

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

3688 HSTA HB 345 (FILE 1) - HB 345 (FILE 2) 56

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: John R. Poy
Agency: _____

Date: 4/12/85 *JCC*

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor

Commissioner of Health, Education and Budget

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. : CS4B 345 (SA)
 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						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

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 : 2/3/85

Approved by Commissioner : [Signature]
 Agency : Public Safety

Date : 2/11/85

Distribution (by Agency preparing fiscal note) :

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

Marsh & McLennan

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.

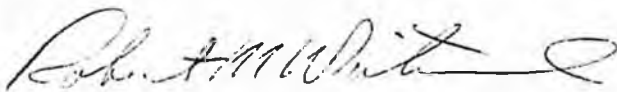
They have all agreed that you may contact them directly for their specific input.

Dave Sager: 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, 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

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ch. 129, SLA

§ 04.21.010

ALCOHOLIC BEVERAGES

§ 04.21.020

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 3
Agriculture and Animals

Alcoholic Beverages

Annual Contents Card

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 04.10.180 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, 88 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 §§ 297, 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.

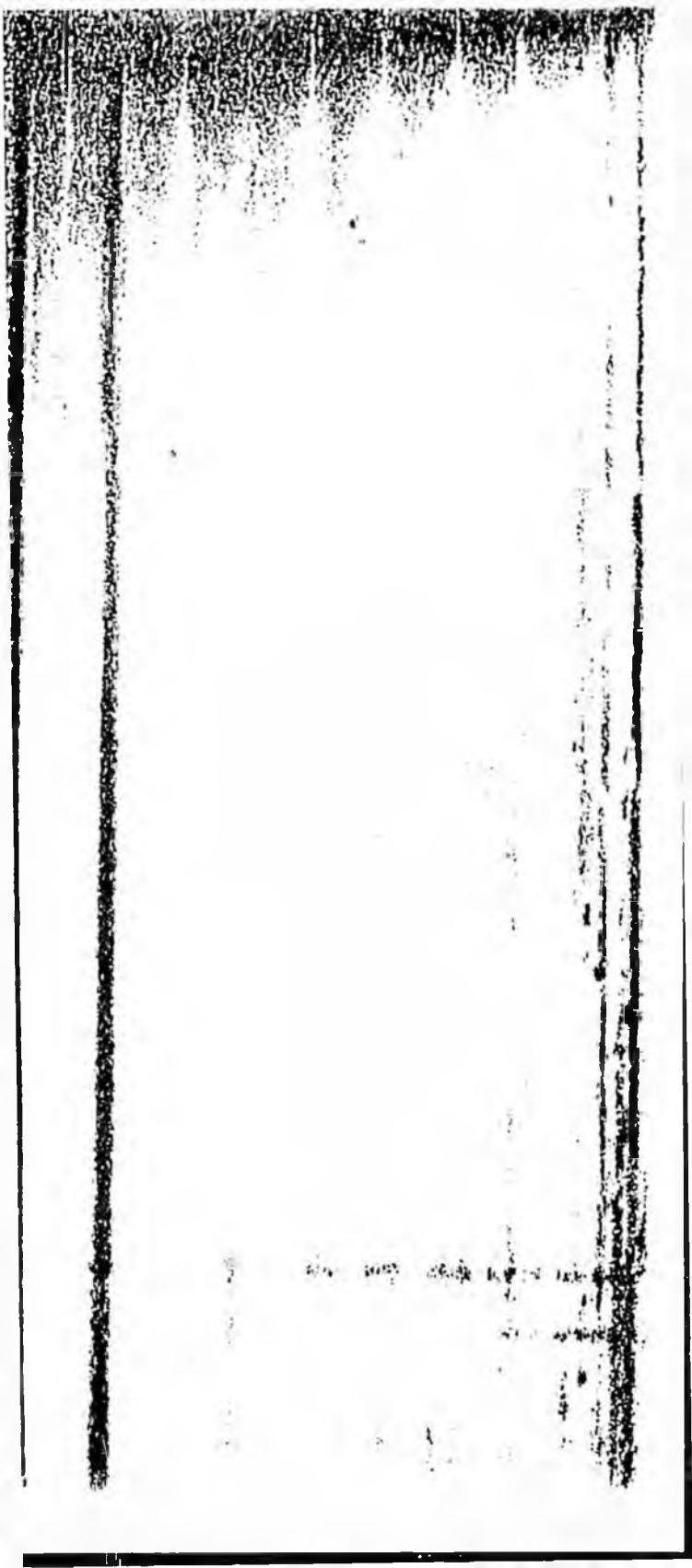
48 C.J.S. Intoxicating Liquors §§ 257, 258.

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.



TESTIMONY OF CHARLIE SELMAN

President, CHARR

Presented to the House State Affairs Committee
February 5, 1986 - Juneau, Alaska

Madam Chairman, members of the Committee, I greatly appreciate the opportunity to appear before you again to testify on the latest version of House Bill 345. In past testimony, CHARR members have raised some of the problems which this legislation poses to the retail liquor industry in the State. Rather than rehash those concerns again today, we would like to instead direct your attention to several key public policy questions related to House Bill 345 which we believe must be addressed before you move the bill from Committee. And finally, we will offer a proposal which we hope the Committee will consider.

CHARR is strongly supportive of the basic concern which has triggered this legislation: getting the drunk driver off Alaska's streets and highways. Therefore, our questioning of the bill is not in regard to its intent, but is instead focused on what we believe is the pivotal public policy question facing the Committee: will passage of House Bill 345 truly have any effect on reducing the number of drunk drivers on Alaska's highways?

This bill essentially focuses on one narrow issue: changing the present criminal negligence standard to an ordinary negligence standard. This aspect of the bill traces its origin back to Governor Sheffield's Task Force on Drunk Driving which was appointed about 18 months ago. The Task Force recommended the criminal negligence standard change to the Governor in its

report. However, there were other key policy recommendations in the Task Force report which are not included in the bill which is before you today. We believe the Committee should carefully review each Task Force recommendation, not just the one which deals with changing the negligence standard.

We also believe this Committee must fashion provisions in House Bill 345 which apply both policies and sanctions in an equitable, even-handed manner to all Alaskans who serve alcohol, whether in a commercial establishment, or in a social setting.

If the public policy objective of this legislation is to reduce or eliminate drunk driving, then all persons--including the social host--who serve alcohol to a driver who is subsequently involved in an alcohol-related accident should be subject to the same liability and sanctions. The family of a person who is injured or killed by a drunk driver who became intoxicated while at a friend's home will find it difficult to understand why the social host is insulated from lawsuits by this bill, while the bar owner and package store operator are not. Therefore, we strongly urge this Committee to carefully review the Task Force's recommendation regarding social host liability.

The need to review the social host issue becomes evident when one reviews Alaska's alcohol sales data. According to information which CHARR has received from a major wholesaler, only 28 percent of the liquor, 20 percent of the wine and 28 percent of the beer sold in Alaska is sold "on premises," which generally means consumed in a bar, restaurant or similar

establishment. If alcohol consumption on the ferries, airlines, military bases and a limited license category is subtracted, "on premise" sales drop to 18 percent for liquor, 15 percent for wine, and 19 percent for beer. Therefore, it appears that more than 80 percent of the alcohol consumed by Alaskans takes place in the home or other social settings. By excluding social host liability from this bill, the Committee could be turning its back on a significant aspect of Alaska's drunk driving problem.

In addition, we urge the Committee to address the following policy questions related to the latest version of House Bill 345:

1. If the bill passes in its present form, how will it affect the liquor industry's ability to obtain liability insurance?
2. What degree of legal protection accompanies the model business practices provisions in the Committee substitute, and have there been any court decisions which clearly define that protection?
3. Does information exist which can tell us if the public policy objectives of the bill will be attained? For example, how many lives will be saved, what property savings will occur, etc. if the bill becomes law?
4. Will this legislation encourage a multitude of lawsuits, and if so, what will its effect be on the State's already overloaded court system?
5. Will industry employees be more vulnerable to liability lawsuits, and if so, how will this affect industry's ability to attract and hold competent help?
6. Will the State, as the licensing agent, assume liability under the ordinary negligence standard, and if so, will it become the "deep pocket" when a person injured by a drunk driver cannot recover damages against an uninsured person who served the alcohol?

The list of unanswered policy questions goes on, but in the interest of time I will stop here.

As I stated earlier, the dram shop issue is a difficult one. A recent edition of the television show "20/20" had an excellent segment on the complexities of this issue. We have contacted ABC News to obtain a copy of the segment and should have it within 10 days. We would be happy to share the video tape with you when it arrives. It is the best overview of the issue which I have seen, and I urge you to take time from your busy schedule to view it.

Madam Chairman, in closing CHARR would like to offer a suggestion for the Committee's consideration. As I have noted, we believe the latest version of House Bill 345 raises as many policy questions as it answers. We realize the full Committee has a limited amount of time to wrestle with the issues raised in this bill. Therefore, we recommend that a small working group--either a subcommittee made up of this Committee's members or a group with expertise in the alcohol regulatory business, such as the ABC Board--be appointed to address the unanswered questions which revolve around this bill.

We realize that some may view this recommendation as a delaying tactic; it is not. Everyone familiar with legislative procedure knows that committee referrals can be waived, particularly at the end of the session when bills often magically sprout legs and gallop through the House and Senate. We also know there is an interest by key members of the House leadership to have this bill move, and if they want it to move, it will.

Therefore, our suggestion should be viewed for what it is: a request to have the major public policy questions and issues

raised by House Bill 345 addressed in a substantive manner. Hopefully, the end product of this effort will be legislation which possesses integrity, common sense and which will truly serve the public interest.

Thank you.

Testimony on H.B. 345

by Jan Wrentmore
Sole Proprietor
Red Onion Saloon of Skagway

Representative Hurley 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 coverge 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.

Model Act

SECTION 10: RESPONSIBLE BUSINESS PRACTICES DEFENSE

(a) A defendant's service of alcoholic beverages is not negligent or reckless if the defendant, at the time of the service, is adhering to responsible business practices. Responsible business practices are those business policies, procedures and actions which an ordinarily prudent person would follow in like circumstances.

(b) The service of alcoholic beverages to a person with actual or constructive knowledge that such person is intoxicated or a minor constitutes an unreasonable business practice. Evidence of responsible business practices pursuant to this section is relevant to determining whether a defendant who does not have actual knowledge should have known of the person's intoxicated condition or age.

(c) Evidence of responsible business practices may include, but is not limited to, comprehensive training of defendant and defendant's employees and agents who are present at the time of service of alcoholic beverages and responsible management policies, procedures and actions which are in effect at the time of such service.

(d) For the purposes of service to intoxicated persons, evidence of comprehensive training includes, but is not limited to, the development of knowledge and skills regarding the responsible service of alcoholic beverages and the handling of intoxicated persons. Such training shall be appropriate to the level, kind, and type of responsibility for each employee and agent to be trained.

(e) For the purposes of service to intoxicated persons, evidence of responsible management policies, procedures, and actions may include, but is not limited to, those policies, procedures and actions which are implemented at time of service and which:

- (1) encourage persons not to become intoxicated if they consume alcoholic beverages on the defendant's premises;
- (2) promote availability of nonalcoholic beverages and food;
- (3) promote safe transportation alternatives other than driving while intoxicated;
- (4) prohibit employees and agents of defendant from consuming alcoholic beverages while acting in their capacity as employee or agent;
- (5) establish promotions and marketing efforts which publicize responsible business practices to the defendant's customers and community;
- (6) implement comprehensive training procedures;
- (7) maintain an adequate, trained number of employees and agents for the type and size of defendant's business;
- (8) are written in a policy and procedures handbook, or similar format, and made available to employees;

- (9) establish a standardized method for hiring qualified employees; and
- (10) reprimand employees who violate employer policies and procedures.

(f) For the purposes of service to minors, evidence of responsible business practices may include, but is not limited to those listed in subsection (e) and the following:

- (1) management policies which are implemented at the time of service and which insure the examination of proof of identification [as established by state law] for all persons seeking service of alcoholic beverages who may reasonably be suspected to be minors;
- (2) comprehensive training of employees who are responsible for such examination regarding the detection of false or altered identification.

