

HB

22

HOUSE BILL NO. 22

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE IVAN

Introduced: 1/13/97

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for illegal sales of alcoholic beverages; and
2 providing for an effective date."

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

4 * Section 1. AS 04.21.020 is amended by adding a new subsection to read:

5 (b) Notwithstanding (a) of this section, a person who sells or barter an
6 alcoholic beverage to another person in violation of AS 04.11.010 is strictly liable for
7 civil damages resulting from the intoxication of the person receiving the alcoholic
8 beverage.

9 * Sec. 2. This Act takes effect July 1, 1997.

Revision Date: _____ Dept. Affected: Revenue
Title: Civil Liability for Bootleggers BRU: Alcoholic Beverage Control Board
Component: Alcoholic Beverage Control Board
Sponsor: Representative Ivan
Requestor: (H) JUD COMPONENT SERIAL NO. 100

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends Alaska law to clearly assert that immunity for social hosts that serve alcoholic beverages does not extend to those persons engaged in the illegal sale of alcohol. Alaska's strong immunity provisions for social hosts was reaffirmed and relied upon in the 1996 Alaska Supreme Court decision, Chokwok v. Worley, that concluded that civil liability for social hosts applied even when serving minors. This bill is designed to remove the potential for this doctrine to be used as a defense by bootleggers facing prosecution.

No fiscal impact is anticipated.

Prepared by: Douglas B. Griffin Phone: (907) 277-8638
Division: Alcoholic Beverage Control Board Date: January 22, 1997
Approved by Commissioner: Wilson L. Condon Date: January 22, 1997
Agency: Revenue

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COPY

FISCAL NOTE

No. 2
 Bill Version: CSHB 22(JUD)
 (H) Publish Date: 2/17/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Department of Law
 Title: An Act relating to civil liability for illegal sales of BRU: Civil Division
alcoholic beverages . . . Component: General Legal Services
 Sponsor: Representative Ivan
 Requester: (H) JUDICIARY COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF:Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

This bill would make individuals who sell or barter an alcoholic beverage to another person in violation of AS 04.11.010 strictly liable for civil damages resulting from the intoxication of the person receiving the alcoholic beverage.

Passage of this legislation would have no fiscal impact on the Department of Law.

Prepared by: Joan Kasson
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-5370
 Date: 1/14/97
 Date: 1/14/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

No. 1
Bill Version CSHB 22(JUD)
(H) Publish Date: 2/17/97

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Civil liability for bootlegging BRU: Trial Courts
 Component: _____
 Sponsor: Rep. Ivan
 Requestor: House Judiciary COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1007 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

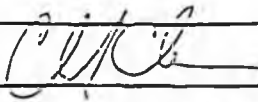
Estimate of any current year (FY 97) cost: None

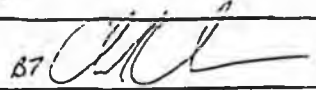
Positions

Full-Time					
Part-Time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel 
 Agency: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director 
 Agency: Alaska Court System

Phone: 264-8228
 Date: 01/23/97
 Date: 01/23/97

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24:13 PM
Rev 1/97

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ALASKA STATE LEGISLATURE



Sen. Robin Taylor, Chair
Sen. Drue Pearce, Vice Chair
Sen. Mike Miller
Sen. Sean Parnell
Sen. Johnny Ellis

State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: (907) 465-3922

Senate Judiciary Committee

MEMORANDUM

TO: Senator Taylor, Chairman
Senator Pearce, Vice Chairman
Senator Miller
Senator Parnell
Senator Ellis

FROM: Laura Chase, Committee Aide *L. Chase*

DATE: March 3, 1997

RE: ABC Board Position on HB 22

Doug Griffin, Director of the Alcoholic Beverage Control Board, called to voice the Board's support for the intent of HB 22.

Mr. Griffin stated that he and the Board support HB 22 as it relates to alcohol. He further explained that, since the original bill has been amended to include drugs, it is beyond his purview to extend support to the portions of the bill not related to alcohol.

If any of the committee members wish to contact him, Mr. Griffin's telephone number is (907) 277-8638.

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SENATE COMMITTEE REPORT

DATE: 2/26/97

FURTHER:

DATE TURNED
IN TO OFFICE: March 6, 1997

Judiciary Committee considered CS FOR HOUSE BILL NO. 22(JUD)

"An Act relating to civil liability for illegal sale or barter of an alcoholic beverage or a controlled substance; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical change
 - new: SCR# _____

SIGNING/DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Miller</i>	✓				
<i>Genice</i>	✓				
<i>Sam R. Parrell</i>	✓				
<i>Jim Ellis</i>	✓				
<i>CHAIR: Adrian Taylor</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>ABC BOARD</i>	<i>1/22/97</i>	⊖	
<i>DEPT. OF LAW / CIVIL DIV.</i>	<i>1/14/97</i>	⊖	
<i>COURT SYSTEM / Trial Div.</i>	<i>1/23/97</i>	⊖	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Alaska State House of Representatives House District 39

Session

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Representative Ivan M. Ivan

SPONSOR STATEMENT COMMITTEE SUBSTITUTE for HOUSE BILL 22 (JUD)

I introduced this legislation because current law seemingly exempts those who sell liquor without a license (bootleggers) from any civil liability for the damages that may be caused by their illegal acts. The basis of the original bill was to remove that exemption and make bootleggers strictly liable for their actions.

During deliberations before the House Judiciary Committee, language was added that addresses civil liability of a person who sells or barter a controlled substance as defined under AS 11.71.900.

The intent of this legislation is to apply strict liability to a bootlegger or drug dealer for any actions taken by a buyer of illegal alcohol or drugs that may result in civil damages to another person, the state or political subdivision of the state. The cost of criminally prosecuting the buyer for any criminal acts while under the influence of the illegally purchased alcohol or drugs may also be sought from the bootlegger or drug dealer.

It is also the intent of the legislation that an injured party can not only be an individual but also the state or a political subdivision of the state. Civil damages includes personal injury, death or injury to property.

Alaska State House of Representatives House District 39

Session

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Representative Ivan M. Ivan

CHANGES IN CSHB 22 (JUD)

There have been a number of changes in CSHB 22 (JUD) from the original bill. The changes adopted in the committee substitute were recommendations from House Judiciary Committee members, the Department of Law and House Judiciary staff.

SECTION 1

Language was added to explicitly express the intent of the original bill.

- A person who sells or barter alcohol illegally is strictly liable (1) to the recipient or another person for civil damages and (2) the cost to the state or political subdivision of the state to criminally prosecute the person receiving the illegal alcohol.
- The person who receives the illegal alcohol must be under the influence and the alcohol must substantially contribute to the civil damages.
- A definition of civil damages under subsection (b) includes damages for personal injury, death or injury to a person's property to include the state or political subdivision.
- A person who illegally sells or barter alcohol cannot use as a defense that the recipient voluntarily consumed or was voluntarily under the influence.

