

HB

330

SFIN

FILE

HB 330

was referred to the
Senate Finance
Committee

No hearing was held
on this bill



OFFICIAL BUSINESS

Alaska State Legislature
Senate
Office of the Secretary

STATE CAPITOL, ROOM 213
JUNEAU, ALASKA 99801-1182
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FOR YOUR IMMEDIATE ATTENTION

DATE: May 11, 2002
TO: Finance Committee
(Mindy - Room 520)
FROM: Office of the Senate Secretary
SUBJ: Waived Bill(s)

The Chair of the Committee noted above has waived referral on the following bill(s):

RETRIEVE

CS FOR HOUSE BILL NO. 330(FIN) am
"An Act relating to providing alcoholic beverages to a person under 21 years of age."

Please give the bill file(s) to the page for forwarding to the next Committee of referral.

Thank you.

ALASKA STATE LEGISLATURE

HOUSE JUDICIARY COMMITTEE

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



State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4990
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Heather M. Nobrega
Counsel to Committee

Sponsor Statement for SCS CSHB 330 (JUD)

The House Judiciary Committee was requested to introduce this bill by Mothers Against Drunk Driving. HB 330 creates tougher penalties for adults who furnish alcohol to minors, who then go on to negligently cause serious injury or death.

On July 9, 2001, Anchorage Police Officer Justin Wollam, and three others were killed when driver Robert Esper crossed the median of the Glenn Highway, and collided head-on with Officer Wollam's patrol car during the early hours of the morning. Esper was suspected of driving while intoxicated.

It was later discovered that Robert Esper, age 19, had a blood alcohol level of .091. The legal limit, at the time of the accident, was .10 BAC, but has since been lowered to .08 BAC. In investigating the events leading up to the tragic and deadly accident, police discovered that Esper, and his underage friends, had been drinking at a party where alcohol was provided by two adults, Ronald Frank and Michael Hunter.

Frank and Hunter were arrested and charged with multiple counts of contributing to the delinquency of a minor, and furnishing alcohol to a minor. Both are class A misdemeanors subject to imprisonment of not more than one year, and a fine of no more than \$5000. Frank pled to two counts of furnishing, and Hunter pled to one count of furnishing. On February 20, Frank was sentenced to two years in jail (the maximum), and Hunter received 240 days in jail.

HB 330 would increase the penalty, for an adult who furnishes a minor alcohol, to a class C felony, if the minor negligently causes death or serious physical injury while under the influence of the alcohol that was furnished by the adult. A class C felony carries a sentence of not more than five years, and a fine of no more than \$50,000.

It is important that those individuals like Ronald Frank and Michael Hunter, who purchase alcohol for minors, be appropriately punished when those minors go on to hurt or kill someone while under the influence of alcohol. HB 330 creates those appropriate penalties and is intended to further dissuade adults from supplying alcohol to minors.

The committee urges your support of this bill.

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Effect of amendments. — The 1995 amendment, effective September 13, 1995, added subsection (b).

Editor's notes. — Section 6, ch. 81, SLA 1995

provides that subsection (b), added by § 1, ch. 81, SLA 1995, "applies to an offense committed on or after September 13, 1995."

NOTES TO DECISIONS

Double jeopardy. — Administrative revocation of a minor's license to drive under AS 28.15.183 is not "punishment" for double jeopardy purposes; thus, a minor whose license was revoked under that section could still be prosecuted for the offense of minor consuming. *Rexford v. State*, 941 P.2d 906 (Alaska Ct. App. 1997), overruled on other grounds, *State v. Esmailka*, 961 P.2d 432 (Alaska Ct. App. 1998).

Even if revocation of a minor's driver's license under AS 28.15.183 is unconstitutional, the minor is not immunized from prosecution for illegal use of alcoholic beverages under this section; the aggrieved minor's remedy is to attack the license revocation. *State v. Esmailka*, 961 P.2d 432 (Alaska Ct. App. 1998).

Right to jury trial. — Minors charged with this offense are entitled to a jury trial and to court-

appointed counsel if they are indigent. *State v. District Court*, 927 P.2d 1295 (Alaska Ct. App. 1996).

