that indicates that the person is 21 years of age or older; or

(2) the alcoholic beverages are provided to a drunken person in violation of AS 04.16.030.

* Sec. 4. AS 04.21.050(c) is amended to read:

(c) A licensee, or an agent or employee of the licensee, may not be charged for a violation of AS 04.16.051 - 04.16.052 if a signed statement as provided in (a) of this section is secured in good faith, or a valid driver's license or identification card described in (b) of this section, is presented indicating that the owner and possessor of the presented driver's license or

identification card is 21 or 16 years of age or over as appropriate. "

Renumber the following bill section accordingly.

Table B-11
Causes of Injury Death - Native

Causes of Injury Death	Male		Female		Unknown Sex		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Drowning	327	22.72	42	8.45	0	0.00	369	19.06
Suicide	313	21.75	52	10.46	0	0.00	365	18.85
Other Injuries	208	14.45	70	14.08	0	0.00	278	14.36
• Motor Vehicle	186	12.93	81	16.30	0	0.00	267	13.79
• Alcohol and Drugs	173	12.02	132	26.56	0	0.00	305	15.75
Homicide	142	9.87	65	13.08	0	0.00	207	10.69
Fire	57	3.97	39	7.85	0	0.00	96	4.97
Aircraft	33	2.29	16	3.22	0	0.00	49	2.53
Total	1,479	100.00	497	100.00	0	0.00	1,936	100.00
Percent of Total		22.37		7.73		0.00		30.09

Table B-12
Causes of Injury Death - Non-Native

Causes of Injury Death	Male		Female		Unknown Sex		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Drowning	690	18.97	46	5.20	0	0.00	726	16.24
• Motor Vehicle	676	18.86	261	29.49	0	0.00	937	20.96
Suicide	569	15.87	122	13.79	0	0.00	691	15.46
Other Injuries	520	14.50	109	12.32	0	0.00	629	14.07
Aircraft	466	13.00	67	7.57	0	0.00	533	11.92
• Alcohol and Drugs	342	9.54	137	15.48	0	0.00	479	10.72
Homicide	263	7.34	104	11.75	0	0.00	367	8.21
Fire	69	1.92	39	4.40	0	0.00	108	2.42
Total	3,585	100.00	885	100.00	0	0.00	4,470	100.00
Percent of Total		55.73		13.76		0.00		69.49

Table B-13
Causes of Injury Death - Unknown Race

Causes of Injury Death	Male		Female		Unknown Sex		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Drowning	8	53.34	1	9.09	0	0.00	9	33.33
Suicide	2	13.33	1	9.09	0	0.00	3	11.11
Other Injuries	2	13.33	2	18.18	0	0.00	4	14.81
• Motor Vehicle	2	13.33	0	0.00	0	0.00	2	7.41
Aircraft	1	6.67	1	9.09	0	0.00	2	7.41
Homicide	0	0.00	4	36.36	0	0.00	4	14.81
• Alcohol and Drugs	0	0.00	1	9.09	0	0.00	1	3.70
Fire	0	0.00	1	9.10	1	100.00	2	7.42
Total	15	100.00	11	100.00	1	100.00	27	100.00
Percent of Total		0.23		0.17		0.02		0.42

Table B-14
Causes of Injury Death - Total

Causes of Injury Death	Male		Female		Unknown Sex		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
	5,039	78.33	1,393	21.65	1	0.02	6,433	100.00

March 10, 1992

Jeanneane Henry
Jake Smith, age 15
Addy Smith, age 11
1038 Dunton
Ketchikan, Alaska 99901
907-225-2428

Representative Donley,

I am here to lobby in support of HB 436. My position on this bill comes from a personal family tragedy that could have been prevented. My oldest son, Joshua Smith, age 17 and Mike Nygard, also 17, were killed in a violent accident December 31, 1991. An adult purchased alcohol, a drug, for a group of teens ranging from 15 to 17 years old. Had a stricter law been in place, well advertised and enforced Joshua and Mike would be with us today. We did not even get to say good-bye to him. The only parts of Josh undamaged were his bladder, kidney, genitals and his right hand. I never thought this kind of tragedy could happen to our family.

These deaths are a direct result of an attitude toward the use of alcohol in our community, state and nation. We as a state have the highest rate of alcoholism in the nation. Why? How many youth must die before we begin to seriously address this and become responsible models for our youth to look to. The message we are sending is not a good one and it is obvious it is not working. The Congress of the United States says teens are not mature enough to use this drug. They can not obtain it unless an adult gives them access to it.

These are not the first in Ketchikan to die because of alcohol and unless we draw a line now they will not be the last. There are many adults who will buy for teens and some that will host drinking parties in their homes. It is well known that the present Class A misdemeanor does not hold the offender responsible. In Ketchikan this offense receives 30 days - 27 suspended.

When an adult can come into your family's life and provide the choice of a drug to your child, one that as a parent you would not give him or her, something is wrong with our present laws. My son's life is gone, our family will have to live with this the rest of our lives. We will never be the same. My son's rights to be a youth and be protected by mature adults have been violated, my rights as a mother have been violated, Jake and Addy's rights to be young and trusting of society have been violated. This tragedy has impacted the lives of the many people who love us. If HB 436 would save one life out of the 80% to 90% of kids in grades 11 and 12 who "party" it would be worth it. Since this accident the parties still go on.

Alcohol is a "Legal Drug" and needs to be dealt with as a drug and not a socially acceptable way for teens to have fun. I know this bill will not solve the problem but it is one step. Drinking among teens is an epidemic and if we are not part of the solution then we as adults are part of the problem. I urge you to pass HB 436 through your committee.

Sincerely,

Jeanneane Henry
Jeanneane Henry
Jake Smith
Jake Smith
Addy Smith
Addy Smith

Norman and Cara Nygard
44 Franklin Road STG
Ketchikan, Alaska 99901
907-225-5849

March 11, 1992

First the man takes a drink
Then the drink takes a drink
Then the drink takes the man.
Japanese proverb

Ladies and Gentlemen:

Hello. My name is Cara Nygard. My husband Norm, our son, Daniel, and I reside in Ketchikan, Alaska. Michael, our 17-year old son, was killed in an automobile/motorcycle collision as was his friend Joshua Smith. Autopsy reports revealed that both boys had consumed alcohol.

Michael enjoyed sports. He enjoyed baseball, soccer and basketball. We had discussed the effects of alcohol and its effects on a person's performance and judgment. Michael felt that if he drank or consumed drugs, he would not be able to perform to his full potential. He planned to serve 2 years in the Navy and then go on to an automotive school in Arizona. He was a warm and compassionate young man.

I don't feel that either of these young men would have made an effort to "seek out" alcohol. The alcohol was purchased by another 17 year old and was shared with other teenagers. The fact that alcohol is so easily obtained by minors needs to be addressed. Michael made a bad choice, nothing we do will bring him back, but we can attempt to keep this from happening to other minors and their families.

As legislatures, the State Constitution grants you the power to pass laws. The primary purpose of these laws is to define criminal behavior and establish criminal penalties. Criminal behavior is a public offense, it has the ability to touch each and every one of us. By controlling crime, we emphasize the protection of society and exercise control over actual or potential criminal offenders.

In calendar year 1991 in the District Court in Ketchikan, 2 counts of Minor in Possession were filed and along with 244 counts of Minor Consuming Alcohol. Do you have any idea how many individuals were charged with Furnishing Alcohol to A Minor? Four(4) The minors aren't going to tell where they got the alcohol or who purchased it for them. So, what is the answer? It is already a crime to furnish alcohol to a minor.

The answer is to provide a more severe penalty for any individual convicted of furnishing alcohol to any minor. By making furnishing a class C felony, a more severe criminal sanction or sentence may be imposed. A person convicted of a felony may be barred from certain fields of employment or from entering some fields of study. A felony offender's status as an alien in the U.S. might also be affected, or the offender might be denied the right to hold office, vote, or serve on a jury. These and other civil liabilities exist only when a person is convicted of a felony offense, not a misdemeanor.

I feel the key is to deter adults from furnishing alcohol to minors. Therefore, I urge you to support House Bill No. 436.

Thank you.





Alaskans for Drug-Free Youth

An Affiliate Member of the National Federation of Parents for Drug-Free Youth.

STATEWIDE BOARD OF DIRECTORS

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April 10, 1992

Rep. Cheri Davis
Alaska State Legislature
Juneau, Alaska 99811

Dear Rep. *Cheri* Davis:

At their recent board meetings, both the Statewide board of Alaskans for Drug Free Youth and the Ketchikan affiliate board voted to support and encourage passage of CSHB436.

Please add both names to your list of supporters of this bill and let us know if we can be of any further assistance.

Sincerely,

Lynda G. Adams
Executive Director

c/o 2417 Tongass, #114
Ketchikan, AK 99901

Rep. Cheri Davis
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Rep. Davis:

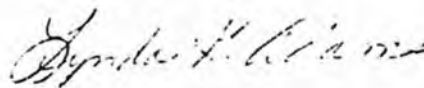
The Mayor's Task Force on Substance Abuse has recently endorsed support for HB 436. The Task Force has strived to eliminate the instances of illegal alcohol and other drug use and to support healthy lifestyles. In support of the Task Force's stance on underage drinking, we endorse HB 436.

The Task Force has always supported current law of furnishing alcohol to a minor, but also agrees with the new amendment that some responsibility lies with the person under the age of 21 who solicits another person to purchase alcohol. Alaska does not presently have a penalty for a minor who attempts to have an adult purchase liquor for a minor. There are such laws in other states, and the minor can also be held responsible. This could provide an added deterrent to minors purchasing alcohol.

The Mayor's Task Force on Substance Abuse also endorses an added amendment of a kegger registration section. This would provide identification of a keg which was found at a party where minors were present and drinking. The adult could be held responsible for furnishing that keg.