SECTION 2

This new section parallels section 1 of the draft committee substitute and addresses civil liability of a person who sells or barter a controlled substance as defined under AS 11.71.900.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 17, 1997

SUBJECT: Civil liability for illegal alcohol sales - (HB 22)

TO: Representative Ivan Ivan
Attn: Tom

FROM: Michael F. Ford
Legislative Counsel

You have asked for a brief explanation of the effects of the above- referenced bill. The bill would impose strict liability on bootleggers, or people who sell alcohol without a license. The imposition of strict civil liability means that a person convicted of bootlegging would be liable for any civil damages regardless of the degree of care exercised by the bootlegger. This is in contrast to a situation where a person is liable only if negligence is proven. To prove negligence you must show a failure to meet a standard of care, whereas in strict liability the only issues are commission of the act and damages.

Also, civil damages would include personal injuries as well as damages for a person's death. Assuming the intoxicated person does die as a result of a bootlegger providing alcohol, the deceased person's estate would still be able to recover damages from the bootlegger. See AS 09.55.570 and 09.55.580.

The imposition of strict liability is not common in our statutes and is often not favored by the courts. However, given the public health concerns addressed by the draft I do not think that there are any legal impediments to imposing strict liability in this situation.

Please contact me if you have further questions.

MFF:pl
97-013.plm

Sec. 09.65.210. Damages resulting from commission of a felony.

A person who suffers personal injury or death may not recover damages for the personal injury or death if the injuries or death occurred while the person was engaged in the commission of a felony, the person has been convicted of the felony, including conviction based on a guilty plea or plea of nolo contendere, and the felony substantially contributed to the injury or death. This section does not affect a right of action under 42 U.S.C. 1983.

History -

(sec. 1 ch 139 SLA 1986)

Revisors Notes -

Formerly AS 09.17.030. Renumbered in 1994.

Editors Notes -

Section 9, ch. 139, SLA 1986 provides that this section applies "to all causes of action accruing after June 11, 1986."

Decisions -

Constitutionality. - This section, as applied to an arrestee who filed a personal injury action against state troopers for allegedly using excessive force in apprehending him, did not deprive him of due process under the constitution of Alaska. *Sun v. State*, 830 P.2d 772 (Alaska 1992).

Plea of nolo contendere. - This section precludes a person who receives injuries in the course of a felony, and pleads nolo contendere to that felony, from later contesting whether he actually committed the felony. *Sun v. State*, 830 P.2d 772 (Alaska 1992).

Based on public policy grounds, a civil plaintiff is collaterally estopped from relitigating any element of a criminal charge to which he has plead nolo contendere. *Burcina v. City of Ketchikan*, 902 P.2d 817 (Alaska 1995).

Causation. - Arrestee's commission of a felony, i.e., assaulting state troopers who attempted to apprehend him, "substantially contributed to the injury," where nothing in the record showed a break in the nexus between the arrestee's assault and the troopers' instantaneous response thereto with deadly force. *Sun v. State*, 830 P.2d 772 (Alaska 1992).

Quoted in *Lord v. Fogcutter Bar & Stacy Cap*, 813 P.2d 660 (Alaska 1991).

Sec. 04.11.010. License or permit required.

(a) Except as provided in AS 04.11.020, a person may not manufacture, sell, offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage unless under license or permit issued under this title.

(b) Except as provided in this subsection, a person may not solicit or receive orders for the delivery of an alcoholic beverage in an area that has adopted a local option under AS 04.11.491. If the area has adopted a local option under AS 04.11.491(a)(1), (2), or (3), or (b)(1) or (2), a package store licensee outside of that local option area may receive orders as provided under AS 04.11.150 but may not solicit in that area or receive orders through an agent or employee in that area. This subsection does not apply to a package store licensee who operates a package store in an area that has adopted a local option under AS 04.11.491(a)(2)(C) or (3)(C) or (b)(2)(C). A person who violates this subsection is punishable upon conviction as provided under AS 04.16.200(a) or (b).

(c) In a criminal prosecution for possession of alcoholic beverages for sale in violation of (a) of this section, the fact that a person possessed more than 12 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages in an area where the sale of alcoholic beverages is restricted or prohibited under AS 04.11.491 creates a presumption that the person possessed the alcoholic beverages for sale.

History -

(sec. 2 ch 131 SLA 1980; am. sec. 1 ch 156 SLA 1988; am. sec. 2, 3 ch 101 SLA 1995)

Amendment Notes -

The 1995 amendment, effective July 1, 1995, rewrote subsection (b) and, in subsection (c), substituted "12 gallons" for "45 liters," inserted "restricted or," and inserted a section reference.

History Reports -

For Senate letter of intent relating to the enactment of (c) of this section by sec. 1, ch. 156, SLA 1988 (HCS CSSB 371 (Jud) am H), see 1988 Senate Journal 2939.

AG Opinions -

A "cooperative" that purchases alcoholic beverages for its members and charges them the actual cost of the purchase plus a percentage "to cover administrative and shipping costs" is required to obtain a license under this section. July 2, 1987, Op. Att'y Gen.

Decisions -

Editor's notes. - Many of the cases cited in the notes below were decided under former AS 04.10.010 and earlier statutes.

This chapter sets forth the only conditions under which a liquor license may be issued - for the sale of liquor within Alaska. In re Kaye, 11 Alaska 556 (1948).

Possession must be with intent to sell. - AS 04.11.010 - 04.11.700 does not make it illegal to possess intoxicating liquors unless the possession is with the intention to sell the same in Alaska. Territory of Alaska v. 188 Cases of Mixed Intoxicating Liquors, 10 Alaska 414 (1944).

The right to sell liquor may be prohibited altogether - in Alaska. In re Kaye, 11 Alaska 556 (1948).

For legislative history of liquor license legislation, - see K & L Distributions, Inc. v. Alaska, 184 F. Supp. 496 (D. Alaska 1960), vacated, 318 F.2d 498 (9th Cir. 1963).

Interpretation of liquor license statutes. - Resort may be had to the legislative history of the liquor license statutes, evidenced by subsequent enactments and amendments, as an aid to their interpretation and application. K & L Distributions, Inc. v. Alaska, 184 F. Supp. 496 (D.

Alaska 1960), vacated, 318 F.2d 498 (9th Cir. 1963).

Constitutionality of AS 04.16.200. - When read in conjunction with this section, AS 04.16.200(b), governing the sale of alcoholic beverages by unlicensed persons, defines an offense, affords adequate notice of the proscribed conduct and the prescribed penalty, and satisfies due process requirements. *Burnor v. State*, 829 P.2d 837 (Alaska Ct. App. 1992).