Comparative negligence. — A licensee who violates this section is not entitled to assert the comparative fault of the minor/consumer, in an action for damages resulting from the unlawful sale of intoxicating liquor. *Loeb v. Rasmussen*, 822 P.2d 914 (Alaska 1991).

Stated in *Shamberg v. State*, 762 P.2d 488 (Alaska Ct. App. 1988); *Martin-Wilson v. State*, Ct. App. Op. No. 4226 (File No. A-7354), P.2d (Alaska Ct. App. 2000).

Cited in *M.O.W. v. State*, 645 P.2d 1229 (Alaska Ct. App. 1982); *Alfred v. State*, 758 P.2d 130 (Alaska Ct. App. 1988); *State v. Simpson*, 946 P.2d 890 (Alaska Ct. App. 1997).

Sec. 04.16.051. Furnishing or delivery of alcoholic beverages to persons under the age of 21. (a) A person may not furnish or deliver an alcoholic beverage to a person under the age of 21 years.

(b) This section does not prohibit the furnishing or delivery 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 or delivery 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.

(d) A person acting with criminal negligence who violates this section is guilty of a class C felony if, within the five years preceding the violation, the person has been previously convicted under

(1) this section; or

(2) a law or ordinance of this or another jurisdiction with elements substantially similar to this section. (§ 3 ch 131 SLA 1980; am § 9 ch 109 SLA 1983; am §§ 7, 8 ch 156 SLA 1988; am § 1 ch 50 SLA 1989; am § 1 ch 46 SLA 1994)

Effect of amendments. — The 1994 amendment, effective July 1, 1994, added subsection (d).

Legislative history reports. — For Senate letter

of intent relating to the amendments to (a) and (b) of this section by secs. 7 and 8, ch. 156, SLA 1988 (HCS CSSB 371 (Jud) am H), see 1988 Senate Journal 2939.

NOTES TO DECISIONS

Contributory negligence. — Fact that injured party violated this section by providing liquor to minor causing accident does not mitigate liability of seller of liquor in violation of AS 04.16.052. *Morris v. Farley Enters., Inc.*, 661 P.2d 167 (Alaska 1983).

Comparative negligence. — A licensee who violates this section is not entitled to assert the comparative fault of the minor/consumer, in an action for damages resulting from the unlawful sale of intoxicating liquor. *Loeb v. Rasmussen*, 822 P.2d 914 (Alaska 1991).

Double jeopardy violation. — Trial court violated defendant's double jeopardy rights by sentencing him for both contributing to the delinquency of a minor and for furnishing alcohol to a minor for the single act of furnishing alcohol to the minor, where

defendant engaged in only a single criminal act which violated two separate statutes and the two counts should have merged. *Newsome v. State*, 782 P.2d 689 (Alaska Ct. App. 1989).

Exceptions as affirmative defenses. — At a minimum, the exceptions specified under subsection (b) are "defenses" to criminal liability; that is, if a defendant wishes to invoke one of these exceptions, then at the very least the defendant must affirmatively raise the exception and point to some evidence from which a reasonable jury could decide that issue in his or her favor. Accordingly, where defendant presented no evidence that he had received his alcoholic beverage from a parent, guardian, or spouse, his conviction was affirmed. *Trout v. State*, 866 P.2d 1323 (Alaska Ct. App. 1994).

Furnishing Alcohol to Minors

	1999	2000	2001	
Arrests - Misdemeanor	310	400	373	
Arrests - Felony	2	5	8	
Convictions - Misdemeanor	124	201	145	
Convictions - Felony	1	2	1	
Sex of Arrestees - Male	261	293	301	61%
Sex of Arrestees - Female	51	111	80	17%
Average Age at Arrest	25	29	26	27

Source:

DPS Criminal History files updated as of March 4, 2002.

Offenses:

DPS offense code 9931, AS 04.16.051, AS 04.16.052, AS 04.16.060

Prepared by DPS March 5, 2002

Arrest made in collision

RONALD FRANK, 25, to face charges in providing alcohol

By **LUCAS WALL**
Anchorage Daily News

Police on Thursday arrested an Anchorage man they say provided alcohol to a group of youths including one involved in a fatal head-on collision with an Anchorage police officer. Justin Wollam, 27, of Valdez, Alaska, will be charged with seven counts of contributing to the delinquency of a minor and one count of reckless endangerment. He was in the Sixth Avenue Correctional Center under \$8,000 bail Thursday night.