The Task Force supports passage of HB 436, and urges the legislature to pass this legislation this session.

Sincerely,



Lynda G. Adams, Vice-Chair
Mayor's Task Force on
Substance Abuse



**CITY OF
KETCHIKAN**

334 Front Street
Ketchikan, Alaska 99901
Phone 907-225-3111
Fax 907-225-5075

RECEIVED
2-4-92

January 30, 1992

Representative Cheri Davis
Alaska State Legislature
P.O. Box V
Juneau, Ak 99811

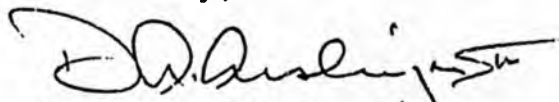
Dear Representative Davis:

Ms. Jeanneane Henry has informed me that you intend to introduce legislation which would increase the seriousness of the offense of furnishing alcoholic beverages to minors if the minor subsequently under the influence of that alcohol engages in criminal behavior or comes to harm.

I think that such legislation would prove to be of benefit in the battle against the high incidence of alcohol abuse in our state. Court rulings requiring specific mental states for conviction as well as the fact that both parties to the crime are willing participants who are generally uncooperative with authorities combine to make the crime of furnishing an extremely difficult offense to enforce. Stiffening the penalty for significant violations may enhance the deterrent effect of the present law and enforcement efforts. Given the potential consequences, it certainly would appear to be worth the effort.

If I can be of assistance to you in this matter, please contact me.

Sincerely,



D. A. Anslinger, III
Chief of Police

DAA:mp
PDLTR61/PDLTRFIL/POLLIB



STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY
DIVISION OF PUBLIC SERVICES

DATE: March 27, 1992

Please accept the enclosed original(s) of written testimony for the House Labor & Commerce teleconference hearing that was scheduled on March 26, 1992.

A copy of this testimony was transmitted to your committee via fax on March 26, 1992.

Thank you,

A handwritten signature in cursive script, appearing to read "James R. Miller", written over a horizontal line.

KETCHIKAN LEGISLATIVE INFORMATION OFFICE
352 FRONT STREET
KETCHIKAN, AK 99901
225-9675



Alaska State Legislature

Please enter into the record my testimony to the Labor & Commerce Judiciary
 committee name Finance
 committee on H.B. # 436, dated March 26th 1992.
 bill/subject

I am a parent of 17 year old son and a 13 year old daughter. During the last five years my husband and I have encountered a problem of Adults providing alcohol to our son. We were very upset and called the authorities at different times to ask what we as parents could do. The process was very frustrating for us. One was that the minor had to testify against the provider. Most teenagers will not testify against the provider out of 1. fear 2. peer pressure 3. the loss of a future provider.

I believe that this Bill will send a strong message to those Adults that do provide alcoholic Beverages to minors - They will be convicted under a class "C Felony" Perhaps more adults will take a serious thought to ~~whether~~ the fact that they are not going to take the Risk. Let's send a stronger message to these violators - Gina M. Such -

Signed:

Testifier

Gina M. Such

Representing (Optional)

3349 South Tongass Ketch. AK

Address

247-1223-

Phone No.



*Alaska Cabaret, Hotel,
Restaurant & Retailers Association*

13101, 1411 141100 • Anchorage, Alaska 99510
401 K Street • (907) 577-8124 • Telex (907) 277-8040

March 26, 1992

Representative David Finkelstein
Members of the House Labor and Commerce Committee
Alaska State Legislature
Juneau, AK

Dear Representative Finkelstein,

Today as you discuss House Bill 436, the problems associated with underage drinking in our society will be uppermost in your mind - problems with sometimes horrendous consequences. We, as an industry, share this concern and have resolved to do our part in seeking a resolution. Our policy statement on this issue is attached for your review.

We have been actively supporting both House Bill 444 and House Bill 445 which, as you will see from our policy statement, we believe will be major tools in fighting underage drinking. This legislation will be effective when it is enacted and we ask for your support.

House Bill 436, on the other hand, is much narrower in scope, directed only at the seller, not to the underage drinker. We do not believe that it would lessen any of the underage drinking problem, and question the wisdom of singling out one type of Title IV violation to be punished as a felony when all others remain misdemeanors. We oppose House Bill 436 on these grounds and ask that you consider our position. Thank you for your consideration.

Yours truly,

Carol Wilson
Executive Director

(UNDERAGE DRINKING POLICY STATEMENT

Much national media attention has been focused recently on the problem of underage drinking in our society. And in our own state of Alaska the press extensively covered the story of two lives taken in a traffic accident last summer which was caused by an underage drinker.

As parents, as citizens, and as involved members of the business community, we are seriously concerned with the impact this problem has on all our lives. The combined membership of the Alaska Wine and Spirits Wholesalers Association and the Alaska Cabaret, Hotel, Restaurant, and Retailers Association (CHARR), representing the beverage alcohol industry, is resolved to be part of the solution to this societal problem.

We wish to be forthright about our point of view as an industry. We advocate the concept of responsible decision making about alcohol use and the responsible use of the products we sell.

Persons under the age of 21 who attempt to purchase or consume alcohol are not making a responsible decision. They fail to consider fully the consequences of such an illegal action. They fail to make responsible use of beverage alcohol. And such irresponsibility has an impact on us all, in some cases, a tragic impact.

While we as an industry cannot provide a total solution, there are some actions we can take that will contribute to it. As we reaffirm our commitment to be responsible purveyors of a regulated product, we also pledge to undertake the following steps:

1. A Public Awareness Campaign

Through graphic point of sale materials we wish to raise the level of public consciousness of the underage drinking issue as well as to send a message to those under 21 seeking to purchase alcohol that we do not want their business. Parents of teenagers need to be reminded of the consequences of illegal use of alcohol. It is not just a case of "sowing wild oats"; the use of alcohol by persons under 21 is breaking the law.

2. Lobbying for Enforcement of Existing Law

The State of Alaska Statutes controlling alcoholic beverages are some of the most progressive of all 50 states. But our excellent laws are of little use if there is no enforcement effort. In our state, the Alcohol Beverage Control Board is established as a regulatory agency; enforcement is a function of police agencies. We will demand of our state and local government officials that police agencies be given the necessary direction to enforce the current law. If we as a society are sincere in our expressed concern for underage drinking, then our governmental bodies as our representatives must give this issue priority when providing direction and allocating resources to our police agencies. If we as a society are serious, if we mean what we say about the problem of underage drinking, then the underage drinker must pay a penalty for breaking the law.

3. Lobbying for Improvement of Existing Law

Although our state laws are very progressive, we see two areas where change could significantly affect the underage drinking problem for the better. First, the penalties for underage drinkers are the traditional fine and/or jail sentence for this misdemeanor. We believe that in addition, the courts should have the option of diversionary penalties such as community service and/or counseling programs. One of the best penalties, we feel, is to delay, suspend, or revoke the driver's license for an alcohol-related violation by a person under 21. This penalty is directed at the underage drinker and can serve as a real deterrent for teenagers.

The second area that requires change concerns the difficulties faced in preventing the use of false IDs. The State of Alaska must take steps to combat this problem by issuing drivers' licenses and identification cards that cannot be altered, duplicated, or counterfeited. Such technology is readily available and is already widely used by banks issuing credit cards. The state of New Jersey currently uses a "latent security image" to eliminate the alteration, duplication, and counterfeiting of drivers' licenses. We believe Alaska should also be a leader in taking this progressive step.

Article XXI of the U. S. Constitution grants states the right to regulate and control distribution and sale of alcohol beverages. We hope that our efforts will lead our local and state governments to exercise this right, adopting measures to curb underage drinking and lessen its impact on our society.

Pioneer Bar & Liquor Store, Inc.

CHRISTINE M. TENGS
President

141-143 Second Ave.
Post Office Box 190
Haines, Alaska 99827
(907) 766-9101 Business
(907) 766-2474 Office
(907) 766-3374 FAX

March 10, 1992

Representative Finkelstein, Chairman
Labor & Commerce Committee
Box V
Juneau, AK 99811

Dear Representative Finkelstein:

I am writing to urge you to amend House Bill 436, introduced by Representative Cheri Davis, to include changes to correct the wording of AS 04.21.020 "Civil Liability of persons providing alcoholic beverages" and AS 04.21.050 "Proof of Age."

As it now stands, the Proof of Age Statute defines acceptable I.D. as a valid Driver's License or I.D. Card encased in plastic with a photo and birthdate. The Civil Liability Statute says we may not be held civilly liable if we take a Signed Statement, Liquor I.D. Card (which we don't even have in Alaska) or Driver's License. In other words, if a person accepts a U.S. Military Card or other I.D. which meets the requirements of the Proof of Age Statute, there would be no protection from a civil suit if the I.D., accepted in good faith, turns out to be false. Please note that there would be protection from criminal charges (AS 04.21.050 (c)) if the same I.D. were taken.

The amendment being offered would replace "liquor identification card, or driver's license" in the Civil Liability Statute with "identification meeting the requirements of" the Proof of Age Statute. In addition the amendment would add to (c) of the Proof of Age Statute, regarding criminal liability, "meeting the requirements of AS 04.21.050 (b)".

As the A.B.C. Board, through regulation, redefines "valid identification" in the Proof of Age Statute, this amendment would protect licensees or their agents and employees from being held criminally and civilly liable for accepting such I.D.. For instance, the A.B.C. Board has recently adopted regulations allowing the acceptance of passports as "valid identification." Under the law, as it stands, we would not be protected from civil or criminal liability if we accepted a passport.

Please amend House Bill 436 to incorporate these changes. Thank you for your consideration of this request.