AS 04.16.200(b) as it existed prior to 1988 construed. - See *Morgan v. State*, 661 P.2d 1102 (Alaska Ct. App. 1983).

Liability of licensee. - In the absence of a statute expressly imposing liability, a person was not liable to a wholesale liquor dealer for the purchase money for liquor merely because he owned the liquor license for the establishment where the dealer had sold the liquor. The protection of creditors of retail dealers in liquor did not come within the spirit or purpose of purely regulatory or revenue producing liquor license statutes. *Sabre Jet Room, Inc. v. K & L Distribs., Inc.*, 384 P.2d 952 (Alaska 1963). For present provisions concerning the licensee's liability, see AS 04.16.150 and 04.21.030.

Availability of defense to accomplice. - If the perpetrator receives a profit, an accomplice may not avail himself of the defense to a charge of illegal sale of alcohol for one who does not profit. *Kinegak v. State*, 747 P.2d 541 (Alaska Ct. App. 1987).

Purchasing agent defense. - A defendant cannot defend against a charge of selling alcohol without a license by alleging that he in effect acted as a purchasing agency by serving as a go-between between the consumer of the alcohol and a third-party seller, and is not entitled to a jury instruction defining sale as requiring a transfer of title from the defendant to the consumer. *Herrera v. State*, 753 P.2d 150 (Alaska Ct. App. 1988).

Evidence sufficient to convict of sale of alcohol and possession of alcohol for sale. - See *Hernandez v. State*, 691 P.2d 287 (Alaska Ct. App. 1984).

Conviction and sentence upheld. - See *Azzarella v. State*, 703 P.2d 1182 (Alaska Ct. App. 1985); *Tuckfield v. State*, 805 P.2d 982 (Alaska Ct. App. 1991).

Sentence upheld. - Concurrent sentences of 240 days with 120 days suspended and concurrent fines of \$3,000 with \$2,000 suspended for sale of alcohol and possession of alcohol for sale were not clearly mistaken. *Hernandez v. State*, 691 P.2d 287 (Alaska Ct. App. 1984).

Sentence of six months' incarceration as a condition of receiving a suspended imposition of sentence, upon conviction of one count of selling intoxicating beverages without a license in a local option area, was not clearly mistaken, where defendant had set up a commercial enterprise, although of short duration, and sold a pint of whiskey to a man who murdered a woman shortly after buying the whiskey. *Wassillie v. State*, 790 P.2d 1385 (Alaska Ct. App. 1990).

Sentence modification. - A trial judge who sentenced a worst offender to two maximum consecutive terms of one year for conviction of one count of selling alcoholic beverages without a license and one count of possession of alcoholic beverages for sale in a local option area, with 275 days of the first sentence suspended, was clearly mistaken in imposing consecutively the unsuspended portion of the offender's jail term for selling alcoholic beverages without a license, where the judge specifically commented at sentencing that the chances for the offender's rehabilitation seemed good and that there was no reason to believe the offender would be inclined to resume a criminal lifestyle. In order to impose consecutive sentences that exceed the maximum sentence for the single most serious count, the sentencing court must expressly find that the full term of imprisonment is necessary for the protection of the public. *Peruski v. State*, 711 P.2d 573 (Alaska Ct. App. 1985).

Cited in *Cleland v. State*, 759 P.2d 553 (Alaska Ct. App. 1988); *Noah v. State*, 887 P.2d

981 (Alaska Ct. App. 1995).

Collateral Refs -

45 Am. Jur. 2d, Intoxicating Liquors, sec. 114-227.

48 C.J.S., Intoxicating Liquors, sec. 90-116.

What constitutes "sale" of liquor in violation of statute or ordinance. 89 ALR3d 551.

Article Notes -

Editors Notes. Section 5, ch. 136, SLA 1996 provides that "the Alcoholic Beverage Control Board shall hold a public hearing on or before January 1, 1997, for the purpose of discussing the alcoholic beverage licenses currently being issued by the board and the interrelationship between those licenses."

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, liquor 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.

History -

(sec. 5 ch 131 SLA 1980; am sec. 14 ch 109 SLA 1983)

Revisors Notes -

In 1980, this section was rearranged for clarity.

Cross References -

For responsibility of licensee for violations, see AS 04.16.150; for responsibility of licensees, agents and employees, see AS 04.21.030.

Decisions -

Editor's notes. - Many of the cases cited in the notes below were decided under former AS 04.10.180 and 04.15.020.

Constitutionality. - This section is not so completely lacking in rationality or legitimacy of purpose as to be unconstitutional. Immunizing social hosts from liability caused by their guests' conduct can rationally be based on a view that it is an undesirable interference with normal hospitality to require a social host to monitor guests' alcohol consumption. Further, the primary actor responsible for harm caused by a drunken person is the drunken person. *Chokwak v. Worley*, 912 P.2d 1248 (Alaska 1996).

Legislative intent. - The intent of the legislature in enacting this section was to limit vendor liability in cases where the vendor has provided alcohol in a statutorily permissible manner. *Williford v. L.J. Carr Invs., Inc.*, 783 P.2d 235 (Alaska 1989).

"Provide" alcohol. - A vendor may "provide" alcohol even unwittingly to third parties. *Williford v. L.J. Carr Invs., Inc.*, 783 P.2d 235 (Alaska 1989).

This section does not immunize vendors who violate AS 04.16.030, - which prohibits certain conduct relating to drunken persons. *Williford v. L.J. Carr Invs., Inc.*, 783 P.2d 235 (Alaska 1989).

Proximate cause. - AS 04.16.030 and this section require for purposes of liability only that the defendant's intoxication, and not the particular sale of intoxicants to a drunken person, be a proximate cause of the accident. *Kavorkian v. Tommy's Elbow Room, Inc.*, 711 P.2d 521 (Alaska 1985).

Even though the plaintiff's may frame the "but for" causation question in terms of the providee's intoxication, they are not required to do so, and may instead take the more traditional approach toward proximate cause, that is, in terms of the negligent provision of the liquor. *Gonzales v. Krueger*, 799 P.2d 1318 (Alaska 1990).

Recognition of bystander's right to recover damages for negligent infliction of emotional distress caused by injury to another. - See *Tommy's Elbow Room, Inc. v. Kavorkian*, 727 P.2d

1038 (Alaska 1986).

Civil liability under former law. - The common-law rule as to the nonliability of the vendor of intoxicating liquor for torts committed by the drinker of liquor while the latter was intoxicated, without more, generally prevailed. *Cherbonnier v. Rafalovich*, 12 Alaska 634, 88 F. Supp. 900 (D. Alaska 1950) See *Vance v. United States*, 355 F. Supp. 756 (D. Alaska 1973).

Although it was true that policy embodied in former AS 04.10.180 could also be enforced by criminal and administrative sanctions, there was no reason for giving that statute a narrow interpretation that would preclude a private right of action for unlawful conduct. *Alesna v. LeGrue*, 614 P.2d 1387 (Alaska 1980).