Detective Everett Robbins said Frank cooperated with police after his arrest and acknowledged buying the alcohol for minors at a liquor store sometime after 10 p.m. Sunday.

Frank was convicted of driving while intoxicated in August, according to state records. Robert Esper, the driver of the 1985 Chevy Blazer that collided with Wollam's patrol car, had attended a party that night with several other youths and drank liquor and other alcohol. He has been charged with providing alcohol to minors.

Robbins said he can't say whether the youths answered many questions about the party. He said he expects delays of several days before he can provide details of Frank's motion. About 15 minutes after the party, because detectives were blocked to allow the party to disperse, the youths were taken to a police station for questioning. The youths were taken to the station at about 11 p.m. and were held there until about 1 a.m. when they were released. The youths were taken to the station at about 11 p.m. and were held there until about 1 a.m. when they were released.

File 13742001

CRASH: Man arrested

Police are awaiting the results of a toxicology test to determine if the driver of a patrol car that collided with a car carrying a young boy was under the influence of alcohol. The driver, Ronald Frank, 25, of Valdez, Alaska, was arrested on Thursday night after his car collided with a patrol car carrying a young boy, Justin Wollam, 27, of Valdez, Alaska. The collision occurred on Saturday night in the 2000 block of Sixth Avenue. The patrol car was carrying Wollam and his 4-year-old daughter, Kisty. The car was traveling north on Sixth Avenue when it collided with Frank's car, which was traveling south. The collision caused the patrol car to flip over and catch fire. Wollam and his daughter were not injured. Frank was charged with providing alcohol to minors and reckless endangerment.

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adn.com

Anchorage Daily News

Second man to be charged in fatal crash FOUR DEAD:31-year-old bought alcohol for party, police say.

By Lucas Wall
Anchorage Daily News

(Published: July 25, 2001)

Anchorage police Tuesday cited a second man for providing alcohol to teens at a July 8 party before the fatal car crash that killed an Anchorage police officer and three teenagers.

Michael Hunter, 31, will be charged with two counts of contributing to the delinquency of a minor and two counts of furnishing alcohol to a minor, according to police. He received a summons to appear in court Aug. 28.

Hunter's phone is disconnected, and he could not be reached.

Detective Everett Robbins said Hunter picked up two girls the evening of July 8 and brought them to the trailer owned by his wife, Leona, in the 7100 block of Lake Otis Parkway. Leona Hunter was working that night and hired the girls to come over and clean the trailer, Robbins said. Contrary to earlier reports, the girls were not baby-sitting that night. Robbins said they were scheduled to baby-sit for Leona Hunter the next day.

She left money for the girls at the trailer, which Robbins said they gave to Michael Hunter, asking him to buy them alcohol. Hunter went to a nearby Tesoro station, Robbins said, where he bought alcohol and brought it back to the trailer. The Hunters are separated, he said, and Michael Hunter returned to his trailer to sleep.

Police arrested Ronald Frank, 30, two weeks ago and charged him with five counts of furnishing alcohol to a minor and four counts of contributing to the delinquency of a minor. He remains at the Sixth Avenue Correctional Center in lieu of \$8,000 bail. Frank and Hunter are friends, Robbins said, and they attended a barbecue together the afternoon of July 8.

Robbins said Hunter has been cooperative and admitted to buying alcohol for the girls. Hunter wasn't jailed, he said, because he wasn't at the party at the trailer later that night.

"He wasn't promoting the party as Ronny had done," Robbins said. "He claims he wasn't aware of the party. He was thinking (the two girls) were just going to be home for the evening."

The party was attended by several other youths. After leaving the party with six others, 19-year-old Robert Esper drove erratically through the city for about half an hour before crashing head-on into a police car driven by officer Justin Wollam on the Glenn Highway. The crash killed the officer, Esper, and two other teens.

With Hunter's arrest, police are starting to wind down the criminal investigation into the crash.

"There are no other suspects we're looking at this time," Robbins said.

A separate internal investigation into how police handled the attempts to stop Esper continues.

Reporter Lucas Wall can be reached at lw@adn.com or 907 257-4321.