(g) Proof of responsible business practices shall be based on the totality of the circumstances, including but not limited to: the availability of training programs and alternative public transportation; the defendant's type and size of business; and defendant's previous contacts with the intoxicated person or minor who is served. Proof of the existence or omission of one or more elements of responsible business practices does not constitute the proof or disproof of the responsible business practices defense.

Commentary

Overview

The responsible business practices defense is a central provision of the Act. It provides a defendant a means of protection from liability if it can be shown that, at the time of the service of alcoholic beverages, the defendant was following those business practices which an ordinarily prudent person would follow with the same duty under like circumstances. The defense reaffirms the defendant's duty not to serve intoxicated persons and minors. Subsection (b) makes this clear by providing that when a defendant serves a person with actual knowledge that such person is a minor or intoxicated, the defense does not apply. Evidence of responsible business practices is needed to determine whether a defendant who did not have actual knowledge should have known of the person's intoxicated condition or age. Nor does the defendant have to pursue this defense in order to avoid liability. If the plaintiff cannot meet his or her burden of proof that the defendant served an intoxicated person or minor knowing or in circumstances where the defendant should have known of the intoxication or the underaged status, then liability will not attach, whatever business practices were in existence at the time of

over →

the service. Thus, the defense does not create a new or alternative cause of action to those stated in Sections 6 and 7.

There are, however, numerous instances in which a defendant did not know of the person's intoxication, and the issue of liability rests on whether he should have known of this fact. The most common issue concerns whether the person's intoxication was "obvious" or "apparent." Frequently there is conflicting evidence regarding the obvious signs of intoxication, the number of drinks served and the other circumstances of the sale. Plaintiffs may be placed at an initial disadvantage due to the possible lack of evidence to make a *prima facie* case against a particular defendant; defendants in turn are put at a disadvantage if such a case is made due to the difficulty in recreating the particular circumstances of the sale and the very subjective and uncertain nature of the "obvious intoxication" standard. In such cases, where factual determinations are difficult to make, the responsible business practices defense may take on particular importance for the fact-finder in determining whether due care was exercised.

While this defense recognizes the difficulties in fulfilling the defendant's duty not to serve intoxicated persons and minors, it also provides that the defendant, as a member of the legitimate business operation, is in a position to take practical steps in the operation of that business to reduce the risk of harm to others. The Act's intent is to provide an incentive to adopt appropriate procedures, practices and actions in order to reduce those risks. Thus, the Act provides possible means of protection when an intoxicated person or minor is served, but only if the business is conducted in a responsible and prudent manner.

The defense is a relatively new concept in dram shop law, but not unprecedented. The North Carolina statute provides that evidence of "good practices" in cases involving service to minors, may be used as a defense.¹ In addition, business practices have been found relevant in some cases on the issue of negligence without any explicit standard in the state's dram shop statute.²

Responsible business practices encompass a broad range of business activities. The section provides a noninclusive set of practices to provide guidance to the fact-finder. Subsection (g) is critical in interpreting the intent of this listing. As stated in that provision, the defense may be available even if some of the practices (or others not listed) have not been met. The particular type of business, the existence of adequate resources

for implementation, particularly of training programs and the defendant's community, may all have an input on how a reasonable person would act in defendant's circumstances. Thus, the "totality of the circumstances" must be considered in applying the section to particular facts.

One possible objection that has been raised regarding the responsible business practices defense concerns the potential increase in liability of the licensee if certain business practices are adopted too enthusiastically (a "good samaritan" rule objection). This section is drafted to avoid this problem. The defendant has a duty to take reasonable steps to avoid serving intoxicated person and minors. This section, as well as Section 6, provides a basis for balancing this duty against the defendant's need to conduct a legitimate business and the difficulties of recognizing intoxicated persons. Thus, a defendant who decides not to take reasonable steps to fulfill this duty does so at his or her own peril. The duty remains the same. If a defendant takes actions that go beyond such reasonable steps, it provides not an increase in liability, but additional support for a responsible business practices defense. In addition, Section 6 provides specific limitations on the defendant's duty to investigate behavior of persons outside the defendant's premises.

Training

The section provides that responsible business practices include comprehensive training of defendant and defendant's employees and agents regarding responsible service of alcoholic beverages and handling of intoxicated patrons. Numerous training programs are now in existence, but they are at a preliminary stage of development and vary widely in format, duration and content. The section does not attempt to define responsible service of alcoholic beverages in recognition of this experimental stage of development, and recognizes the need for the fact-finder to judge the training programs in light of community and business standards at the time of the service in question.

A critical variable, which is included in the section, concerns the development of both knowledge and skills regarding the responsible service of alcoholic beverages and the handling of intoxicated persons. This reflects the need to learn interaction skills in order to make the identification of intoxicated persons easier and to make interventions with patrons who drink heavily more effective. The inability to implement training procedures renders a training program useless. Several training pro-

1. N.C. GEN. STAT. § 18B-122 (1983).

2. See, e.g., *Ewing v. Clover Leaf Bowl*, 20 Cal. 3d 389, 572 P.2d 1155, 143 Cal. Rptr. 13 (1978).

(beginning in October 1983) and included three data components. In the first phase, all state appellate and supreme court dram shop cases were systematically reviewed and analyzed with the aid of a specially-designed computer program. The second phase consisted of detailed interviews with practicing attorneys for both plaintiffs and defendants primarily in three case-study states (Massachusetts, California and Michigan). The interviews were designed to determine how dram shop cases are currently being litigated, with particular attention to the role, if any, of server intervention programs and to the process of settling claims. Finally, an inventory of current server intervention programs was developed. During this final phase, program components and training topics were examined, which provided the data from which the model "responsible server defense" was developed (see below)⁵

The research established several key findings. The case law review revealed that the legal system was not establishing clear guidelines for applying dram shop liability provisions or concepts. The states vary widely in the type and extent of liability that is being imposed and, frequently, there is great uncertainty as to when liability will apply. Even in states where the legislature has acted to establish statutory guidelines, cases have reached conflicting interpretations of the provisions. This uncertainty has had a major impact on the litigation strategy of the parties, encouraging settlements of questionable claims, high insurance costs, and considerable debate and uncertainty in the legal community.

The research also found that courts and attorneys have ignored the recent efforts by the retail industry, educators, and others to develop server intervention programs as a means for the industry to meet its responsibility to the public safety. "Server intervention" refers to reforms in the mode of operation by retail establishments designed to reduce the risk of serving alcoholic beverages to intoxicated or underaged patrons and to promote alternative forms of transportation (other than drunk driving) for patrons who do become intoxicated. Such programs are be-

5. Detailed findings of the research are reported in the following: Mosher, *supra* n.2; Mosher, J., "Server Intervention: Present Status and Future Prospects," paper presented at the Research Workshops on Alcohol and the Drinking Driver sponsored by the National Institute on Alcohol Abuse and Alcoholism and the National Highway Traffic Safety Administration, Bethesda, Maryland, (May 1984); Mosher, J., "Server Intervention: A Guide to Implementing Local and State Programs," paper presented at a conference entitled "Control Issues in Alcohol Abuse Prevention II: Impacting Communities," Charleston, South Carolina, sponsored by the South Carolina Commission on Alcohol and Drug Abuse and other organizations, (Oct. 1984). Colman, V., Krell, B., and Mosher, J., "Preventing Alcohol-Related Injuries: Dram Shop Liability in a Public Health Perspective," *W.S.U. L. Rev.* (forthcoming); Colman, V., "Dram Shop Laws: A Prevention Tool," paper presented at the 40th Annual Conference on the National Council on Alcoholism, Detroit, Michigan, (Apr. 1984); Harrington, C., "Illustrative Dram Shop Settlement and Jury Verdict Cases: Further Evidence that Server Liability Is Expanding?" Prevention Research Group (Dec. 1984).

ing instituted throughout the country and consist of two types of trainings. Serving staff (e.g., bartenders and cocktail waitresses) are trained to recognize intoxicated persons and minors, and to intervene effectively. Management personnel are trained to adopt procedures to support the server intervention process, by promoting alternative nonalcoholic beverages and foods, alternative transportation programs and other business reforms. Efforts to formalize the training curricula are now in process.⁶

This industry response to public pressure represents a first step toward establishing a definition of negligent service of alcoholic beverages within a dram shop context. Current law rests primarily on whether a patron was served while "obviously intoxicated," a subjective standard that has led to uncertainty in practice. By focusing the issues so narrowly, the courts have left out an evaluation of the management and server practices which led to the service in question. These practices can be evaluated by a fact-finder to determine whether a reasonable person in like circumstances could have acted more prudently, the classic definition of negligent behavior.

The Model Dram Shop Act is designed to address these problems. It provides a structured, comprehensive guide for drafting a dram shop law or deciding a dram shop case and addresses the uncertainties in current law that have been identified in the course of the research project. It also establishes a "responsible practices" defense as a means to coordinate the legal handling of dram shop cases and the recent development of server intervention programs. As such, it is a resource tool, based on systematic and thorough research, for those developing a comprehensive dram shop liability policy once a decision that such a policy is appropriate in a given state or court. Thus, it is not meant as a vehicle for advocating the imposition of liability but rather as a means to maximize its beneficial public health impact once the decision to impose liability has been made.

A first draft of the Model Act was circulated for comment in January 1985 to over 150 interested persons, including representatives of industry, citizen leaders, trial attorneys, health professionals, and government officials. Twenty responses were received, many of which offered detailed critiques and suggestions. The Act was revised based on the critiques and further study, and a final version of the Act was com-

6. See, Mosher, *supra* n.5; Peters, J. (ed.), *Proceedings of the First Northeast Conference on Alcohol-Server Liability*, January 12-13 1984, Boston, Mass. (Northampton, MA: Intermission Ltd., 1984). Intermission Ltd., a non-profit organization, is the leading institute developing such trainings and coordinating the efforts of all training programs. Services include consultations, the newsletter *Responsible Beverage Service*, trainings and a resource library. For further information, contact In-

DRUNK DRIVING FACTS

ALCOHOL-RELATED FATAL ACCIDENTS, ALASKA, 1976-82

YEAR	FATAL ACCIDENTS	INVOLVED ALCOHOL	PERCENT INVOLVING ALCOHOL	PERCENT ACCIDENTS DUE TO DRIVERS AGE 17-20		FATALITIES	
				FATAL/ALCOHOL INVOLVED	INVOLVED	TOTAL	ALCOHOL RELATED
1982	98	51	52.0%	9%	17%	107	53
1981	90	66	73.3%	21%	25%	100	76
1980	86	58	67.4%	17%	12%	95	64
1979	81	59	70.4%	34%	33%	91	69
1978	112	54	48.2%	not available	not available	127	not available
1977	130	64	49.2%	available	available	136	available
1976	111	67	60.4%	"	"	124	"
TOTAL	708	419	59.2%			780	

ALCOHOL ACCIDENTS BY AGE GROUP, ALASKA, 1979

AGE	NUMBER OF ALCOHOL ACCIDENTS	PERCENT ACCIDENTS DUE TO AGE GROUPS	PERCENTAGE OF LICENSED DRIVERS
15-18	220	11.3%	3.4%
19-29	922	47.2%	36.5%
30-39	407	20.9%	27.8%
40-49	238	12.2%	15.2%
50-59	134	6.9%	10.3%
60+	31	1.6%	2.5%
TOTAL	1952	100%	100.0%

ARREST FOR DRIVING UNDER THE INFLUENCE, BY SEX, ALASKA, 1979-82

	1979		1980		1981		1982	
MALE	2599	86.5%	2240	87.0%	3012	86.6%	3962	86.4%
FEMALE	453	13.5%	335	13.0%	469	13.4%	626	13.6%
TOTAL	3006	100%	2575	100%	3481	100%	4588	100%

ARRESTS FOR DRIVING UNDER THE INFLUENCE, ADULT/JUVENILE STATUS ALASKA, 1979-82

	1979		1980		1981		1982	
ADULT	2922	97.3%	2584	97.0%	3384	97.3%	4465	97.3%
JUVENILE	84	2.7%	91	3.0%	97	2.7%	123	2.7%
TOTAL	3006	100%	2575	100%	3481	100%	4588	100%

This information has been prepared in the public interest by the State Office of Alcoholism and Drug Abuse, Department of Health and Social Services. Information was provided by the Department of Law and the Highway Safety Planning Agency.