It is not unfair to hold a licensee responsible for the establishment's operation even though the licensee does not have actual control of the day-to-day functions. *Alesna v. LeGrue*, 614 P.2d 1387 (Alaska 1980).

For construction of former AS 04.15.020(a) as setting a minimum standard of care for the purposes of the common-law cause of action based upon ordinary negligence, see *Vance v. United States*, 355 F. Supp. 756 (D. Alaska 1973).

Liability of social host. - Employer, as a social host, owed no legal duty to plaintiffs. Since employer did not hold a liquor license, it was not liable as a social host for injuries resulting from a guest's intoxication, nor was it liable (under a "control" theory) as the employer of an intoxicated person who caused injuries. *Mulvihill v. Union Oil Co.* 859 P.2d 1310 (Alaska 1993).

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

Liability of alcohol seller. - Even though this section does not define the elements of all viable causes of action against liquor licensees, it does present a bar to all such causes of action based on providing alcoholic beverages if the conditions giving rise to immunity are met. A jury's conclusion that defendant did not with criminal negligence sell to a drunken person means that defendant was immune under the statute for all unlawful providing claims. The focus of the jury's attention should be whether the seller responded as a reasonable person would to the appearance and outward behavior manifestations of the person to whom the alcoholic beverage was sold, not on any specialized training the seller should have had as an aid to recognizing when a person is intoxicated. *Gonzales v. Safeway Stores, Inc.*, 882 P.2d 389 (Alaska 1994).

Sale to group. - A licensed provider of alcoholic beverages is entitled to immunity from civil liability only if he does not sell to a drunken person, and since vendor sold liquor to a group, one of whom was clearly a drunken person, he could not avoid liability. *Gonzales v. Krueger*, 799 P.2d 1318 (Alaska 1990).

Quoted in *Gordon v. Alaska Pac. Bancorporation*, 753 P.2d 721 (Alaska 1988); *Lord v. Fogcutter Bar & Stacy Cap*, 813 P.2d 660 (Alaska 1991).

Collateral Refs -

45 Am. Jur. 2d, Intoxicating Liquors, sec. 553-614.

48A C.J.S., Intoxicating Liquors, sec. 428-463.

Liability of innkeeper, restaurateur, or tavernkeeper for injury occurring on or about premises to guest or patron by person other than proprietor or his servant. 70 ALR2d 628; 28 ALR4th 80; 43 ALR4th 281.

Who is, as "owner" of premises on which intoxicating liquor is sold, liable under civil

damage or dram shop act. 18 ALR3d 1323.

Third person's participating in or encouraging drinking as barring him from recovering under civil damage or similar acts. 26 ALR3d 1112.

Right of one liable under Civil Damage Act to contribution or indemnity from intoxicated person, or vice versa. 31 ALR3d 438.

Proof of causation of intoxication as a prerequisite to recovery under civil damage act. 64 ALR3d 882.

Liability of state or municipality in tort action for damages arising out of sale of intoxicating liquor by state or municipally operated liquor store or establishment. 95 ALR3d 1243.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another. 97 ALR3d 528; 62 ALR4th 16.

Liability of persons furnishing intoxicating liquor for injury to or death of consumer, outside coverage of civil damages act. 98 ALR3d 1230.

Choice of law as to liability of liquor seller for injuries caused by intoxicated person. 2 ALR4th 952.

Employer's liability for furnishing or permitting liquor on social occasion. 51 ALR4th 1048.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence. 62 ALR4th 16

Sec. 11.71.900. Definitions.

In this chapter, unless the context clearly requires otherwise,

(1) "administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means into the body of a patient or research subject by

(A) a practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or

(B) the patient or research subject at the direction and in the presence of a practitioner;

(2) "agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser, but does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman;

(3) "committee" means the Controlled Substances Advisory Committee established in AS 11.71.100;

(4) "controlled substance" means a drug, substance, or immediate precursor included in the schedules set out in AS 11.71.140 - 11.71.190;

(5) "counterfeit substance" means a controlled substance which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed the substance and which falsely purports or is represented to be the product of, or to have been distributed by, the other manufacturer, distributor, or dispenser;

(6) "deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance whether or not there is an agency relationship;

(7) "dispense" means to deliver a controlled substance to an ultimate user or research subject by or under the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery; "dispenser" means a practitioner who dispenses;

(8) "distribute" means to deliver other than by administering or dispensing a controlled substance, whether or not there is any money or other item of value exchanged; it includes sale, gift, or exchange; "distributor" means a person who distributes;

(9) "drug"

(A) means

(i) a substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to these publications;

(ii) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(iii) a substance, other than food, intended to affect the structure or any function of the body of humans or animals; and

(iv) a substance intended for use as a component of any article specified in (i), (ii), or (iii) of this subparagraph;

(B) does not include a device or its components, parts, or accessories;

(10) "hashish" means the dried, compressed, resinous product of the plant (genus) Cannabis;

(11) "hashish oil" means the viscous liquid concentrate of tetrahydrocannabinols extracted from the plant (genus) Cannabis;

(12) "immediate precursor" means a substance which is by statute or regulation designated as the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture of that controlled substance;

(13) "manufacture"

(A) means the production, preparation, propagation, compounding, conversion, growing, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; however, the growing of marijuana for personal use is not manufacturing;

(B) includes the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance or its container unless done in conformity with applicable federal law

(i) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(ii) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(14) "marijuana" means the seeds, and leaves, buds, and flowers of the plant (genus) Cannabis, whether growing or not; it does not include the resin or oil extracted from any part of the plants, or any compound, manufacture, salt, derivative, mixture, or preparation from the resin or oil, including hashish, hashish oil, and natural or synthetic tetrahydrocannabinol; it does not include the stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the stalks, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination;

(15) "opiate" means

(A) a substance having an addiction-forming or addiction-sustaining capability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining capability; and

(B) includes its racemic and levorotatory forms; but

(C) does not include the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan);

(16) "opium poppy" means the plant of any species of Papaver containing the phenanthrine alkaloids of opium, except its seeds;

(17) "peyote" means any part of the plant classified botanically as Lophophora Williamsii Lemaire, whether growing or not, the seeds of the plant, any extract from any part of the plant, and a compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or extracts, including mescaline;

(18) "poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;

(19) "practitioner" means

(A) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in the state;

(B) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in the state;

(20) "recreation or youth center" means a building, structure, athletic playing field, or playground run or created by a municipality or the state to provide athletic, recreational, or leisure activities for minors.

