

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

3335 HJUD HB 338 - HB 345

### Alaska Compared to Colorado

Information contained so far in this discussion provides a basis for reasonable conclusions regarding a method to estimate probable net revenue for an Alaskan lottery. Although Alaska shares similarities with the most successful lottery states (economic and physical composition of its population), our population size does not reasonably allow for a direct comparison with these states. Likewise, although our population size compares with some of the least successful lottery states, other marketing factors; our degree of urban versus rural population, our degree of population concentration, the lack of accessible neighboring lotteries, and the economic and physical composition of our population; does not allow for a direct comparison with these states.

One lottery state, with a three year lottery income history, does have a number of similar characteristics to Alaska and qualifies as a reasonable model for generating revenue projections. Colorado is similar to Alaska in more aspects than any of the other lottery states.

A review of Table 2-II and the discussion pertaining to it illustrates that Colorado provides a basis for conservative comparisons from a per capita, family and household economic perspective. It provides for a very close comparison from the perspective of educational level of the populations. And when including the information from Table 5-II with columns H, I and J from Table 2-II, Colorado is a good match with Alaska regarding comparisons of the urban nature and population concentration patterns of the two states, as well as the male to female ratio and population over eighteen years of age factors.

### Alaska Lottery Income Projections

Using an average of Colorado's last three years per capita net income, \$17.01 (Table 1-II), as a probable per capita income for Alaska will give a reasonable, conservative estimate for annual profit from an Alaskan lottery.

A second projection, using an average median per capita income from all lottery states for the last three years, \$26.07 (Table 1-II), will provide a second, possibly less conservative and more simplified projection for Alaska.

A population factor of 730,000 for Alaska has been determined to be most useful for computing a probable FY 87 net profit, should Alaska implement a state operated lottery by July, 1986. This population factor is based on the assumption that tourists to the state would play a lottery with much more frequency than the average for the state. Tourists are here to be entertained and they have the money to spend (82% of the visitors to Alaska in 1983 had household incomes over \$20,000, 25% over \$60,000<sup>4</sup>). However, since tourists are in the state for an average of only 16.8 nights (this represents more than

10.8 million person-nights per year spent in the state)<sup>5</sup> a factor must be based on their short duration here. Therefore, an assigned factor of .25 is used as an approximation of their lottery play, compared to residents with a factor of 1.0. Likewise a factor of .50 is used to approximate the frequency of lottery play by crews from the airlines and cruise ships, who spend about one-fourth of the year in Alaska.

We now have enough information to compute a projection for an annual profit from operation of an Alaskan lottery.

<u>Population Base</u>	<u>Number</u>	<u>Factor</u>	<u>Total</u>
Alaska Total Population (Est. 1985):	533,000	x 1.00	= 533,000
Alaska Tourist Volume (Est. 1986):	776,600	x .25	= 194,150
Cruise Ship and Airline Crews (1985):	6,000	x .50	= 3,000
Total Effective Population			730,150

Using this "effective population" figure and the two per capita profit amounts, one from Colorado (\$17.01) and the other from a national average (\$26.07), an expected range of total net revenue for Alaska can be determined.

1. Alaska Total Effective Population	730,150
Colorado '83-'85 Average Per Capita Profit	x \$17.01
Estimated Alaska Net Revenue (low)	<u>\$12,419,851</u>
2. Alaska Total Effective Population	730,150
National '83-'85 Average Per Capita Profit	x \$26.07
Estimated Alaska Net Revenue (high)	<u>\$19,035,011</u>

An Alaska lottery could expect to generate between \$12.4 and \$19.0 million in FY 87.

This low end estimate, \$12.4 million, is a very conservative figure when we consider that it is based on the Colorado lottery which is restricted to only operating instant games. A parallel comparison to this restriction would be to restrict a jewelry store to only selling gold jewelry. There is a large market for gold jewelry, but it's only a percentage of the total market.

The high estimate, \$19.0 million, is a fairly realistic estimate, and is only dependent on how freely the enabling legislation for an Alaska lottery allows it to respond to the market.

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<sup>5</sup> Overview, Alaska Traveler Survey and Visitor Industry Analysis 1983; Dept. of Commerce and Economic Development, Div. of Tourism PART

### III: SOCIAL IMPACTS OF LOTTERIES

The five questions most often asked regarding lotteries social impact are:

1. What affect do state lotteries have on the "poor?"
2. What affect do state lotteries have on the "less educated?"
3. How do lotteries affect the incidence of compulsive gambling?
4. Does winning disrupt the lives of winners of large cash prizes?
5. Do lotteries cause a negative economic drain on rural communities?

Questions 1 and 2:

The most often raised objection to state operated lotteries is that people from lower income households and/or the less educated buy a disproportionate amount of lottery tickets. The implicit suggestion is that a lottery should be prohibited in order to protect the "poor" and "less educated." As a matter of empirical fact, it is simply untrue that the poor and/or less educated buy lottery products disproportionately to their percentage of the population.

Research has been conducted in every state with a lottery operating for over one year regarding these questions (#1 & #2), and the conclusion is always the same; the poor and less educated play the lottery to a lesser degree than their proportion of the population.

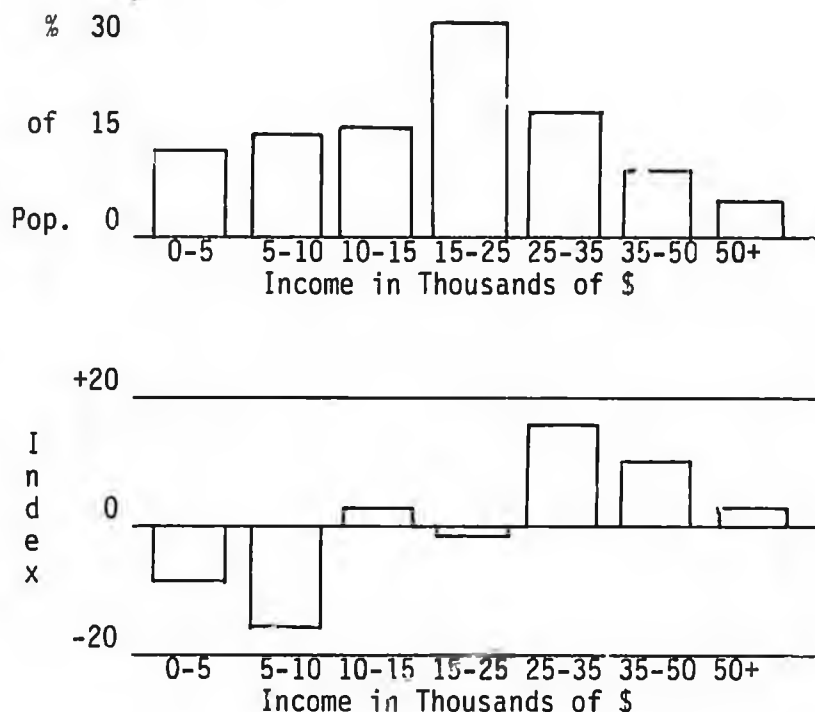
Some comments from a sampling of the numerous studies conducted follow. Please bear in mind that every statement to follow is based upon statistical evidence, not opinion.

Colorado: Chart 1-III, below, is comprised of two bar graphs. The top graph represents the income group's percentage of the Colorado population. The bottom graph represents an index of lottery participation by the income group. Where the bar is above zero, that group plays the lottery more than their relative proportion in the population, and vice versa.<sup>1</sup>

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<sup>1</sup> Chart reproduced from "Colorado Lottery Facts", Oct. 1983, included in the Report to the Colorado Legislature by the Lottery, dated Dec. 6, 1983.

Chart 1-III  
 COLORADO LOTTERY PLAYER



As the chart dramatically shows, the lower income groups play the Colorado Lottery substantially less than their proportion in the population. The Colorado Lottery explained the methodology of their analysis and also commented generally on this issue.

"Analysis of the winners in lottery games is a statistically perfect sampling of the players. During each year, several state lotteries do research on the profile of their players through analysis of winners' age, income, occupation, sex, residence, and lifestyle. Every study conducted in the legal lottery business in North America has shown that the bulk of the lottery tickets are purchased by middle income consumers. Typically, most tickets are bought by persons between the ages of 35 and 54 although the play of the lotteries ranges in age from 18 to over 65. In addition, although the range of players runs from low income to high income, the majority of the tickets are purchased by persons whose household incomes are between \$12,000 and \$36,000. Research in Colorado indicates that the average education and income of the players are higher than the national average. Even low income players play the lottery from their discretionary income,

low income players play the lottery from their discretionary income, that is to say, even low income persons purchase lottery tickets on a competitive basis with their purchase of candy, movies and softdrinks. An average of 90¢ a week played on the lottery, while being a higher percentage of the discretionary income of a low income person than it is in a middle income person, is still a minor decision..."<sup>2</sup>

The results of the Colorado studies are confirmed by numerous other studies about the income levels of lottery players in other states. For example:

Arizona: An independent study concluded that "the poor are dramatically underrepresented among lottery players."<sup>3</sup>

Delaware; 89% of the buyers of "Daily Numbers" lottery tickets had an annual family income in excess of \$10,000. The median family income of players was \$19,200 a year, while the median income of non-players was \$18,200 a year.<sup>4</sup>

Illinois; People with incomes below \$11,000 only participated in lotteries about 75-78% of their percentage of the population.<sup>5</sup>

Maine; Studies "conclusively demonstrate that it is the middle income segment of the population that is the primary market for lotteries... [T]he poor (under \$5,000 in income) are extremely underrepresented among lottery players."<sup>6</sup>

Illinois, Michigan, New Jersey, New York, Pennsylvania; An analysis of the household income profiles of over 6.5 million winners established that "the poor participate in the state lottery games at levels disproportionately less than their percentage of the population."<sup>7</sup>

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<sup>2</sup> "Colorado Lottery Fact Sheet", Oct. 1983, p.8, included in Report, op. cit. fn. 1.

<sup>3</sup> "Using Demographics to Increase Lottery Sales", G.E. Shippee, D.J. Schwartzman, K. Dynolds, Public Gaming Magazine, Aug. 1983. See also, "Analysis of Sales Data of Lotteries", July 1983, Scientific Games, Inc. cited in Public Gaming Magazine, Dec. 1983, p.29 (hereafter "Analysis"), and Time, May 28, 1984, p.42.

<sup>4</sup> Report by Dr. Keiser, University of Delaware, College of Business and Economics, 1979.

<sup>5</sup> Public Gaming Magazine, Jan. 1982, p.33, Table II.

<sup>6</sup> "Analysis," op.cit., fn. 3.

<sup>7</sup> "The Myth of the Poor Buying Lottery Tickets", by Dr. J.R. Koza, Public Gaming Magazine, Jan 1982, at p.40.

Washington; An analysis of all players in the lottery during the 1983 reporting period indicated the group which played the lottery the least was the under-\$10,000 income range.<sup>8</sup>

These are only a sampling of the numerous studies on this issue.

The Louisiana legislature, after conducting an extensive investigation on this issue and an analysis of the numerous available studies, concluded: "The overwhelming majority of studies conducted in this country illustrate that the poor patronize the lottery in numbers proportionately less than their numerical presence in any community."<sup>9</sup>

Similar conclusions have even been admitted by lottery critics. The Berean League of Minnesota, a self-described coalition of concerned Christians, admitted in an extensive paper submitted to the Minnesota legislature, in opposition to pending lottery legislation, that "Poor people do not play the lottery out of proportion to their percentage of the population (the evidence shows that they play less than their percentage of the population)...[N]othing has surfaced to question the accuracy of the studies that the poor play the lottery... less than other segments of the population."<sup>10</sup>

The Illinois, Michigan, New Jersey, New York, & Pennsylvania study took an additional step in the analysis of data collected from its over 6.5 million winners of large prizes. Relative level of sales were studied to determine if there were any correlations between heavy lottery players and household incomes. New York was chosen for this study because its household income profile for lottery game players was most representative of the average of the five states involved. Data for this analysis was collected from seventeen \$1 instant games in New York. Areas were designated as having "below-average" sales if the sales index for that zip code averaged 25% or more below the statewide level. An area was designated as having "above-average" sales if the sales index averaged 25% or more above the statewide level. The remaining areas were considered "average." This approach placed about 24 percent of the New York population into above-average sales areas, about 43 percent into average sales areas, and about 33 percent into below-average sales areas.

Having thus divided the state into three distinct categories based on the actual occurrence of recorded lottery winners (and hence players), the household income distribution for the three categories was examined. See Table 1-III for a presentation of this data in the form of indexed numbers.

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<sup>8</sup> Washington State Lottery 1983 Annual Report.

<sup>9</sup> Final Joint Lottery Subcommittee Report, Louisiana Legislature, April 5, 1983, p. 27.

<sup>10</sup> "The Proposed Minnesota Lottery," Report by the Berean League of Minnesota, 1984, pp. 22, 23.

Table 1-III

INDEXED HOUSEHOLD INCOME DISTRIBUTION  
(Above-Average, Average & Below-Average Sales Areas of  
17 \$1 Instant Lottery Games, New York State)

ANNUAL HOUSEHOLD INCOME  
(In 1980 Dollars)

	Over \$56,000	\$34,000- \$56,000	\$23,000- \$33,999	\$18,000- \$22,999	\$11,000- \$17,999	\$6,700- \$10,999	Under \$6,700
+ Ave.	105	128	120	99	83	75	75
Average	158	139	109	90	83	75	79
- Ave.	140	94	81	89	111	116	113

The income profile for the areas of the state having above-average sales have a relatively higher representation of high-income households. The same is true for of the areas of the state having average sales. For example; households with an income above the \$56,000 (1980 dollars) range have an index value of 158 in the "average sales" level areas. This means that this level income household occurs at a rate 58% higher than in the state as an average.

However, for the areas of the state having below-average sales, the income distribution is bi-modal. It contains the "poor" and it also contains a significant representation of very high income people. The main point, however, is that the lower-income categories are relatively underrepresented in both the average and the above-average sales areas and that the lower-income households are overrepresented only in the below average sales areas.

Thus, using this slightly different perspective, the conclusion is again the same. Namely, that the poor participate in the lottery games at a disproportionate rate as compared to their percentage of the population.<sup>11</sup>

Most analysis and comment from the studies conducted by states operating lotteries include educational levels as well as household income issues. These studies indicate similar conclusions with regard to education levels of those playing lotteries; the less educated play lotteries proportionately less than they are represented in the total population.