NOTICE

In a further effort to crack down on drunk drivers in Alaska, the last legislature made important changes in the Driving While Intoxicated laws. Effective October 17, 1983 (12:01 a.m., Pacific Standard Time), the law provides:

- If you are in a traffic accident or are suspected of having committed a moving traffic violation you may be required to take an on-the-spot preliminary breath examination. Refusal to take the preliminary breath examination is an infraction, punishable by a fine of up to \$300.
- If you are convicted for the first time of D.W.I. you will be sentenced to a minimum of 72 consecutive hours in jail and a fine of \$250.
- If you are arrested for D.W.I. you must take a breathalyzer or intoximeter test. Refusal to take a breath test is a separate crime, punishable upon a first conviction by a minimum of 72 consecutive hours in jail and a fine of \$250.
- If you are convicted of D.W.I. or refusal to take a breath test and you have a previous conviction for either a D.W.I. or a refusal within the past 10 years you will be sentenced to a minimum of 20 consecutive days in jail and a fine of \$500.
- If you are convicted of D.W.I. or refusal to take a breath test and you have two prior convictions for either D.W.I. or refusal within the past 10 years you will be sentenced to a minimum of 30 consecutive days in jail and a fine of \$1,000. Additionally, your motor vehicle may be permanently forfeited to the state.
- The police must immediately seize your driver's license if you are arrested for D.W.I. and you refuse to take a breath test or your breath test shows a breath alcohol reading of .10 or higher. A temporary driver's license, valid for seven days, will be issued to you. Your license is automatically revoked by the Department of Public Safety unless, within the seven day period, you file a written request for an administrative hearing challenging the license revocation. A revocation for a first offense is for 90 days; for a second offense, one year; and for a third offense, 10 years.
- If your license was revoked after conviction for D.W.I. or refusal, and you drive during the revocation period, you may be prosecuted for the crime of driving while license revoked. Upon conviction, if your license revocation was for a first offense, you will be sentenced to a minimum of 30 days in jail and a \$500 fine; if your license revocation was for a second or subsequent offense, you will be sentenced to a minimum of 90 days in jail and a fine of \$1,000. You will also lose your license for an additional year.
- If you are a driver who has been involved in an accident which resulted in injury to another person, a sample of your blood may be drawn to be analyzed for alcohol content without your consent.

Important Notes

- If you are suspected of drunk driving, the new law requires you to take two separate breath tests, a preliminary breath examination and a breath alcohol test. The preliminary breath examination is conducted on-the-spot with a small, battery operated, portable device. The breath alcohol test is conducted at a police station with an intoximeter or breathalyzer test instrument. These testing devices measure the alcohol concentration in your breath.
- Your driver's license will be automatically revoked by the Department of Public Safety for refusal to take a breath test, or for a breath test that shows a breath alcohol reading of .10 or higher. Your license remains revoked whether or not you're found guilty.
- If your driver's license is revoked for a first offense D.W.I., you may ask for a limited license, but only for the last 60 days of the required 90 day revocation period. If you refuse to take a breath test, or have been convicted before, you cannot get a limited license.

Penalties for Driving While Intoxicated and Refusal to Take a Breath Test AS 28.35.030 and AS 28.35.032 - Class A Misdemeanor

	Fines		Imprisonment		Driver's License Revocation	Possible Loss of Motor Vehicle
	Minimum	Maximum	Minimum	Maximum	Minimum	
1st Offense	250	5,000	72 hours	1 year	90 days	No
2nd Offense*	500	5,000	20 days	1 year	1 year	No
3rd Offense*	1,000	5,000	30 days	1 year	10 years	Yes

- For purposes of 2nd or 3rd offenses, prior convictions for either D.W.I. or refusal will be considered. Prior convictions in Alaska as well as anywhere else in the United States will be considered as long as the conviction occurred within the previous 10 years. A conviction for both D.W.I. and refusal arising out of the same incident will be considered a single prior conviction.

Driving While Intoxicated means operating a motor vehicle with a breath alcohol content of .10 or higher, or operating a motor vehicle when the driver's ability is impaired by alcohol or a depressant, hallucinogenic, stimulant or narcotic drug.

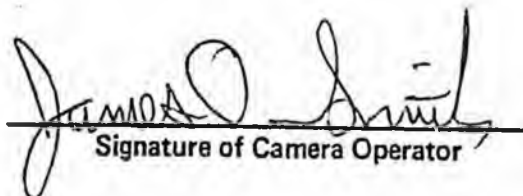
If you are driving while intoxicated and you cause an accident which results in injury or death to another, you may be charged with assault in the first, second, or third degree, negligent homicide, manslaughter, or second degree murder. These offenses are all felonies and may result in lengthy prison terms.

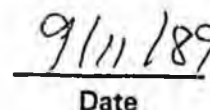


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Signature of Camera Operator


Date

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(2 of 3)

HOUSE STATE AFFAIRS COMMITTEE

Bill Number 345 Title Alcohol / Lib. Day Date Rec'd 4/1/85

Fiscal Note	Position Paper	Date requested	From	Amount	Date Rec'd Note	Date Rec'd Paper
			LOW	0	✓	
			WESS	0	✓	
			Pub Safety			✓

CONTACTS

BACKUP LIST

Clocksin : 8005 basic force

Gous letter 3/29/85

Glen Mackney : MADA

Low F-note

George Mundell : office of Alcoholism

WESS pos papers

MATI Felix 6-6201

WESS F-note

Jerry Runward 6-8966 CHAR 4/1 left mssgs!
90542

Public Safety pos papers

HEARING INFORMATION

tc public hearings 4/18/85

NOTES:

4/12 backup coming, Felix & Froehlich working on testimony
6/7/85 N. Lange discussion in Anchorage

FINAL ACTION



REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

MAJORITY LEADER

1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-4031

WHILE IN JUNEAU:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3704

Honorable William Sheffield
Governor
State of Alaska
Pouch A
Juneau, Alaska 99801

September 25, 1985

Dear Governor Sheffield:

I am aware of the national problems with liability insurance coverage for nearly all classes of risk groups, and many of the ways those problems are manifested in Alaska. We have seen drastically increased insurance rates and abruptly terminated policies for school districts, day care centers, bars, nurse-midwives, fishing boats, etc.

I am also aware of the meeting in Anchorage at which Mr. George, of the State Division of Insurance, a multitude of insurance industry executives and numerous attorneys representing the industry and defendants in liability cases called for a fundamental restructuring of the Tort Law system in Alaska and nationally, as "the" solution for the liability insurance problem. This restructuring entails major restrictions in the ability of victims to recover fully for their losses.

I am further aware of your formation of a "task force," to which Mr. George will be the principal staff, which will study the liability insurance matter from the State's perspective and suggest to you "reforms" that will help solve the problems of liability insurance coverage in Alaska.

I am concerned that your task force may not adequately consider the impact of proposed "reforms" in Alaska's Tort Law system on the rights and privileges of victims who are the plaintiffs in liability cases. I am equally concerned about the apparent lack of focus on the role of government regulatory agencies in enforcing various life, health and safety codes in order to reduce the risks to the public, diminish the exposure of insured groups to risk, and thereby to reduce losses. Put very simply, I doubt that the answer to our problem lies solely in rolling back government regulation of health and safety or restricting the rights of victims of negligence.

I am also concerned that your chief Administration official on insurance has apparently already made a judgement as to what's needed to solve the problem. He apparently feels that defects in the judicial system and the governmental regulatory structure are the problem, not the industry

itself. I would remind you that the Division of Insurance is supposed to protect consumers, not the industry. See AS 21.36 and Northern Adjusters, Inc. v. Dept of Revenue, 627 P. 2d 205 (Alaska 1981).

Nationally, some questions have been raised regarding whether the so-called insurance "crisis" has been artificially created by the industry. I've enclosed two articles, and I'm gathering more information.

I can certainly appreciate the problems that all groups of insureds are having in acquiring liability insurance at a reasonable rate. I am certain, however, that the sole solution to this does not reside in limiting victim's access to recovery in the Courts or in eliminating protection of public health and safety. I do not believe the public will support such exclusive "solutions" once they understand their impact. Such "solutions" strike at the heart of individuals' ability to be compensated for harm incurred through no fault of their own and to be protected from injury or loss they cannot control. The tort liability system provides substantial incentives to business to operate safely, at little or no cost to government. As you know, this this argument is at the heart of your proposal in HB 345 to make bar owners liable for negligence in the serving of alcohol.

I would like some assurance from you that the concerns of victims will be represented on your task force, and that attention will also be given by your task force to the role of enforcement of life, health and safety codes in reducing risk exposure and losses by groups of insured. Your assistance in bringing a balanced approach to the perspective of your own working group on this matter will save us all alot of unnecessary future aggravation when bills to rectify the problems of liability insurance come before the Legislature for consideration.

Thank you for your attention to this matter.

Sincerely,



Representative Don Clocksin
House Majority Leader
Alaska House of Representatives

DC:je encl.

Consumer advocates decry huge insurance rate hikes

By JONATHAN EIQ
Los Angeles Times

WASHINGTON — Midwives, day care centers, engineers and entire cities are losing their insurance policies or suffering huge premium hikes because insurers are fabricating an industrywide economic crisis, consumer advocates charged Thursday.

Consumer activist Ralph Nader said the dramatic step taken by insurers "in order to get high premiums from millions of Americans . . .

reflects a major economic crisis, but one that is manufactured by a very wealthy insurance industry."

Insurance companies nationwide are looking to increase profits and reduce malpractice payments in light of the industry's smallest profit margin in years. And, activists charged at a news conference, they are accomplishing this by canceling policies, failing to renew them or by increasing premiums as much as 1,000 percent.

Dennis Connolly, vice president

for liability at the American Insurance Association, disputed Nader's charges, saying insurers are being forced to drop riskier clients because they simply cannot afford the huge malpractice and negligence liabilities being assessed by courts. Insurers are not greedy, Connolly said, but simply trying to survive.

Jim Dinegar, a Washington representative for the Independent Insurance Agents of America, agreed that the industry cannot survive the huge lawsuits such as those brought

against companies that allegedly cause environmental hazards. If legislators fail to offer more protection for insurers, Dinegar said, companies that rely on insurance protection might fold.

But Bob Hunter, president of the National Insurance Consumer Organization, said insurers were overreacting. The insurance industry, which he said is already showing signs of recovery, could easily reverse its fortunes with small premium increases and without imperil-

ing businesses that rely on their insurance, Hunter said.

Some 1,400 members of the American College of Nurses-Midwives already have lost their malpractice insurance, as have many engineers who perform pollution-related work.

Moreover, the government of the Virgin Islands could soon be without its two principal insurers, and even tram operators at Mount Rushmore could be forced out of business by threats to their coverage, Hunter said.

Nader claims insurance industry manufacturing crisis

By JUDI HASSON

United Press International

WASHINGTON — Consumer advocate Ralph Nader told Congress Thursday the insurance industry is a "cash cow" that is manufacturing a phony crisis by canceling liability policies for daycare centers, nurse-midwives and other services.

Nader told a House commerce subcommittee the insurance industry is betting it can get mammoth rate

hikes by refusing to sell policies or demanding excessive premiums to sectors of the economy it says are high risk.

"The insurance companies are using judges and juries as their favorite whipping boys, blaming verdicts and settlements for their troubles," Nader said. "The insurance industry should be more than a cash cow. It should be a safety bull to reduce the basis for claims."

The hearing on the problems of getting insurance coverage was called by Rep. James Florio, D-N.J., who said the crisis in property casualty insurance, the inability of some to get coverage for loss or damage to their property, is widespread and growing fast.

Among its victims are architects, midwives, hotels, taverns, ski resorts and day care centers, which have had a hard time getting insur-

ance because of cases involving employees who abused children.

The expense and scarcity of insurance coverage has forced many businesses to close or greatly increase the cost for basic services, according to witnesses.

Robert Hunter, president of the National Insurance Consumer Organization, said Maryland obstetricians recently faced a 70 percent insurance hike, and malpractice in-

surance for lawyers and architects jumped 300 to 900 percent.

Day care centers, if they can get insurance at all, are facing a 200-500 percent increase in their rates, Hunter said.