Very truly yours,


Christine M. Tengs
C.H.A.R.R. Board Member

copies to: Rep. Davis
Rep. Mackie
Rep. Choquette

2 pages

To	Rep Finkelman	From	CHRISTY TEXAS
Co.		Co.	
Dept.		Phone #	766-2474
Fax #	465-3448	Fax #	766-2384

Sec. 04.21.050. Proof of age. (a) If a licensee or an agent or employee of the licensee questions or has reason to question whether a person entering licensed premises, or ordering, purchasing, attempting to purchase, or otherwise procuring or attempting to procure alcoholic beverages, has attained the age of 21 years or is entering without consent in violation of AS 04.16.049(a)(3) and has not attained the age of 16 years, that licensee, agent, or employee shall require the person to furnish proof of age acceptable under (b) of this section or proof of consent in a form determined by the board. If the person questioned does not furnish proof of age acceptable under (b) of this section, or if a licensee, agent, or employee questions or has reason to question the validity of the proof of age furnished, the licensee, employee, or agent shall require the person to sign a statement that the person is over the age of 21 or 16 years as appropriate. This statement shall be made on a form prepared by and furnished to the licensee by the board.

(b) A valid driver's license or a valid identification card is acceptable as proof of age when used for identification in the purchase of alcoholic beverages and for securing entry to and remaining on premises where alcoholic beverages are sold if the license or identification card is made of or encased in plastic and contains a photograph of the licensee or card holder and a statement of age or date of birth.

(c) A licensee, or an agent or employee of the licensee, may not be charged for a violation of AS 04.16.051 - 04.16.052 if a signed statement as provided in (a) of this section is secured in good faith, or a valid driver's license or identification card is presented indicating that the owner and possessor of the presented driver's license or identification card is 21 or 16 years of age or over as appropriate.

MEETING THE REQUIREMENTS of AS.04.21.050(b)

Sec. 04.21.020. Civil liability of persons providing alcoholic beverages. A person who provides alcoholic beverages to another person may not be held civilly liable for injuries resulting from the intoxication of that person unless the person who provides the alcoholic beverages holds a license authorized under AS 04.11.080 - 04.11.220, or is an agent or employee of such a licensee and

(1) the alcoholic beverages are provided to a person under the age of 21 years in violation of AS 04.16.051, unless the licensee, agent, or employee secures in good faith from the person a signed statement, license-identification-card, or driver's license meeting the requirements of AS 04.21.050(a) and (b), that indicates that the person is 21 years of age or older; or

(2) the alcoholic beverages are provided to a drunken person in violation of AS 04.16.030.

← ~~signed statement, license-identification-card, or driver's license~~ "OR IDENTIFICATION"

Sec. 04.16.051. Furnishing of alcoholic beverages to persons under the age of 21. (a) A person may not furnish an alcoholic beverage to a person under the age of 21 years.
(b) This section does not prohibit the furnishing of an alcoholic beverage
(1) by a parent to the parent's child, by a guardian to the guardian's ward, or by a person to the legal spouse of that person if the furnishing occurs off licensed premises; or
(2) by a licensed physician or nurse to a patient in the course of administering medical treatment.
(c) Acts unlawful under AS 11.51.130 are not made legal by (b) of this section. (3 ch 131 SLA 1980; am 9 ch SLA 1983)

Sec. 04.21.080. Definitions. (a) In this title (1) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

Sec. 12.55.135. Sentences of imprisonments for misdemeanors. (a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.

Sec. 12.55.125. Sentences of imprisonment for felonies.
(e) A defendant convicted of a class "C" felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.125-12.55.175:
(1) if the offense is a second felony conviction, two years
(2) if the offense is a third felony conviction, three years

Sec. 12.55.035. Fines. (a) Upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law. In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden its payment will impose. No defendant may be imprisoned solely because of inability to pay a fine.

(2) \$50,000 for a class A, B, C felony:
(3) \$5,000 for a class A misdemeanor:

'Alarming' ozone depletion found

See page 11

SPORTS

Magic no All-Star, says Charles Barkley

See page 7

Imelda says far comes from hid

See page

Ketchikan Daily

Vol. 57 No. 029, (UPS 293-940), 12 Pages

Ketchikan, Alaska, Tuesday, February 4, 1992

REP CHERI DAVIS
P.O. BOX V
KETCHIKAN, AK. 99901
2722 05/13/92

Mother wants stiffer 'furnishing' laws

By TOM MILLER
Daily News Staff Writer

"We must change laws to save our kids."

"Furnishing alcohol kills our kids."

"Make providing a felony."

"Providers endanger us all. Make it a felony."

Those messages were scrawled on placards carried by two women outside the Alaska courthouse Monday afternoon. Inside, 23-year-old James C. Porter was being arraigned on a charge of furnishing alcohol to a minor. Ketchikan District Court was packed as 50 or more people came to watch the arraignment. Most of them were there to support the two mothers of Joshua Smith, 17, and Michael Nygaard, 17. The two teens were killed instantly on New Year's Eve when a motorcycle they were riding crashed into another vehicle at high speed on North Tongass Highway.

Troopers said that alcohol was involved, and they appealed to the public to help find the person responsible for providing a 1.75 liter bottle of Smirnoff vodka to the boys.

Troopers announced on Jan. 27 that Porter had been charged with the misdemeanor that is punishable by up to one year in jail, a \$5,000 fine or both.

District Judge George Gucker read Porter his rights and asked him if he would obtain his own attorney or if he wanted a court-appointed lawyer. Porter chose to ask for a court appointed attorney. He offered no plea. Then Gucker disqualified himself from the case because he is familiar with one of

the families, he said. Porter was scheduled to appear again in court on Tuesday at 1:30 p.m. to learn if he qualifies for a court attorney.

Porter left the courtroom. Approximately 35 other people walked out behind him.

Wants stiffer penalties
Jesmene Henry, the mother of Joshua Smith, said after the proceedings that she will aggressively seek to change Alaska's laws concerning people who furnish alcohol to minors. Rather than being classified as a misdemeanor, she says the crime should be a felony. Further, Henry wants violations to be punished for the consequences of teen drinking, whether it be alcohol-related accidental deaths, assault, rape or other crimes.

That change in the law should be followed by a law providing that signs be posted in liquor stores which state that buying booze for youngsters is a felony, she said.

"Kids are immature. They are part children and part adults. They are unable to handle alcohol," Henry said. "If a buyer felt the danger of being jailed for the consequences, they'd think twice."

"An adult can't just give a gallon of vodka to kids and say: 'Have a good time.'"

Henry told her children that if someone ever gave them drugs or alcohol, she would "make a big stink over it," she said. Now, she said, her oldest of three children is dead because someone gave him alcohol. She holds her son respon-

See 'Mother' on page 3



Colleen Blaka, along with Joyce Silberling (background) picketed outside the State Office Building Monday afternoon when James C. Porter was in court on a charge of selling alcohol to minors Michael Nygaard and Josh Smith, both 17. The youths died in a motorcycle accident on Dec. 31, 1991. The women want selling alcohol to a minor changed from a misdemeanor to a felony.

Staff photo by Neil Anderson

Check the record

When Jesmene Henry was interviewed by the Daily News in the halls of the state office building, she pointed back toward the district courtroom and said: "Almost every case happening in there is alcohol related."

As if to help emphasize her point, the Ketchikan Police Department report for Monday was full of alcohol related "public record" material.

CITY POLICE

Jan. 30

Police took a woman into protective custody after a caller said someone was passed out in the bus stop at Sea Level Drive.

Jan. 31

Police investigated a report that rocks were thrown by kids at a window at Ketchikan High School. Damage to a window was estimated at \$200. Police stopped two juveniles,

aged 16 and 15, in connection with the vandalism at Kaybi and charged them with minor consuming alcohol. One of them, a 15-year-old girl, said she had been given a tequila drink by a 26-year-old man.

James T. Evans, 63, was arrested and charged with being drunk on a licensed premises.

Feb. 1

Charles B. Hodge, 33, and Carlos A. Atreola, 24, were arrested in front of the Marine Bar and charged with disorderly conduct after an officer allegedly observed them punching each other's faces. They didn't stop fighting when ordered until they were both restrained, the report said.

An officer was waved over by a person who pointed to a man who was passed out on the sidewalk on

See 'Record' on page 2

Mother

Continued from page 1

sible for making a bad choice to use alcohol, but she is committed to following through now and raising the issue.

"I'm not going to stop talking until we get a stiff law against providing alcohol to kids here, and until we get some options. We have 22 bars here," Henry said. "I'm not saying close them, but look at it. What's wrong with this picture?"

"We're being totally irresponsible. We want to just say, 'Just say no,' and then close our eyes."

Industry shares blame

The liquor industry is partly responsible, Henry said, because it pays for lobbying that keeps the laws loose. The industry's advertising promotes attitudes that keep people drinking, said Henry. They glorify it. They make kids think drinking is cool and fun, she said.

Ketchikan society is responsible because it fails to provide kids with alternatives to drug and alcohol abuse, she said.

"There are 22 bars, one theater, and one bowling alley," she said.

The bowling alley is full of drinking adults and a family night at the movies is expensive, she said.

"They get run out of the mall," Henry said. "But at some point, they don't want to sit at home with you and watch movies. They want somewhere to go."

Kids need to have a place where they can socialize, eat, dance, and be with their dates, said Henry.

Henry said she has been told that Ketchikan can't afford a roller rink or similar place for kids because the money needs to be spent on economic development instead.

"How economically developed are we going to be when business people look at Ketchikan and say: 'I don't want to move there to raise my kids — not on a bet.'"

Henry wants more education that will make teens think twice before drinking. "Kids need to read the coroner's reports," she said. "We're protecting them from the ugliness of what it does, but we don't protect them from the option [of drinking]."

Henry will be traveling to Juneau to lobby state legislators on behalf of House Bill 436, filed last Thursday by Rep. Cheri Davis, R-Ketchikan. The bill, entitled "Penalty for providing alcohol to a minor," would make the crime a class C felony punishable by up to five years in jail and/or a \$50,000 fine.