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<sup>11</sup> "Myths", Public Gaming Magazine, Dec. 1983, pp. 28-33; and "Roses and Thorns of State Lotteries", by Bill Curry, State Legislatures Magazine, March 1984, p. 31-36.

The Washington State Lottery found that residents with 1 - 3 years of college were overrepresented in lottery play to a degree significantly exceeding that of any other educational group. Based on an index of 100, those in this category reached index levels as high as 141. Conversely, those with eight years of education or less were severely underrepresented, with indices ranging from 68 down to 43.

Final figures for FY 83 in Washington showed residents with 13 - 15 years of education totaling out at an index of 120, with those with eight years of education, or less playing at an index rate of 56, the lowest of any category.<sup>12</sup>

A study of six western counties of Washington state by KIRO Broadcasting, Inc. found that 78 percent of the lottery players had 12 or more years of education.

The Arizona Lottery also tested for educational level of its players. In every case, the median educational level of players exceeded that of Arizona residents overall.<sup>13</sup>

Pennsylvania contracted with Opinion Research Corporation to use the "low, average and heavy play" analysis procedure described above for New York. They found that in the "heavy play" group - the group showing the most interest in the lottery - only 9.8 percent had less than a high school diploma.<sup>14</sup>

Again, these are only a sampling of survey results all stating the same conclusion - the less educated segments of the population in lottery states play lottery games less than they are represented in the total population of their state.

These conclusions are no surprise to those who view lotteries as a business operated for profit. The tremendous growth in both lottery participation and profit to those states operating them could never be generated by a dependency on the poor and under-educated. This segment of our population simply does not constitute a large enough percentage base to target marketing efforts. The majority of the population in most states lives in middle income households and has a higher than median education level. This is the natural market.

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<sup>12</sup> Washington State Lottery, 1983 Annual Report

<sup>13</sup> "Using Demographics to Increase Lottery Sales", G.E. Shippee, D.J. Schwartzman, K. Renolds, Public Gaming Magazine, Feb. 1983.

<sup>14</sup> Pennsylvania Study for the Bureau of State Lotteries, Opinion Research Corporation, Princeton, NJ, 1981.

Question number 3:

How do lotteries affect the incidence of compulsive gambling?

Studies done thus far have shown the compulsive gambler to be someone who by nature seeks avenues other than state lotteries to satisfy his or her need for gambling; state lotteries do not provide what a compulsive gambler needs for gratification.

Dr. Robert Custer, acting director of mental health for the Veterans Administration in Washington D.C. and medical advisor to the National Council on Compulsive Gambling, has done extensive research into the incidence and treatment of compulsive gambling, and is widely recognized as an expert on the subject. Custer contends that state lotteries do not provide a sufficient outlet for a compulsive gambler to either alleviate withdrawal symptoms or to experience any sustained euphoria generated by most other types of gambling. Custer said that of the compulsive gamblers he has treated at the V.A., 20% have fallen into each of four different categories: addiction to horse race betting, casino games(not casinos in particular, but games associated with them such as craps and card games), illegal sports betting, and stock options and commodities. The remaining 20% is divided among all other forms of gambling, lotteries only amounting to perhaps 2%. Of compulsive gamblers, Custer said lotteries are "not their style," because play is too slow. "The shorter the interval between the time you place your bet and when you collect, the more addictive," adding that, "any game involving a waiting period for the outcome and/or collection of winnings, such as lotteries, does not sustain a compulsive gambler, ..." Two key elements that compulsive gamblers need for satisfaction are some feeling that s/he has an "edge" or privileged information regarding the bet, and that some element of skill plays a part in the outcome. Neither of these exist with state lotteries.

"I think winning is a lot more stimulating than we realize," said Custer. "Particularly winning amounts ranging from a fourth to a half of one's income. That's one of the things about the lottery that I've never been very concerned about, because people don't win big that often. There are a lot of \$1 and \$2 winners, but very few million dollar winners."

Custer states that no data exists supporting the contention that lotteries increase compulsive gambling.<sup>15</sup>

A study for the New Jersey Lottery, supervised by Dr. Peter Carlton of the New Jersey College of Medicine and Dentistry, reached basically the same conclusions as did Custer's research; no cause-and-effect relationship was established showing lotteries to cause compulsive gambling, the same physiological changes were noted in gamblers as with the V.A. research. These results show that lotteries simply don't offer enough "action" to satisfy the needs of a compulsive gambler. A totally different environment of lottery-playing, as

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<sup>15</sup> "Do Lotteries Increase Compulsive Gambling?", The Lottery Journal, Vol. 1, No. 2, p. 22 & 58.

opposed to other types of gaming, exists for state lottery participation. Lottery playing does not require a contained environment with a high degree of social interaction, as is found with other gaming activities. The decision to participate in a lottery game usually is an afterthought from some other activity.

John D. Quinn, Director of the New York State Lottery, and past president of the National Association of State Lotteries says that during his tenure as director of the N.Y. Lottery over 2 billion tickets have been sold and he has not received one phone call or letter saying a wife or husband "had spent the bread or milk money on the lottery."<sup>16</sup>

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<sup>16</sup> "Myths", op.cit., fn. 11, pp 39-41.

Question number 4:

Does winning disrupt the lives of winners of large cash prizes?

The results of a survey by the Ontario Lottery Corporation, updated through November of 1983, indicate that the lifestyles of the overwhelming majority of the lottery's jackpot winners changed little after their windfalls.

This survey of 870 people who won between \$7,000 and \$1 million in the lottery indicated that the overwhelming majority of the big-money winners kept their jobs and stayed in the same house. Few were bothered by adverse publicity or bothersome requests for donations.

Of the winners responding to the survey, 91.4% of those employed kept their job. Eight of the 25 winners of \$500,000 or more continued to work. Most of the winners bank their money, and few indulge in spending sprees. Only 2.2% spent the bulk of their winnings on luxuries. Twenty-five percent bought a new car, and only 22.6% took vacations. More than two-fifths of those winning large prizes, 40.8%, shared their good fortunes with family, friends and charities.

Ninety percent of the winners were not subjected to calls and letters begging for money, and 70% of those who were contacted did not consider the solicitations a problem.

Most of the big winners have not been bothered by media attention. Of those responding to the survey 90.1%<sup>17</sup> said media treatment of their good luck had been fair and courteous.

Surley examples exist which illustrate that lives have been changed by the winning of large amounts of money, some of these changes would be considered positive and some negative. However, the statistics available, when considering broad cross-sections of winners, indicate that the majority of winners are not negatively affected. Ms. Mary Faulk, Director of the Washington State Lottery, puts it very well in her statement, "The lottery by design is open to maximum scrutiny by the public at all times. Our credibility is the first product we sell to the public. Identification of winners is an important responsibility to all our players. We feel that the media has shown responsible constraint in their handling of winners. Our winners have accepted this exposure with grace, because they recognize the public's right to know."

The administration of most lotteries use a prize award structure that makes payments to large winners over an extended time period; i.e., \$1,000 per month for life. This is financially advantageous to the state and to the winner, and helps prevent the possible disruption of a winners life with a \$1 million dollar check.

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<sup>17</sup> "Lottery Winner Research Indicates Life As Usual", Wendy Horne, Ontario Lottery Corporation.

Question No. 5:

Do lotteries cause an economic drain on rural communities?

This question is asking if it appears likely that a state run lottery will result in the residents of small remote communities spending an amount of their available cash to a degree exceeding the benefits these same communities would receive from the expenditures of lottery profits. Three additional questions must be examined to provide an answer to this concern of economic impact on rural communities:

1. How many communities and what population base is of concern?
2. What spending level for lottery products is likely to occur?
3. What level of benefits will these communities likely receive from the operation of a state lottery?

A conservative analysis, considering "worst case" possibilities for lottery expenditures by rural community residents and reasonable assumptions regarding benefits received from probable state lottery profits, indicates that a state operated lottery would not cause an economic drain on rural communities. In fact, the opposite is true.

For purposes of this discussion the term "rural community" is defined as a community of 2000 or less people. Alaska has a total of 262 communities of this size with a total population of 70,286, or 13.44% of the state's total population (see Table 2-III).

Individual spending on lottery products will be directly proportional to the degree to which residents of these communities would have access to lottery products. This access would only exist through state licensed lottery product retailers. Only qualified "viable businesses" would be issued lottery sales licenses upon application. A "viable business" is defined as one which would likely meet the qualifications established by a state lottery as necessary to be licensed as a lottery product retailer.

The Alaska WIC Program (Special Supplemental Food Program for Women, Infants, and Children) has been selected as a means to identify the number of probable "viable businesses" in rural communities. The WIC program is a state subsidized health and nutrition program for pregnant women, breastfeeding mothers, infants, and young children. The state provides subsidies for foods and other health needs purchases by its participants to the retailers participating in the program. This program has been selected for analysis on the assumption that its retail participants are considered by the state as "viable businesses" meeting WIC's vendor qualifications.

A review of the total number and locations of WIC vendors (see Table 3-III), provides the following items of information. It appears that a community population of more than 100 is necessary to support the operation of a retail store, the most common form of rural business (only 4.55% of communities of less than 100 have WIC qualified vendors). Eighty eight rural communities, comprising .98% of the state's total population or 5100, do not have the population base to support retail enterprises. At least some of the businesses in communities over 100 will not desire to be qualified as lottery

Table 2-III

## 1984 ALASKA POPULATION ESTIMATES BY COMMUNITY SIZE

A COMMUNITY SIZE	B #	C TOT. POP.	D % of AK	E # WIC	F % SVD.
0 - 50	37	1,266	0.24	0	
51 - 100	51	3,834	0.73	4	7.8
101 - 150	23	2,881	0.55	3	12.5
151 - 200	24	4,087	0.78	7	29.2
201 - 250	23	5,194	0.99	10	43.5
251 - 300	19	5,252	1.00	4	19.1
301 - 400	23	7,833	1.51	10	43.5
401 - 500	23	10,370	1.98	21	91.3
501 - 600	18	9,821	1.88	10	55.6
601 - 700	8	5,242	1.00	7	87.5
701 - 800	2	1,509	0.30	2	100.0
801 - 900	4	3,448	0.66	5	100.0
1,001 - 1,500	4	4,690	0.90	4	100.0
1,501 - 2,000	3	4,809	0.92	1	33.3
2,001 - 2,500	4	9,424	1.80	6	100.0
2,501 - 3,000	2	5,892	1.13	4	100.0
3,001 - 3,500	4	13,066	2.50	6	100.0
3,501 - 4,000	2	7,462	1.43	4	100.0
4,001 - 5,000	1	4,850	0.93	3	100.0
5,001 - 8,000	1	7,611	1.46	3	100.0
9,001 - 15,000	2	21,446	4.10	8	100.0
15,001 - 25,000	2	47,100	9.01	11	100.0
25,001 - 50,000	1	25,791	4.93	4	100.0
50,001 - 75,000	1	62,175	11.89	9	100.0
75,000 - 250,000	1	243,829	46.62	36	100.0
BCSA's (Table 3-III)		4,116	0.78	0	
Total	283	523,048	100.00	180	

Source: Alaska Department of Labor, Research and Analysis; (Draft)  
Alaska Population Overview, 1985; Table IV.2.

Alaska Department of Health & Social Services; Special  
Supplementary Food Program for Women, Infants and Children,  
Vendor List, Sept. 1985.

Column Explanations

- A. Self explanatory.
- B. Number of communities within the size indicated in column A.
- C. Total population of all the communities within that size group.
- D. Percent of the total population of Alaska within that size group.
- E. Number of WIC vendors serving communities within that size group.
- F. Percent of population within that size group served by WIC vendors.

Table 3-III

## 1984 ALASKA POPULATION ESTIMATES FOR COMMUNITIES OVER 2000

PLACE/S	POPULATION	% of AK.
Anchorage Borough	243,829	
Subtotal	243,829	46.62
Fairbanks Area (Frbnks., Eielson, College, No. Pole, & Fox)	62,175*	
Subtotal	306,004	58.50
Palmer-Wasilla	25,791*	
Juneau Bourough	23,729*	
Kenai-Soldotna	23,371*	
Subtotal	378,895	72.45
Kodiak Area (Kodiak & Kodiak C.G.B.)	11,024*	
Ketchikan Area (Ketch., No. Tongas Hwy. & Saxman)	10,422*	
Subtotal	400,341	76.54
Sitka Borough	7,611	
Subtotal	407,952	78.00
Delta Jct. Area (Delta Jct., Big Delta & Ft. Greely)	4,850*	
Subtotal	412,802	78.92
Bethel	3,743*	
Valdez	3,719*	
Homer	3,373	
Petersburg	3,340*	
Nome	3,184*	
Adak	3,169	
Subtotal	433,330	82.85
Barrow	2,969	
Seward	2,923*	
Subtotal	439,222	83.97
Wrangell	2,499*	
Kotzebue	2,485*	
Cordova	2,356*	
Dillingham	2,084*	
Subtotal	448,646	85.78
Remainder (262 places of less than 2000)	70,286	
Balance of Census Subareas (BCSA's)**	4,116	523,048 100.00

Source: Alaska Department of Labor, Research and Analysis, (Draft)  
Alaska Population Overview, 1985; Table IV.1.

\* Population in BCSA included.

\*\* Balance of Census Subareas (BCSA) contain those people living outside of defined communities designated as census areas; i.e., those living in the Kodiak area but outside of the Kodiak city limits.

retailers or would not qualify upon application. Therefore, it is safe to conclude that less than 100% of the people living in communities of 2000 and fewer will have access to lottery products on a day-to-day basis. However, a total of 84 WIC vendors ("viable businesses") in 83 rural communities with populations of 101 to 2000 would provide a probable minimum level of access to lottery products for 64.8% of the rural residents.

A maximum level of access to lottery products would exist if each rural community of 100 or more persons contained at least one lottery retailer. This is a possibility that cannot be discounted because the WIC program has not been able to consider service to all rural communities, therefore its vendor list may not contain all "viable businesses" in these areas.