The industry, however, told the congressional hearing it had to suspend coverage of certain areas because it was suffering huge losses, but it is working to find a solution to the problem.

JUNEAU EMPLOYE 4-3-85

WORKING / 345

'Dram shop' bill deserves your support

Despite its two false starts, we hope the third time is a charm for Gov. Bill Sheffield's "dram shop" bill.

If adopted by the Legislature, the bill would allow persons involved in accidents with drunken drivers to more easily sue bar owners for negligence. In addition, the bill changes the test for negligence to make it easier to prove. Under current law, "criminal negligence" must be proved, which is all but impossible.

Though introduced and pulled twice, if the bill that debuted this week were passed it would provide a valuable tool for clamping down on alcohol abuse in Alaska. Much progress has been made in our state, especially in toughening the drunken driving statutes. But those statutes essentially place all of the responsibility on the individual.

In some cases, however, a bar could be considered an accomplice if the bartender had continued to serve a customer who was already obviously intoxicated. If that customer then climbed into a car and killed someone, there would be plenty of blame to go around. Not only would the individual be negligent but the bar would, too—under the new legislation.

That only makes sense, since giving a drink to someone who is already obviously drunken is just like cocking a gun. It not only hurts the individual, it transforms him into a threat to himself and the public.

It should be noted that the majority of bar owners and bartenders are responsible individuals who would not serve an obviously intoxicated customer. Unfortunately, though, there are those who try to bend, if not break, the law.

That, combined with the inadequate enforcement of the state's liquor laws — there are five enforcement officers for the entire state — makes it all too easy for an accident to happen. Too often, when a drunken driver is involved, someone gets hurt or killed.

It has happened in Juneau, Anchorage and almost every community in Alaska. A drunken driver has killed a pedestrian, a passenger in another car or a passenger in his car. It is a tragedy when that happens, but that tragedy is made even worse if that driver was knowingly served 10 drinks in a bar before driving.

In the past there has been resistance to a better "dram shop" bill from the liquor lobby. Any fears that lobby has, however, would be minimized by its members refusing to serve customers who are obviously intoxicated.

We urge you to contact your legislators in support of this bill.

PRC

PREVENTION RESEARCH CENTER

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

RECEIVED
OFFICE OF ALCOHOLISM
AND DRUG ABUSE

JUN 13 1985

George Mundell
Regional Program Coordinator
Office of Alcoholism and Drug Abuse
Pouch H 05F
Juneau, Alaska 99811

June 7, 1985

Dear Mr. Mundell:

My name is Victor Colman, an associate of Jim Mosher's. I was substantially involved in the drafting of the Model Dram Shop Act, and have been following the legislative processes that the Act has undergone these past sessions. California was one state where the Act had wide dissemination and interest, and part of the Act was introduced into the state Assembly, but the proponents of the bill pulled out just before the first committee hearing for lack of support. Other states have also taken more than a token interest in the Act, including Oregon, Hawaii, and Florida.

Thank you for forwarding the Task Force materials, the industry comments were most enlightening. I hope that the Model Act will get a full briefing in your state. Please keep us abreast of any such developments. Of course, if any additional background material is needed in the liquor liability area, feel free to call or write me. One possible issue is the rising insurance premium costs when dram shop is instituted or enlarged. As we mention in the commentary to the Model Act, a premium should be reduced if the licensee can show compliance with responsible server practices, usually by undergoing a bona fide server training course. There now exist several insurance companies who are giving discounts for such responsible servers. Innovative ideas like this are excellent retorts to the same old arguments against the imposition of civil liability.

Please keep in touch.

Sincerely,



Victor Colman, J.D.
Legal Research Analyst

cc. Jim Mosher, J.D.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2515

DIVISION OF INSURANCE

January 28, 1986

Honorable Katherine T. Hurley
Alaska State House of Representatives
P.O. Box V
Juneau, AK 99811

Attention Navette Bower

Dear Representative Hurley:

Re: "Liquor Liability"

Thank you for the opportunity to review the "model act" regarding liability of retail license premises. From the copy you provided to me, I am unable to tell if this particular "model act" is one also promulgated by the Uniform State Law Commissioners, who promulgate most uniform and model acts. If it is not, promulgation by that body always appears to give impetus to enactment.

Liability for serving liquor is not new, and the fact that something over three-fourths of the states "tamper" with common law liability is evidence that the system has not worked very well for some time. The effect is that legal liability connected with licensed premises is the center of a now visible ongoing controversy which has been around legal circles for decades, in fact, a couple of centuries.

Insurance companies writing liquor liability business in Alaska have run into the expected wide variety of "results." Even though it is my understanding we have about 600 licensed premises, that number is still very small in dealing with insurance matters. Insurance coverage is based on "the law of large numbers," and, as in so many areas, Alaska's situation just does not supply these numbers. To worsen matters, it is not typical for insurance companies to break out their losses on liquor liability as opposed to other and more general types of liability. We have recently undertaken efforts to secure more definite information on liquor liability losses.



Official Business

Alaska State Legislature

House of Representatives

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99801

(907) 485-4883

To: Mr. John George, Director
Division of Insurance

From: Nevette Bowen, Committee Staff *Nevette*
House State Affairs Committee

Date: November 6, 1985

Subject: Dram shop - liability insurance

As per our conversation please review the model act, particularly the Responsible Business Section and determine whether or not it has the potential of reducing insurance premiums for Alaska licensees who can show compliance.

Also, has the cost of insurance for the liquor liability actually decreased since 1980 and if so can it be attributed to the change in Alaska's dram shop statute?

Please return the Model Act to the committee after you have had a chance to review it as we are very short on copies.

Thank you very much for your time and effort.

Enactment of the model act would, at the very least, send a signal to insurance underwriters that Alaska was trying to do something to at least stabilize and make more predictable the liability of bar owners, package stores, etc. Model acts tend to build up case law in the various jurisdictions in which they were enacted, and frequently some enterprising scholar collects reports of all of the cases by way of a synopsis behind each section of the law, and a force for real stabilization of the law nationwide is created. To the extent that this would happen, enactment of a model act, such as the one you present, would be very, very useful in dealing with Alaska matters pertaining to liquor liability insurance. Many underwriters have told us that it is not so much the size of judgments that causes them so much grief, rather the inconsistency of courts in North America in awarding such damages and judgments. Size they can deal with, inconsistency they cannot, they often say.

To respond in the manner you would wish us to, a complete review of this bill based on the impact on consistency of awards in appropriate liability cases would have to be undertaken by a relatively knowledgeable liquor liability tort attorney/researcher. Once the effect on present Alaska law was established, this material could be presented to underwriters, and, if the material was favorable, an increase in availability and, perhaps, a reduction in premiums might be achieved.

As to past results in this area, the most graphic material is presented on attachment 1. Note that during the period 1980-1983, insurance companies writing liquor liability in Alaska lost \$1.41 for every dollar of premium they collected. The economics are stark. It is doubtful that an insurance carrier would tie presenting liquor liability to the market as a means of getting other general liability business from the same clients. The nature of most liquor establishments, with the exception of large liquor store chains in Anchorage, just does not make that marketing approach attractive. (Insurance companies have been known to market unprofitable lines in order to fill out a liability package to present to upper-middle sized and large businesses.)

In the past several years, most insurance companies that have attempted to be in the liquor liability business in Alaska were in business for only one year. They wrote at grossly inadequate rates. (I use inadequate here as a technical rating term, and not generically. An inadequate rate is one that is not sufficient to allow the insurance company to stay in business.) Their products were priced from 30¢ to 85¢ per \$100 of gross liquor sales. It appears that only the companies which wrote at a rate of about \$3.00 or slightly more per \$100 of gross liquor sales have an adequate rate and provide an ongoing market. Currently, the only insurer for the classifications of bars and taverns, the Alliance, is experiencing difficulties and delays in obtaining reinsurance. Without reinsurance, essentially, there is no insurance.

As you are aware, insurance companies basically "lay off" their risks in large part, not infrequently 95% and even 100%, to other insurance companies. Only an insurance company buys reinsurance. It is not regulated by this or any other state. Market forces control it.

For a retail liquor sales outlet in 1986, we know of one market charging \$4.50 per \$100. The rate trend we perceive indicates premiums of \$4.50 to \$5.25 per \$100, certainly for the next 18 months.

Educating and training employees of licensed premises is a current popular trend. There is no question that such proper loss control techniques and "packaging" of a particular liquor store or bar to a broker will allow a broker to go into the marketplace and achieve more success in "selling" the client's risk. However, in a period of emphasis of liquor liability in the public press that increases public awareness, coupled with the trend of increasing frequency of loss and increasing size of judgment, it appears that such useful practices as sound risk management would dictate are bucking a strong head wind. Short-term price reduction is unlikely.

It is obvious that society, through common law or statute, has insisted that a seller of liquor in some way be responsible for his or her acts related to intoxicated patrons, selling to the incompetent or minors, and otherwise. However, the realities of the situation are that many liquor establishments, estimated by some as 40-60% of all such establishments in the State, "go bare" without any liability insurance whatsoever. The nature of many of those businesses hardly makes them a "deep pocket" for recovery for injuries for which they are found to be the proximate cause.

The exact dollars spent on liquor liability premium in Alaska is impossible to establish because many companies are writing in the so-called surplus lines, otherwise known as the nonregulated or nonadmitted market. That is true simply because the insurance is not available from "licensed companies." Between 1980 and 1983, a mere \$724,000 was spent on premiums for liquor liability which we can trace through financial statements. Given the fact that Alaska produces something over \$800,000,000 premium a year and is dead last among the states, this liquor premium is clearly an insignificant amount of premium in the overall business of insurance.

As you are aware, the Alaska Supreme Court reportedly reversed itself on a major liquor liability case known generally as "Tommy's Elbow Room," and apparently found liability where they had before rejected finding liability on the same set of facts and circumstances. We have here a situation of wide publicity which will further depress the market. Underwriters clearly would rather put their underwriting capacity into areas where risks are at least more predictable.

January 28, 1986

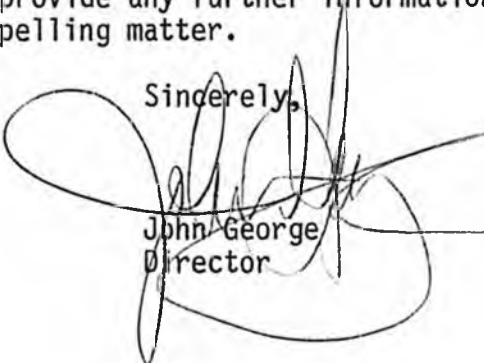
Given the nature of insurance, no one can make anyone sell insurance in Alaska. The industry is actually regulated in a manner similar to the way airlines were regulated, as opposed to utility regulation whereby granting monopolies or partial monopolies is in the system. Therefore, insurance, a totally portable commodity, can pick up and go whenever the company decides that is the best course of business action to take.

We hope very much that the legislative legal division or other appropriate researchers will delve into this model act, and we note that, as with most model acts, commentary on each section is provided. A body, such as Alaska's former Code Revision Commission is, in our experience, a good method of dealing with these matters which allows academic and legal study to be closely focused. In a time of crises, perhaps that simply can't happen.

We are continuing to inquire of appropriate sources what the effect on liquor liability would be, but, as with other proposed reforms of the civil justice system, insurance companies cannot give an answer based on speculation. Only the actual collection of premiums and payment of claims to establish loss experience will prove or disprove the effect of any statutory reform on legal liability.

Please contact me if I can provide any further information or assist you in any way in this most compelling matter.