"It can't be just a senseless thing," Henry said. "There's got to be something positive that comes out of this."

"I'm not saying prohibition. I'm saying responsible," Henry said.

Nazis

Continued from page 1

studies. "I think it's very important to prove what happened."

Richmann was kidnapped by Israeli commandos in 1960, taken to Jerusalem for trial, convicted and hanged. Mengele's family say he drowned in Brazil in 1979.

Josef Schwammberger, a commandant at labor camps in Poland, was extradited in 1990 and now is on trial in Stuttgart, Germany, for war crimes.

Schwammberger, now 79, lived here under his own name. So did Mengele, who obtained a driver's license and an identity card from police, the magazine Somos reported over the weekend, after apparently having had a...

Federal Police files on display at the news conference included folders with faded news clips, photographs and typed statements about Mengele, Bormann and others. Reporters were allowed to photograph the folders, but not examine them.

It's unclear how many Nazis found shelter here. Some reports put the number in the thousands, but Manzano, the interior minister, said it was "much, much less."

He also insisted that those who came did so on Red Cross passports and not — as has been reported — on Argentine passports issued by Peron

William Ray and Rose M. Davis.

Dec. 17

Robert L. Sellards and Nancy Mona Haldane.

Dec. 23

Robert A. Gunselman Jr and Coralyn M. Fitzsimmons.

Dec. 29

Delain A. Tate and Dawn J. Francisco.

Dec. 30

Marvin E. Dewitt and Rita Marie Braz.

Record

Continued from page 1

Front Street. The man was taken into protective custody. Michael W. Paulsen, 20, and Pamela Metcalf, 18, were cited for minor consuming alcohol. Paulsen was also arrested and charged with driving while intoxicated. The charges were made after an officer stopped Paulsen for speeding. Neither Paulsen nor Metcalf would say where they obtained the alcohol they had been drinking. A man was taken into protective custody after a taxi driver complained that an occupant of the cab wouldn't pay a fare and that the man had been thrown out of a downtown bar.

Feb. 1

Police searched the Potlatch Bar for \$5,000 in cash and a checkbook that a man said he was missing after drinking there from 3:15 p.m. to 8 p.m. The man said he didn't know if someone might have picked his pocket or if he could

TLMP

and look at the economic impact of their (U.S. Forest Service) decision," he said.

The final EIS of the Tongass Land Management Plan is in the works and the Forest Service hopes to have a Record of Decision on the plan by July, said Steve Brink, U.S. Forest Service team leader for the plan.

The Forest Service is now processing the 7,000 individual responses to the plan. A summary of the comments will be categorized by resource, such as timber, wildlife issues, etc., said Brink.

The state's position on the plan also is being reviewed.

ARRAIGNMENTS

Jan. 17

Samuel Barber pleaded innocent to driving with a suspended license.

Rex Seley, reckless driving.

Jan. 21

Dave Snyder pleaded innocent to third-degree criminal mischief.

Nancy Martin, disorderly conduct.

John M. Crippen, fourth-degree assault.

Jan. 22

Frank Jones, one count of third-degree misconduct involving a controlled substance. Bail was set at \$10,000.

have lost the money, police said. The money had been in a white envelope in the man's pocket, he told police.

Nick Krmaloff, 57, was arrested and charged with disorderly conduct, and open container after an officer reportedly saw him drinking white port wine from a bottle in the spruce mill parking lot.

Feb. 2

One 17-year-old boy, two 15-year-old boys, and two 14-year-old girls were in a van that was stopped for having a bright spotlight turned on that was pointed backwards into the eyes of following motorists. All but one of the 14-year-old girls were subsequently charged with minor consuming alcohol and curfew violation. The 14-year-old was charged only with curfew violation. They all refused to say where they had gotten the alcohol they drank.

done, it could be another year before the Record of Decision is reached.

"We hope that isn't necessary, but we won't know until we get information back on the market demand," Brink said.

The FRIS is expected to address old-growth areas, wildlife habitat changes, biological diversity, socioeconomic affects, recreation and tourism, timber supply and subsistence.

The plan is being done to manage the 17-million acre Tongass National Forest. Forest planning is much like a local Comprehensive Plan where zoning ordinances are related.

Ketchikan Daily News

REP CHERI DAVIS
P O BOX V
JUNEAU, AK, 99811
2722 05/13

(UPS 293-940), 14 pages

Ketchikan, Alaska, Tuesday, January 28, 1992

In brief

Porter charged

Alaska State Troopers have charged James C. Porter, 23, with furnishing alcohol to a minor in connection with a fatal Dec. 31, 1992 motorcycle accident on North Tongass Highway. Joshua Smith, 17, and 17-year-old Michael Nygard died instantly when the motorcycle they were riding went out of control, crossed the center line and collided with another vehicle.

"Alcohol is believed to have been the main contributing factor in the accident," Trooper 1st Sgt. Ted Bachman said in a Monday press release.

Porter is to appear in Ketchikan District Court on Feb. 2.

The maximum penalties for furnishing to a minor are one year or \$5,000 or both, said Bachman. The judge could also impose community work service and treatment.

SPORTS

Ingell, Misschiefs meet for third

See page A-8

Relief flights to republics begin

See page C-1

WEEKEND EDITION

REP. CHERI DAVIS
P. O. BOX 5
JUNEAU, AK, 99811
2722 05/13/92

**JUD

Juneau, Alaska, Saturday-Sunday, February 8-9, 1992

\$1.25

'How many have to die?'

Smith's mother campaigns for stiffer liquor laws

By TOM MILLER
Daily News Staff Writer

Jeanneane Henry, the mother of a teen-ager who died in a motorcycle accident after drinking, carried her demand for stiffer laws against furnishing alcohol to minors to the Governor's Advisory Board on Alcoholism and Drug Abuse Friday. She was backed up by Cara Nygard, whose son died in the same New Year's Eve accident.

The board was in its second day of a three-day meeting in Ketchikan and took testimony here and from around the state by teleconference at the Cape Fox Hotel.

Henry passed a picture of her family around the board table as she told them that she wants the crime of furnishing to be a felony instead of a misdemeanor as it is now.

Her son, Joshua Smith, 17, and his friend Michael Nygard, also 17, died instantly when the motorcycle they were riding went out of control, crossed the center line and collided with another vehicle.

"Alcohol is believed to have been the main contributing factor in the accident," Alaska State Trooper 1st Sgt. Ted Bachman said in a press release after the incident.

Henry called her son a "miracle child" because she had been told that she couldn't have children, then she had three, beginning with Joshua.

She said he was a bright, wonderful boy. He made a bad choice, she said, when he drank; but blame should also go to the adult who bought a bottle of vodka and gave it to teen-agers.

James C. Porter, a 23-year-old restaurant cook, admitted to Alaska State Troopers that he purchased a 1.75 liter bottle of vodka on Dec. 30 and gave it to Richard Knusus, 17, according to Assistant District Attorney Thomas Wagner. Porter knew Knusus was a minor, Wagner said. According to Porter, Nygard and Smith drank vodka from that bottle the night they were killed. A jury trial for Porter is scheduled for April 20 and 21.

Because they drank, Henry said their sons were killed in a horrible way. She said her boy was decapitated and that his chest organs were



Members of the Governor's Advisory Board on Alcoholism and Drug Abuse listen to Cara Nygard tell of her son's death in a motorcycle accident on New Year's Eve. Alcohol was involved in the incident, according to Alaska State Troopers. Pictured from left are: Boardmember Reggie L. Jouse, Nygard, Boardmember Frank O. Williams and Boardmember E. Dwain McKenzie. A photograph of Nygard's deceased son Michael rests on the corner of the table. Staff photo by Tom Miller

crushed. The only parts of him that were not mangled were a kidney, his bladder, his genitals and his right hand, she said.

"I'm not telling you this to gross you out," Henry added. "But it was the result of a legal drug that we glorify."

Kids don't manufacture, distribute or advertise alcohol — adults do, she said.

"How many kids have to die before we learn to say 'no.'"

A bar can be held liable if an adult staggers out of it and is hurt, she said. If he breaks his ankle or is killed in a fall or drowns because he got too drunk in the bar, the bar can be sued, she said.

Henry called for a law making it a felony to furnish alcohol to minors and for a law that would make the furnisher an accomplice in any crimes committed by a teen-ager under the

See 'Alcohol,' page A-4

Alcohol

Continued from page A-1

influence.

With a felony furnishing law in place, warning signs should be posted in liquor stores that tell potential furnishers of the felony consequences of the act, she said. Liquor ads should be taken off television just as cigarette ads were removed; and she wants warnings placed on bottles.

Kids need a place to hang out, she said.

"We as adults have to focus on this problem," Henry said.

"Why is there no place for them to hang out? Are they such a low priority," she asked the board.

Boardmember Dr. William Browner agreed with Henry's argument about liquor advertising and said: "There is great concern about the promotion of alcohol on television and that it should be treated like cigarettes."

Nygaard speaks

Cara Nygaard placed a large portrait of her son on the table before she spoke. She emphasized Henry's assertion that society glorifies alcohol: "They've got these slinky chicks and beautiful guys who are looking real good and saying alcohol is great."

She also illustrated the gruesomeness of the accident that killed the two mothers' sons: "It took two days to figure out which parts belonged to which kids," she said.

Nygaard told the board that she works for the public defenders agency and that 95 percent of the cases handled by the agency are alcohol related.

The minor consuming cases come in and out, she said. The same kids keep showing up in court. New kids keep showing up too.

"They're lucky," she said. "As a parent, I wish my kid was able to show up in court."

After listening to the controlled but emotional presentations by both women, Boardmember George W. McNeven spoke to Nygaard in a soft voice, saying: "I want you to know, we don't come to this looking through rose-colored glasses."