The access to lottery products in rural communities, and thus the probable level of spending on these products, can then be anticipated as likely to be within parameters established by this maximum and minimum. The maximum case represents a situation in which 100% of the population in communities 101 to 2000 residents, or 65,186 people in 174 communities, would have access to a lottery retailer. The minimum case represents a situation in which 64.8% of the rural population, or 42,261 people, those living in 83 communities over 100 and served by the WIC program, would have access to a lottery retailer.

A probable low (maximum access) and high (minimum access) economic impact on rural communities can now be projected from lottery sales using an '83-'85 national per capita profit in lottery states of \$26.07 and an assumed state total net revenue of \$19,035,011 (from Pt. II, page 28). This impact will be a result of lottery expenditures by residents of these communities compared to the benefits received through expenditures by the state from lottery net profits. For this analysis it will be assumed that state expenditures are made on an equal per capita basis in all communities of the state. That is, a community with 5% of the population receives the benefits of 5% of state government spending.

#### Conclusion:

Both the "maximum access" and the "minimum access" case would result in a positive economic impact in all of the rural communities in Alaska. This positive impact would range from a low of 5.38% to a high of 62.54% in the 174 communities with populations of from 101 to 2000. That is, for every \$1 spent on lottery products which leaves a rural community, between \$1.05 and \$1.63 would return in the form of state government services and grants from lottery profits. This return does not include the 50% of lottery expenditures remaining in communities from retail sales commissions and prizes. Eighty eight rural communities with populations of less than 100, comprising a total population of 5,100 (0.98% of the state's population), would experience even higher economic benefits, a total of \$186,543 or \$36.58 per capita, because they would receive the same benefits as others from lottery profits but would not be likely to make expenditures in a customary form of lottery.

The following computations corroborate these conclusions.

	AK Total	Max. Case	Min. Case
Population	730,150	65,186	42,221
Nat. '83-'84 Ave.	<u>x 26.07</u>	<u>x 25.07</u>	<u>x 26.07</u>
Per Capita Profit			
Net Profit (35% of Gross)	\$19,035,011	\$1,699,399	\$1,101,744
Gross Profit (100%)	\$54,385,745	\$4,855,425	\$3,147,841
Less Prize Payments (45%)	<u>- 24,473,585</u>	<u>- 2,184,941</u>	<u>- 1,416,528</u>
	\$29,912,160	\$2,670,484	\$1,573,920
Less Commissions (5%)	<u>- 2,719,287</u>	<u>- 242,771</u>	<u>- 157,392</u>
\$ Leaving Communities	\$27,192,873	\$2,427,713	\$1,573,930
Less Admin. Costs (15%)	<u>- 8,157,862</u>	<u>- 728,314</u>	<u>- 472,176</u>
Net Profit to Gen. Fund	\$19,035,011	\$1,699,399	\$1,101,744

Rural communities would realize benefits from a return of lottery profits equal to their percentage of the state population times the state net profit, or;

$$13.44\% \times \$19,035,011 = \$2,558,305$$

The probable maximum and minimum amount of dollars leaving rural communities is \$2,427,713 and \$1,573,920, respectively. The differences between the negative and positive cashflow are:

$$\$2,558,305 - \$2,427,713 \text{ (max.)} = \$130,592 \text{ (low); or a 5.38\% gain;}$$

$$\$2,558,305 - \$1,573,920 \text{ (min.)} = \$984,385 \text{ (high); or a 62.54\% gain.}$$

Two assumptions which have been made that led to the above conclusions merit additional comment. First is, the assumption that rural and urban residents would purchase lottery products on an equal per capita ratio. As has been illustrated above, a higher ratio of urban versus rural lottery purchases results in a high return to rural communities in terms of benefits received compared to expenditures made. Marketing strategies based on economy of scale will, in all likelihood, focus on the urban areas of the state, not rural communities. This will result in lottery products and consumer incentives designed to appeal to urban residents and tourists. This will increase the ratio of lottery purchases outside of rural areas compared to purchases in rural communities to a higher degree than the above illustration assumes. The second assumption is that rural communities and urban communities receive benefits from state government spending on an equal bases. This assumption, again, results in very conservative projections with regard to the probable benefits received by rural communities.

## PART IV: IMPLEMENTING AND OPERATING A STATE LOTTERY

### Enabling Legislation

The experience of the past twenty years of lottery operation in the U.S., and the experiences of other governments' lottery operations, should be reviewed when considering legislation for an Alaska lottery. Most state lottery laws were drafted when the idea of a state lottery was a novel concept and little or no practical experience was available. The resulting legislation contained burdensome language addressing anxiety which stemmed from illusions based on fear rather than actual causes for concern. While this approach may have been justified ten or more years ago, it should have long since been abandoned and enabling statutes should now be drafted in light of the available record of lottery experience.

The operation of a lottery should be insulated, as far as is possible, from the operation of the political process. The following points have been recommended by Edward J. Powers, past executive director of the New Hampshire Sweepstakes Commission, which started the first lottery in the U.S. in 1964, and a founder and past president of the National Association of State Lotteries.

1. A state lottery should be established in the form of an independent authority (public corporation) rather than as a regular state agency. The authority should have its own identity and be responsible for its decisions. This is best from a public relations as well as from an efficiency viewpoint. It should have the authority to issue and present prize checks. It should be able to employ personnel and to enter into contracts, within established state procedures, and issue its own bid specifications. State purchasing statutes were not written with lotteries in mind, and so are not suited to the peculiar requirements of lottery management.

If an authority form of entity is not achievable, then, a separate commission consisting of members from both the public and private sector overseeing a separate department is preferable to a division within an existing department.

However, it should be noted that a number of state lotteries are currently functioning within another state agency.

2. The lottery agency should be treated like a business as much as possible. This is the only way to maximize revenues. It must have the flexibility to launch new programs and change marketing strategy. It should not be in a budget straightjacket that prevents it from making personnel or policy changes.

3. Full public accountability must be required. Periodic reports of revenue and expenses must be presented to the governor and the legislature. An annual report should be published for the public and the press to review. Some lotteries require that an outside accounting agency conduct periodic audits.

4. Security is paramount in every aspect of the lottery. The draft legislation should provide the framework for the internal controls

that are necessary to deter and prevent subversion both from within and without. Computer technology permits controls today that were unavailable in the past. Most security problems have arisen from employees and this emphasizes the need for close pre-employment screening. There must be cross-checks and frequent unannounced inspections to eliminate temptation.

5. It must be remembered that a state lottery will return close to 40 percent of total gross revenues to the state, after paying all the prizes and expenses. The lottery agency is completely self-supporting. Its initial start-up costs will be paid back to the state within a matter of months. Details as to lottery operation should not be specified in statutes. Legislation should not specify a percentage of prizes to be paid, the amount to be spent on advertising, the percentage allowed for expenses or the minimum amount to be returned in net revenue. State lotteries have proven they are capable of raising substantial net revenue. There is no need to set minimum acceptable levels of net revenue. Similarly, it is counterproductive to mandate the types of lottery games to be operated. These restrictions can seriously impede decision-making. It is best to charge the administrators of the lottery with the responsibility of raising maximum revenue from the program.

Experiences of operating lotteries have identified some areas that should be addressed in enabling legislation that were not, or if addressed were not adequately detailed. For instance, disputed claims should be clearly appealable only through state administrative procedures and should not be treated as civil disputes where contract law applies. Authority to own, operate and maintain separate data processing systems should be given lest a lottery be required to share time thereby compromising the lottery's security. Criminal offender record information should be available for use in licensing decisions. Failure of sales agents to promptly pay proceeds of lottery sales after reasonable demand should be a criminal offense.

In summary, legislation should be drafted using the store of lottery experience developed in the past and not simply be modeled on existing lottery laws adopted when this store of experience was not available. Maximum flexibility should be obtained in the original enactment as once carved in stone laws are hard, if not impossible, to change. The particular areas where governmental restraints are counterproductive should be identified and specifically modified or waived as to lottery operations.<sup>1</sup>

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<sup>1</sup> "Editorial Viewpoint", Public Gaming Magazine, Jan. 1982 and Jan. 1983.

### Interim Funding of a Lottery Agency

Any agency formed to implement a state lottery, no matter what the organizational structure is, must be afforded interim funding. An accepted "rule of thumb" in gauging the amount to be appropriated is \$1 for each state resident. A minimum recommendation needed in any state, regardless of its population is \$1,500,000. The following paragraphs describe the time frames involved in the establishment of the lottery's first game and where the money will be needed.

If a lottery bill became effective on July 1 in any year, as an example, the appointments to the board or commission and the hiring of a full time director might take place within the next 30 to 45 days. If a bid was prepared within the next 30 to 45 days to purchase tickets for the state's first lottery game and then an award was made to a vendor to provide those tickets by mid-October those tickets could be delivered in the state by early or mid-December. While all of the aforementioned is going on, the board or commission will have time to promulgate lottery rules and regulations and the director will be forming the lottery administration ... who in turn will help license the ticket sales agents throughout the state. By the end of December, or six months after the effective date of the legislation, lottery ticket sales should commence. This is a conservative timeline as has been illustrated by Oregon taking only 135 days to become operative after its law was signed.

Based on the scenario described in the previous paragraph, lottery ticket sales will commence around the first of the year with the tickets for the first game "sold out" by the end of February ... or eight months after the effective date of the legislation. At this point in time a "cash flow" (money and profit coming into the agency from the sale of tickets) will have started and the agency will be in a position to return all of the "borrowed money" back to the state. Also, from that point on the agency will be self-sufficient, requiring no additional funding.

The interim funds provided the agency initially will be used to pay rent and utility bills for office and warehouse space ... for payroll costs for the the lottery employees for at least eight months ... to purchase a small computer or lease time on an existing system for the lottery agency's "accountability" programs ... to purchase vehicles for the agency's field staff ... to advertise and promote the first game ... to print all the necessary forms and pamphlets ... and to purchase millions of instant lottery tickets for the first game. Most of the above items must be paid for before the "cash flow" begins.

If a state with a population of 1,000,000 provided its new lottery agency with \$1,500,000 in interim funding, for example, chances are that the state will order at least 10,000,000 instant lottery tickets for its first game and based on prior experiences will sell those tickets out in six to eight weeks. Washington State Lottery sold out its first games 50,000,000 tickets in five weeks to a population of 4.1 million. Therefore by the end of February (assuming tickets were placed on sale at the beginning of January) the state will have sold

\$10,000,000 worth of tickets and will have realized a profit of \$4,000,000. At this point, the \$1,500,000 can be returned to the state along with another \$1,000,000 to \$2,000,000 in profits, with the agency holding on to the balance to carry out its activities with continuing games.

There are two points to remember. First, the longer it takes the state to implement the lottery and its first game, the more dollars would be needed in interim funding. Secondly, if it is the state's desire to have the money "borrowed" by the lottery agency repaid within the same fiscal year, the above scenario sees<sup>3</sup> that occurrence happening with great ease and a good deal of leadway.

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<sup>3</sup> Paul Silvergleid, Consultant and Past Chairman of the Connecticut Gaming Commission, Feb. 1983

## Operation of a State Lottery

Most state lotteries are operated in a generally similar way. The majority of the state lotteries are overseen by a Commission (Delaware, Michigan and New York are exceptions). The Commission is responsible for broad policy making decisions, promulgation of appropriate rules and regulations to govern the lottery, and review of proposed contracts between the lottery and outside vendors. The actual day-to-day administration of the lottery is the responsibility of the lottery Director, who is a full time employee and generally has experience in the operation of state lotteries. In turn, the Director will have department heads in such areas as security, administration, marketing, and data processing. There will be a lottery staff of full time employees in each of these areas. Depending on the size of the state, the total number of staff will vary but one can expect between 50 and 150.

Although the lottery is operated by the Director and his staff, lottery tickets are actually sold by licensed agents. These licensed agents are generally retailers such as convenience stores, newsstands, package stores, supermarkets, etc. The Director will accept applications from all those eligible to be licensed agents and, after a background check, the retailers will be licensed and will sell lottery tickets subject to rules and regulations of the Commission. The agents will be compensated for sales of lottery tickets by receiving a commission on such sales. The most common retailers' commission in lottery states is 5%.

After setting up its staff and licensing its agents, the lottery must determine what type of game it will run. There are a variety of lottery games available, but the two most common are what are called "instant games" and "on-line games." An instant game is played by the use of tickets which have hidden symbols concealed by a removable covering. The player purchases the ticket, removes the covering, and determines instantly whether he has won a prize and, if so, the amount of the prize. He then redeems his winning ticket in a manner established by the lottery. For small prizes, many states establish a system for the payment of the winning ticket by the licensed agents themselves. Larger prizes are redeemed through claim centers staffed by employees of the lottery. The instant tickets are constructed in such a way so that winning tickets can be validated to prevent any tampering, counterfeiting or fraud.

The on-line numbers games take a variety of forms. A typical game is a 3-digit daily numbers game. In order to run this game, the lottery distributes small computer terminals to its licensed agents which are comparable in size to cash registers. The terminals are connected "on-line" to a large central computer at lottery headquarters. A player selects a 3-digit number ranging from 000 to 999. He then tells the sales agent his selection along with the amount of money he wants to play on that number. The agent enters the number on his terminal (which simultaneously transmits the entry to the central computer) and the terminal issues the player a ticket. That ticket, as with an instant ticket, has various security and validation fea-

tures which protect against any tampering, counterfeiting or fraud. At the end of the day, the lottery randomly draws a three-digit number and the player who has a ticket with that number wins.

Although all aspects of the operation of a lottery are in-state, the lottery will have to purchase its instant tickets or on-line system from one to the established and experienced vendors in the United States. At this time, there are 3 primary instant ticket vendors and three primary "on-line" vendors. The lottery will generally pay such vendors approximately 2 - 3% of the total lottery gross revenues for the purchase of lottery products. That money is the only money which will be spent outside of the state.

Of course, there will be a "lag time" between the date the lottery law becomes effective and the date lottery tickets are first sold. It is during this period that lottery personnel are hired, the lottery administration is established, and the lottery vendor is chosen. Usually, there will be interim funding of the lottery during this "lag time" and that money is invariably<sup>4</sup> repaid within 6 - 8 months of the effective date of the lottery law.

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<sup>4</sup> Robert L. Mote, Esq., Scientific Games, Inc., May, 1983.