Sincerely,



John George
Director

JG/mst3267m
012786a
Enclosures

LIQUOR LAW LIABILITY EXPERIENCE 1980-1983

STATE	# CLAIMS	FARNED PREMIUM	PREM RANK	INCURRED LOSS	LOSS RANK	LOSS RATIO	POPULATION	PER CAP PREMIUM	PER CAP LOSS
ALABAMA	2	\$139,257	29	\$11,648	40	8.36%	3,943,000	\$0.04	\$0.00
ALASKA	8	\$724,258	15	\$1,021,861	8	141.09%	438,000	\$1.65	\$2.33
ARIZONA	10	\$845,473	13	\$184,454	21	21.82%	2,860,000	\$0.30	\$0.06
ARKANSAS	0	\$10,973	51	\$0	-	0.00%	2,291,000	\$0.01	\$0.00
CALIFORNIA	122	\$11,164,614	1	\$3,749,303	2	33.58%	24,724,000	\$0.45	\$0.15
COLORADO	10	\$895,068	12	\$358,761	16	40.08%	3,045,000	\$0.29	\$0.12
CONNECTICUT	82	\$1,840,891	7	\$664,817	9	52.41%	3,153,000	\$0.58	\$0.31
DELAWARE	1	\$81,825	43	\$28,806	35	35.20%	602,000	\$0.14	\$0.05
DIST COLUMBIA	1	\$205,910	25	\$1,290	46	0.63%	631,000	\$0.33	\$0.00
FLORIDA	12	\$950,786	11	\$146,189	22	15.57%	10,416,000	\$0.09	\$0.01
GEORGIA	3	\$210,734	24	\$6,856	43	3.25%	5,639,000	\$0.04	\$0.00
HAWAII	16	\$1,057,030	10	\$558,560	14	52.84%	994,000	\$1.06	\$0.56
IDAHO	2	\$71,065	44	\$8,945	42	12.50%	965,000	\$0.07	\$0.01
ILLINOIS	71	\$4,700,297	4	\$666,222	13	12.90%	11,446,000	\$0.41	\$0.05
INDIANA	13	\$547,209	19	\$234,079	19	42.78%	5,471,000	\$0.10	\$0.04
IOWA	54	\$677,111	16	\$295,208	17	43.60%	2,905,000	\$0.23	\$0.10
KANSAS	1	\$31,616	50	\$69	48	0.22%	2,408,000	\$0.01	\$0.00
KENTUCKY	5	\$152,191	28	\$70,397	29	46.28%	3,667,000	\$0.04	\$0.07
LOUISIANA	1	\$276,863	22	\$748	47	0.27%	4,362,000	\$0.06	\$0.00
MAINE	5	\$163,765	26	\$19,532	36	11.93%	1,133,000	\$0.14	\$0.02
MARYLAND	8	\$100,550	36	\$14,719	38	14.64%	4,265,000	\$0.02	\$0.00
MASSACHUSETT	10	\$645,871	17	\$727,341	12	112.61%	5,781,000	\$0.11	\$0.13
MICHIGAN	186	\$3,000,556	5	\$3,798,098	1	94.06%	9,109,000	\$0.44	\$0.42
MINNESOTA	97	\$5,552,582	3	\$2,996,558	3	53.97%	4,133,000	\$1.34	\$0.73
MISSISSIPPI	2	\$137,193	31	\$34,275	34	24.98%	2,551,000	\$0.05	\$0.01
MISSOURI	5	\$100,456	37	\$101,015	26	100.56%	4,951,000	\$0.02	\$0.02
MONTANA	1	\$51,237	48	\$4,877	44	9.52%	601,000	\$0.06	\$0.01
NEBRASKA	6	\$58,174	47	\$41,480	33	71.30%	1,586,000	\$0.04	\$0.03
NEVADA	12	\$346,130	21	\$70,156	30	20.27%	881,000	\$0.39	\$0.08
NEW HAMPSHIRE	3	\$137,119	30	\$100,164	27	72.89%	951,000	\$0.14	\$0.11
NEW JERSEY	63	\$3,504,920	6	\$1,504,013	6	41.95%	7,438,000	\$0.48	\$0.20
NEW MEXICO	5	\$82,517	42	\$66,610	31	80.72%	1,359,000	\$0.06	\$0.05
NEW YORK	68	\$7,171,545	2	\$2,457,751	4	34.27%	17,659,000	\$0.41	\$0.14
NORTH CAROLINA	7	\$152,872	27	\$81,685	28	53.43%	6,019,000	\$0.03	\$0.01
NORTH DAKOTA	2	\$97,578	38	\$56,024	32	58.34%	670,000	\$0.15	\$0.08
OHIO	11	\$796,321	14	\$137,154	23	17.30%	10,791,000	\$0.07	\$0.01
OKLAHOMA	4	\$62,674	45	\$256,625	18	409.46%	3,177,000	\$0.02	\$0.08
OREGON	41	\$1,509,884	8	\$2,132,333	5	142.07%	2,649,000	\$0.57	\$0.80
PENNSYLVANIA	11	\$1,351,711	9	\$922,871	10	68.27%	11,865,000	\$0.11	\$0.08
RHODE ISLAND	0	\$107,572	33	\$0	-	0.00%	958,000	\$0.11	\$0.00
SOUTH CAROLINA	1	\$60,191	46	\$9,945	41	16.52%	3,203,000	\$0.02	\$0.00
SOUTH DAKOTA	2	\$97,064	39	\$14,034	39	14.46%	691,000	\$0.14	\$0.02
TEXAS	17	\$411,308	20	\$113,581	24	27.61%	15,280,000	\$0.03	\$0.01
TENNESSEE	5	\$123,497	32	\$789,409	11	639.21%	4,651,000	\$0.03	\$0.17
UTAH	4	\$94,931	40	\$387,890	15	408.60%	1,554,000	\$0.06	\$0.25
VERMONT	3	\$102,860	34	\$19,373	37	18.83%	510,000	\$0.20	\$0.04
VIRGINIA	2	\$102,173	35	\$1,460	45	1.43%	5,491,000	\$0.02	\$0.00
WASHINGTON	18	\$600,534	18	\$1,159,568	7	193.09%	4,245,000	\$0.14	\$0.27
WEST VIRGINIA	0	\$42,340	49	\$0	-	0.00%	1,948,000	\$0.02	\$0.00
WISCONSIN	10	\$271,303	23	\$209,246	20	77.13%	4,765,000	\$0.06	\$0.04
WYOMING	2	\$88,320	41	\$101,490	25	114.91%	502,000	\$0.18	\$0.20
PUERTO RICO	0	\$1,435	52	\$0	-	0.00%	3,196,520	\$0.00	\$0.00
NATIONAL TOTAL	1003	\$52,773,228	-	\$26,578,990	-	50.36%	234,731,520	\$0.22	\$0.11

working / 345

APR 18 1985



REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-4031

MAJORITY LEADER

M E M O R A N D U M

WHILE IN JUNEAU:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3704

TO: Representative Katie Hurley
Chair
State Affairs Committee

DATE: April 18, 1985

FROM: Representative Don Clocksin
Majority Leader

SUBJECT: Liquor Industry

Two issues affecting the liquor industry are pending in the Alaska State Legislature. The first of those is proposed revisions to DRAM Shop Liability appearing in House Bill 345. That bill is scheduled for its first hearing in your committee today. I am a strong supporter of that legislation, as you know, and believe that it will operate as a substantial deterrent to the serving of alcohol to drunken persons.

The second issue is the liability insurance problem. In case you have not seen it, attached is a letter and materials distributed by Senator Joe Josephson regarding this issue. His proposal, simply put, is to appropriate up to \$10 million to capitalize a "public insurance corporation" and recoup the \$10 million with a doubling of the state tax on alcohol.

It is my judgement that insufficient time remains in this legislative session to do what Senator Josephson is proposing. While many of us recognize the serious problem faced by the liquor industry, that problem is not unique to them and also applies to crab boats, day care centers, architects, etc. Furthermore, I am concerned that the consumers will pay for this problem with drastic increases in alcohol at a time when many of us do not believe that consumer taxes need to be increased.

I recommend that you consider establishing as a formal interim project of the State Affairs Committee a review of both of these situations. It would require extensive research, hearings, and ingenuity. Please be advised that my original position was to completely separate the issues and urge passage of House Bill 345 regardless of how the insurance problem was resolved. Political realities dictate otherwise.

I would be happy to talk to you about this proposal in detail. Thank you.

DC:blg

- cc: The Honorable Bill Sheffield
- Representative Ben Grussendorf
- Representative Al Adams
- Senator Joe Josephson
- Catherine Bigler, M.A.D.D.
- Jerry Reinwand, C.H.A.R.



PREVENTION RESEARCH CENTER

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

Ms. Patty Macklin
Alaska Legislature
House State Affairs Comm.
1024 West Sixth
Anchorage, Alaska 99501

August 19, 1985

Dear Ms. Macklin:

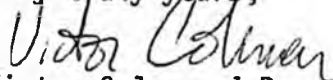
Pursuant to our conversation of today I am sending you further information regarding both myself and Prevention Research Center. Please let me know if you require any further materials to this end. Additionally, I am sending you another copy of the Model Dram Shop Act, as it appeared in a recent law review article (also enclosed). Finally, enclosed also is a briefing paper on AB 2005, the most recent dram shop bill in the California legislature. The paper was originally intended to be our written testimony but the bill was pulled shortly before its first committee hearing. It is expected that the bill will be heard this year, in the House Judiciary Committee.

Thank you again for inviting me to address the House State Affairs Comm. As I told you on the telephone I will be addressing the Wisconsin and Vermont legislatures as well. I anticipate that my role will be similar in each of my appearances, which would be to explain the current status of dram shop liability, and how reform of the law can directly aid in preventing alcohol-related injuries.

Again, to reiterate, our approach is one of public health, and cannot be linked to the specific interests of plaintiff's attorneys groups or the alcohol beverage industry.

I look forward to hearing from you in the near future. Please let me know if you and the committee require any additional information.

Very truly yours,


Victor Colman, J.D.
Legal Research Analyst

cc. James Mosher, J.D.

enc

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.

Prevention Research Center REPORTS

Spring 1985

Volume 1, Number 1

MESSAGE FROM THE DIRECTOR

THE PREVENTION RESEARCH CENTER is well into its second year of operation. During our brief history we have been pleased to find a great interest in prevention research from the professional, academic, and general communities. *Prevention Research Center Reports* is intended to serve as one vehicle in disseminating our work to those who share a common goal of finding effective means for preventing alcohol-related problems.

A National Alcohol Research Center on Prevention

The Prevention Research Center (PRC) is one of nine national alcohol research centers. It is the only center with a primary focus on prevention. Funded by a grant from the National Institute on Alcohol Abuse and Alcoholism (#AA06282-03) to the Pacific Institute for Research and Evaluation, it has been in operation in Berkeley, California since October, 1983.

Center goals

- To conduct multidisciplinary research contributing to informed discussion and decision-making on prevention issues
- To develop innovative approaches to the prevention of alcohol-related problems
- To provide multidisciplinary training opportunities
- To summarize and report on current knowledge about prevention research to professional, academic, and community audiences

A Public Health Model

THE CENTER'S UNIFYING THEME is that prevention of health and social problems commonly associated with alcohol is best understood within a public health framework. This framework suggests that individual behavior can most adequately be analyzed in relation to the social and physical environment in which it takes place. Alcohol problems, therefore, are understood

please turn to page 4

Right: Monique Adam, Center Administrative Assistant, blocks out daily assignments with secretary Wendy Gilmore.



Bottom: The Wednesday morning staff meeting, Center Director Laurence Wallack presiding.



In This Issue

Message from the Director	1
National Center	1
A Public Health Model	1
Research Agenda: Environment	2
Driving	2
Mass Media	2
Family	3
Schools	3
Affiliated Projects: Law	3
Zoning	3
Insert: Center Library	

C. Ling Hsu and Richard Cowan, Editors. Design & production by Cheryl Nichols.

RESEARCH AGENDA

THE RESEARCH AGENDA of the center is comprised of seven projects. Each focuses on a different level of the social and physical environment. The initial five are funded by National Institute on Alcohol Abuse and Alcoholism through a national alcohol research center grant. Two others, funded through different sources, are also housed at the Prevention Research Center.

FOCUS ON THE DRINKING ENVIRONMENT

Server Intervention Project

The Center's Server Intervention project investigates the use of server practices in addressing a variety of problems associated with drinking in social settings.

THE DIFFERENT ENVIRONMENTS, Navy bases and college living groups, have been selected for study. These provide the project with two relatively well-controlled settings, the former involving paid servers, the latter with "social hosts." After collecting baseline data at both environments on current server practices, drinking behavior, and drinking problems, the study will adapt, refine, and implement server intervention programs. Ultimately, these programs will be evaluated in terms of the training's effectiveness in changing servers' behavior. Multiple qualitative measures also will be used to analyze the impact of server intervention on drinking behavior and associated problems. This approach will allow the study to move beyond a single outcome variable relating only to server behavior to a broader analysis of how server intervention affects the target population, the immediate drinking environment, and the larger social setting.