He said he was born into a family of nine children of alcoholic parents. The parents died because of alcohol when he was aged six, he said. Three of his siblings died because of alcohol, he said.

"I've never had a drink in my life," McNeven said. "We want to see your suggestions. We will support you."

Sitting to McNeven's left, boardmember Charles Clay said "That's right. That's right."

Henry's plans include speaking to Rotary 2000 Tuesday at noon; and on a special town meeting radio program entitled: "Ketohikan and Alcohol," on KRSD-FM, Feb. 24.

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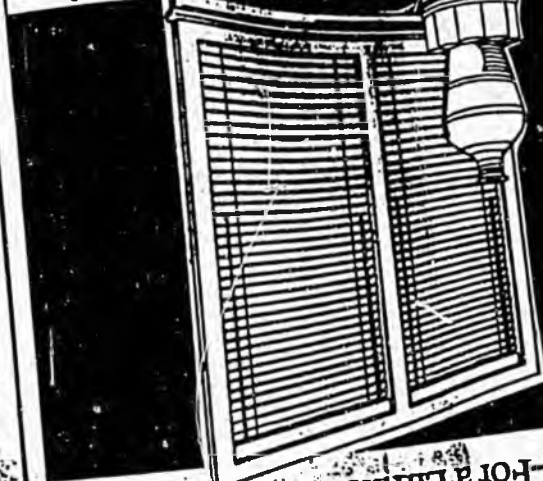
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Stephan Boeck
Kelly Lambert
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Liquor burden widened

Court takes hard line on furnishing minors

By James Wallace
P-I Reporter

In a case that could have broad social implications, the state Supreme Court ruled yesterday that a person who furnishes liquor to a minor in a social setting can be held responsible if the minor is injured or killed as a result of intoxication.

Previously, legal responsibility was limited to commercial settings, such as a restaurant or bar.

"It sends a message to adults out there, and to the public," said Sim Osborn, the Seattle attorney who represented Judith Hansen of Kent in a wrongful death suit dismissed in 1988 by a King County Superior Court judge. Her 15-year-old son drowned while on a fishing trip after a night of drinking. His access to beer at the campsite had not been restricted by the two 21-year-old men he was with, according to court records. They also were drinking.

The state Supreme Court split 5-4 in sending the case back to King County for trial.

Judith Hansen said she always held out hope that the case would go before a jury. "I don't believe minors know right from wrong. They don't know at what point they should stop," she said. "Adults should not be allowed to give minors alcohol or drugs."

In a strongly worded dissent, Justice Jim Dolliver wrote that the majority was "usurping" the powers of the state Legislature, which in 1955 repealed a law that imposed liability on social hosts.

"The majority, apparently transfixed by the facts before it and harboring a belief that youth must be served, has determined it can and, indeed, should take on a more creative role in usurping the powers of [the Legisla-

ture]," Dolliver wrote. "... It seems more than likely that in the next case involving a social host the court will declare the doctrine of social host immunity has ceased to exist in this state and hold there is a duty by any social host toward those to whom the host has furnished alcohol beverages."

But Justice Charles Johnson, writing for the majority, said the crux of the case must be determined on existing state law that makes it a crime to give or sell liquor to anyone under 21. "The Legislature has thus established that

See LIQUOR, Page B4



KURT SMITH/P-I

Judith Hansen filed suit after her 15-year-old son drowned while intoxicated.

Seattle PI - 2/21/92

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Cancer: Others urged to demand the treatment

From Page B1

"a human life," said the Michigan State University graduate who grew up in Seattle, California and Michigan as the eldest of three children.

Federal judges in other parts of the country have ordered insurers to pay for the procedure.

Although the settlement of LeRoux's case means won't set a formal precedent she wants to see other women with breast cancer take note of her suit.

"I hope that women like me that need to have a bone-marrow transplant and are denied by their insurance companies can find the courage to take them on," LeRoux said.

Already, she said, the case has "generated a huge reaction," bringing telephone calls of support.

Liquor: Social hosts have responsibility

From Page B1

both commercial hosts and social hosts commit a criminal act if they furnish liquor to a minor," Johnson wrote. "Pursuant to this statute, social hosts owe a duty to exercise ordinary care not to furnish liquor to a minor."

Hansen drowned April 24, 1987, the opening day of fishing season, at Lake Jameson in Eastern Washington. He went there with Robert Friend and Robert Petty, both of Kent. After a night of drinking beer, he apparently wandered away from the campsite and fell into the lake. His body was not found for several weeks. An autopsy determined his blood-alcohol level was twice the legal limit for intoxication.

There is still dispute over who fur-

nished the beer the three drank before and during the fishing trip. The state Supreme Court, said that issue will have to be determined by a jury. Harold Field, the attorney for Friend, said yesterday he is convinced the evidence will show the beer was supplied by Petty, and thus his client is not liable.

The attorney for Petty was not available for comment yesterday.

Yesterday's ruling reversed the decision of King County Superior Court Judge Charles Burdell to throw out the wrongful death suit. Joining Johnson in the majority opinion were Justices Jim Andersen, Bob Brachtenbach, Charles Smith and Bob Utter. Signing Dolliver's dissent were Justices Rich Guy, Barbara Durham and Chief Justice Fred Dore.

Deaths

ALEX: Clifford E., 71, of Seattle, Feb. 13.
ANDERSON: Carl J., 78, of North Bend, Feb. 12.
BEAUDREAU: Helene M., 98, of Federal Way, Feb. 11.
BERGNER: Vivian E., 88, of Seattle, Feb. 17.
BESK: Patricia M., 66, of Seattle, Feb. 12.
BEYERS: Willard L., 76, of Seattle, Feb. 13.
BODE: Dorothy L., 59, of Sumner, Feb. 12.
BOUK: Lillian A., 83, of Seattle, Feb. 16.
BROWN: Eva, 91, of Seattle, Feb. 18.
CALDERON: Victor E., 65, of Seattle, Feb. 17.
CHRISTIANSON: Charles O., 80, of Seattle, Feb. 12.
COATNEY: Edna N., 77, of Kirkland, Feb. 15.
COOT: W.E., 65, of Seattle, Feb. 15.
DE LOS ANGELES: Juan, 80, of Woodinville, Feb. 14.

ELLISON: Elaine S., 66, of Seattle, Feb. 13.
ELLSWORTH: Doris B., 91, of Des Moines, Feb. 12.
FLEURY: Michael G., 33, of Seattle, Feb. 11.
FOLEY: Alice, 81, of Seattle, Feb. 14.
GAMBLE: Faith L., 73, of Kent, Feb. 13.
GARCIA: Domingo T., 80, of Seattle, Feb. 18.
GENTRY: Nettie, 77, of Des Moines, Feb. 11.
GREEN: Nancy L., 23, of Kent, Jan. 21.
HALEY: Alexander P.M., 70, of Seattle, Feb. 9.
HARRISON: Harold W., 77, of Renton, Feb. 13.
HAUGLAND: Sigfred E., 41, of Seattle, Feb. 16.
HERZOG: Marianne H., 56, of Bellevue, Feb. 14.
HOFSTAD: Mary L., 65, of Seattle, Feb. 14.
HUDSON: Wynona E., 84, of Mercer Island,

Feb. 14.
JOHNSON: Vera M., 60, of Kent, Feb. 14.
KAMIYA: Jon K., 44, of Kent, Feb. 17.
KRUMBACH: Lowell D., 80, of Kirkland, Feb. 13.
KUMMERFELDT: Walter J., 66, of Edmond, Feb. 15.
LARRIMER: Mary M., 73, of Kirkland, Feb. 13.
LEIER: Greta M., 74, of Seattle, Feb. 17.
LEO: Agnes V., 92, of Seattle, Feb. 14.
MacDONALD: Fredrick A., 74, of Tukwila, Feb. 13.
MARSHALL: William W., 91, of Mercer Island, Feb. 16.
MARTIN: Kathryn B., 76, of Seattle, Feb. 11.
McNALLY: Vivian, 80, of Seattle, Feb. 16.
OLSEN: Ray L., 87, of Seattle, Feb. 14.
ROWE: Helen G., 95, of Des Moines, Feb. 14.

SANCHEZ: Cristobal S., 77, of Seattle, Feb. 16.
SCHURMAN: Esther M., 83, of Renton, Feb. 13.
SCHWARTZ: Oliver, 66, of Kent, Feb. 15.
SHARPE: Edgar A., 69, of Seattle, Feb. 15.
SLADEK: Richard O., 66, of Snohomish, Feb. 13.
STOOPS: Ricky A., 38, of Seattle, Feb. 13.
TRUEBLOOD: Kara O., 84, of Des Moines, Feb. 11.
URCH: Kathryn M., 76, of Redmond, Feb. 14.
VAUGHN: William M., 71, of Woodinville, Feb. 17.
WATT: Dolores J., 70, of Bellevue, Feb. 15.
WOJCIOWICZ: Bernice C., 72, of Seattle, Feb. 13.
WOOD: Julia V., 55, of Redmond, Feb. 15.

Funerals and Deaths

Paid Notices

Hilda M. ANDERSON

Age 87. Beloved wife of Victor, Seattle. Aunt of Karen Nelson, California. One sister, two brothers and several nieces and nephews in Sweden. Member of Kilpan No. 228 V.O.A. and Swedish Club. Cryptic services Tuesday, 11 a.m. at Washelli Cemetery directed by Wiggen and Sons. In lieu of flowers, memorials to American Heart Association.