(21) "sale" means to sell, barter, exchange, give, or dispose of to another, or an exchange for a thing of value;

(22) "schedule IA controlled substance" means a controlled substance included in the schedule in AS 11.71.140;

(23) "schedule IIA controlled substance" means a controlled substance included in the schedule in AS 11.71.150;

(24) "schedule IIIA controlled substance" means a controlled substance included in the schedule in AS 11.71.160;

(25) "schedule IVA controlled substance" means a controlled substance included in the schedule in AS 11.71.170;

(26) "schedule VA controlled substance" means a controlled substance included in the schedule in AS 11.71.180;

(27) "schedule VIA controlled substance" means a controlled substance included in the schedule in AS 11.71.190;

(28) "school bus" means a motor vehicle operated by a school district or private school, directly or by contract, to transport students;

(29) "school grounds" means a building, structure, athletic playing field, playground, parking area, or land contained within the real property boundary line of a public or private preschool, elementary, or secondary school.

(30) "ultimate user" means a person who lawfully possesses a controlled substance for the person's own use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household.

History -

(sec. 2 ch 45 SLA 1982; am sec. 41 ch 6 SLA 1984; am sec. 5 ch 63 SLA 1991; am sec. 5 ch 70 SLA 1994)

Revisors Notes -

Paragraphs in this section were renumbered in 1991 and 1994 as necessary to reflect the enactment of paragraphs (20) and (29) - (30) and maintain alphabetical order.

Cross References -

For definition of terms used in this title, see AS 11.81.900.

Amendment Notes -

The 1991 amendment, effective September 16, 1991, added paragraphs (28) and (29).

The 1994 amendment, effective September 1, 1994, added present paragraph (20).

Decisions -

Purpose of definition of marijuana. - The definition of marijuana in this section is for the purpose of determining whether or not a person could be charged with marijuana possession or delivery, but has nothing to do with determining aggregate weight. *Gibson v. State*, 719 P.2d 687 (Alaska Ct. App. 1986).

It is clear that this statutory definition of marijuana is not controlling when the aggregate weight of marijuana is at issue in a given case; rather, that issue is governed by AS 11.71.080. *Atkinson v. State*, 869 P.2d 486 (Alaska Ct. App. 1994).

Constitutionality of "sale" definition under former AS 17.10 and AS 17.12. - See *McKay v. State*, 489 P.2d 145 (Alaska 1971).

A person of common intelligence reading the definition of "sale" in the former narcotics law might well understand such definition as including an agent of a purchaser as well as an agent of a seller, particularly in light of the obvious expansion in the definitions of the concept of "sale" as it is commonly used in a commercial context. The fact that some courts might judicially construe the definition of "sale" in such a way as to narrow its scope to exclude purchasers' agents hardly renders the entire definition unconstitutionally vague. *McKay v. State*, 489 P.2d 145 (Alaska 1971).

Constitutionality of definition of "narcotic drugs" under former AS 17.10. - See *Crutchfield v. State*, 627 P.2d 196 (Alaska 1980).

Cocaine included as "narcotic drug" under former AS 17.10. - See *State v. Erickson*, 574 P.2d 1 (Alaska 1978).

Opium and heroin as narcotic drugs under former AS 17.10. - See *Tarnef v. State*, 492 P.2d 109 (Alaska 1971).

Classification of marijuana with other drugs under former law. - See *Ravin v. State*, 537 P.2d 494 (Alaska 1975).

Applied in *Stuart v. State*, 698 P.2d 1218 (Alaska Ct. App. 1985); *State v. Resek*, 706 P.2d 706 (Alaska Ct. App. 1985).

Quoted in *Chambers v. State*, 811 P.2d 318 (Alaska Ct. App. 1991).

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 12, 1996

The Honorable Ivan M. Ivan
Representative, House District 39
Alaska State House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

Dear Representative Ivan:

This is in response to your recent letter to the Attorney General in which you forwarded a copy of Mr. Christopher Cooke's letter about a recent decision of the Alaska Supreme Court concerning civil immunity of social hosts serving minors. The decision was Chokwak v. Worley, Op. No. 4323 (Alaska, March 8, 1996). In Chokwak the Alaska Supreme Court held that the grant of civil immunity in AS 04.21.020 to social hosts applies even if the social hosts provide alcohol to minors. Although the Supreme Court did not address the question in the Chokwak decision, Mr. Cooke believes that "the interpretation of the statute rendered in this opinion seems to extend civil immunity to any person who is not a licensee, even if that person is an unlicensed seller of liquor or is otherwise unlawfully trafficking in alcohol." Since the Supreme Court did not specifically address the issue of whether the civil immunity of AS 04.21.020 extends to unlawful sellers of alcoholic beverages, this office cannot determine for certain that Mr. Cooke's interpretation of the Supreme Court's ruling is correct with regard to bootleggers.

Mr. Cooke's comments are well taken, however. Certainly the legislature could address this subject if they so wish. If the legislature wishes that civil immunity not be extended to "bootleggers" then we agree with Mr. Cooke that the statute should be amended for clarification. You may wish to have the legislature's staff draft various proposed amendments. One simple approach would be to make the existing statute paragraph (a) and add a paragraph (b) to AS 04.21.020 to provide:

(b) Notwithstanding (a) of this section a person who provides alcoholic beverages to another person in violation of AS 04.11.010 may be held civilly liable for injuries resulting from the intoxication of that person.

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
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FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
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FAX: (907) 465-6735

The Honorable Ivan M. Ivan
Representative, House District 39
Alaska State House of Representatives

April 12, 1996
Page 2

Mr. Cooke's letter also addresses whether there should be strict civil liability for unlicensed sellers of alcoholic beverages. This is a policy decision for the legislature. If the legislature wishes to institute such a policy the legislature could add a subsection (b) to AS 04.21.20 to provide:

(b) Notwithstanding (a) of this section a person who provides alcoholic beverages to another person in violation of AS 04.11.010 may be held strictly liable for injuries resulting from the intoxication of that person.

The Alaska Supreme Court remarked in Chokwak:

As difficult as it is to defend a policy specifically immunizing those who unlawfully furnish liquor to minors from civil liability, we agree . . . that a policy immunizing social hosts in general from liability for injuries caused by intoxicated persons to whom they have served liquor is not indefensible.

Id. at 13.

Whether the legislature wants to continue to provide civil immunity to those social hosts who provide minors with alcoholic beverages is also a policy issue for the legislature.

I hope this answers your questions. If you need other information or assistance concerning this issue don't hesitate to contact us. The Attorney General appreciated receiving this information and thanks you for keeping him informed of your concerns.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:

Linda M. O'Bannon
Linda M. O'Bannon
Assistant Attorney General

LMO/cw

cc: Christopher R. Cooke, Esq.
Bruce Botelho, Attorney General

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 12, 1996

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Christopher R. Cooke, Esq.
Hedland, Fleischer, Brennan & Cooke
P.O. Box 555
Bethel, Alaska 99559

Re: Civil Immunity/Liability for Unlicensed Providers of
Liquor

Dear Mr Cooke:

Thank you for your recent letter to the Attorney General expressing your concerns about the possibility that the Alaska Supreme Court's decision in Chokwak v. Worley, Opinion No. 4323 (Alaska, March 8, 1996) could be interpreted to exempt "bootleggers" from civil liability for serving alcoholic beverages to minors. The Attorney General asked me to respond to your letter since I am the Assistant Attorney General who represents the Alcoholic Beverage Control Board. He very much appreciated your taking the time to express your views on this important subject.