Part V: ALASKA LOTTERY SURVEY

The following pages contain excerpts from results of a state-wide survey concerning an Alaskan lottery completed by the Dittman Research Corporation of Alaska. This survey clearly indicates that Alaskans would favor the operation of a state lottery by a two to one margin.

Survey Methodology

During the period of November 1 through November 12, 1985, 502 residents of 51 Alaskan communities were personally contacted by telephone by professional interviewing employees of the Dittman Research Corporation. The views and opinions of the Alaskan residents were recorded on a strictly confidential basis.

Research Design: A random sample was featured which provided that all residents of the communities included had essentially the same chance of being interviewed.

Sample Selection: The Anchorage sample was selected through a computer-generated random digit dialing program. This is particularly important in Anchorage due to a 40% rate of unpublished and unlisted numbers.

The sample in other communities state-wide was randomly selected from current telephone subscribers listed in the most recent directory for each community. In these communities, the percentage of non-listed numbers does not exceed 10%.

Findings

Overall, Alaskans on a state-wide basis support the idea of a lottery by well over a 2:1 margin...

"Some people have suggested it would be a good idea for Alaska to have a state lottery, while others have said it would be a bad idea. What are your views -- do you basically favor or oppose Alaska having a state-wide lottery?"

Favor.....65%  
Oppose.....29%  
Unsure..... 6%

...and the support is basically consistent throughout all geographic regions...

Region	Favor	Oppose
Rural.....	57%.....	37%
Central.....	65%.....	28%
Southcentral.....	65%.....	29%
Anchorage.....	39%.....	24%
Southeast.....	62%.....	36%

...demographically, upper income residents are slightly more supportive...

Income	Favor	Oppose
Up to \$20,000.....	64%.....	32%
\$20,000 - \$40,000.....	64%.....	30%
\$40,000 - \$60,000.....	65%.....	30%
\$60,000 plus.....	73%.....	22%

...and young people are more supportive than older people...

Age	Favor	Oppose
18 - 24 years.....	84%.....	13%
25 - 40 years.....	67%.....	28%
41 - 55 years.....	62%.....	31%
56 years and older.....	44%.....	46%

...there is little difference based on gender...

Sex	Favor	Oppose
Male.....	66%.....	30%
Female.....	65%.....	27%

...and significantly important, the idea of a state-wide lottery has broad appeal across all political boundaries...

Party	Favor	Oppose
Democrat.....	67%.....	24%
Republican.....	61%.....	31%
Non-partisan.....	67%.....	30%

Summary:

The support for a state-wide lottery is strong and broad throughout Alaska. Only among residents 56 and over does opposition exceed support, while among other age groups, support exceeds opposition by margins of up to 6:1.

Overall, in terms of political and geographic constituencies, support exceeds opposition by approximately 2:1 in each geographic area, and Democrats, Republicans and Non-partisan voters all support the idea of a state-wide lottery by 30% margins or more.

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<sup>5</sup> "State-wide Survey Concerning Lottery"; Report to Rep. D. Thompson; Dittman Research Corp., Anchorage, AK; Nov. 1985.

H B

3 4 3

# Alaska State Legislature

## COMMITTEES:

Committee on Community and Regional Affairs  
Committee on Transportation  
Special Committee on Oil and Gas  
Special Committee on Fisheries  
Finance Sub-committee on Fish and Game




**Andre Marrou**  
Representative

## District 5

Kenai	Sterling
Soldotna	Anchor Point
Homer	Port Graham
Seldovia	English Bay
Kachemak	Nikolaevsk
Kasilof	Halibut Cove
Ninilchik	Clam Gulch

April 26, 1985

To: Mike Miller, Chairman House Judiciary Committee

From: Andre Marrou 

Subject: HB 343, No State Obligation for Municipal Bonds

The North Slope Borough is \$1,203,440,000 in debt. This is \$97,373 for each and every person living in the North Slope Borough. Valdez is \$80,497,000 in debt which is \$21,833 per capita. Nenana is indebted \$2,869,000 -- \$5,245 per capita-- or 25.5% of their total assessed value. Compare this last number with the average city debt of 3.3% of valuation. Many more statistics could be quoted supporting the view that some of our municipalities are abusing their bonding authority.

These municipalities are jeopardizing the bonding credibility of the State. There is no clear-cut State policy regarding the possible default of any municipality. For this reason, I have introduced HB 343.

I consider it morally reprehensible that citizens in a fiscally responsible community might be asked to share the debt burden of communities who act without prudence and frugality. This would occur if the State ever decided to bail out a municipality facing bankruptcy.

It is imperative that municipalities and their citizens understand that they must act responsibly when issuing bonds. A city does not have the right to rob its neighbor of potential capital projects by assuming that the State will pay its debt in case they fail.

I am respectfully requesting a hearing or committee waiver for this bill.

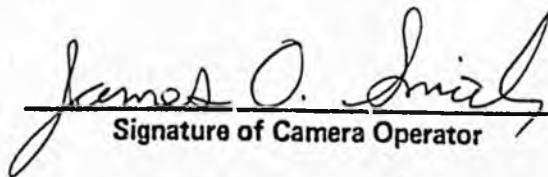
Please call if you have any questions.

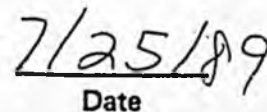


# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

  
Date

H B

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# STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

POLICE - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House State Affairs	4/18/85	3:00 pm
" " "	9/18/85	9:AM
" " "	2/12/86	3:00 pm
House Judiciary	4-2-86	8:00 AM.
" "	4-9-86	7:30 pm
" "	4-18-86	1:30 pm

A M E N D M E N T

Offered in the House

TO: CSHB 345

Page 1, lines 6-8:

Delete: "relating to civil liability of persons who provide alcoholic beverages; and providing for an effective date"

Insert: "relating to civil liability of persons, including social hosts, providing alcoholic beverages"

Page 1, lines 10 - 25:

Delete all material and insert:

"\*Section 1. AS 04.21.020 is repealed and reenacted to read:

Sec. 04.21.020. CIVIL LIABILITY OF PERSONS PROVIDING ALCOHOLIC BEVERAGES. A person, including a social host, who provides alcoholic beverages to another person may not be held civilly liable for injuries resulting from intoxication of that person unless

(1) the alcoholic beverages are provided to a drunken person; or

(2) the alcoholic beverages are provided to a person under the age of 21 years and the person who provides the alcoholic beverages is licensed under AS 04.11.080 - 04.11.250, or is an agent or employee of the licensee, or is required by AS 04.11.010 to hold a license or permit, 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 04.21.050(b), that indicates the person is 21 years of age or older."

A M E N D M E N T

Offered in the HOUSE

By Taylor

TO: HB 345

Page 1, line 8, following "law;" insert:

"court ordered alcohol treatment;"

Page 2, following line 5, insert a new bill section to read:

"\* Sec. 3. AS 28.35.030 is amended by adding a new subsection to read:

(h) The provider of alcohol education or rehabilitation selected by the court under (c) of this section shall notify the court if a person fails to complete a program as ordered by the court. Failure to complete the court-ordered treatment program is contempt of court punishable under AS 09.50.020."

Renumber remaining section accordingly.

A M E N D M E N T

Offered in the HOUSE

TO: CSHB 345 (State Affairs)

Page 1, after line 10, insert a new bill section to read:

"\*Section 1. FINDINGS. The legislature finds that

(1) personal responsibility is the solution to the problems created by alcohol abuse; and

(2) the consumption of alcoholic beverages rather than the serving of alcoholic beverages is the proximate cause of injuries and damage caused by an intoxicated person; and

(3) liability for injuries and damage caused by an intoxicated person should not as a matter of public policy extend to the providers of alcoholic beverages.

Page 1, lines 26 - 29, page 2, lines 1 - 29, page 3, lines 1 - 29, page 4, lines 1 - 3, delete all material and insert:

"\*Sec. 2. AS 04.21.020 is repealed and reenacted to read:

Sec. 04.21.020. CIVIL LIABILITY OF PERSONS PROVIDING ALCOHOLIC BEVERAGES. A person who provides an alcoholic beverage to another person may not be held civilly liable for injuries or damages that result from the intoxication of the person to whom the alcoholic beverage is provided unless

(1) the alcoholic beverage is provided to a person under the age of 21; and

(2) the provider fails to secure from the person a signed statement, or a liquor identification card, or driver's license as described in AS 04.21.050(b) that

confirms the provider's reasonable belief that the person is  
at least 21 years of age.

Renumber remaining sections accordingly.

similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 30 consecutive days and a fine of not less than \$1,000 if, within the preceding 10 years, the person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses: (1) driving while intoxicated under this or another law or ordinance with substantially similar elements; (2) refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. The execution of sentence may not be suspended nor may probation be granted except on condition that the minimum imprisonment provided in this section is served. Imposition of sentence may not be suspended. In addition, if the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked in accordance with AS 28.15.181 and the vehicle used in commission of the offense may be forfeited under AS 28.35.036. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of alcohol education or rehabilitation that the court, after consideration of any information compiled under (d) of this section, finds appropriate. The court shall require that the program notify the court within 24 hours after a person assigned to the program fails to appear for an appointment or otherwise ceases to participate in the program before completion. Upon notice that a person failed to appear for an appointment or otherwise ceased to participate in a court-ordered program before

completion the court shall immediately issue an order that requires the person to appear and show cause why sanctions should not be imposed against the person."

Renumber succeeding section accordingly.

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 4/1/86

**REQUEST**

Bill/Resolution No. : CSHB 345 (SA)  
 Title : An act to return the standard  
 for civil liability of vendors of  
 alcoholic beverages  
 Sponsor : Rules Committee  
 Requestor : House Judiciary  
 Date of Request : 4/1/86

**FISCAL DETAIL**

Agency Affected : Public Safety  
 BRU : Highway Safety Planning Agency  
 Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

<b>CAPITAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
----------------	------------	------------	------------	------------	------------	------------

<b>REVENUE</b>						
----------------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**POSITIONS :**

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

**ANALYSIS :** Attach a separate page if necessary

Prepared by : T. Michael Lewis  
 Division : Highway Safety Planning Agency

Phone : 465-4371  
 Date : 4/1/86

Approved by Commissioner : X  
 Agency : Public Safety

Date : 4/1/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

DEPARTMENT OF PUBLIC SAFETY  
POSITION PAPER - CSHB 345(SA)

SUPPORT

April 1, 1986


CSHB 345(SA) - "An Act returning the standard for civil liability of of vendors of alcoholic beverages to ordinary negligence under common law; and providing for an effective date."

ANALYSIS

This legislation would return the standard of negligence to ordinary negligence under common law, thus eliminating the necessity of proving criminal intent. Enactment of this legislation would place a greater burden of responsibility upon the servers of alcoholic beverages to ensure that persons who show signs of intoxication are no longer served drinks if they plan to drive. The real benefit of this legislation is that alcohol beverage servers will be forced to play an active role in the prevention of alcohol-related highway deaths and injuries.

PURPOSE

During calendar years 1978 through 1984, there were 456 persons killed and 8,389 persons injured in alcohol related traffic accidents. The estimated cost of alcohol related accidents during this time period was a conservative 209.6 million dollars. The purpose of this legislation is to reduce the number of alcohol related traffic deaths, injuries and societal costs in Alaska by encouraging the servers of alcoholic beverages to share in the responsibilities related to the consumption of alcohol and driving. The servers will not suffer from the enactment of this legislation, if they take prudent action by providing server training and becoming involved with other proven programs directed at reducing the incidence of drunk driving.

  
Robert U. Sundberg

Notified of 4-18 mtg;

~~Governors Task Force~~  
MEMBERS

~~2/10/81~~

✓

Rep. Don Clocksin, Chair  
Alaska House of Representatives 465-3704  
1527 H Street  
Anchorage, Alaska 99501

✓

Mr. Mac Armstrong 747-3636  
Sitka Council on Alcoholism and Other Drug Abuse  
207 Moller Street  
Sitka, Alaska 99835

✓

Mr. Banarsi Lal 452-1648  
FNA Regional Center for Alcohol & Other Addictions  
310 1/2 First Avenue  
Fairbanks, Alaska 99701

✓

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Assistant Attorney General  
Pouch KC  
Juneau, Alaska 99811

✓

Judge John Bosshard  
Box 645  
Valdez, Alaska 99686  
~~835-835-2412~~  
- 2266  
Counthouse no.

✓

Lt. Col James D. Vaden 465-4322  
Deputy Commissioner  
Department of Public Safety  
Pouch N  
Juneau, Alaska 99811

✓

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President, Mothers Against Drunk Drivers  
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Anchorage, Alaska 99501 279-MADD

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N/A (2)

Mr. Robert Winslow 277-0483(?)  
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Anchorage, Alaska 99510

✓

Ms. Dana Fabe 279-7541  
Public Defender

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Anchorage, Alaska 99501

~~333-118~~

Ms. Annie S. Bowen  
Chair, Review Board on Alcoholism 333-1489  
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Anchorage, Alaska 99504

✓ Ms. Arlene W. Nelson  
Review Board on Alcoholism 886-4462  
Box ~~3147~~ 173  
Ketchikan, Alaska 99901  
metlakatla 26

✓ Ms. Margy Johnson  
Review Board on Alcoholism 424-3272  
Box 1309  
Cordova, Alaska 99574

Mr. Leonard Nugen 376-4534  
P.O. Box 1545  
Wasilla, Alaska 99687

Mr. Craig McMahon Magistrate - no.  
P.O. Box 136  
Aniak, Alaska 99557

✓ Mr. Frank O. Williams, Jr. 966-8368  
Review Board on Alcoholism  
P.O. Box 237  
Sitka, Alaska 99835

Mr. Ralf Kavorkian  
P.O. Box 2782  
Fairbanks, Alaska 99707

✓ Ms Nancy G. Davis 543-3442  
PO Box 559  
Bethel, AK 99553

✓ Ms Curtis G. Foote 562-3212  
1841 Crescent Drive  
Anchorage, AK 99508

✓  
(907) 276-5231

(all proposals  
- incl. MADD) -

Studio

PHILIP R. VOLLAND  
ATTORNEY AT LAW

LAW OFFICES OF  
REESE, RICE AND VOLLAND, P.C.