Forrest W. MARRIOTT

Age 79, died February 19, 1992. Beloved father of Carol Britton and Robert Marriott. Two grandsons. At his request, no services. Cremation.
EVERGREEN-WASHELLI FUNERAL HOME

Robert Sanford MUTTER

Of Federal Way, died Feb. 18, 1992 at age 81. He was

Gill Otto OAK

Age 83, of Renton, died February 19, 1992. Services Saturday, February 22, 1992 at 1 p.m. at BONHEY-WATSON Washington Memorial 16445 Pacific Highway South

Alvin J. SPADAFORE

Died February 19, 1992. Arrangements pending.
BONHEY-WATSON

Joseph T. THOMAS, Lt. Col. U.S.A.F., retired

Age 67, of Edmonds, passed away February 20, 1992 at Swedish Hospital in Seattle. He was the youngest of ten children born to Mr. and Mrs. Lewis Thomas, Greensboro, North Carolina. He graduated from flying school in Naples, Alabama in 1943 and served 23 years in the Air Force Tactical Air Command as a fighter pilot. Following military retirement he was a program director of Northrop Corporation for

Citation	Rank(R)	Page(P)	Database	Mode
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(Cite as: 1992 WL 28858 (Wash.))

Judith HANSEN, individually and as Personal Representative of the Estate of
Keith Hansen. Petitioner,

v.

Robert Anthony FRIEND and Jane Doe Friend, husband and wife; Robert M. Petty
and Jane Doe Petty, husband and wife; and John and Jane Does 1-10, husbands
and wives. Respondents.

No. 57658-1.

Supreme Court of Washington.

En Banc.

Feb. 20, 1992.

Kargianis, Austin & Osborn, Bruce A. Wolf, Sim Osborn, Seattle, for
petitioner.

Murray, Dunham & Murray, Harold B. Field, Ronald L. Unger, Reed & McClure,
William Robert Hickman, Pamela A. Okano, Marilee C. Erickson, Seattle, for
respondents.

JOHNSON, Justice.

> *1 Fifteen-year-old Keith Hansen drowned in an alcohol-related incident.
The petitioner, Hansen's mother, seeks review of the Court of Appeals opinion
affirming the trial court's summary judgment dismissal of her wrongful death
suit. 59 Wash.App. 236, 797 P.2d 521. In her suit, she alleges the
respondents, two adult social hosts, negligently furnished liquor to her minor
son, causing his intoxication and death. The Court of Appeals held that social
hosts could not be held liable as a matter of law. We reverse the Court of
Appeals and remand the case to the trial court.

On April 24, 1987, 15-year-old Keith Hansen and 21-year-old Robert Friend
drank liquor at Friend's house in Kent, Washington. Hansen supplied the liquor
from his parents' house. The two drank through the night and into the morning.

When 21-year-old Robert Petty arrived at Friend's house that morning, both
Hansen and Friend were visibly intoxicated. Petty and Friend had planned to
leave that day for Lake Jameson in Eastern Washington for an overnight fishing
trip. When Petty arrived, he had with him two or three half-cases of beer.
Friend asked Petty if Hansen could go on the fishing trip with them, and Petty
agreed.

On the way to Lake Jameson, the three stopped at a store where Petty bought
another 6-pack of beer. The three arrived at Lake Jameson around 6:30 p.m.,
set up camp and had dinner. Petty stated in his deposition that he and Friend
had some beer at this time, but that Hansen did not. Friend's deposition
indicates, however, that Hansen may also have consumed alcohol at this time.
Clerk's Papers, at 64-65. Petty went to sleep around 9 p.m., after having two
or three beers. By this time, Friend had consumed from two to four beers.
Hansen's access to the beer does not appear to have been restricted in any way
at the campsite.

Around 11 p.m., Hansen and Friend entered an adjacent campsite. Both were visibly and severely intoxicated. They stumbled back toward their own campsite around 11:30 p.m. Alan Petty, Robert's brother, arrived at the lake about this time. Shortly after Alan Petty's arrival at the campsite, Hansen left once again, stating he was going to another campsite to steal a beer.

Sometime afterward, the campers at the adjacent campsite heard a loud splash. They then heard something or someone splashing in the water, going up and down gasping for air. They ran to Hansen's campsite to get help. Alan Petty and one of the other campers got in a boat and searched the lake, but they found nothing. Hansen's body floated to the surface of Lake Jameson about 2 weeks later.

(1) The petitioner contends Friend and Robert Petty negligently furnished liquor to her minor son. In order to prove actionable negligence, a plaintiff must establish: (1) the existence of a duty owed to the complaining party; (2) a breach of that duty; (3) a resulting injury; and (4) that the claimed breach was the proximate cause of the injury. *Pedroza v. Bryant*, 101 Wash.2d 226, 228, 677 P.2d 166 (1984). At issue here is whether Friend and Petty owed a duty of care to Hansen.

> *2 (2)(3) Whether a defendant owes a duty of care to the complaining party is a question of law. *Pedroza*, at 228, 677 P.2d 166. The standard of conduct required of a reasonable person may be prescribed by legislative enactment. *Young v. Caravan Corp.*, 99 Wash.2d 655, 659, 663 P.2d 834, 672 P.2d 1267 (1983) (citing *W. Prosser, Torts* s 36 (4th ed. 1971)). The >petitioner argues RCW 66.44.270(1) provides the relevant duty of care in this case. This statute provides, in part, that:

It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control. (FN1)

The Legislature has thus established that both commercial hosts and social hosts commit a criminal act if they furnish liquor to a minor. See also RCW 66.44.320 (also prohibiting the sale of liquor to any minor). This court has held that commercial hosts can be held liable in a civil cause of action for breaching their statutory duty not to sell liquor to minors. See *Young*, at 660, 663 P.2d 834. We are thus faced with the question of whether RCW >66.44.270(1), which makes it a criminal act for "any person" (FN2) to furnish liquor to a minor, also defines the standard of conduct required of a reasonable person in a social host position.

The Washington courts have adopted the 4-part test from the Restatement (Second) of Torts s 286 (1965) for determining when the court may adopt a legislative enactment as a reasonable person's standard of conduct. *Young*, at 659-60, 663 P.2d 834.

The Restatement indicates:

The court may adopt as the standard of conduct of a reasonable (person) the requirements of a legislative enactment ... whose purpose is found to be exclusively or in part

(a) to protect a class of persons which includes the one whose interest is invaded, and

(b) to protect the particular interest which is invaded, and

(c) to protect that interest against the kind of harm which has resulted, and

(d) to protect that interest against the particular hazard from which the harm results.

Restatement (Second) of Torts s 286 (1965).

The first question under this test is whether Hansen was a member of the class protected under the statute. RCW 66.44.270(1) prohibits persons from furnishing liquor to a minor. The statute defines "minor" as any person under the age of 21 years. RCW 66.44.270(1). A rational basis exists for setting the legal drinking age at 21 years. *Houser v. State*, 85 Wash.2d 803, 808, 340 P.2d 412 (1975), overruled on other grounds in *State v. Smith*, 93 Wash.2d 329, 336, 610 P.2d 869, cert. denied, 449 U.S. 873, 101 S.Ct. 213, 66 L.Ed.2d 93 (1980). Hansen was 15 years old when the incident occurred and therefore was a member of the protected class.

The second question under the Restatement is whether the statute protects the particular interest which was invaded. The purpose behind the Washington State Liquor Act is to protect "the welfare, health, peace, morals, and safety of the people of the state". RCW 66.08.010. RCW 66.44.270(1) protects a minor's health and safety interest from the minor's own inability to drink responsibly. The Legislature believed that persons under 21 years of age are neither physically nor mentally equipped to handle the consumption of intoxicating liquor. *Young*, 99 Wash.2d at 660, 663 P.2d 834 (citing *Callan v. O'Neil*, 20 Wash.App. 32, 39, 579 P.2d 890 (1978)). Hansen's health and safety interest was invaded by the effects of alcohol. The statute was thus designed to protect the particular interest which was invaded.

> *3 The third question is whether the statute protects a minor's health and safety interest against the kind of harm which resulted. RCW 66.44.270(1)'S prohibition against giving alcohol to minors protects a minor's interest against physical harm which could result from his or her abuse of alcohol. Hansen suffered physical harm in this case, allegedly as a result of his intoxication. The statute therefore protects against the kind of harm suffered here.

The final question is whether the purpose of the statute is to protect a minor's health and safety interest from the particular hazard from which the harm resulted. The particular hazard the statute regulates is alcohol in the hands of minors. The statute was therefore designed to protect Hansen from the particular hazard at issue.

The statute thus meets the Restatement's 4-part test for adoption as a reasonable person's standard of conduct. The respondents argue, however, that *Burkhart v. Harrod*, 110 Wash.2d 381, 755 P.2d 759 (1988) should still bar a cause of action in this case. In *Burkhart*, this court held that social hosts who served liquor to an adult guest could not be sued for injuries resulting from the guest's intoxication.

This court reasoned in *Burkhart* that the only indication of legislative intent in the area of social host liability was the disinclination to impose such liability due to the fact that the Legislature repealed the dramshop act in 1955. (FN3) *Burkhart*, at 387-88, 755 P.2d 759. In this case, however, the Legislature has acted to prohibit both social hosts and commercial hosts from furnishing liquor to minors. The Legislature has enacted criminal penalties on "any person" who gives, sells or otherwise furnishes liquor to minors.

(4)(5) This case involves furnishing liquor to a minor, not an adult, and is thus distinguishable from *Burkhart*. The Legislature established that persons under 21 years of age are a protected class under the Washington State Liquor Act, RCW Title 66. *Young*, 99 Wash.2d at 660, 663 P.2d 834 (citing *Callan v. O'Neil*, supra). We therefore conclude that RCW 66.44.270(1) imposes a duty

of care on social hosts not to serve liquor to minors. A minor may maintain an action against a social host where this duty is breached, and the injuries sustained by the minor are proximately caused by this breach.