Your letter was also forwarded to the Attorney General by Representative Ivan. I have enclosed a copy of my response to Rep. Ivan which I believe addresses the issues you raised in your letter.

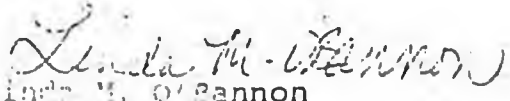
Your concerns raise important policy considerations for the legislature. We will be happy to provide any interested legislator with assistance as requested.

Don't hesitate to write again if there are issues that you believe need to be brought to our attention.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:


Linda M. O'Bannon
Assistant Attorney General

LMO/cw

cc: Representative Ivan M. Ivan
Bruce Botelho, Attorney General

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April 16, 1996

Mr. Ivan M. Ivan
Representative, House District 39
Alaska State House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

Dear Representative Ivan:

The Department of Law sent me a copy of their letter to you of April 12, 1996 dealing with civil liability for bootleggers. As you know, the current law seems to exempt those who sell liquor without a license from any civil liability for the damages that may be caused their illegal acts.

I think that the second proposal made by the Department of Law for strict liability of those who illegally sell or traffic in liquor is appropriate. I hope you will be able to introduce and persuade the legislature to pass such a bill.

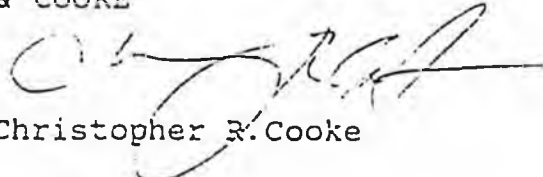
Certainly the proof requirements against a bootlegger should be less stringent than the proof required to show that a licensed dealer in alcohol engaged in conduct which should make him civilly liable for injuries resulting from intoxication. Also, the connection between the proposed strict liability statute and the unlicensed sale or trafficking in alcohol should separate those situation from the circumstances of social hosts. As shown by the Chokwak v. Worley decision, the legislature and the courts have been reluctant to impose civil liability on social hosts. As mentioned in my previous correspondence, however, the circumstances of someone who is profiting from illegal sale of alcohol are quite different from the circumstances of a private person who may provide liquor to guests at a social function.

If there is not time in the current legislative session to propose and consider a provision for civil liability of bootleggers, I ask

Mr. Ivan M. Ivan
Representative, House District 39
April 16, 1996
Page 2

that your staff might at least draft the proposed amendment so it could be available for filing as soon as the next legislative session begins. Thank you for your help on this matter.

Very truly yours,
HEDLAND, BRENNAN, HEIDEMAN,
& COOKE



Christopher R. Cooke

CRC:cls

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ERIN J. CROFF

March 18, 1996

Mr. Bruce M. Botelho, Attorney General
Attorney General's Office
P.O. Box 110300
Juneau, Alaska 99811-0300

Re: Civil Immunity/Liability for Unlicensed
Providers of Liquor

Dear Attorney General Botelho:

I recently read the Alaska Supreme Court's opinion in Phillip Chokwak v. Les Worley & Ron Worley, Opinion No. 4323, issued March 8, 1996, which interprets A.S. 04.21.020 dealing with civil liability of persons providing alcoholic beverages. The opinion holds that A.S. 04.21.020 grants civil immunity to social hosts who unlawfully provide liquor to minors and that this grant of immunity is not unconstitutional.

Although the focus of the opinion is on "social hosts" the interpretation of the statute rendered in this opinion seems to extend civil immunity to any person who is not a licensee, even if that person is an unlicensed seller of liquor or is otherwise unlawfully trafficking in alcohol.

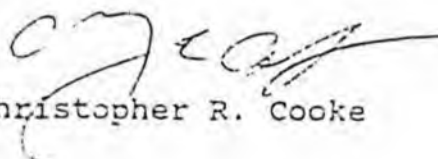
For example, if only licensees who violate subsections (1) and (2) of A.S. 04.21.020 may be held civilly liable for injuries resulting from intoxication and all others are immune, then a person who illegally sells alcohol to a minor or to an adult or in violation of a local option statute apparently has immunity from civil liability. If this statute means that "bootleggers" cannot be sued for any injuries resulting from the alcohol they illegally sell, that is an outcome with which I and, I believe, many in rural Alaska would disagree with. I also think that additional legislation is needed to impose civil liability on bootleggers for the consequences of their actions.

Mr. Bruce M. Botelho, Attorney General
Attorney General's Office
March 18, 1996
Page 2

Therefore, I am interested in your opinion as to whether the immunity arising from A.S. 04.21.020 includes bootleggers in rural Alaska and elsewhere. I am also interested in what sort of legislative remedy you would recommend to impose civil liability on such persons and what specific statutory language might accomplish this purpose. Personally, I believe strict liability - rather than just negligence - should apply to such conduct.

Because passing such legislation would obviously involve those in the political arena, I am sending copies of this letter to my legislative representatives and others who may have an interest in addressing this issue. Thank you for your consideration.

Very truly yours,
HEDLAND, FLEISCHER, BRENNAN &
COOKE



Christopher R. Cooke

cc: Senator Lyman Hoffman
Representative Ivan M. Ivan
Senator Georgianna Lincoln
Senator Al Adams
Representative Richard Foster
Representative Don Long
Representative Irene Nicholai
Mr. James Metcalfe, Bethel District Attorney

CRC:cls

HB 22 CIVIL LIABILITY FOR BOOTLEGGERS

CHAIRMAN JOE GREEN advised members they would first consider HB 22 - "An Act relating to civil liability for illegal sales of alcoholic beverages; and providing for an effective date.", sponsored by Representative Ivan Ivan. His committee aide, Tom Wright would provide comments on behalf of Representative Ivan.

Number 101

TOM WRIGHT, Committee Aide to Representative Ivan Ivan provided comments on HB 22 on behalf of the prime sponsor, Representative Ivan Ivan, who was ill.

MR. WRIGHT advised members that current law appeared to exempt those who sell liquor without a license from any civil liability for damages that might be caused by their actions. The basis of the bill was to remove that exemption and make bootleggers strictly liable for his or her actions.

MR. WRIGHT pointed out that Christopher Cooke, an attorney in Bethel, Alaska was responsible for bringing this matter to the attention of the Attorney General's Office. He noted that there had been an Alaska Supreme Court decision, *Chokwak v. Worley*, 912 P.2d 1248 (Alaska 1996), which stated that there might be a problem as far as civil liability was concerned, for those who sell liquor without a license.