211 H STREET  
ANCHORAGE, AK 99501

276-5231

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\*  
\* DELIVER TO: LIOANC \*  
\* \*  
\* ORIGINAL \*  
\* SENT: 09/20/85 TIME: 09:26 \*  
\* FROM: LIOSIT \*  
\* SUBJECT: FINAL STATS & REQUEST \*  
\* PRINT DATE: 09/20/85 TIME: 09:29 \*  
\* \*  
\*\*\*\*\*

TO MODERATOR FR SITKA

FINAL STATS/SITKA 1 OBSERVER/0 TO TESTIFY:

1. FRANK D. WILLIAMS, MEMBER GOV'S ADVISORY BOARD ON ALCOHOLISM  
PO BOX 2428, SITKA  
747-6086

PLEASE NOTE: MR. WILLIAMS WAS UNABLE TO ATTEND THE MORNING  
PORTION OF THE TELECONFERENCE AND WOULD LIKE TO HAVE A  
TRANSCRIPT--IF POSSIBLE BEFORE THE UPCOMING ADVISORY BOARD  
MEETING (I BELIEVE IN 2 WEEKS).

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\* ATTACHMENT \*  
\* SENT: 09/20/85 TIME: 09:26 \*  
\* FROM: LIOSIT \*  
\* \*  
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TO ANCHORAGE & JUNEAU TELECONFERENCE---I SEE THAT I SENT THIS TO  
LAXIC(ALL). RATHER THAN TO YOUR SPECIFIC ADDRESSES. HERE THEN  
ARE THE STATS FOR LYNN'S RECORDS. AND COULD SOMEONE IN  
ANCHORAGE FOLLOW UP ON THE TRANSCRIPT REQUEST? (HE IS NEEDING  
ONLY THE MORNING'S TESTIMONY.)

THANKS. ELAINE

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 \*  
 \* DELIVER TO: TCAND  
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 \* ORIGINAL  
 \* SENT: 09/19/85 TIME: 11:09  
 \* FROM: TCMAT  
 \* SUBJECT: H. ST AFFAIRS  
 \* PRINT DATE: 09/19/85 TIME: 11:10  
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\*\*\* FINAL T/C STATS\*\*\*

DATE: \_\_\_\_\_ 9/18/85 \_\_\_\_\_  
 SITE: \_\_\_\_\_ MAT-SU \_\_\_\_\_  
 SPONSOR: \_\_\_\_\_ HOUSE STATE AFFAIRS CMTE \_\_\_\_\_  
 SUBJECT \_\_\_\_\_ HB 345 - DRAM SHOP LAW \_\_\_\_\_  
 LOCAL MODERATOR \_\_\_\_\_ MARY \_\_\_\_\_

\*\*\*\*\*

TESTIFIED:

NAME/REPRESENTING	ADDRESS	PHONE
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OBSERVED:

NAME/REPRESENTING	ADDRESS	PHONE
1. ARNOLD C. PERRY	P O BOX 871643	WASILLA 99687 376-4854
2. GENE ANNAS	REP LARSON AIDE P O BOX 53	PALMER 99645
376-8628		
3. MATT FISHEL	SEN KERTTULA P O BOX 2	PALMER 99645
376-2675		

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TESTIFIED: \_\_\_\_\_ 0 \_\_\_\_\_  
 OBSERVED: \_\_\_\_\_ 3 \_\_\_\_\_  
 TOTAL \_\_\_\_\_ 3 \_\_\_\_\_

TIME START: \_\_\_\_\_ 9:00 A.M. \_\_\_\_\_  
 TIME END: \_\_\_\_\_ 4:30 P.M. \_\_\_\_\_

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 \* DELIVER TO: TCANC \*  
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 \* ORIGINAL \*  
 \* SENT: 09/19/85 TIME: 08:17 \*  
 \* FROM: PAULA GRAY \*  
 \* SUBJECT: STATS/DRAMSHOP LAW \*  
 \* PRINT DATE 09/19/85 TIME: 08:19 \*  
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\*\*\*\*\* FINAL T/C STATS \*\*\*\*\*

DATE: 9-18-85  
 SITE: FAIRBANKS MODERATOR PAULA GRAY  
 SPONSOR: HOUSE STATE AFFAIRS  
 SUBJECT: DRAMSHOP LAW/HB 345

NAME/REPRESENTING	ADDRESS	PHONE
TESTIFIED:		

OBSERVED

TESTIFIED: 0 TIME START: 9:00 AM TIME END: 4:00 PM

OBSERVED 0  
 TOTAL: 0

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\*  
\* DELIVER TO: LTCA  
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\* ORIGINAL  
\* SENT: 09/18/85 TIME: 16:27  
\* FROM: LIGSIT  
\* SUBJECT: FINAL STATS & REQUEST  
\* PRINT DATE: 09/18/85 TIME: 16:29  
\*  
\*\*\*\*\*

TO MODERATOR FR SITKA

FINAL STATS/SITKA 1 OBSERVER/0 TO TESTIFY:

1. FRANK O. WILLIAMS, MEMBER GOV'S ADVISORY BOARD ON ALCOHOLISM  
PO BOX 2428, SITKA  
747-6086

PLEASE NOTE: MR. WILLIAMS WAS UNABLE TO ATTEND THE MORNING  
PORTION OF THE TELECONFERENCE AND WOULD LIKE TO HAVE A  
TRANSCRIPT--IF POSSIBLE BEFORE THE UPCOMING ADVISORY BOARD  
MEETING (I BELIEVE IN 2 WEEKS).

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\*  
\* DELIVER TO. BARBARA NORRELL  
\*  
\* ORIGINAL  
\* SENT: 09/19/85 TIME: 15:51  
\* FROM: LIOSOL  
\* SUBJECT: FINAL STATS  
\* PRINT DATE: 09/19/85 TIME: 15:52  
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\*\*FINAL STATS\*\*

DATE: 9/13/85  
SITE: SOLDOTNA  
MODERATOR: BECKY  
SPONSOR: HOUSE STATE AFFAIRS  
SUBJECT: HB 345---DRAMSHOP LAW

NO PARTICIPANTS

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\*  
\* DELIVER TO: BARBARA NORRELL  
\*  
\*  
\* ORIGINAL  
\* SENT: 09/19/85 TIME: 15:51  
\* FROM: LIOSOL  
\* SUBJECT: FINAL STATS  
\* PRINT DATE: 09/19/85 TIME: 15:52  
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\*\*FINAL STATS\*\*

DATE: 9/18/85  
SITE: SOLDOTNA  
MODERATOR: BECKY  
SPONSOR: HOUSE STATE AFFAIRS  
SUBJECT: HB 345--DRAMSHOP LAW

NO PARTICIPANTS

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\*  
\* DELIVER TO: LTCA \*  
\*  
\* ORIGINAL \*  
\* SENT: 09/18/85 TIME: 11:57 \*  
\* FROM: LTCJ \*  
\* SUBJECT: H ST AFF, 9/18 \*  
\* PRINT DATE: 09/18/85 TIME: 15:59 \*  
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\*\*\*\*\*

TO BARBARA, HARRY IN ANCHORAGE

FROM MARTI IN JUNEAU

THE PARTICIPANT IN JUNEAU WHO WISHES TO TESTIFY IS:

JERRY REINWANT OF CHAR

\*\*\*\*\*  
\*  
\* DELIVER TO: LTCA \*  
\*  
\* ORIGINAL \*  
\* SENT: 09/18/85 TIME: 16:27 \*  
\* FROM: LIOSIT \*  
\* SUBJECT: FINAL STATS & REQUEST \*  
\* PRINT DATE: 09/18/85 TIME: 16:29 \*  
\*  
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TO MODERATOR FR SITKA

FINAL STATS/SITKA 1 OBSERVER/0 TO TESTIFY:

1. FRANK O. WILLIAMS, MEMBER GOV'S ADVISORY BOARD ON ALCOHOLISM  
PO BOX 2428, SITKA  
747-6086

PLEASE NOTE: MR. WILLIAMS WAS UNABLE TO ATTEND THE MORNING PORTION OF THE TELECONFERENCE AND WOULD LIKE TO HAVE A TRANSCRIPT IF POSSIBLE BEFORE THE UPCOMING ADVISORY BOARD MEETING (I BELIEVE IN 2 WEEKS).

*Send him copy of tapes*



Legislative  
Information and  
Teleconference Networks

LEGISLATIVE TELECONFERENCE NETWORK SIGN IN SHEET

DATE: 9-18-85  
LOCATION: ANCH. L.I.N.  
SPONSOR/SUBJECT: H.S.A.

Start time:  
End time:  
Address:  
Bin Number:

PLEASE PRINT

NAME/REPRESENTING	ADDRESS	PHONE	Here to Testify	Here to Observe
Pat Smutz / AK. State AFL-CIO	2501 Commercial DR. Anch. AK.	338 6284	✓	
Daryl Steslicki, Alyeska Resort	70 Box 249 Girdwood, AK. 99587	783-2222		✓
Bob Nestell	P.O. Box 17153 CAGLE RIVER, AK 99577	694-9372	✓	
Barbara Bailey	7521 Old Seward Hwy Pouch H-057	249-6002	✓	
George Mundell	Jensen, AK 99811	586-6207	✓	
Vicki Colman (Prevental Research Center)	2532 Durant Ave Berkeley CA 94704	(415) 486-1111	✓	
Harriet M. Sauer	5757 S. Tahiti Ln Anch AK. 99507	<del>486</del> 272-6591	✓	
Robert L. Cole	c/o DON CLOCKSIN SUITE 201A 1024 W. 67TH	274-4031		
Ron Swan	4333 Spenser Rd	243-2090	✓	
Jim McMichael	12531 Vandenberg Anchorage, AK.	345-5197		✓
Cheryl Long	2701 Raspberry Anch AK 99502	243- 7539		✓
John Bruner for Bob Williams	2550 Denali Anchorage AK 99509	276-5424	✓	
ANGELO ARTUSO / AK. LIBERTARIAN PARTY	P.O. Box 104073 ANCH. AK. 99510	561-5413.	✓	
KATHERINE Bigher	2526 ARLINGTON DR	279-6233	✓	
T.C. R. Volled	211 H ST	276-8021	✓	





Testimony on H.B. 345

by Jan Wrentmore  
Sole Proprietor  
Red Onion Saloon of Skagway

Representative Miller and Members of the Committee,

My name is Jan Wrentmore. In 1980, I renovated the historic Red Onion Saloon in Skagway, purchased a liquor license for it, and have owned and managed the bar for six years. I have worked very hard and am very proud of my business. It has become a major tourist attraction in Skagway, employs up to eight people, and other than one small grant, the revenues from the bar have totally supported the renovation of the building.

Prior to moving to Skagway, I worked in the fields of health planning and public information. I am very concerned about the problem of drunk driving and feel that my background gives me a broader perspective than just a business one.

The problem of drunk driving is a serious one and I commend this committee for addressing it. However, as with most problems that involve human behavior, it is a complex one to which there are no simple solutions. My concern with H.B. 345 is that while well-intended, it will actually worsen the problem of drunk driving at the same time that it drives many small, independently owned businesses across the state out of business.

In short, if I am going to lose my business, I would at least like to see some good accomplished.

Here are some of the statistics that I have heard that make me suspect that holding bars and bartenders liable for the actions of their customers is not addressing the real problem:

--Nationally, two-thirds of all fatal DWI accidents are caused by only 7% of drivers, primarily problem drinkers, alcoholics, and repeat offenders.

--In Alaska in 1984, drivers under 21, the legal drinking age, were responsible for 20% of alcohol-related deaths. Because it is illegal to serve alcohol to individuals under 21, these drivers were most likely drinking at home or in their cars and not on licensed premises.

--Wholesale figures tend to indicate that 80 percent of the alcohol sold in Alaska is consumed off-premises.

There is a lack of information in this area and since I am not a statistician I do not pretend have a totally accurate interpretation of these statistics, however they do tend to indicate that the problem lies with the drinker and not with the

server.

Until the attitudes of drinkers are changed, abuse and careless use of alcohol will continue. The average citizen must understand thoroughly throughout his or her consciousness that drinking and driving is illegal and intolerable. Bars share a responsibility with government to help effect this change in attitude but as the above statistics indicate they can only affect a small portion of the problem. Responsibility must ultimately lie with the individual. Making anyone else responsible for the drinker's behavior will only increase the problem. The issue of personal responsibility is more than a moral or philosophical one. Anyone who has worked in the field of alcohol rehabilitation knows that until the alcoholic takes responsibility for his or her problem, there is no improvement in their condition.

The unending string of lawsuits that will follow if H.B.345 is passed will drive most small bars out of business. The cost of a drink will be forced higher & higher. However, this will not prevent people from drinking, it will only encourage their getting together to drink in each other's homes, at private parties and in their automobiles. This phenomenon was clearly demonstrated in Skagway in 1982 when the closure of the White Pass and Yukon Railroad forced over 50% of the working population into unemployment. Bar sales dropped drastically with a corresponding increase in private home parties.

Small bars cannot afford the attorney fees to protect themselves. While the sound business practices mentioned in the bill are intended as some level of protection, they are too vague and attorneys will argue endlessly about whether or not the bartender "should have known better." In fact, it is impossible to tell when someone has reached the point at which they cannot drive. Individual tolerances vary so greatly that short of a breathalyzer or blood test, there is no way that a bartender can tell when a person needs to be cut off. Only the individual himself knows how much he has had to drink and how he is feeling.

Witnesses at the bar will have varying reports as to the actual condition of the individual and the circumstances, particularly after years have elapsed before the case goes to court. This will give attorneys ample opportunity to argue about fine points and contradictory testimony by witnesses. An example of the vagueness of the "sound business practices" is that it does not define specifically what is an adequate number of employees for a crowd of a particular size. I suspect the attorneys could argue forever about this one.

In 1984, I paid \$6,000 fee for an insurance package which included fire, premises liability, liquor liability and workers compensation. In December of that year, all of my insurance was cancelled. In the spring of 85, I was informed that the cost of a similar package was \$18,000. When I dropped my liquor liability, the remaining coverage still amounted to \$12,000. At present, I have no liability coverage whatsoever. In talking to

my insurance agent, I learned that of the bars they insure in southeast, 90percent have no liquor liability and 25 percent have no liability coverage at all. If this is the situation under existing standards of negligence, how can H.B. 345 but worsen the situation?