Close Window

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Esper was drinking, toxicology confirms

■ **091:** Reading short of legal limit, but driving warranted charges, police say.

By LUCAS WALL
Anchorage Daily News

Toxicology results released by police Wednesday show the 19-year-old man who crashed head-on into an Anchorage police officer last month had a blood-alcohol content of .091.

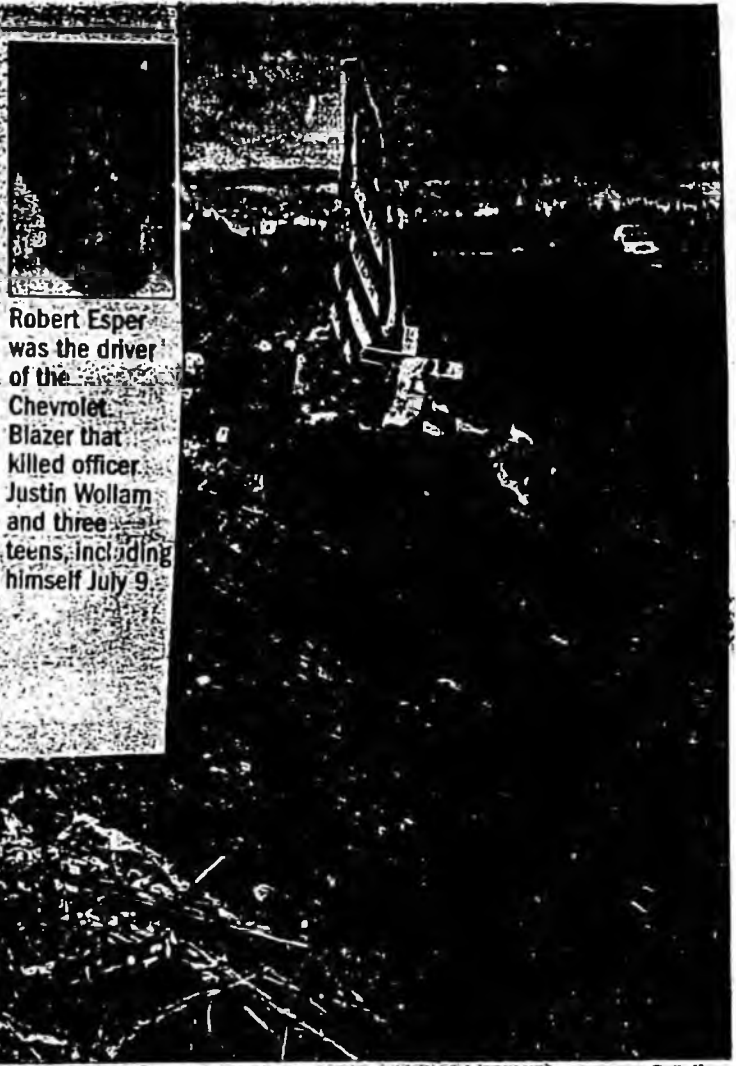
Police initially suspected Robert Esper was driving while intoxicated when an offi-

cer attempted to stop him about 3:20 a.m. July 9 near the 7200 block of Lake Otis Parkway. Esper and nine other teens had attended a get-together at a nearby trailer that night where alcohol was present.

"Based on his initial driving behavior and his erratic driving, the officer suspected he was a drunken driver," said Detective Everett Robbins. "This confirms her initial observations."

See Back Page, ESPER

Robert Esper was the driver of the Chevrolet Blazer that killed officer Justin Wollam and three teens, including himself July 9.



Flowers, stuffed animals, birthday balloons, religious tokens and other items adorn the Glenn Highway memorials to crash victims Makayla Lewis, Robert Esper, Heidi Weilbacher and officer Justin Wollam on Tuesday.

ESPER: Teenager had .091 blood-alcohol level

Continued from A-1

Esper fled from police for more than half an hour before ending up running in officer Justin Wollam on the wrong side of the Glenn Highway. Wollam, Esper and two passengers in Esper's Chevrolet Blazer, Makayla Lewis and Heidi Weilbacher, died.

Police reported Weilbacher, 14, had a blood alcohol content of .088. No alcohol was found in Lewis' blood, and none of the teenagers tested positive for drug use.