CHAIRMAN GREEN noted that individuals at two teleconference sites in Anchorage and Fairbanks were standing by to provide testimony on the proposed legislation.

MR. WRIGHT advised members that Linda O'Bannon, Assistant Attorney General, would be able to respond to any technical questions posed by committee members. Ms. O'Bannon was the Attorney General who had corresponded with Christopher Cook and Representative Ivan's office, and also does legal work for the Alcohol Beverage Control Board (ABC) Board.

CHAIRMAN GREEN requested testimony from Fairbanks.

LISA JAEGER, Tanana Chiefs Conference, Inc. (TCC), advised members that TCC fully supported HB 22. She offered to fax down a position paper and also expressed that the TCC had adopted several resolutions during their annual conventions relating to alcohol issues. Ms. Jaeger advised members that alcohol was an excessive

problem in the Fairbanks area.

MS. JAEGER stated that not only did the TCC fully support the bill, but the Elders in the community had declared war on alcohol. She advised members that they had experienced problems bringing criminal charges because, basically, everyone's related, which was a major problem in the smaller villages.

Representatives Jeannette James and Norman Rokeberg arrived.

VICE CHAIRMAN CON BUNDE expressed his support of TCC in dealing with alcohol related problems. He asked Ms. Jaeger how the proposed legislation would affect neighbors and relatives if a criminal charge were imposed.

MS. JAEGER did not know how the legislation would help with respect to people not wanting to testify against one another. However, felt it would be a great tool, in terms of waving a flag, that those people would be civilly liable for activities caused by other people that they illegally sell alcohol to.

Number 606

VICE CHAIRMAN BUNDE questioned the ability of those being charged with bootlegging to pay a fine because of the lack of work in the smaller villages, as well as many people living a semi-subsistence lifestyle.

MS. JAEGER felt it was known that the bootleggers were the individuals with money, and other people, in the remote areas, did have snow machines and property.

REPRESENTATIVE ERIC CROFT referenced the "sell or barter" language of the proposed legislation and asked if a barter arrangement was typical.

MS. JAEGER was not familiar with how bartering for alcohol worked. The transactions she was most familiar with involved money transactions.

REPRESENTATIVE CROFT asked if it was generally known who, in the villages, the bootleggers were.

MS. JAEGER responded that it was common knowledge who the bootleggers were in the villages.

REPRESENTATIVE ETHAN BERKOWITZ asked what the estimated cost of a bottle of alcohol was that goes through a bootlegging operation.

MS. JAEGER stated that the cost varied depending on the location, however a bottle of alcohol could range from double the shelf cost to 25 times the shelf cost.

REPRESENTATIVE CROFT asked what types of efforts the TCC would make to publicize and alert the public of the legislation if it passed.

MS. JAEGER felt they would run front cover stories in the local newspapers, as well as utilize the local radio stations to publicize the enactment of the legislation.

LINDA O'BANNON, Assistant Attorney General and representative of the Alcohol Beverage Control Board (ABC) and their staff, pointed out that the proposed legislation would make clear that bootleggers are civilly liable for the harm they cause by the illegal sale of alcohol. She added that under the particular version, a bootlegger would be subject to strict liability.

MS. O'BANNON advised members that after the Alaska Supreme Court decision in *Chokwak v. Worley* concerning civil immunity, the ABC Board and staff felt it should be clarified in statute that civil immunity was not, and should not be extended to persons who unlawfully traffic alcohol. She noted that the ABC Board recommended a change to AS 04.21.020 by adding a paragraph to make clear that bootleggers were held responsible for damages they cause to other persons. Ms. O'Brannon noted that as the bill was currently written, it might include someone who purchased alcoholic beverages from the bootlegger and then was injured, or someone injured by the person who purchased alcoholic beverages from the bootlegger, such as an innocent victim of an automobile accident.

Number 1270

REPRESENTATIVE NORMAN ROKEBERG advised members that he had a suggested amendment that he had received from the Alcohol Beverage Control Board and asked if the language had been drafted by Ms. O'Brannon.

MS. O'BANNON responded that she did draft that language, although that had been done some time ago and was slightly different than the language of HB 22.

REPRESENTATIVE CROFT referenced the difference between a negligent standard and a strict liability standard and asked Ms. O'Brannon

what the difference and practical effect would be between a negligent and strict liability standard. He questioned how someone would prove negligence in an act that was already criminal.

MS. O'BRANNON agreed, pointing out that what they were talking about would be a criminal violation, and therefore, negligence per se.

REPRESENTATIVE BRIAN PORTER recommended adding a new subsection to HB 22 which would read as follows: "(b) Notwithstanding (a) of this section, a person who sells or barter an alcoholic beverage to another person in violation of AS 04.11.010 is strictly liable for civil damages FOR PERSONAL INJURIES, DEATH, AND PROPERTY DAMAGES, resulting from the intoxication of the person receiving the alcoholic beverage IF THE INTOXICATION SUBSTANTIALLY CONTRIBUTED TO THE PERSONAL INJURIES, DEATH AND PROPERTY DAMAGES."

MS. O'BRANNON advised members she did not see a problem with that language. She stated that AS 04.21.020 provides immunity to social hosts and people who hold liquor licenses if they do certain things. Ms. O'Brannon explained that by amending AS 04.21.020 that bootleggers would be responsible, no matter what, in a civil liability situation.

REPRESENTATIVE JEANNETTE JAMES spoke in favor of the proposed language because it made more perfectly clear what an individual would be civilly liable for.

Number 1980

REPRESENTATIVE BERKOWITZ preferred the more simple language over specifying certain incidences because a broader statement would more likely result in a civil liability case.

REPRESENTATIVE ROKEBERG asked if a community or a law enforcement agency would be able to bring a cause of action against an individual for the illegal sale of alcoholic beverages.

MS. O'BRANNON stated that for a criminal prosecution under the bootlegger statute, AS 04.11.010, the district attorneys office would have to prove the allegations beyond a reasonable doubt. However, in a civil context, the people who could bring civil law suits would be those who had actually been injured or were in some type of relationship with the injured party. In a civil liability case the standard of proof would be a preponderance of the

evidence, as opposed to beyond a reasonable doubt, which is a much easier standard of proof. Ms. O'Brannon also pointed out that a criminal prosecution of the bootlegger would not be needed in order to bring a civil law suit against that person.

VICE CHAIRMAN BUNDE asked if what was being said, was that a bootlegger could be acquitted on a criminal charge, but a civil suit could be brought because of certain results of his illegal selling of alcoholic beverages.

Number 2245

MS. O'BRANNON fully agreed with Vice Chairman Bunde's understanding, noting that there was a very famous case being argued currently where that same type of situation occurred.