For the Navy base study, the research staff has already collected archival and interview data from Navy base club managers and initiated program planning for server intervention at a selected Navy site. In the coming year, the program will be tailored, implemented, and evaluated for its effectiveness. In the college setting, the study is being conducted in conjunction with the University Student Health Service. A questionnaire already has been designed and administered to approximately 2200 University of California, Berkeley students on their drinking patterns, social, and academic life. In Spring, 1985, the research staff will supplement this survey data with systematic observations at student social events, and the staff also will consult with the Student Health Service on the design and implementation of the college's server intervention program.

The Server Intervention Project is co-directed by Robert Saltz, Ph.D., and Friedner Wittman, Ph.D., assisted by Curtis Christy and Donna Elandt.

FOCUS ON DRIVING

Alcohol-Related Traffic Crashes Project

The PRC Traffic Project examines the influence of minimum drinking age laws and macroeconomic conditions on motor vehicle crashes.

A DETAILED INVESTIGATION into specific effects of legal minimum drinking age laws on motor vehicle crashes began October, 1984, using multivariate time-series analysis methods on

a large database of crashes in Michigan and Texas. While there is considerable evidence that drinking age significantly affects drinking/driving among youth, numerous issues remain unresolved. The study expects to illuminate such topics as the long-term effects of drinking age changes; the differential effects of one-, two-, or three-year age changes; intervening variables relevant to the legal impact; and implications of the legal drinking age experience for prevention of other alcohol-related problems.

The macroeconomic component of the study, which begins in 1985, will measure the influence of economic factors on alcohol-impaired driving and crash-related injuries. This component will analyze data on economic indicators, drinking patterns, driving patterns, and fatal and nonfatal traffic crashes in the United States over the past decade. Results will contribute to assessing the relative effectiveness of current policies and programs designed to reduce alcohol-related casualties.

The alcohol-related traffic crash project is administered as a PRC sub-contract to study director Alexander C. Wagenaar, Ph.D., University of Michigan, Transportation Research Institute.

FOCUS ON MASS MEDIA

Alcohol and the Media Study

The Media Project seeks to increase knowledge of how the mass media -- in particular prime-time television and college newspapers -- portray alcohol and drinking.

THE PRIME-TIME TELEVISION STUDY is currently analyzing portrayals of drinking, drug taking and smoking drawn from a composite two-week sample of Fall, 1984 shows. This study is a continuation of content analysis studies done by Warren Breed and James De Foe. At the completion of the current analysis, ten years of prime-time television shows will have been reviewed. The quantitative and qualitative data generated by this series of studies provide a foundation for working with mass media personnel. In the past a process called "cooperative consultation" has proven successful in working with producers, writers, and directors to promote more accurate television presentations of drinking and alcohol-related problems.

A second component of this research is the College Newspaper study. This project also uses content analysis to determine how the nation's college newspapers portray alcohol and drinking in their advertising, news, and editorials. A national sample of college newspapers was collected through mail solicitation, and guidelines for analysis are currently being developed.

The Media Project is co-directed by Warren Breed, Ph.D., and Lawrence Wallack, Dr. P.H.. Jon Cruz, M.A., is a senior research associate working with both components.

An affiliated media project employing content analysis is also housed at the Prevention Research Center. This study, funded by National Highway Traffic Safety Administration, examines how drinking and driving issues are presented in local

FROM THE LIBRARY

THE CENTER HOUSES a rapidly growing Research Library to serve the staff as well as the prevention field. In operation since February, 1984, its collections have been built around the subject areas of the Center's research projects.

At present time, the library receives 90 journals and newsletters to augment its holdings of approximately 700 books and documents in the areas of mass media and alcohol, alcohol and families, legal aspects of alcohol problems, and prevention in general. As a member of the Substance Abuse Librarians and Information Specialist Network, the library shares resources with other substance abuse libraries. The Alcohol Research Group Library in Berkeley, in particular, provides inter-library loan services to the Center's staff.

The library staff compiles the Prevention Research Center *Publications and Documents List* quarterly to inform the field on recent research publications from the Center. The most recent issue was completed January, 1985. The List is available upon request.

Selected new titles from the Center include:

Ames, G. "Family ethnography: a new approach to alcohol studies," *The Drinking and Drug Practices Surveyor*, No. 20, March, 1985 (GA 305)

This short article outlines the theoretical underpinnings of the family ethnography approach in its application to alcohol treatment and prevention. Two traditional perspectives in anthropology — structural-functionalism and the institutional approach — comprise its framework in studying the family as a culture system.

Colman, V., B.E. Krell & J.F. Mosher "Preventing alcohol-related injuries: dram shop liability in a public health perspective," unpublished manuscript, in press, 40 pp. (VC 302)

Surveys the common law background of dram shop law and discusses its policy implications from a public health perspective. Proposes a legislative approach encouraging responsible business practices by commercial alcohol sellers.

Wallack, L. & W. Breed "Television programming and alcohol: some opportunities for change," in *Alcohol and Drug Abuse: Patterns, Prevention, Treatment*, Wadsworth Press, forthcoming (LW 310)

This paper proposes a community strategy for working with local media programmers. It suggests the method of "cooperative consultation," a collaboration of researchers, the local community, and media personnel, as a strategy for promoting more accurate alcohol portrayals on television and other media.

Wallack, L., W. Breed & J. De Foe "Alcohol and Soap Operas: Drinking in the Light of Day," paper presented at 112th annual meeting of the American Public Health Association, Anaheim, California, November 13, 1984 (LW 309)

Reports on drinking portrayals in the day-time soap opera, "All My Children." Finds, overall, that the program is doing a good job of depicting drinking problems, with appropriate role models for social drinking and abstinence and negative reinforcement for heavier and high risk drinking. Presents several recommendations regarding ways soap operas can take greater advantage of a unique opportunity for health education.

Wittman, F.D. & M.E. Hilton "Uses of planning and zoning ordinances to regulate alcohol outlets in California cities," paper presented at "Control Issues in Alcohol Abuse Prevention II: Impacting Communities" Conference,

Charleston, South Carolina, October 11-13, 1984 (FW 303a)

Part of a Study Report for the California Department of Alcohol and Drug Programs oriented toward improving community prevention of alcohol-related problems through the use of local planning and zoning ordinances as applied to alcohol outlets. This paper analyzes and reports on 340 California cities regarding their current practices in using local ordinances. It also discusses local awareness in issues of alcohol availability.



Fried Wittman maps Bay Area alcohol outlets.

A NUMBER OF OTHER PAPERS written by PRC staff members and associates are available from the library. They can be obtained by writing Ling Hsu, Librarian, at the Prevention Research Center, 2532 Durant Avenue, Berkeley, CA 94704:

Ablon, J., G. Ames & W. Cunningham "To all appearances: an ideal American family," in E. Kaufman, ed., *The Power to Change: Case Studies in Alcoholism*, New York, NY: Gardner Press, 1984 (GA304).

Bennett, L. & G. Ames, eds. *The American Experience with Alcohol: Contrasting Cultural Perspectives*. New York, NY: Plenum Press, in press, 1985 (GA 303).

Ames, G. "American beliefs about alcoholism: historical perspectives on the medical-moral controversy," in *The American Experience with Alcohol: Contrasting Cultural Perspectives*. New York, NY: Plenum Press, in press, 1985 (GA 302).

"Middle class Protestants: alcohol and the family," in L. Bennett & G. Ames, eds., *The American Experience with Alcohol: Contrasting Cultural Perspectives*. New York, NY: Plenum Press, in press, 1985 (GA 301).

Breed, W., J. De Foe & L. Wallack "Drinking in the Mass Media: a nine-year project," *Journal of Drug Issues*, 1984, in press (WB 304).

Breed, W. & J. De Foe "Drinking and smoking on television, 1950-82," *Journal of Public Health Policy*, 5:2, pp. 257-270, June, 1984 (WB 303).

De Foe, J. & W. Breed "Alcohol education via the mass media: a seven-year project," *Journal of Drug Issues*, 1984, forthcoming (WB 302).

Breed, W., J. De Foe & L. Breed "Working with mass media for alcohol education: the method of cooperative consultations," in *Plan for the Prevention of Alcohol-Related Problems*, State of California, Department of Alcohol & Drug Program, forthcoming (WB 301).

- Colman, V. *Dram shop laws: a prevention tool*, paper presented at the 40th Annual Conference of the National Council of Alcohol, Detroit, Michigan, April, 1984 (VC 301).
- Harrington, C. "Illustrative dram shop settlement and jury verdict cases: further evidence that server liability is expanding," *Alcohol and Drug Abuse Report, Special Report*, pp. 1-16, National Association of State Alcohol & Drug Abuse Directors, December, 1984 (CH 301).
- McBride, R. & J.F. Mosher "Public health implications of the international alcohol industry: issues raised by a World Health Organization project," *British Journal of the Addiction*, in press (JM 308).
- Mosher, J.F. *Server intervention: a guide to implementing local and state programs*, paper presented at a conference titled "Control Issues in Alcohol Abuse Prevention II: Impacting Communities" Conference sponsored by the South Carolina Commission on Alcohol and Drug Abuse, Charleston, South Carolina, October, 1984 (JM 307).
- _____ "Alcohol policy and the Presidential Commission on Drunk Driving: the paths not taken," *Accident Analysis and Prevention*, in press (JM 306).
- _____ *Alcohol advertising, public health and government regulation: five myths blocking reform*, Berkeley, California: Prevention Research Center, July, 1984, 20 pp. (JM 305).
- _____ *Server intervention: present status and future prospects*, paper presented at the Research Workshop on "Alcohol and the Drinking Driver" Sponsored by NIAAA & NHTSA, Bethesda, Maryland, May, 1984 (JM 304).
- _____ *Legal liabilities of licensed alcoholic beverage establishment: recent developments in the United States*, paper presented at "Public Drinking and Public Policy: A Symposium on Observational Studies" Banff, Alberta, Canada, April, 1984 (JM 303).
- _____ "The impact of legal provisions on barroom behavior: toward an alcohol problems prevention policy," *Alcohol*, 1, pp. 205-211, 1984 (JM 302).
- _____ "Alcohol control: the impact of alcohol consumption on the nation's health," *Church & Society*, pp. 31-34, January/February, 1984 (JM 301).
- Moskowitz, J.M., J. Malvin, G. Schaeffer & E. Schaps "Evaluation of Jigsaw: a cooperative learning technique," *Contemporary Educational Psychology*, in press (JMM 302).
- _____ "An experimental evaluation of a drug education course," *Journal of Drug Education*, 14:1, pp. 9-22, 1984 (JMM 301).
- Moskowitz, J.M. "Preventing adolescent substance abuse through drug education," in T. Glynn; C. Leukefeld & J. Ludford, eds., *Preventing Adolescent Drug Abuse: Intervention Strategies*. Rockville, Maryland: National Institute on Drug Abuse, Research Monograph 47, pp. 233-249, 1983 (JMM 225).
- Leukefeld, C. & J.M. Moskowitz "Discussion and recommendations," in T. Glynn; C. Leukefeld & J. Ludford, eds., *Preventing Adolescent Drug Abuse: Intervention Strategies*. Rockville, Maryland: National Institute on Drug Abuse, Research Monograph 47, pp. 250-255, 1983 (JMM 224).
- O'Donnell, M.A. *Research on drinking locations of alcohol-impaired drivers: implications for prevention policies*, research paper, Berkeley, CA: Prevention Research Center. October, 1984. 12 pp. (MO 301).
- Saltz, R. & L.G. Smith-Donals *Social networks and reentry: A panel study of former Heroin addicts*. Final Report. Lafayette, CA: Pacific Institute for Research & Evaluation, May 1984, 3 volumes (185 p. report and 2 volumes of appendices) (RS 301).
- Wagenaar, A. *Effects of minimum drinking age on alcohol-related traffic crashes: the Michigan experience five years later*, paper presented at "Control Issues in Alcohol Abuse Prevention II: Impacting Communities" Conference, Charleston, South Carolina, October, 1984 (AW 309).
- _____ "Effectiveness of mandatory child restraint laws: impact on childhood injury due to traffic crashes," *Journal of Safety Research*, in press (AW 308).
- _____ "Alcohol consumption and the incidence of acute alcohol-related problems," *British Journal of Addiction*, in press (AW 307).
- _____ "Effects of macroeconomic conditions on the incidence of motor vehicle accidents," *Accident Analysis and Prevention*, 16:3, pp. 191-205, 1984 (AW 306).
- _____ "The legal minimum drinking age: a review and update," in *Proceedings of the National Alcohol Forum*, Detroit, Michigan, 1984, New York: National Council on Alcoholism, April, 1984 (AW 305).
- _____ "Effectiveness of mandatory child restraint laws," in *The 28th Annual Proceedings of American Association for Automotive Medicine*, pp. 319-330. Morton Grove, Illinois: AAAM, October, 1984 (AW 304).
- _____ *Restraint usage among crash-involved motor vehicle occupants*, Ann Arbor, Michigan: University of Michigan, Transportation Research Institute, February, 1984, 192 pp. (Available from National Technical Information Service, 2825 Port Royal Road, Springfield, VA 22161) (AW 303).
- _____ "Effects of the Michigan mandatory Child-Restraint Law," *The UMTRI (University of Michigan Transportation Research Institute) Research Review*, 14:5, pp. 6-8, May 1/April, 1984 (AW 302).
- _____ "Economic conditions and alcohol-impaired driving: review of the literature," in NIAAA eds., *Research Issues on Alcohol & Traffic Safety*. Washington, DC: U.S. Government Printing Office, forthcoming (paper presented at the Research Workshop on Alcohol and the Drinking Driver, sponsored by the National Institute on Alcohol Abuse and Alcoholism, Bethesda, Maryland, May, 1984 (AW 301).
- Wittman, F. "Community perspectives on the prevention of alcohol problems," in *Framework for Planning: Preventing Alcohol-related Problems in California*, pp. 80-98, Sacramento, California: Department of Alcohol and Drug Problems, State of California Health and Welfare Agency, March, 1984 (FW 301).
- Wallack, L. "The prevention of alcohol-related problems: health educators and the 'New Generation' of strategies," *International Journal of Health Education*, in press, 21 pp. (LW 311).
- Wallack, L. *The prevention of alcohol-related problems: recommendations for public policy initiatives*, paper prepared for the "Closing the Gap" project of the Carter Policy Center, Atlanta, Georgia, July, 1984, 32 pp. (LW 308).
- Ratcliffe, J. & L. Wallack *Primary prevention in public health: an analysis of basic assumptions*, Berkeley, CA: School of Public Health, University of California. (Mimeograph) 1984 (LW 307).
- Ratcliffe, J., L. Wallack, F. Fagnani & V. Rodwin "Perspectives on prevention: health promotion vs. health protection," in J. de Kervasdoued, Kimberly & V. Rodwin, eds., *The End of an Illusion: The Future of Health Policy in Western Industrialized Nations*, pp. 56-84. Berkeley, CA: University of California Press, 1984 (LW 306).
- Wallack, L. "Practical issues, ethical concerns and future directions in the prevention of alcohol related problems," *Journal of Primary Prevention*, 4:4, pp. 199-224, Summer, 1984 (LW 304).
- _____ "Social marketing as prevention: uncovering some critical assumptions," in T. Kinnear, ed., *Advances in Consumer Research*, Vol. II, pp. 682-87, 1984 (LW 303).
- _____ "The health education debate: comments," in M. Grant & B. Ritson, eds., *Alcohol: The Prevention Debate*, pp. 84-90. London: Croom Helm, 1983 (LW 302).
- _____ "Drinking and driving: toward a broader understanding of the role of mass media," *Journal of Public Health Policy*, in press, December, 1984 (LW 301).