In its present form this bill encourages the sue-happy, deep-pocket ethic which the public is becoming increasingly disenchanted with. And, with the bars uninsured, could not the state, as the licensing agent, become the ultimate deep pocket? Has not the state neglected its responsibilities to set safety standards and regulations for this industry. Doctors, pharmacists, lawyers are all examples of licensed professions in which there are educational requirements, and tests and standards which must be met to protect the public. Even hair dressers must meet standards set by law before they can practice. Why are there no such standards for people licensed to dispense this potentially dangerous drug? When I was issued my liquor license in 1980, I received no training and was not even asked if I understood the effects of the drug I was being licensed to serve. When I searched Title 4 for guidance, all I learned was that I was not to serve 1) minors, and 2) visibly intoxicated people, whatever that might mean.

The liquor industry is and should be a regulated industry and there should be clear and unambiguous safety standards legislated up front, in statute and regulation. I hope that this committee will accept the challenge of doing this and not take the back door approach which H.B. 345 opts for by basically saying "let the courts decide." Only the attorneys will benefit from this approach as was evidenced by the preponderance of enthusiastic testimony by attorneys at last summer's teleconferenced hearing in Anchorage.

The following are my own ideas of steps that the committee could take to protect the public safety and the survival of small business such as mine at the same time.

1. Mandate training and licensing of licensees and their employees through law, not as H.B. 345 does which leaves training optional and offers it only as a defense.
2. Set other specific standards by law. For instance, define in numbers what is a reasonable ratio of customers to employees in bars of varying sizes.
3. Get better information as to who is causing the alcohol-related accidents ie. is it the social drinker in the bar or at home parties or is it the repeat offender, the chronic alcoholic who needs nothing short of long-term rehabilitation? Target this group and develop a public education program aimed at them.
4. Mandate completion of court-ordered alcohol treatment programs for alcohol offenders.

5. If you determine that the server is the problem and not the drinker, then make all servers liable under the same standard. While I believe strongly, as most Alaskans do, in personal responsibility, at least the social host provision as it is called will have the beneficial effect of emphasizing to drinkers and servers in all walks of life that drunk driving is everyone's problem.

6. Establish a sub-committee to identify other possible solutions to the problem.

Thank you for sitting through this dissertation. This issue is one which I feel strongly about not only because the survival of my business is at stake but because there are serious moral and public policy issues to be decided with regard to the safety of the public. I pledge my support and cooperation to this committee in attempting to find workable solutions to the problem.

Thank you.

*100-400, 3-10-1971  
-100-400-100*

# M A D D

MOTHERS AGAINST DRUNK DRIVERS

Fairbanks Northern Lights Chapter

P.O. Box 1167

Fairbanks, Alaska 99707-1167

(907) 456-2964

Wednesday, April 9, 1986

Honorable M. Mike Miller  
Chps. House Judiciary Com.  
Room 124, Capitol Bldg.  
Fairbanks, Ak 99811

Honorable M. Mike Miller;

Please accept this written testimony in lieu of personal testimony tonight during the 7:30 teleconference on HB 345, Dram Shop. Regrettably I am unable to secure a babysitter for this evening. I could bring my three boys to Legislative Affairs tonight, but they're all under the age of 3 years, and their presence would obviously prove a distraction for others wishing to testify!

As my correspondance to you on February 11, 1986 indicates, I am fervently in support of seeing HB 345 passed this legislative session.

Let me reiterate that MADD views this particular bill as a deterrent rather than a punitive measure for liquor license holders.

Since 1980 when Title IV statutes were re-written, the liquor industry has been enjoying unheard of protection from victim lawsuits since the word 'criminal' was inserted before the word negligence in AS 04.16.030. No other industry in the state of Alaska, and no other state in the Union requires "criminal negligence" be proved of liquor license holders in court. So why is that the case in Alaska? Has the liquor industry crossed the palms of our legislators long and hard enough to be given this extraordinary protection?

As Executive Director of Mothers Against Drunk Driving, Northern Lights Chapter, I believe I speak for our 324 members in the Interior, when I say that we expect that the time is now to return the standard of negligence to ordinary negligence under the common law for liquor license holders!

We further believe that our elected officials are mandated to pass laws to protect society. We believe that once liquor license holders are subject to the same standard of negligence as every other industry in the state of Alaska, our roads, businesses, and homes will be safer. As Alaskans we are demanding protection from harmful drug dispensing practices in our community.

We look forward to seeing your committee pass HB 345 over to the Senate, and hope that you will continue to lobby for its passage, and ultimately the safety of your constituents.

Sincerely,

*Theresa Suzanne Alexander*  
Theresa Suzanne Alexander



# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : CSHB345  
 Title : "An Act relating to civil liability of persons who provide alcoholic beverages; and providing for an effective date."  
 Sponsor : Governor Bill Sheffield  
 Requestor : Representative Katie Hurley  
 Date of Request : 2/13/86

**FISCAL DETAIL**

Agency Affected : Health & Social Services  
 BRU : Alcohol and Drug Abuse Services

Components : Alcohol Abuse Grants

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

\*to ordinary negligence under common law; and providing for an effective date. "

Prepared by: Matthew C. Felix *Matthew C. Felix* Phone: 586-6201  
 Division: Alcoholism and Drug Abuse Date: 2/13/86 *JCL*

Approved by Commissioner: John R. Poy Date: 2/20/86  
 Agency: DEPT OF H+SB

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

HOUSE STATE AFFAIRS COMMITTEE  
FEBRUARY 5, 1986

HB 345

LIST OF BACK UP INFORMATION CONTAINED IN COMMITTEE FOLDERS

PROPOSED COMMITTEE SUBSTITUTE - WORK DRAFT

HB 345

GOVERNOR'S TRANSMITTAL LETTER

MR. VICTOR COLMAN'S RESUME - EXPERT WITNESS

MR. VICTOR COLMAN'S FEBRUARY 5TH TESTIMONY ON THE PROPOSED  
COMMITTEE SUBSTITUTE AND SUGGESTED REVISIONS

MR. COLMAN'S SEPTEMBER 18TH TESTIMONY BEFORE THE HOUSE STATE  
AFFAIRS COMMITTEE

DEPARTMENT OF PUBLIC SAFETY POSITION PAPER - SUPPORTS HB 345

DEPARTMENT OF HEALTH & SOCIAL SERVICES - SUPPORTS HB 345

CURRENT STATUTES ON THE MATTER

FACT SHEET AND LETTER FROM BOB WHITMARSH OF MARSH AND  
MCLENNAN, INC.

TESTIMONY OF CHARLIE SELMAN, PRESIDENT OF CHARR

MODEL ACT LANGUAGE AND COMMENTARY ON RESPONSIBLE BUSINESS  
PRACTICES DEFENSE.

ADDITIONAL INFORMATION REGARDING THE MODEL DRAM SHOP ACT

ALASKA DRUNK DRIVING STATISTICS

LETTER FROM V. COLMAN RESPONDING TO COMMENT MADE AT FEB. 5TH  
MEETING

LETTER FROM PAT JONES

## RESUME

VICTOR COLMAN, J.D.

217 Parnassus Avenue  
San Francisco, California 94117  
(415) 665-8733

Prevention Research Center  
2532 Durant Avenue  
Berkeley, California 94704  
(415) 486-1111

Specialist: Dram Shop Liability Laws

### Current Research Projects

- (1) Legal Research Analyst, Prevention Research Center, Pacific Institute for Research and Evaluation. Help to design, conduct and supervise original research on drug and alcohol prevention policy and the law.
- (2) Associate Director, Prevention Research Group, Medical Research Institute of San Francisco. Associate Director of 18-month federally funded study. Research included the analysis of current server intervention programs, dram shop statutes and relevant case law, and the drafting of a comprehensive model dram shop law. (Grant objectives completed, final report due September 1985.)

### Book Chapters

- (1) Liquor Liability Law (Goldberg and Mosher). New York: Matthew Bender Co. (writing in progress, publication in 1986).

### Journal Articles

- (1) "Preventing Alcohol-Related Injuries: Dram Shop Liability in a Public Health Perspective," (co-authored with B. Krell and J. Mosher). Western State University Law Review, Volume XII, No. 2 (Spring 1985).
- (2) "Dram Shop Laws: A Prevention Tool." Paper presented at the 40th annual forum of the National Council on Alcoholism, April 11-15, 1984.

### Conference Presentations on Dram Shop Liability

- (1) Seminar on Dram Shop Litigation in Massachusetts and New England States, sponsored by the Massachusetts Academy of Trial Attorneys, October 12, 1984.
- (2) Seminar on Preparation and Trial of Dram Shop Cases, sponsored by the Michigan Trial Lawyers Association, June 22, 1984.
- (3) Workshop on Dram Shop Liability and Server Intervention Programs. National Council on Alcoholism, 40th Anniversary Forum, April 12-15, 1984.

### Litigation Experience

- (1) Research Assistant to Bruce E. Krell, Attorney at Law, 345 Grove Street, San Francisco, California 94102. Drafted pleadings and researched legal issues for dram shop case in 1983, which was ultimately settled for 10.5 million dollars.

LEGISLATIVE TESTIMONY  
ALASKA HOUSE STATE AFFAIRS COMMITTEE  
DRAM SHOP LIABILITY AND THE  
RESPONSIBLE BUSINESS PRACTICES DEFENSE

Victor J. Colman, J.D.  
Legal Research Analyst  
Prevention Research Center  
Pacific Institute for  
Research and Evaluation  
2532 Durant Avenue  
Berkeley, CA 94704

and Legal Consultant  
Council on Alcohol Policy  
National Association for  
Public Health Policy

James F. Mosher, J.D.  
Associate Director for  
Policy Studies  
Prevention Research Center  
Pacific Institute for  
Research and Evaluation  
2532 Durant Avenue  
Berkeley, CA 94704

and Secretary  
Council on Alcohol Policy  
National Association for  
Public Health Policy

September 18, 1985

## DRAM SHOP LIABILITY: CURRENT TRENDS AND RATIONALE

Dram shop (or server liability) refers to the potential legal liability of licensed servers of alcoholic beverages for injuries caused by their intoxicated and underage patrons. The concept of dram shop liability has had a major resurgence in the United States since 1979, concurrent with the increasing public concern and outcry over the enormous societal costs of drunk driving. Currently, thirty-nine states and the District of Columbia impose dram shop liability in some form (through statutes and state Supreme Court decisions) while other states have adopted it through lower court decisions (see attached chart for details). Numerous governmental public interest and private groups, including the Presidential Commission on Drunk Driving, support dram shop liability law as an appropriate public health approach for reducing the number of injuries and deaths caused by drunk drivers and for compensating victims.

The increased attention on the retail alcoholic beverage industry is not surprising. Research shows that 50% or more of all drunk drivers are drinking in licensed establishments just prior to the drunk driving incidents. Given the terrible costs of overconsumption and the prevalence of heavy drinking in retail establishments, the retailing of alcoholic beverages must be considered a hazardous activity, one that requires both skill and care to protect others.

Yet, despite the potential dangers involved, many alcohol beverage retailers have, until recently, paid little attention to their role in the drunk driving prevention effort. Staff are often given only the most minimal training, management has often geared their policies to maximize alcohol profits, and staff incomes are often directly tied to selling large quantities

of alcohol without regard to potential consequences. Establishments are frequently understaffed, and irresponsible promotions — such as happy hours and drink and drown nights — have been used to encourage heavy drinking. These practices, which are now being reexamined and reformed both within and outside the alcohol retail industry, would be considered intolerable for other less hazardous business activities in our society. Thus, the increased exposure of the retail industry to dram shop liability reflects the increasing awareness that retailers do have a significant societal responsibility, along with the intoxicated person, to prevent drunk driving and other alcohol-related problems emanating from their establishments.

#### DRAM SHOP REFORM: THE MODEL RESPONSIBLE BUSINESS PRACTICES DEFENSE

This, the most innovative aspect of the Model Law, will help to bring Alaska in line with what is a national trend, and, at the same time, addresses uncertainties in current law. It establishes a "responsible business practices defense", which provides a defendant a means of protection from liability if, at the time of the service of alcoholic beverages, the drinking establishment and its employees were following responsible business policies, procedures and actions. This defense encompasses the recent efforts by the retail industry, educators, governmental organizations, and others to develop server intervention programs. Server intervention refers to reforms by retail establishments which are designed to reduce the risk of serving alcoholic beverages to intoxicated or underaged persons.

The Model Responsible Business Practices Defense was drafted as part of the Model Alcoholic Beverage Retail Licensee Liability Act of 1985 to address several problems in current dram shop law and practice. The Model



related problems. The bill relies on ordinary principles of negligence to impose liability on licensees who conduct their business without due care for the safety of others. It does not constitute an unusual burden on the industry; rather, it relies on legal liability principles that affect all businesses and citizens conducting business in our society. It is a public health and safety measure that reflects community standards and expectations.

The Model Dram Shop Act provides clear guidelines for defining the licensees' responsibility, acting as a strong incentive for industry-wide reform. Continued research and evaluation of server intervention programs should be conducted with the passage of The Model Dram Shop Act so that the business practices most conducive to prevention will become increasingly standardized. Business that can show adherence to the standards will be able to justify lower insurance premiums, an additional economic incentive for compliance. In short, the Model Act will trigger appropriate action by licensees, researchers, program developers and evaluators, insurance companies, citizen's groups and others to prevent the carnage on our highways and the terrible toll alcohol plays in our society. It also provides just compensation to drunk driving victims, appropriately placing the financial burden on not just the intoxicated tortfeasor, but the irresponsible sellers of alcoholic beverages who have profited from the injury-producing incident. The Model Dram Shop Act therefore represents an important public health measure that deserves support from health and safety constituencies, concerned citizens and policymakers.

## APPENDIX A

### THE MODEL DRAM SHOP ACT: SUMMARY

PURPOSE OF ACT: (1) To prevent intoxicated traumatic injuries, death, and other damages; (2) To provide compensation to those suffering as a result of intoxication-related incidents.

PLAINTIFF: (who can sue): Any person who suffers injury, except that the intoxicated adult is not permitted to recover for self-inflicted injuries. (Note that several jurisdictions have allowed suits by intoxicated minors. The Model Act takes no position on this issue.)