Robbins said if police had stopped Esper that night, he could have been charged with DWI even though he was slightly below the presumptive legal limit of .10. Drivers are considered impaired if their BAC is higher than .04, Everett said, and if they are driving in a dangerous manner they can still be considered intoxicated even if they haven't reached .10. People's alcohol tolerance levels are different,

I'm sorry for all the losses. I wish it could have been handled better totally so there wouldn't have been any losses.

Teenager's father
Robert Esper

he said, and that affects how they drive after drinking. The Legislature, under threat of losing federal funds, this year lowered the state's presumptive legal limit for DWI to .08. Esper would have been considered legally drunk under the new standard, which takes effect Sept. 1.

All those legalisms aside, Everett said, "minors shouldn't

have any alcohol at all." Ronald Frank and Michael Hunter have been charged with providing the alcohol to the minors and contributing to their delinquency that night. The district attorney's office is still reviewing the case against the two men and further charges are possible, Robbins said.

Esper's father, Robert, said he didn't have much to say about Wednesday's release. "I'm sorry for all the losses," he said. "I wish it could have been handled better totally so there wouldn't have been any losses."

Police have been criticized by some, including 15-year-old Ashley Shettlers and her mother, for their handling of the attempt to stop Esper that night. Shettlers was one of three teens who got out of Esper's Chevrolet Blazer in a trailer park before the crash.

Robbins said the account of events Shettlers gave in an interview with the Daily News

last week is a little different than the state's. The state police after the crash. Her account is more exaggerated than what she originally told police, Robbins said, and conflicts with what 15-year-old Savannah Fielding told police. Fielding is the only person who survived the crash.

"Her story doesn't fit exactly with what she says is saying," Robbins said. "There's conflicting information, and I'm going to leave it at that. What am I going to say? She's entitled to her own opinion. There's more than just one person's statement here, and you have to weigh it all out."

Robbins would not discuss what Fielding told police about the events leading up to the collision. Fielding's family has declined to speak publicly about that night.

Reporter Lucas Wall can be reached at wall@adn.com or 257-4321.



Mothers Against Drunk Driving • Juneau Chapter

211 Fourth St. Suite 102 • Juneau, AK 99801

January 22, 2002

HOUSE BILL NO. 330 "An Act relating to providing alcoholic beverages to a person under 21 years of age." BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA: * Section 1. AS 04.16.051(d) is amended to read: (d) A person acting with criminal negligence who violates this section is guilty of a class C felony if (1) [,] within the five years preceding the violation, the person has been previously convicted under (A) [(1)] this section; or (B) [(2)] a law or ordinance of this or another jurisdiction with elements substantially similar to this section; or (2) the person under 21 years of age who receives the alcoholic beverage injures or causes the death of another person and the injury or death occurs while the person under 21 years of age was under the influence of an alcoholic beverage received in violation of this section.

Mothers Against Drunk Driving (MADD) supports House Bill Number 330. MADD supports laws, which save lives from injuries or death due to drunk driving.

House Bill 330 will make the sale of alcohol to minors a felony, thereby increasing fines and jail time.

House Bill 330, by becoming law, will send a message out to Alaskans that our children are valuable and if harmed, severe consequence will occur. House Bill 330 supports and joins Alaskans in their attempt to change the current accepted norm of underage drinking.

Sincerely,

Cindy Cashen
Volunteer

Subject: [Fwd: HB 329 and 330]

Date: Mon, 21 Jan 2002 10:40:27 -0900

From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>

Organization: Alaska State Legislature

To: Heather_Nobrega@legis.state.ak.us

For our files.

Janet

Subject: HB 329 and 330

Date: Sun, 20 Jan 2002 16:29:45 -0800

From: "David W. Rochford" <rochfor@concentric.net>

To: <Representative_Norman_Rokeberg@Legis.state.ak.us>

CC: "MADD Anchorage Chapter" <madd@corecom.net>

Dear Representative Rokeberg

I am writing in support of HB 329 and 330.

I am a police officer with the Anchorage Police Department and have 30 years of police experience (20 years with APD).