(6) If a social host breaches his or her duty not to furnish liquor to a minor, the trier of fact may consider the breach as evidence of negligence, rather than as negligence per se. See RCW 5.40.050. The Legislature has abolished the common law doctrine of negligence per se for cases filed on or after August 1, 1986. See RCW 5.40.050; (FN4) Laws of 1986, ch. 305, s 910, p. 1367. Because the petitioner filed this suit in 1988, the negligence per se doctrine does not apply.

(7)(8) The practical effect of RCW 5.40.050 is:

to eliminate what might be called the "strict liability" character of statutory violations under the old negligence per se doctrine, (and) to allow jury to weigh the violation, along with other relevant factors, in reaching its ultimate determination of liability.

*4 Doss v. ITT Rayonier, Inc., 60 Wash.App. 125, 129-30, 803 P.2d 4, review denied, 116 Wash.2d 1034, 813 P.2d 583 (1991). In weighing the relevant factors, the trier of fact may find a statutory violation is not negligence where the violation is due to some cause beyond the violator's control, and ordinary care could not have guarded against the violation. See

6 Wash.Prac., WPI 60.03 (3d ed. 1989); Young, 99 Wash.2d at 661, 663 P.2d 834 (interpreting the above language as an exception under the former negligence per se standard) (citing Brotherton v. Day & Night Fuel Co., 192 Wash. 362, 369-70, 73 P.2d 788 (1937)). Whether or not ordinary care could have guarded against the statutory violations alleged here is a question for the trier of fact.

(9)(10) Petty argues that a social host's duty not to furnish liquor to a minor should be limited only to minors who subsequently drive while intoxicated. We note, however, that the concept of foreseeability determines the scope of the duty owed. Christen v. Lee, 113 Wash.2d 479, 492, 780 P.2d 1307 (1989). Foreseeability is normally an issue for the trier of fact. Christen, at 492, 780 P.2d 1307. In order to establish foreseeability:

the harm sustained must be reasonably perceived as being within the general field of danger covered by the specific duty owed by the defendant.

Christen, at 492, 780 P.2d 1307 (quoting Maltman v. Sauer, 84 Wash.2d 975, 981, 530 P.2d 254 (1975)). Many minors do not drive, as they are ineligible to obtain drivers' licenses until the age of 16 years. RCW 46.20.031(1). It therefore remains a question for the trier of fact whether the harm 15-year-old Hansen sustained was foreseeable.

(11)(12) Although a minor may maintain a suit against a social host, two factors may limit the extent of a minor's recovery. First, minors can be found contributorily negligent for violating RCW 66.44.270(2) which provides: "It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor." In Young, this court held that the 19-year-old decedent who consumed alcohol in a commercial host setting was contributorily negligent as a matter of law. Young, 99 Wash.2d at 661-62, 663 P.2d 834. The issue of contributory negligence for minors from 6 to 16 years of age, however, is generally a question for the trier of fact. Bauman v. Crawford, 104 Wash.2d 241, 244, 704 P.2d 1181 (1985). Therefore, whether 15-year-old Hansen was contributorily negligent in this case is an issue for the trier of fact.

(13) Second, a minor's recovery may be limited by RCW 5.40.060 which provides that:

It is a complete defense to an action for damages for personal injury or wrongful death that the person injured or killed was under the influence of intoxicating liquor ... at the time of the occurrence causing the injury or death and that such condition was a proximate cause of the injury or death and the trier of fact finds such person to have been more than fifty percent at fault....

> *5 A minor is thus barred by statute from receiving damages from a social host where the trier of fact finds the minor more than 50 percent at fault.

(14)(15)(16) Even in view of social host liability for furnishing liquor to minors, Friend and Petty both argue that the trial court's summary judgment in their favor is still appropriate. A court will grant summary judgment only when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *Wilson v. Steinbach*, 98 Wash.2d 434, 437, 656 P.2d 1030 (1982). The court must consider all facts submitted and all reasonable inferences from the facts in the light most favorable to the nonmoving party. *Wilson*, at 437, 656 P.2d 1030. The motion will be granted only if reasonable persons could reach only one conclusion from all of the evidence. *Wilson*, at 437, 656 P.2d 1030.

Friend argues summary judgment in his favor is appropriate because he did not give or otherwise supply liquor to Hansen. However, it is unclear from the record whether the liquor at the campsite was Petty's or both Friend's and Petty's. Questions of material fact remain in Friend's case. Summary judgment as to Friend is therefore inappropriate.

Petty argues summary judgment in his favor is appropriate for two reasons. First, he argues the record reflects he did not give any liquor to Hansen; rather, Hansen merely took the liquor without Petty's knowledge. Second, Petty argues the record does not reflect he knew or had reason to know Hansen was a minor. Petty failed to raise either of these arguments before the trial court. An appellate court will generally not consider arguments raised for the first time on appeal, and we decline to do so here. See *Smith v. Shannon*, 100 Wash.2d 26, 37, 666 P.2d 351 (1983). Summary judgment is inappropriate as to both Petty and Friend.

> In conclusion, under RCW 66.44.270(1), it is a criminal act for any person, including a social host, to furnish liquor to a minor. Pursuant to this statute, social hosts owe a duty to exercise ordinary care not to furnish liquor to a minor. A minor may maintain an action against a social host where this duty is breached, and the injuries sustained by the minor are proximately caused by this breach. The minor's recovery, however, may be limited by a finding of contributory negligence. Moreover, if the trier of fact finds the minor more than 50 percent at fault, the minor's recovery is entirely barred by statute.

Because questions of material fact remain in this case as to both respondents, we remand the case to the trial court for proceedings consistent with this opinion.

UTTER, BRACHTENBACH, ANDERSEN and SMITH, JJ., concur.

DOLLIVER, Justice (dissenting).

Like Julia, in *Burkhart v. Harrod*, 110 Wash.2d 381, 755 P.2d 759 (1988), the court whispered, "I will ne'er consent". Now, like Julia, it has consented.

As is so many times the case in contemporary society, the court chooses to use as its vehicle for significant doctrinal change the presumed welfare of persons under the age of majority. In doing so, the court completely disconnects itself from its previous analysis of the duty of care for a social host who serves alcoholic beverages.

> *6 The underpinnings for Burkhart, which rested upon the belief that (1) the Legislature had effectively preempted the field relative to all aspects of alcoholic beverages (Burkhart, at 390, 755 P.2d 759 (quoting *Settlemyer v. Wilmington Veterans Post 49, Am. Legion, Inc.*, 11 Ohio St.3d 123, 127, 464 N.E.2d 521 (1984))), and (2) the "judiciary is ill equipped" to impose social host liability, have been scuttled. Burkhart, 110 Wash.2d at 388, 755 P.2d 759. While the analysis of the majority moves briskly to the point and suggests considerable authority as it imposes a duty on a social host relative to minors, it is idle to infer the Legislature in enacting RCW >66.44.270(1) (Laws of 1933, 1st Ex.Sess., ch. 62, s 37(1), p. 193) somehow thought it was imposing a duty of care, actionable in tort, for a social host who serves liquor to minors; or that nearly 60 years hence that duty would be discovered by this court.

I have consistently held to the belief that without legislative mandate no tort action should lie against a host, either commercial (*Dickinson v. Edwards*, 105 Wash.2d 457, 482, 486, 716 P.2d 814 (1986) (Callow, J., dissenting; Durham, J., dissenting)) or social (*Burkhart v. Harrod*, supra) (but see *Young v. Caravan Corp.*, 99 Wash.2d 655, 663 P.2d 834, 672 P.2d 1267 (1983)), and continue to do so. Nothing which has occurred in the months since Burkhart persuades me otherwise. Furthermore, the Legislature has failed to act. Nonetheless, the majority, apparently transfixed by the facts before it and harboring a belief that "youth must be served", has determined it can and, indeed, should "take on a more creative role in usurping powers of (the Legislature)." Burkhart, 110 Wash.2d at 390, 755 P.2d 759. This is an odd way to maintain continuity in the law and surely does little to engender respect.

Thus, given the action of the court today, I do not believe it can any longer, with integrity, maintain its previous position. To do so would be a transparent charade. Although I dissent here, it seems more than likely that in the next case involving a social host the court will declare the doctrine of social host immunity has ceased to exist in this state and hold there is a duty by any social host toward those to whom the host has furnished alcoholic beverages. *Christen v. Lee*, 113 Wash.2d 479, 510, 780 P.2d 1307 (1989) (Utter, J., concurring in part, dissenting in part); Burkhart, 110 Wash.2d at 391, 755 P.2d 759 (Utter, J., concurring); Recent Cases, Negligence--Social Host Liability--Social Hosts Not Liable for Accidents Caused by Intoxicated Guests.--Burkhart v. Harrod, 110 Wash.2d 381, 755 P.2d 759 (1988), 102 Harv.L.Rev. 349 (1988).

DORE, C.J., and GUY and DURHAM, JJ., concur.

FN1. A previous version of this statute was in effect at the time of Hansen's death. See Laws of 1955, ch. 70, s 2. The previous version, like the present version, prohibited giving or otherwise supplying liquor to minors. As such, the two versions of the statute do not differ materially for the purpose of our analysis.

- > FN2. RCW 66.44.270 provides for the following narrow exceptions where minors may be given liquor, none of which apply in this case:
- "(3) This section does not apply to liquor given or permitted to be given to a person under the age of twenty-one years by a parent or guardian and consumed in the presence of the parent or guardian....
- "(4) This section does not apply to liquor given for medicinal purposes to a person under the age of twenty-one years by a parent, guardian, physician, or dentist.
- "(5) This section does not apply to liquor given to a person under the age of twenty-one years when such liquor is being used in connection with religious services and the amount consumed is the minimal amount necessary for the religious service."

FN3. The dramshop act formerly provided a cause of action to anyone injured by an intoxicated person against anyone who sold or gave the liquor to the intoxicated person. See Laws of 1905, ch. 62, s 1, p. 120.