DEFENDANTS (who can be sued): Any alcohol beverage retailer (and their employees and agents), who, at the time of furnishing of the alcohol, was required by law to hold an alcoholic beverage license. Social hosts, under the present language in Section 5, remain exempt from civil liability.

ACTS GIVING RISE TO LIABILITY: The negligent service of alcoholic beverages to a minor or an intoxicated person.

DEFENSES: (1) Any defenses generally applicable to tort actions under California law; (2) Responsible Business Practices Defense.

### THE MODEL DRAM SHOP ACT: QUESTIONS AND ANSWERS

(1) DOES THE MODEL ACT BENEFIT THE DRUNK DRIVER?

No. Intoxicated wrongdoers are not "off the hook." They are still responsible, criminally and civilly, for the injuries that they cause. The Model Act requires the intoxicated wrongdoer to share the fault with the negligent or reckless provider of alcohol.

(2) ISN'T THE MODEL ACT A MAKE-WORK PROJECT FOR PLAINTIFF'S ATTORNEYS?

No. The Model Act, in the interests of public health, is designed to encourage responsible business practices by servers of alcohol in providing a defense to those licensees who can demonstrate such responsible practices.

(3) CAN UNLICENSED FURNISHERS OF ALCOHOL (SOCIAL HOSTS) BE HELD LIABLE UNDER THE MODEL ACT?

No. Only those defendants who are required to have a license can be held liable under the present language in Section 5 of the Model Act.

(4) IS THE LIABILITY OF A LICENSEE FOR SERVING MINORS OR INTOXICATED PERSONS A NEW CONCEPT IN CIVIL RESPONSIBILITY?

No. Dram shop liability is based upon ordinary principles of tort law, which have been applied by numerous courts across the country to unreasonable serving practices by retail licensees. This type of responsibility has also been recognized by criminal laws, which provide for criminal liability if licensees serve minors or intoxicated persons. Every business and private citizen has a general legal responsibility to act responsibly in preventing foreseeable harm to others.

(5) DOES THE MODEL ACT UNFAIRLY IMPOSE A STANDARD OF CARE FOR COMMERCIAL SERVERS OF ALCOHOL THAT IS NOT EXPECTED FROM OTHER TYPES OF RETAIL BUSINESSES?

No. The Model Act utilizes the same tort standards that other businesses are subject to, and takes into account the difficulties that face licensed purveyors of alcohol. The Model Act recognizes that the sale of alcoholic beverages requires the exercise of skill and care to protect the public due to the hazardous nature of this business activity.

(6) WHAT ARE RESPONSIBLE BUSINESS PRACTICES?

Section 10 of the Model Act lists illustrative management and server practices and policies that a jury can consider in determining the merits of a responsible business practices defense. These practices are well-recognized within the alcoholic beverage industry, and are already adhered to by many responsible licensed establishments. For example, evidence of responsible management policies, procedures, and actions would include encouraging persons not to become intoxicated if they consume alcoholic beverages on the defendant's premises, and to promote the availability of non-alcoholic beverages and foods.

(7) CAN THE LICENSEE AVOID LIABILITY BY ATTENDING A "CRASH COURSE" OR SERVER TRAINING, EVEN IF HE ACTS IRRESPONSIBLY AT THE TIME OF SERVICE?

No. The licensee must act responsibly at the time of the service of alcoholic beverages. The fact that a licensee attended a training course might actually be used against him if he failed to follow the procedures and practices learned in the training.

### CURRENT STATUS OF SERVER LIABILITY LAWS

Statutory Liability: 24 states

Common Law Liability (court-made law): 29 states

-Lower courts only: 6 states

-Common law only: 15 states

+ District of Columbia

Total Number of States with Server Liability: 39 states

+ District of Columbia

Total Number of States without Server Liability: 11 states

### OTHER FACTS

- Eleven (11) states have enacted new server liability statutes since 1971, nine (9) of these in the last five (5) years.

- Fifteen (15) states have established common law server liability in the last five (5) years.

TESTIMONY BEFORE STATE AFFAIRS  
COMMITTEE OF THE ALASKA STATE HOUSE  
REGARDING HB 345 -- DRAM SHOP LIABILITY

Victor J. Colman  
Legal Research Analyst  
Prevention Research Center  
Pacific Institute for  
Research and Evaluation  
2532 Durant Avenue  
Berkeley, CA 94704  
(415) 486-1111

and Legal Consultant  
Council on Alcohol Policy  
National Association for  
Public Health Policy

James F. Mosher  
Associate Director  
for Policy Studies  
Prevention Research  
Center  
Pacific Institute  
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Evaluation  
2532 Durant Avenue  
Berkeley, CA 94704

and Secretary  
Council on Alcohol  
Policy  
National Association  
for Public Health  
Policy

February 5, 1986

## INTRODUCTION

Our names are Victor J. Colman and James F. Mosher, Legal Consultant and Secretary, respectively, for the Council on Alcohol Policy of the National Association for Public Health Policy. As lawyers, we have had more than ten years combined experience in the study of public policies affecting the prevention of alcohol-related problems. We recently completed a federally-funded research study on server intervention and dram shop liability, culminating in the drafting of a model dram shop act and a detailed analysis of the business practices of the alcoholic beverage retail industry.

Our testimony today concerns the importance of HB 345 as one part of a comprehensive legislative approach to alcohol problems prevention policy. We are, as a society, reexamining our attitudes and norms regarding alcohol consumption. This reexamination recognizes that, according to the U.S. Surgeon General, alcohol is associated with more than 200,000 deaths annually; that drunk driving is the leading cause of death among our youth; and that alcoholism and associated diseases represent the number one drug problem in our society.

As part of this growing new awareness, there has been increased attention given to the alcoholic beverage retail industry. Research shows that 50% or more of all drunk drivers are drinking in licensed establishments just prior to the drunk driving incident. Given the terrible costs of overconsumption and the prevalence of heavy drinking in retail establishments, the retailing of alcoholic beverages must be considered a hazardous activity, one that requires both skill and care to protect others.

DRAM SHOP REFORM: THE RELEVANCE OF RESPONSIBLE BUSINESS PRACTICES

This, the most innovative aspect of HB 345, will help to bring Alaska in line with what is now a national trend, while at the same time directly address uncertainties in current law. It establishes that the adherence of a licensee (or his agent or employee) to responsible business practices shall be relevant in determining if the person served was intoxicated or a minor. This broadened evidentiary focus encompasses recent efforts by the retail industry, educators, governmental branches, and others to develop server intervention programs. Server intervention refers to reforms by retail establishments which are designed to reduce the risk of serving alcoholic beverages to intoxicated or underaged persons.

The noninclusive list of management policies incorporated into HB 345 reflects an evaluation of the best server intervention programs in the country. It also provides an explicit guide to courts and juries for evaluating an establishment's adherence to a reasonable standard of care to protect public health and safety.

Comments/Suggested Changes

Section 1 AS 04.21.020 (1) Service to minors

Topic: This section outlines the liability for service to underaged drinkers. There are other situations that this section could cover, however.

Suggestion: Add a subsection (a):  
"Proof of service of alcoholic beverages to a minor without request for identification shall form a rebuttable presumption of negligence."

Comment: Because the present dram shop bill is phrased in the negative it might be appropriate to enact affirmative language that can provide real incentive for licensees to systematically check identification.

Suggestion:

Add a subsection (b):

"Service of alcoholic beverages by a defendant to an adult person who subsequently serves a minor off the premises [or who is legally permitted to serve a minor] does not constitute service to the minor unless a reasonably prudent person in like circumstances would know that such subsequent service is reasonably likely to occur."

Suggestion:

Add a subsection (c):

"A defendant does not have a duty to investigate whether a person being served alcoholic beverages intends to serve the alcoholic beverages to other persons off the premises."

Comment:

These last 2 subsections deal with the situation where a minor has an adult purchase alcohol for him/her. The licensee is not under a duty to actively investigate this possibility, and is only charged with a legal duty when s/he knows that this is the situation. See Section 6 of the Model Act.

Section 04.21.020 (2) Service to drunken persons

Suggestion:

Insert the word "intoxicated" for "drunken."

Comment:

"Drunken" is a phrase which may connote that the patron is an alcoholic. Dram shop liability is meant to deter service to anyone who may become intoxicated, whether they are alcoholics or not. Furthermore, Section 2 of AS 04.21.020 (c) uses the word "intoxicated." To achieve consistency "intoxicated" should be used throughout the entire statutory scheme.

Section 2 AS 04.21.020 (b) Determining negligence

Suggestion:

Insert "intoxicated" for "drunken." (See previous Comment.)

AS 04.21.020 (c) Responsible business practices

Suggestion:

This subsection is too long to insert into one paragraph. The Model Act divided these parts into subsections; it is recommended that a similar structure be implemented.

Suggestion:

Delete the last ten words of subsection (b) so that the subsection ends with: "... shall be relevant."

Comment:

The last ten words are excess verbiage and make it unclear whether evidence of responsible business practices are applicable to service to both intoxicated persons and minors.

Section 3 AS 04.21.080 (b)(7) Defining drunken person

Suggestion: Insert "intoxicated" for "drunken."

Suggestion: Other words to use instead of "observable and reasonably discoverable" might be: "...who, at time of service, exhibits those visibly apparent, outward manifestations of behavior..."

Comment: The phrase "... observable and reasonably discoverable ..." may set up an ambiguous standard which is not as forceful and distinct as "... visibly apparent ..." The phrase "... reasonably discoverable outward ..." indicates that servers have an obligation to hunt out their customers and look for outward manifestations, when such servers are only under a legal duty to observe signs of intoxication at time of service.

Suggestion: In addition to defining intoxicated person, it is recommended that the definition of intoxication, as defined in Section 3 (d) of the Model Act, be inserted as well.

Comment: Utilizing a definition of "intoxication" along with defining "intoxicated person" will help the courts and juries distinguish between intoxicated acts and serving someone who is an intoxicated person.

Other Suggestions

- (1) To add Section 14 of the Model Act and make it absolutely clear that this statutory scheme is the exclusive remedy against licensed defendants. This approach does not prevent plaintiffs from suing social hosts under a common law theory of recovery.
- (2) To add a server training component (see Appendices A and B). Comprehensive server training involves training of staff personnel, along with management training and extensive policy review and development. Appropriate management policies will set the tone of the establishment's responsible serving practices. Enacting the Responsible Server Training Act, which has already been introduced into the California State Senate as SB 1595, is an important and complementary step, along with dram shop liability, in developing alcohol control policy which can aid in preventing drunk driving and other alcohol-related problems.
- (3) To amend Section 04.16.030. Sale or disposition of alcoholic beverages to drunken persons
  - a. change "drunken" to "intoxicated"
  - b. change "criminal negligence" to "negligence"

Comment: Dram shop liability is an action in tort and it is highly anomalous to impose a criminal negligence standard upon a civil cause of action. No other states in the nation have used this standard in dram shop statutes or in the common law.

### CONCLUSION

HB 345 is an important public health bill, which relies on ordinary principles of negligence to impose civil liability on licensees who conduct their business without due care for the safety of others. It does not constitute an unusual burden for the retail industry; rather, HB 345 simply relies upon legal liability principles that affect all merchants and citizens conducting business in our society. HB 345 represents an important public health measure that deserves support from health and safety constituencies, concerned citizens and policymakers.

DEPARTMENT OF PUBLIC SAFETY  
POSITION PAPER - HB 345

FEBRUARY 3, 1986

"An Act returning the standard for civil liability of vendors of alcoholic beverages to ordinary negligence under common law; and providing for an effective date."

The Department of Public Safety supports this legislation.

ANALYSIS

This legislation would return the standard of negligence to ordinary negligence under common law, thus eliminating the necessity of proving criminal intent. Enactment of this legislation would place a greater burden of responsibility upon the servers of alcoholic beverages to ensure that persons who show signs of intoxication are no longer served drinks if they plan to drive. The real benefit of this legislation is that alcohol beverage servers will be forced to play an active role in the prevention of alcohol-related highway deaths and injuries.

PURPOSE

During calendar years 1978 through 1984, there were 456 persons killed and 8,389 persons injured in alcohol related traffic accidents. The estimated cost of alcohol related accidents during this time period was a conservative 209.6 million dollars. The purpose of this legislation is to reduce the number of alcohol related traffic deaths, injuries and societal costs in Alaska by encouraging the servers of alcoholic beverages to share in the responsibilities related to the consumption of alcohol and driving. The servers will not suffer from the enactment of this legislation, if they take prudent action by providing server training and becoming involved with other proven programs directed at reducing the incidence of drunk driving.

RECOMMENDED BY:

T. Michael Lewis

T. Michael Lewis, Program Director  
Alaska Highway Safety Planning Agency

DATE:

February 3, 1986

APPROVED BY:

Robert J. Sundberg

Robert J. Sundberg  
Commissioner  
Department of Public Safety

DATE:

2/4/86

**STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : 4B 345  
 Title : An act to return the standard  
 for civil liability of vendors of  
 alcoholic beverages  
 Sponsor : Rules Committee  
 Requestor : Governor  
 Date of Request : 4/1/85

**FISCAL DETAIL**

Agency Affected : Public Safety  
 BRU : Highway Safety Planning Agency  
 \_\_\_\_\_  
 Components : \_\_\_\_\_  
 \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

<b>CAPITAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
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<b>REVENUE</b>						
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**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**POSITIONS :**

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

**ANALYSIS :** Attach a separate page if necessary

Prepared by : T. Michael Lewis *TM* Phone : 465-4371  
 Division : Highway Safety Planning Agency Date : 2/3/86

Approved by Commissioner : [Signature] Date : 2/11/86  
 Agency : Public Safety

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

POSITION PAPER

HOUSE BILL 345

"An Act returning the standard for civil liability of vendors of alcoholic beverages to ordinary negligence under common law; and providing for an effective date."

The Department of Health and Social Services supports this legislation.

Analysis

The Standard of negligence would be returned to ordinary negligence under common law, by a court decision with this legislation. This standard would bring Alaska in alignment with nineteen (19) other states and return the Alaska statute to its original intent prior to 1980. The civil liability under this legislation is well established in law as early as the mid 1700's. The ordinary negligence standard for alcohol dispensation was also well established in Alaskan law, before the 1980 changes.