HB329

I agree that chemical testing should be required for all persons arrested as the bill describes. It would also be helpful . . . this requirement extended to all drivers involved in a collision which involved death or an injury which required medical treatment. Also, there should be a requirement that treating physicians inform law enforcement if a person being treated has alcohol or drugs in their system, and what the reported level or concentration is. This requirement would only apply if the person being treated was the driver of a motor vehicle, or is the suspect in a crime. Many people are injury while driving while intoxicated and are never prosecuted. The reason is that police officers are often not in a position to make a determination as to the suspect's state of sobriety by virtue of the fact that the person is receiving emergency treatment or is in surgery and can not be observed by the officer until it is too late. I have personally seen suspects feign unconsciousness to avoid detection of alcohol impairment by me.

Additionally, the wording "controlled substance" should be replaced with "any drug" or better yet, "any substance that impairs...". The problem with "controlled substance" is that it requires that the substance appear on the state's list of controlled substances. There are many substances that impair driving which are not on this list. Toluene, paint thinner, and gasoline fumes are primary examples. No matter how complete a list is, someone will get intoxicated on something that was overlooked on the list and escape prosecution. The other problem with using the "controlled substance" wording is that it requires that a specific drug be identified and named. This is not always possible. We may be able to prove to a jury that the driver is impaired by an unknown substance, or a substance we suspect, but we can not convict with out a blood test which is positive for a controlled substance. Even then, there may be a problem proving that the controlled substance detected in the blood was the drug or substance causing the impairment. This wording seriously needs to be changed.

The law was recently changed to allow law enforcement to obtain a search warrant for a person's blood in a DWI case if we can articulate drug involvement. This law has been a great help and I have already obtained search warrants and obtained valuable evidence using this law. However, a law like California enacted would be even more helpful. California extended the implied consent law to include a blood and/ or urine testing if the arresting officer suspects drug use, and articulates the suspicion in his

police report. This would save valuable time lost while applying for a search warrant. Some drugs clear from the blood stream quickly and the time spent getting a warrant could make the difference between getting a positive blood test and a negative one. Also, such a law should include blood AND urine, since we cannot know ahead of time if the drugs will be found in the blood or urine or both blood and urine.

Also, I should put in a pitch for the Drug Recognition Program which I spoke of at the DWI training you attended at the APD training center. The laws pertaining to driving under the influence of drugs are useless without having officers trained to enforce these laws. This program still has not been established here in Alaska.

I also support HB 330

The tragic death of my friend and co worker, Justin Wollam, is testimony enough of the need for this law. If an adult knew he might be charged with a felony, he might reconsider providing alcohol to minors.

Respectfully,
Dave Rochford
Anchorage P.D.

SENATE COMMITTEE REPORT

DATE: 4/4/02

FURTHER: Finance

DATE TURNED IN TO OFFICE: 5/16/02

Judiciary Committee considered CS FOR HOUSE BILL NO. 330(FIN) am
 HB 330 PROVIDING ALCOHOL TO PERSONS UNDER 21
 "An Act relating to providing alcoholic beverages to a person under 21 years of age."

and recommends:

- be replaced with S CS CS HB 330 (JUD)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

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

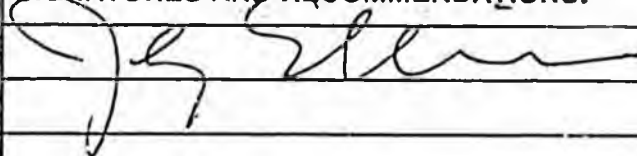
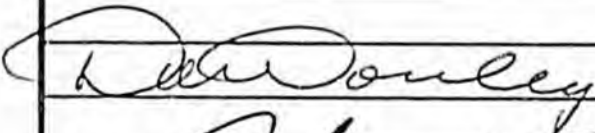
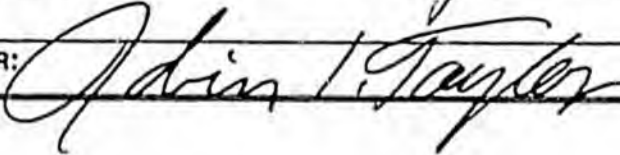
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DOL	2/28/02		✓	1
DOA	2/1/02	 		2
DOC	2/8/02	 		3

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
	X			
	✓			
CHAIR: 	✓			