REPRESENTATIVE BERKOWITZ asked if the state would have the ability to recover investigation costs as an economic damage in a bootlegging case.

MS. O'BRANNON did not feel the proposed legislation would provide for that. She explained that the state or city would not be the directly injured party and specific language would be necessary to include that ability. Ms. O'Brannon went on to say that the proposed legislation would cover a situation even where an investigation had not been conducted by a governmental entity.

REPRESENTATIVE PORTER felt that the cost of prosecution to a city or state should be added to personal injuries, death and property damages.

Number 2430

LISA KIRSCH, Committee Aide to Chairman Green, referenced the language of, "substantially contributed" in the proposed amendment, and wondered if that would cause a problem with the causation standard in Title 9.

TAPE 97-2, SIDE B

Number 000

MS. O'BRANNON stated that the way the tort laws were currently written, she did not know if it was necessary to say "substantially contributed", because she felt the courts would automatically provide jury instructions that would apportion fault among the

parties based on their percentage of the fault.

REPRESENTATIVE PORTER requested that HB 22 be held over to further consider the ability of the state or city being able to recover monetary damages from acts of bootleggers and the need to investigate those types of cases.

TOM WRIGHT, Committee Aide to Representative Ivan, advised members the sponsor would not object to holding the bill over for the purpose of considering additional amendments addressing the concerns voiced at the present hearing. Mr. Wright offered to work with the Chairman's staff, Representative Porter's staff and Representative Berkowitz staff to arrive at language that would accommodate their concerns.

REPRESENTATIVE CROFT declared a possible conflict of interest advising members that he had worked with Christopher Cooke, the attorney from Bethel, Alaska, although it involved nothing to do with the proposed legislation, HB 22.

REPRESENTATIVE ROKEBERG expressed his support of a community or state having the ability to file action.

CHAIRMAN GREEN advised members that HB 22 would be held over for the purpose of considering additional language, and brought back before the committee at a later date.

HB - 22 CIVIL LIABILITY FOR BOOTLEGGERS

REPRESENTATIVE IVAN IVAN presented opening remarks on HOUSE BILL NO. 22 - "An Act relating to civil liability for illegal sales of alcoholic beverages; and providing for an effective date." He explained that the proposed legislation would make bootleggers responsible for actions that resulted from the illegal sale of alcohol to the individual and the resulting judicial costs.

Representative Norman Rokeberg arrived.

REPRESENTATIVE CON BUNDE moved to adopt CSHB 22 (JUD) for the purpose of discussion. There being no objection, CSHB 22 (JUD) was adopted.

REPRESENTATIVE IVAN advised members that language had been added under Section 1 that would explicitly express the intent of the original bill. A person who sells or barter alcohol illegally would be strictly liable for civil damages to the recipient, or another person. Representative Ivan explained that the proposed legislation would also require the bootlegger to pay costs to the state or political subdivision of the state to criminally prosecute the case.

Representative Jeannette James arrived.

REPRESENTATIVE IVAN pointed out that the third change from the original version was the definition of civil damages which would include damages for personal injury, death, or injury to a person, including the state or a political subdivision of the state.

REPRESENTATIVE IVAN advised members that Section 2 addressed civil liability for people who sell or barter a controlled substance as defined by statute.

TOM WRIGHT, Legislative Aide, Representative Ivan, advised members that the changes explained by Representative Ivan were the result of input from Jim Sourant, Representative Porter's staff, Lisa Kirsch, Counsel to the House Judiciary Committee, Gail Voigtlander, Assistant Attorney General, Special Litigation Section and Mike Ford, Attorney, Legislative Legal Services.

MR. WRIGHT pointed out some minor changes to the latest proposed committee substitute (LS0148\K) suggested by Mr. Ford. These changes would appear on page 1, line 6, after "strictly liable", insert (1), and delete [(1)] on line 7. He advised members that

they had some discussions as to whether the state or political subdivision could be considered a "person". Mr. Wright stated that by placing the (1) after "strictly liable" on line 6, and removing it from line 7, that it would be clear that a bootlegger could be liable to (1) another person, or (2) the state or a political subdivision.

MR. WRIGHT advised members another suggested change to the new proposed committee substitute would fall on page 1, line 10, after "(2)" insert the word for. That would result in saying that, "the recipient or another person," and also "for the state" would make it clear that the state was also included in the process. Mr. Wright pointed out that those changes would also be made under Section 2, as everything done in Section 1 was paralleled in Section 2.

REPRESENTATIVE BRIAN PORTER moved to adopt Amendment 1, as described by Mr. Wright. There being no objection, Amendment 1, CSHB 22(JUD), was adopted.

REPRESENTATIVE ERIC CROFT referenced page 1, line 12, and asked if they wanted to recover the costs to criminally prosecute the recipient of the alcohol, or the bootlegger.

MR. WRIGHT explained, with respect to criminal prosecution, that the state presently had the ability to attempt to recover those costs. The proposed legislation says that if a person who received the alcohol illegally commits a crime while under the influence, that the bootlegger would also be partly responsible for that action.

REPRESENTATIVE NORMAN ROKEBERG asked if the Alcohol Beverage Control Board (ABC), and the Department of Law had any input on the new draft committee substitute.

MR. WRIGHT advised members that Ms. Voigtlander, Assistant Attorney General, had reviewed the language and found no problem. Also the ABC Board had the opportunity to review and consider the suggested changes, and they expressed no concern.

MR. WRIGHT pointed out that while working through the process they did have conversations with Linda O'Bannon, Assistant Attorney General, Commercial Section, and the only area she was concerned with was Section 1; however, she had no objections to the amended language.

REPRESENTATIVE CROFT noted that the original genesis of the proposed legislation was a result of the *Chokwak v. Worley* decision on which dealt with social hosts, and he wanted to confirm that the intent of the provision was to cover those who sell alcohol through the business of bootlegging, and not liability to a social host.

REPRESENTATIVE IVAN said that would be correct.

REPRESENTATIVE PORTER moved to report CSHB 22 (JUD) out of committee with the attached zero fiscal notes and individual recommendations. There being no objection, it was so ordered. CSHB 22(JUD) was reported out of committee.

STATE OFFICE
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January 17, 1997

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Representative Ivan Ivan
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Representative Ivan,

On behalf of the Alaska Peace Officers Association, I would like to thank you for sponsoring House Bill 22 relating to the civil liability for the illegal sales of alcoholic beverages. At a recent meeting of the APOA State Board, we decided to unanimously support this legislation. We believe that persons selling alcoholic beverages illegally should be held as accountable as possible when committing violations of this sort.

We encourage you to call on us when there are hearings on this bill, so that we may testify about the need for this legislation. If you need assistance as you shepherd this bill through the legislative process, please call me at 451-5316, or our business manager, Joseph Young at 277-0515.

Sincerely,



Michael Corkill
APOA State President