Reasonable and responsible vending of alcoholic beverages by licensees must be encouraged by statute, regulation, and public policies to insure the health, and welfare of the general population. The application and subsequent issuance of a license to dispense alcohol assumes awareness by the licensee of the effects of the drug alcohol. Furthermore, the designated vendor must realize the systemic relationship of alcohol consumption, over-consumption and the drinker's subsequent action, especially as it applies to potential criminal acts. This awareness and understanding must be reinforced by consistent knowledge of possible civil liability for the results of unreasonably dangerous acts of the licensee. The level of a licensee's liability for unreasonable failure to control over consumption on the licensee's premises must be commensurate with the level of liability that other businesses face for unreasonably dangerous activity.

Purpose

It is accepted medical knowledge that individuals under the influence of central nervous system depressant drugs (alcohol) may not use reasonable judgment under ordinary environmental conditions. Furthermore, this class of drug effects the motor skills that become increasingly more critical as society becomes more technically advanced. Several recent research studies have suggested that alcohol abuse prevention policy requires the development of many complementary strategies that do not focus exclusively on individual drinking behavior. The present law embodies a policy of encouragement rather than prevention. There is a possibility, under present statute, that a vendor may perceive a higher level of protection from liable action. This perception may undermine the intent of regulations and statutes that recognize special duties for alcohol dispensing. Under these circumstances, prevention through the proper operation of an establishment is less likely.


To place total liability for harmful acts on those who are injured by the drugged individual, and/or the individuals that have reached their drugged condition under the supervision of a state licensed vendor, seems contrary to logic. Not only the threat of regulatory sanction, but a knowledge of possible liability to those who may be injured, must force licensed vendors to dispense alcohol in a prudent manner and to permissible classes of individuals. In addition, the possible liability must not be placed beyond reach of the harmed public by an unreasonable level of proof requirement.

When drinking problems are analyzed from a contextual or environmental standpoint, and not merely as manifestations of alcoholism or alcohol abuse, it becomes clear that the particular harms that result are preventable without focusing on the individual drinking behavior itself. In fact the structural, environmental, systems manipulation offers more promise of prevention than concentrating on drugged individual motivations that are unresponsive to reason. Punitive efforts focused on changing the drunk drivers habits are an example of the limited effect of individual approaches to preventing alcohol related accidents or fatalities.

Many, if not most, drunk driving accidents injure more than the drunk driver. "Motivated" intervention before an incident occurs, offers a obvious prevention strategy. This intervention has inherent conflict with financial incentives found in commercial vending establishments. If the licensees are aware that the level of negligent proof is so difficult that recourse by the injured public is not generally expected, the financial incentives for serving liquor more easily override the other incentives to intervene. As a prevention strategy, "dram shop" legislation becomes much more effective when this balance is maintained. The change would merely expose liquor vendors to the same standards of responsibility that are applied to almost all other commercial and, for that matter, non-commercial activities.

There is a wealth of data showing a distinct correlation between per capita consumption and a host of health and social ills. In a contemporary social structure where nearly everyone drives or rides in an automobile, the most obvious result of drinking and driving is death and injury from accidents. No one change in legislation should be considered an all encompassing solution. Nevertheless, HB 345 brings the statute back into balance in a historically reasonable approach to the problem of injuries and deaths attributed to alcohol abuse.

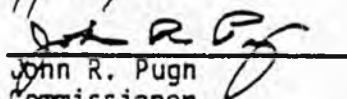
Recommended by:

  
Matthew C. Felix  
Coordinator  
Office of Alcoholism/  
Drug Abuse

Date:

4/12/85

Approved by:

  
John R. Pugn  
Commissioner  
Dept. of Health &  
Social Services

Date:

4/12/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 345  
 Title: "An Act returning the standard civil liability of vendors of alcoholic beverages"  
 Sponsor: Governor Bill Sheffield  
 Requestor: Representative Don Clocksin  
 Date of Request: 4/6/85

FISCAL DETAIL

Agency Affected: Health & Social Services  
 Program Category Affected: Alcohol & Drug Abuse Services  
 BRU, Program or Subprogram(s) Affected: Alcohol Abuse

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary to ordinary negligence under common law; and providing for an effective date."

Prepared By: Matthew C. Felix *Matthew Felix*  
 Division: Alcoholism and Drug Abuse

Phone: 586-6201  
 Date: 4/12/85

Approved by Commissioner: Jan R. Poy  
 Agency: \_\_\_\_\_

Date: 4/12/85 *JCC*

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor

**Marsh &  
McLennan**

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Marsh & McLennan, Incorporated  
2550 Denali Street, Suite 1400  
P O Box 4-A  
Anchorage, Alaska 99509  
Telephone (907) 276-5424

January 31, 1986

To: Interested Legislators

Re: HB 345

Following is a list of Insurance Underwriters, Managers and Surplus Lines Brokers who agree that a change from criminal negligence to simple negligence in liquor liability will basically eliminate liability insurance availability for any operation that sells liquor.

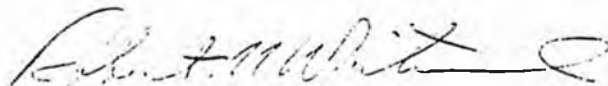
They have all agreed that you may contact them directly for their specific input.

Dave Sever: Cigna Companies	561-1400
Wayne Gardner: Alaska National Insurance	248-2642
Dave Poisson: Industrial Indemnity	561-6000
Chuck Beytebiere: Alaskan General Agency	338-7148
John Flemma: Preferred General Agency	276-5676
Roy Hollinger: M. J. Hall	279-9693

The above names represent the majority of liquor related insurance written in Alaska. If you need additional contacts, we can also supply the names of "outside" underwriters who have taken the same stance.

The basic position is simple. If the law is changed to simple negligence, not only will liquor liability insurance not be available, simple premises liability will not be available. Without this insurance, the liquor establishments will eventually face closure.

This bill will hurt Alaska if passed. It will cause a reduction in business, loss of jobs, and severe economic loss to Alaskan citizens who suffer injury. There are better solutions to the liquor problems.



Robert M. Whitmarsh  
Marsh & McLennan, Inc.

# Marsh & McLennan

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Marsh & McLennan, Incorporated  
2550 Denali Street, Suite 1400  
P O Box 4-A  
Anchorage, Alaska 99509  
Telephone (907) 276-5424

## HB 345

Marsh & McLennan, Inc. made an informal survey of clients' records and has used that information to draw the following conclusions:

- Fact 1. Currently, only one market will consider writing liquor liability for the average risk in Alaska.
- Fact 2. Currently, only one market will consider writing premises liability for the average risk if liquor liability is not also written through another carrier.
- Fact 3. All markets have stated that they will cancel existing premises liability if HB345 is passed.
- Fact 4. The only available liquor liability market will withdraw if HB345 is passed.
- Fact 5. Approximately 60 to 65% of all licensed premises are leased. All leases reviewed require premises liability to be carried.
- Fact 6. Most lending institutions now require premises liability before they will make building loans.

Considering the above facts, the results that could occur if HB345 is passed are as follows:

1. Within one year, most licensed premises will not be able to purchase liquor liability or premises liability.
2. If they are unable to purchase this coverage, they will default their leases and/or loans.
3. Many will be closed due to the defaults.
4. Many will voluntarily close to avoid losing their assets in an uninsured claim.

5. Those that remain open will only be open until a large claim causes them to file bankruptcy.

The end result of this is that this bill could effectively eliminate many jobs in Alaska. The lack of licensed premises could affect tourism. "After Hours" establishments would flourish - without insurance, without paying taxes.

If the intent of HB345 is to protect the Alaska citizens, the result would be the reverse. The regulation of drinking would be virtually eliminated.

Since the mandatory auto insurance statutes do not require insurance until after an accident, the victim of a drunk driver would have almost no recourse.

WHAT can be done to protect Alaskans from the alcohol abusers? Please consider the following:

1. Make auto insurance truly mandatory for all autos.
2. Make liquor liability excess of all valid and collectible auto insurance.
3. Make hosts responsible in the same manner as licensed premises.
4. Impose strong penalties against drunk drivers.
5. Impose strong penalties against "After Hours" establishments.

HB345 will work against Alaskans. Support a bill to help the situation, not one that will make it worse.

Robert M. Whitmarsh

February 4, 1986

04.20.010

§ 04.21.010

ALCOHOLIC BEVERAGES

§ 04.21.020

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### Chapter 21. General Provisions.

Section

- 10. Municipal regulation
- 20. Civil liability of persons providing alcoholic beverages
- 30. Responsibility of licensees, agents and employees

Section

- 40. Sales on federal reservations
- 50. Proof of age
- 60. Warehousing of alcoholic beverages
- 70. Enforcement
- 80. Definitions

**Sec. 04.21.010. Municipal regulation.** (a) A municipality may adopt ordinances governing the barter, sale, and consumption of alcoholic beverages within the municipality as necessary for the orderly conduct of the business of selling alcoholic beverages within the municipality. An ordinance adopted under this section may not be inconsistent with this title or regulations adopted under this title.

(b) If, as a result of an election held in accordance with AS 04.11.502 in a municipality, the board is prohibited from issuing, renewing, or transferring a license between holders or locations or if the importation of alcoholic beverages is prohibited in the municipality, the municipality may adopt an ordinance making the sale or importation of alcoholic beverages a misdemeanor. The ordinance may not be inconsistent with this title or the regulations adopted under this title.

(c) A municipality may not impose taxes on alcoholic beverages except (1) property taxes on alcoholic beverage inventories and (2) sales taxes on alcoholic beverage sales. (§ 4 ch 131 SLA 1980)

Am. Jur. 2d and C.J.S. references. —  
45 Am. Jur. 2d Intoxicating Liquors § 27.  
48 C.J.S. Intoxicating Liquors § 193.

**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 19 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 04.21.050(b), which indicates that the person is 19 years of age or older; or

(2) the alcoholic beverages are provided to a drunken person in violation of AS 04.16.030. (§ 5 ch 131 SLA 1980)

Title 5  
Amusements and Sports

Title 3  
Agriculture and Animals

Alcoholic Beverages

**Revisor's note.** — This section was slightly rearranged by the revisor of statutes, pursuant to AS 01.05.031(b), for clarity.

**Cross references.** — As to responsibility of licensee for violations, see AS 04.16.150. As to responsibility of licensees, agents and employees, see AS 04.21.030.

**Editor's note.** — The cases cited in the note below were decided under former AS 04.10.130 and 04.15.020.

**Civil liability under former law.** — The common-law rule as to the non-liability 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, 38 F. Supp. 900 (D. Alas. 1950). See *Vance v. United States*, 355 F. Supp. 756 (D. Alas. 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*, Sup. Ct. Op. No. 2148 (File No. 4406), P.2d (1980), overruling *Barton v. Lund*, Sup. Ct. Op. No. 1423 (File No. 2726), 563 P.2d 875 (1977).

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*, Sup. Ct. Op. No. 2148 (File No. 4406), P.2d (1980).

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

**Am. Jur. 2d and C.J.S. references.** — 45 Am. Jur. 2d Intoxicating Liquors §§ 553 — 614.

48 C.J.S. Intoxicating Liquors §§ 430 — 485.

**Sec. 04.21.030. Responsibility of licensees, agents and employees.** The licensee has a duty to exercise that degree of care which a reasonable person would observe to insure that a business under his control is lawfully conducted. This duty of the licensee includes, but is not limited

(1) to insuring the compliance by agents or employees with this title and regulations adopted under this title, including acting with reasonable diligence to determine that his agents or employees are advised of the provisions of this title and the regulations adopted under this title, either by securing the agent's or employee's written acknowledgement of posted instructions or otherwise; and

(2) to insuring the compliance of the premises with public health, fire, and safety codes and ordinances of the state or municipality having jurisdiction. (§ 4 ch 131 SLA 1980)

**Cross reference.** — As to responsibility of licensee for violations, see AS 04.16.150.

**Sec. 04.21.040. Sales on federal reservations.** (a) A wholesaler of alcoholic beverages may sell alcoholic beverages to a person who does not have a license under this title who has a fixed place of business on land in the state maintained by the United States government as a military or naval reservation, a national park, or other federal reservation. A sale may be made under this section only if the purchaser is a ship's service store, officers club, officers mess, post exchange, or similar organization. The wholesaler may deliver

**Sec. 04.16.020. Solicitation of alcoholic beverages.** (a) A person may not pay or receive from another a salary, percentage or commission to solicit or encourage a patron of licensed premises to purchase alcoholic or other beverages for consumption by a person other than the patron.

(b) A licensee, his agent, or employee may not knowingly permit a person to loiter within or about premises licensed under this title for the purpose of begging or soliciting a patron or visitor to purchase alcoholic or other beverages for the person who is begging or soliciting. (§ 3 ch 131 SLA 1980)

Former law construed. — See Alaska Alcoholic Beverage Control Bd. v. Malcolm, Inc., Sup. Ct. Op. No. 208 (File No. 363), 391 P 2d 441 (1964).

Am. Jur. 2d and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquor §§ 237, 298. 48 C.J.S. Intoxicating Liquors § 267.

**Sec. 04.16.030. Sale or disposition of alcoholic beverages to drunken persons.** A licensee, his agent, or employee may not with criminal negligence

- (1) sell, give, or barter alcoholic beverages to a drunken person;
- (2) allow another person to sell, give, or barter an alcoholic beverage to a drunken person within licensed premises;
- (3) allow a drunken person to enter and remain within licensed premises or to consume an alcoholic beverage within licensed premises;
- (4) permit a drunken person to sell or serve alcoholic beverages. (§ 3 ch 131 SLA 1980)

Am. Jur. 2d and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors §§ 265, 266.

48 C.J.S. Intoxicating Liquors §§ 257, 258.

**Sec. 04.16.040. Access of drunken persons to licensed premises.** A drunken person may not knowingly enter or remain on premises licensed under this title. (§ 3 ch 131 SLA 1980)

**Sec. 04.16.045. Obligation to enforce restrictions in licensed premises.** A licensee, his agent or employee may not permit the consumption of alcoholic beverages by any person within licensed premises unless it is permitted by the license. (§ 3 ch 131 SLA 1980)

Revisor's note. — This section was originally enacted as AS 04.16.041 but was renumbered by the revisor of statutes.

Cross reference. — As to responsibility of licensee for violations, see AS 04.16.150.