FN4. RCW 5.40.050 allows for the following limited exceptions where the negligence per se doctrine continues to apply: "any breach of duty as provided by statute, ordinance, or administrative rule relating to electrical fire safety, the use of smoke alarms, or driving while under the influence of intoxicating liquor or any drug, shall be considered negligence per se."

Wash., 1992.

Hansen v. Friend

--- P.2d ----, 1992 WL 28858 (Wash.)

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Historical and Statutory Notes Intent—Laws 1987, ch. 202: See Historical Note following § 2.04.190.
1987 Legislation
Laws 1987, ch. 202, § 223, throughout the section, substituted "deputy" for "constable".

CHAPTER 66.44—ENFORCEMENT—PENALTIES

Section
66.44.328. Preparation or acquisition and supply to persons under age twenty-one of facsimile of official identification card—Penalty.
66.44.365. Juvenile driving privileges—Alcohol or drug violations.
66.44.800. Compliance by Washington wine commission.

66.44.010. Local officers to enforce law—Authority of board—Liquor enforcement officers

(1) All county and municipal peace officers are hereby charged with the duty of investigating and prosecuting all violations of this title, and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all fines imposed for violations of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor shall belong to the county, city or town wherein the court imposing the fine is located, and shall be placed in the general fund for payment of the salaries of those engaged in the enforcement of the provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

(2) In addition to any and all other powers granted, the board shall have the power to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. The board may appoint and employ, assign to duty and fix the compensation of, officers to be designated as liquor enforcement officers. Such liquor enforcement officers shall have the power, under the supervision of the board, to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. They shall have the power and authority to serve and execute all warrants and process of law issued by the courts in enforcing the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. They shall have the power to arrest, without a warrant any person or persons found in the act of violating any of the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor.

Amended by Laws 1987, ch. 202, § 224.

Historical and Statutory Notes Intent—Laws 1987, ch. 202: See Historical Note following § 2.04.190.
1987 Legislation
Laws 1987, ch. 202, § 224, near the end of subsec. (1), substituted "district court" for "justice court".

66.44.180. General penalties—Jurisdiction for violations

Every person guilty of a violation of this title for which no penalty has been specifically provided shall be liable, on conviction, for a first offense to a penalty of not more than five hundred dollars, or to imprisonment for not more than two months, or both; for a second offense to imprisonment for not more than six months; and for a third or subsequent offense to imprisonment for not more than one year. If the offender convicted of an offense referred to in this section is a corporation, it shall for a first offense be liable to a penalty of not more than five thousand dollars, and for a second or subsequent offense to a penalty of not more than ten thousand dollars, or to forfeiture of its corporate license, or both.

Every district judge and municipal judge shall have concurrent jurisdiction with superior court judges of the state of Washington of all violations of the provisions of this title and may impose any punishment provided therefor.

Amended by Laws 1987, ch. 202, § 225.

Historical and Statutory Notes
1987 Legislation
Laws 1987, ch. 202, § 225, near the beginning of the second paragraph, substituted "district judge and municipal judge" for "justice of the peace and magistrate".
Intent—Laws 1987, ch. 202: See Historical Note following § 2.04.190.

66.44.200. Sales to persons apparently under the influence of liquor

Notes of Decisions
Negligence per se 3
Obviously intoxicated 2

Purchase v. Meyer (1987) 108 Wash.2d 220, 737 P.2d 661.

Exceptions to general rule of nonliability for furnishing intoxicants to able-bodied persons exist for obviously intoxicated persons, persons in state of helplessness, or persons in special relationship to furnisher of intoxicants. Rhea v. Grandview School Dist. No. JT 116-200 (1985) 39 Wash.App. 557, 694 P.2d 666.

2. Obviously intoxicated

Results of alcohol breath test taken hours after minor was served alcoholic beverages at restaurant and pharmacologist's affidavit which, based on breath test results, purported to relate minor's blood alcohol content back to time minor was last served at restaurant did not show that minor appeared "obviously intoxicated," for purpose of this section, when she was served at restaurant. Purchase v. Meyer (1987) 108 Wash.2d 220, 737 P.2d 661.

Investigating officer's testimony as to how minor appeared to him at scene of motor vehicle accident an hour or two after minor was last served alcohol at restaurant did not show that minor appeared "obviously intoxicated" to those around her when she was served liquor at restaurant, for purpose of this section.

3. Negligence per se

Liquor establishment was not negligent per se in violating West's RCWA 66.44.200 and 66.44.320 by furnishing intoxicating liquor to intoxicated person who was also minor, for purposes of assault victim's action against liquor establishment based upon intoxicated patron's assault of victim; prevention of driver error was obvious and legitimate purpose behind legislation and thus, statutes were not intended to protect against particular hazard of subsequent criminal assault by patron. Christen v. Lee, Wash.1989, 119 Wash.2d 479, 780 P.2d 1307.

66.44.270. Furnishing liquor to minors—Possession, use—Exceptions

(1) It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control.

(2) It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor.

(3) This section does not apply to liquor given or permitted to be given to a person under the age of twenty-one years by a parent or guardian and consumed in the presence of the parent or guardian. This subsection shall not authorize consumption or possession of liquor by a person under the age of twenty-one years on any premises licensed under chapter 66.24 RCW.

(4) This section does not apply to liquor given for medicinal purposes to a person under the age of twenty-one years by a parent, guardian, physician, or dentist.

(5) This section does not apply to liquor given to a person under the age of twenty-one years when such liquor is being used in connection with religious services and the amount consumed is the minimal amount necessary for the religious service.

(6) Conviction or forfeiture of bail for a violation of this section by a person under the age of twenty-one years at the time of such conviction or forfeiture shall not be a disqualification of that person to acquire a license to sell or dispense any liquor after that person has attained the age of twenty-one years.

Amended by Laws 1987, ch. 458, § 3.

Historical and Statutory Notes

1987 Legislation

Laws 1987, ch. 458, § 3, rewrote the section.

Severability—Laws 1987, ch. 458: See Historical Note following § 48.21.160.

Notes of Decisions

Consumption 2.6

Possession 2.5

2. In general

State v. Hornaday (1984) 38 Wash. App. 431, 685 P.2d 653 [main volume] reversed 105 Wash.2d 120, 713 P.2d 71.

This section does not protect third parties injured by intoxicated minors; rather, section protects minors from injuries to themselves stemming from their alcohol consumption. Mills v. Estate of Schwartz (1986) 44 Wash.App. 578, 722 P.2d 1363.

2.5. Possession

Once alcohol within person's system, power of person to control, possess, use or dispose of is at an end; "possession" of liquor does not include liquor which has been assimilated by the body. State v. Hornaday (1986) 105 Wash.2d 120, 713 P.2d 71.

2.6. Consumption

Alcohol which has already been swallowed and is in process of being assimilated into person's body is not being consumed for purposes of this section. State v. Hornaday (1986) 105 Wash.2d 120, 713 P.2d 71.

5. Negligence per se

Even if county violated statute [§ 66.44.270] making it unlawful for anyone to permit any person under age of 21 to consume liquor on premises or any premises under his control, motorcyclist who was struck by vehicle driven by minor who allegedly became intoxicated in county park and who drove out of park at direction of park official was not member of class of persons statute was designed to protect and, therefore, violation of statute was not actionable by motorcyclist under theory of negligence per se. Hostetler v. Ward (1985) 41 Wash.App. 343, 704 P.2d 1193.

County in its role as property owner did not have sufficient control over activities in park to justify finding that it permitted minor to consume liquor on its premises and, therefore, county could not be held liable for injuries sustained by motorcyclist who was struck by vehicle driven by minor after minor allegedly became intoxicated in park and had been directed to leave by park official. Hostetler v. Ward (1985) 41 Wash.App. 343, 704 P.2d 1193.

Decedent, who was killed when automobile driven by minor was involved in accident, was not member of class protected by this section, for purpose of minor's estate's contribution claim against deceased victim's employer, which had held Christmas party which decedent and minor had attended, and at which minor had consumed alcoholic beverages, so that employer could not be

held liable for decedent's death on negligence per se theory based on its alleged violation of section and, therefore, since no joint and several liability could exist between employer and minor's estate, minor's estate failed to state claim for contribution. Mills v. Estate of Schwartz (1986) 44 Wash.App. 578, 722 P.2d 1363.

66.44.291. Minor purchasing or attempting to purchase liquor—Penalty against persons between ages of eighteen and twenty, inclusive

Every person between the ages of eighteen and twenty, inclusive, who is convicted of a violation of RCW 66.44.290 is guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community service shall require not fewer than twenty-five hours of such service.

Amended by Laws 1987, ch. 101, § 1.

Historical and Statutory Notes

1987 Legislation

Laws 1987, ch. 101, § 1, rewrote the section.

66.44.316. Certain persons eighteen years and over permitted to enter and remain upon licensed premises during employment

It is lawful for:

(1) Professional musicians, professional disc jockeys, or professional sound or lighting technicians actively engaged in support of professional musicians or professional disc jockeys, eighteen years of age and older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment as musicians, disc jockeys, or sound or lighting technicians;

(2) Persons eighteen years of age and older performing janitorial services to enter and remain on premises licensed under the provisions of Title 66 RCW when the premises are closed but only during and in the course of their performance of janitorial services;

(3) Employees of amusement device companies, which employees are eighteen years of age or older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment for the purpose of installing, maintaining, repairing, or removing an amusement device. For the purposes of this section amusement device means coin-operated video games, pinball machines, juke boxes, or other similar devices; and

(4) Security and law enforcement officers, and fire fighters eighteen years of age or older to enter and to remain in any premises licensed under Title 66 RCW, but only during and in the course of their official duties and only if they are not the direct employees of the licensee. However, the application of the [this] subsection to security officers is limited to casual, isolated incidents arising in the course of their duties and does not extend to continuous or frequent entering or remaining in any licensed premises.