newspapers. A manual containing concepts, units of analysis, and coding procedures has been developed and tested. Initial results are expected by April, 1985. Rhoda Estep, Ph.D., is the project coordinator.

FOCUS ON FAMILY

The Alcohol and Family Life Project: Exploring a Family-Level Cultural Model for Prevention

The primary goal of the Family Project is to explore and identify family practices which inhibit or contribute to the development and maintenance of alcohol problems.

THE PROJECT VIEWS THE FAMILY as a system. It proposes that tendencies to either resist or incorporate potential drinking problems can be examined and organized with the following categories: 1) cultural patterning, (2) strategies for basic family survival, and (3) individual need fulfillment. Each participating family will be studied at home using the ethnographic techniques of naturalistic observation, open-ended interviews, and life history assessment to gather data relevant to these categories.

Following an initial survey of unemployed auto workers in Fremont, California, thirty blue-collar families, fifteen heavy drinking and fifteen light-moderate drinking, were recruited for the in-home stage of the study. A comparison of heavy and moderate drinking families will illuminate family and community processes which affect the development of problem drinking. Six visits are being made to the home of each participating family for

in-depth interviews on family, work, and drinking histories, as well as observations of family and community life in general. Particular emphasis will be placed on individual and whole-family responses to alcohol use and drinking behavior. This field work is in progress, and analysis of the extensive field data will begin in Fall, 1985. The current study will provide the basis for family-level approaches to prevention, to be developed in later years.

Genevieve Ames, Ph.D., is the project's study director. Craig Janes, Ph.D., and Linnea Klee, Ph.D., have significant responsibilities in the field study and data analysis.

FOCUS ON THE SCHOOLS

National High School Alcohol and Drug Policy Study

The High School Project is a descriptive study of alcohol and drug use policies as they relate to students throughout the United States.

THE PROJECT BEGAN in April, 1984 with a systematic review of the school discipline literature. It discovered that while much had been written on the subject, little of this was empirically based. To move from speculation to empirical research, the project first developed and pilot-tested a 20 page survey questionnaire. A stratified random sample of 750 public high schools then was produced by the Institute of Social Research at the University of Michigan, and a 16-page questionnaire was mailed to the principals of these schools in January, 1985. This

please turn to page 4

AFFILIATED PROJECTS

FOCUS ON THE LAW

The Legal Aspects of Server Intervention Project

THIS PROJECT, which began October, 1983, studies the legal aspects of server intervention, particularly in the area of dram shop liability. "Dram shop liability" refers to the potential legal liability of alcohol beverage servers for injuries caused by their intoxicated and/or underaged patrons. The project was awarded by National Institute on Alcohol Abuse and Alcoholism to the Prevention Research Group, Medical Research Institute of San Francisco. It is being conducted at PRC as an affiliated project.

Research began with the collection and analysis of existing state provisions, dram shop liability court cases, and insurance company policies and practices for the retail alcohol industry. These data provided a basis for determining the impact of dram shop liability on commercial servers, its likely judicial outcome, and its impact on affected parties. As a possible defense against dram shop liability, the project also studied existing server training programs to determine the contents, format, sponsoring agencies and participants in such programs. The research culminated in the drafting of a model dram shop act, "Model Alcohol Beverages Retail Licensee Liability Act of 1985," which includes detailed commentaries on all aspects of dram shop liability law. The model law is presently being redrafted based on

comments from attorneys, industry representatives, legal scholars and government officials. Versions of the law have already been introduced into the Hawaii legislature, and several other states are now studying it. The model law is available on request from PRC.

James F. Mosher, J.D., is the principal investigator. He is assisted by Victor Colman, J.D., associate director and Robert Roth, J.D., research associate. Kathy Janes, Colleen Harrington, and Carter Beavers are law student assistants.

FOCUS ON ZONING

Local Regulation of Alcohol Availability

THE LOCAL REGULATION PROJECT is working to improve the ability of localities (that is, cities or counties) to prevent alcohol-related problems through the use of community planning and zoning ordinances as applied to alcohol outlets. The project is supported by the California Department of Alcohol and Drug Programs and housed at PRC.

Local planning and zoning ordinances hold great potential for initiatives in preventing alcohol-related problems. Nevertheless, at present little is known about how they are being used, or about

please turn to page 4

REPORTS

Prevention Research Center
2532 Durant Avenue
Berkeley, CA 94704

PUBLIC HEALTH from page 1

as consequences of interactions between individuals, the substance alcohol, and the larger environment through which alcohol availability is mediated.

The research agenda of the Center seeks to develop a better understanding of the social and physical environment influencing individual drinking behavior and alcohol-related problems. This broad approach requires the interaction of various disciplines and professional perspectives. The Center's staff represents a diverse background including public health, architecture and city planning, anthropology, psychology, health education, social psychology, sociology, mass communications, and law.

SCHOOLS from page 3

spring, data analysis files will be constructed, and descriptive and exploratory statistical analyses will begin.

The school study will assess the nature and prevalence of differing school drug and alcohol policies. This information will permit an analysis of the relationship between type of school policy and other school characteristics, such as staff and students. The extent to which school policies distinguish between alcohol and drug violations, and the manner in which such violations are handled, also will be examined.

Joel Moskowitz, Ph.D., is the project's study director.

ZONING from page 3

many communities' ability and readiness in using them. The project is taking a three-part approach toward understanding the relationship of local ordinances to prevention of alcohol-related problems. In Summer, 1984, questionnaires and solicitations concerning local ordinances were sent to 429 city planning

departments throughout California. An information data base is being developed from the 340 cities that replied to the survey. Secondly, so that the zoning ordinances and/or planning practices for alcohol outlets can be shared among community planners, technical assistance on preventive uses of zoning ordinances is provided as requested to cities, counties, and various organizations. In 1984, twenty-four requests were filled for consultation and information. Finally, planning assistance is being provided to two California communities on a pilot basis to explore ways to increase local participation and control over community-level distributions of alcohol outlets in order to prevent problems associated with alcohol availability.

Friedner Wittman, Ph.D., is the project's study director. He is assisted by Michael Hilton, Ph.D.



Official Business

Alaska State Legislature

House of Representatives

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

(807) 489-4882

To: Mr. John George, Director
Division of Insurance

From: Nevette Bowen, Committee Staff *Nevette*
House State Affairs Committee

Date: November 6, 1985

Subject: Dram shop - liability insurance

As per our conversation please review the model act, particularly the Responsible Business Section and determine whether or not it has the potential of reducing insurance premiums for Alaska licensees who can show compliance.

Also, has the cost of insurance for the liquor liability actually decreased since 1980 and if so can it be attributed to the change in Alaska's dram shop statute?

Please return the Model Act to the committee after you have had a chance to review it as we are very short on copies.

Thank you very much for your time and effort.

PRC

PREVENTION RESEARCH CENTER

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

RECEIVED
OFFICE OF ALCOHOLISM
AND DRUG ABUSE

JUN 13 1985

June 7, 1985

George Mundell
Regional Program Coordinator
Office of Alcoholism and Drug Abuse
Pouch H 05F
Juneau, Alaska 99811

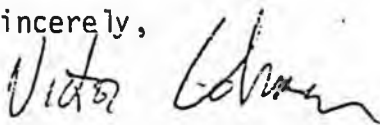
Dear Mr. Mundell:

My name is Victor Colman, an associate of Jim Mosher's. I was substantially involved in the drafting of the Model Dram Shop Act, and have been following the legislative processes that the Act has undergone these past sessions. California was one state where the Act had wide dissemination and interest, and part of the Act was introduced into the state Assembly, but the proponents of the bill pulled out just before the first committee hearing for lack of support. Other states have also taken more than a token interest in the Act, including Oregon, Hawaii, and Florida.

Thank you for forwarding the Task Force materials, the industry comments were most enlightening. I hope that the Model Act will get a full briefing in your state. Please keep us abreast of any such developments. Of course, if any additional background material is needed in the liquor liability area, feel free to call or write me. One possible issue is the rising insurance premium costs when dram shop is instituted or enlarged. As we mention in the commentary to the Model Act, a premium should be reduced if the licensee can show compliance with responsible server practices, usually by undergoing a bona fide server training course. There now exist several insurance companies who are giving discounts for such responsible servers. Innovative ideas like this are excellent retorts to the same old arguments against the imposition of civil liability.

Please keep in touch.

Sincerely,



Victor Colman, J.D.
Legal Research Analyst

cc. Jim Mosher, J.D.

January 28, 1986

Honorable Katherine T. Hurley
Alaska State House of Representatives
P.O. Box V
Juneau, AK 99811

Attention Navette Bower

Dear Representative Hurley:

Re: "Liquor Liability"

Thank you for the opportunity to review the "model act" regarding liability of retail license premises. From the copy you provided to me, I am unable to tell if this particular "model act" is one also promulgated by the Uniform State Law Commissioners, who promulgate most uniform and model acts. If it is not, promulgation by that body always appears to give impetus to enactment.

Liability for serving liquor is not new, and the fact that something over three-fourths of the states "tamper" with common law liability is evidence that the system has not worked very well for some time. The effect is that legal liability connected with licensed premises is the center of a now visible ongoing controversy which has been around legal circles for decades, in fact, a couple of centuries.

Insurance companies writing liquor liability business in Alaska have run into the expected wide variety of "results." Even though it is my understanding we have about 600 licensed premises, that number is still very small in dealing with insurance matters. Insurance coverage is based on "the law of large numbers," and, as in so many areas, Alaska's situation just does not supply these numbers. To worsen matters, it is not typical for insurance companies to break out their losses on liquor liability as opposed to other and more general types of liability. We have recently undertaken efforts to secure more definite information on liquor liability losses.

Enactment of the model act would, at the very least, send a signal to insurance underwriters that Alaska was trying to do something to at least stabilize and make more predictable the liability of bar owners, package stores, etc. Model acts tend to build up case law in the various jurisdictions in which they were enacted, and frequently some enterprising scholar collects reports of all of the cases by way of a synopsis behind each section of the law, and a force for real stabilization of the law nationwide is created. To the extent that this would happen, enactment of a model act, such as the one you present, would be very, very useful in dealing with Alaska matters pertaining to liquor liability insurance. Many underwriters have told us that it is not so much the size of judgments that causes them so much grief, rather the inconsistency of courts in North America in awarding such damages and judgments. Size they can deal with, inconsistency they cannot, they often say.

To respond in the manner you would wish us to, a complete review of this bill based on the impact on consistency of awards in appropriate liability cases would have to be undertaken by a relatively knowledgeable liquor liability tort attorney/researcher. Once the effect on present Alaska law was established, this material could be presented to underwriters, and, if the material was favorable, an increase in availability and, perhaps, a reduction in premiums might be achieved.

As to past results in this area, the most graphic material is presented on attachment 1. Note that during the period 1980-1983, insurance companies writing liquor liability in Alaska lost \$1.41 for every dollar of premium they collected. The economics are stark. It is doubtful that an insurance carrier would be presenting liquor liability to the market as a means of getting other general liability business from the same clients. The nature of most liquor establishments, with the exception of large liquor store chains in Anchorage, just does not make that marketing approach attractive. (Insurance companies have been known to market unprofitable lines in order to fill out a liability package to present to upper-middle sized and large businesses.)

In the past several years, most insurance companies that have attempted to be in the liquor liability business in Alaska were in business for only one year. They wrote at grossly inadequate rates. (I use inadequate here as a technical rating term, and not generically. An inadequate rate is one that is not sufficient to allow the insurance company to stay in business.) Their products were priced from 30¢ to 85¢ per \$100 of gross liquor sales. It appears that only the companies which wrote at a rate of about \$3.00 or slightly more per \$100 of gross liquor sales have an adequate rate and provide an ongoing market. Currently, the only insurer for the classifications of bars and taverns, the Alliance, is experiencing difficulties and delays in obtaining reinsurance. Without reinsurance, essentially, there is no insurance.

As you are aware, insurance companies basically "lay off" their risks in large part, not infrequently 95% and even 100%, to other insurance companies. Only an insurance company buys reinsurance. It is not regulated by this or any other state. Market forces control it.

For a retail liquor sales outlet in 1986, we know of one market charging \$4.50 per \$100. The rate trend we perceive indicates premiums of \$4.50 to \$5.25 per \$100, certainly for the next 18 months.

Educating and training employees of licensed premises is a current popular trend. There is no question that such proper loss control techniques and "packaging" of a particular liquor store or bar to a broker will allow a broker to go into the marketplace and achieve more success in "selling" the client's risk. However, in a period of emphasis of liquor liability in the public press that increases public awareness, coupled with the trend of increasing frequency of loss and increasing size of judgment, it appears that such useful practices as sound risk management would dictate are bucking a strong head wind. Short-term price reduction is unlikely.

It is obvious that society, through common law or statute, has insisted that a seller of liquor in some way be responsible for his or her acts related to intoxicated patrons, selling to the incompetent or minors, and otherwise. However, the realities of the situation are that many liquor establishments, estimated by some as 40-60% of all such establishments in the State, "go bare" without any liability insurance whatsoever. The nature of many of those businesses hardly makes them a "deep pocket" for recovery for injuries for which they are found to be the proximate cause.

The exact dollars spent on liquor liability premium in Alaska is impossible to establish because many companies are writing in the so-called surplus lines, otherwise known as the nonregulated or nonadmitted market. That is true simply because the insurance is not available from "licensed companies." Between 1980 and 1983, a mere \$724,000 was spent on premiums for liquor liability which we can trace through financial statements. Given the fact that Alaska produces something over \$800,000,000 premium a year and is dead last among the states, this liquor premium is clearly an insignificant amount of premium in the overall business of insurance.

As you are aware, the Alaska Supreme Court reportedly reversed itself on a major liquor liability case known generally as "Tommy's Elbow Room," and apparently found liability where they had before rejected finding liability on the same set of facts and circumstances. We have here a situation of wide publicity which will further depress the market. Underwriters clearly would rather put their underwriting capacity into areas where risks are at least more predictable.

January 28, 1986

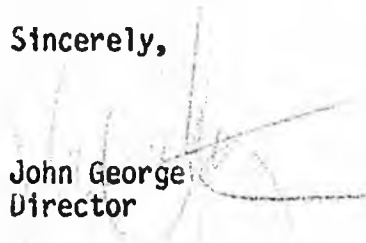
Given the nature of insurance, no one can make anyone sell insurance in Alaska. The industry is actually regulated in a manner similar to the way airlines were regulated, as opposed to utility regulation whereby granting monopolies or partial monopolies is in the system. Therefore, insurance, a totally portable commodity, can pick up and go whenever the company decides that is the best course of business action to take.

We hope very much that the legislative legal division or other appropriate researchers will delve into this model act, and we note that, as with most model acts, commentary on each section is provided. A body, such as Alaska's former Code Revision Commission is, in our experience, a good method of dealing with these matters which allows academic and legal study to be closely focused. In a time of crises, perhaps that simply can't happen.

We are continuing to inquire of appropriate sources what the effect on liquor liability would be, but, as with other proposed reforms of the civil justice system, insurance companies cannot give an answer based on speculation. Only the actual collection of premiums and payment of claims to establish loss experience will prove or disprove the effect of any statutory reform on legal liability.

Please contact me if I can provide any further information or assist you in any way in this most compelling matter.

Sincerely,


John George
Director

JG/mst3267m
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Enclosures



Car can flunk drunk drivers

Denver (AP) — Drivers who don't always know when they've had one drink too many can now attach a device to their ignition that prevents them from starting their car if their breath contains too much alcohol.

The Guardian Interlock sits on the dashboard, where the driver must blow into its mouthpiece for four seconds before turning the key.

But while failing the police test may mean a revoked drivers' license, a stiff fine and possibly jail, flunking the Guardian's test only means a temporarily conked-out car.

A green light means clear sailing and connects the ignition, a yellow light allows the car to start but warns the driver the limit is being approached, and a red light leaves the car stalled and means the driver is legally impaired.

HB 345/working

ALASKA STATE SENATE

JOE P. JOSEPHSON
DISTRICT H — ANCHORAGE
1526 F STREET
ANCHORAGE, ALASKA 99501
(907) 277-4419

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4525



COMMITTEES
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RULES
TRANSPORTATION
SENATE CHAIR, ANCHORAGE CAUCUS

OFFICE OF MINORITY WHIP

April 12, 1985

APR 12 1985

The Honorable Katie Hurley
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Katie:

Several weeks ago, representatives of "CHARR" (the Cabaret, Hotel, Restaurant and Retail Association) appeared before the Anchorage Caucus to discuss the liability insurance crisis affecting their industry.

After the Caucus, I conferred with Mr. John George, Director, Division of Insurance, Department of Commerce and Economic Development, and other administration officials, including Governor Sheffield and Commissioner Loren Lounsbury. I talked by telephone with Representative Randy Kelly of the Minnesota Legislature, and with the Insurance Commissioner for Minnesota, and the Insurance Commissioner for Pennsylvania, to obtain a national perspective.

I learned that the problem reported by "CHARR" is a national problem, but it may be exacerbated here by the litigious nature of the Alaska community and the small market which Alaska offers to insurance carriers.

Here in Alaska, the problem can be summarized as follows: First, when insurance is available, businesses (except for the major hotels that have umbrella coverage for all their activities) are seeing rate changes that are dramatic. One Fairbanks bar owner showed me a letter from his underwriter; his premium is going up from about \$4,000 per year to about \$26,000 per year -- even though he has had no claims ever filed against him!

Second, insurance is not available for many. More and more establishments are operating without any liability insurance at all -- a development which is a disservice to the entire Alaska public, since any Alaskan might be the victim of a drunk driver at any time.

The Honorable Katie Hurley
April 12, 1985
Page Two

These trends injure the Alaska community for other reasons. As bar owners who hold valuable licenses face the perils of operating without coverage, or of struggling to pay exorbitant premiums for any coverage they can find, if any, they become more and more tempted to sell the licenses and leave the business. State officials believe that these factors may accelerate the entry into the Alaska market of undesirable elements in the liquor trade, elements that can use laundered cash to acquire valuable licenses. The problem is especially severe for the small, low-volume, neighborhood bar, where there is a high value in the license relative to gross sales, but the license is located in an urban area.

The availability of insurance would help assure that an Alaska victim of drunk driving will have recourse and remedy if a liquor licensee is at fault, for tort purposes, in the sale of alcoholic beverage to a customer who is drunken. Without insurance, recovery by a victim is obviously more problematical.

With the assistance of Mr. George, I have developed a bill to address the problem I have described, a problem that is a community problem and not just an industry concern.

Under this concept, the Legislature would appropriate money to capitalize a public insurance corporation for the purpose of providing insurance at reasonable rates to the industry.

Although an appropriation is necessary, the bill requires a temporary doubling of the state tax on alcohol, for a period of one fiscal year only, so that the total amount of the appropriation would be recouped by the General Fund within the same fiscal year (FY 1986).

The amount of the appropriation required for this purpose is to be determined, but I am advised by the Director of Insurance that the amount of capitalization should be as much as ten million dollars. I am further advised that a temporary doubling of the state tax on alcohol, as proposed, would be more than sufficient to return to the General Fund all the amount made available for capitalization.

The insurance company thus established would be modeled after MICA, the state public corporation created by the Legislature to meet the insurance need of the medical

The Honorable Katie Hurley
April 12, 1985
Page Three

profession during the administration of former Governor Jay Hammond. Senator Rodey was a leader in that effort which has proved very helpful to physicians and patients.

Coverage would be furnished to licensees for liability between the amounts of \$50,000 and \$500,000. These parameters have been arrived at because of several considerations. First, under the new Alaska quasi-mandatory automobile liability insurance law, the required coverage is \$50,000. We believe that the insurance parameters in the enclosed draft will encourage smaller claims (under \$50,000) to be focused upon the drunk driver who in most cases is the primary tortfeasor, and the driver's insurance coverage. This is in accord with the idea of emphasizing the drinker's individual responsibility. It is also practical.

The insurance director for Minnesota told me that one of the difficulties of insurance providers in the field of alcoholic beverage insurance is the necessity to investigate relatively small claims, and to defend against such claims. It had not even occurred to me, for example, that a drunk driver involved in a one-car accident (e.g., a drunk driver who collides with a tree and damages his or her vehicle) might sue a bar where the driver had been drinking, putting the driver in the role of the "victim". Such cases have been brought -- and even won, as a matter of fact.

The \$500,000 limitation is imposed to assure the viability of the insurance company; however, it is believed that most prudent operators would seek, and would be able to find at reasonable premiums, "excess" coverage for claims exceeding the \$500,000 limit.

If the bill becomes law, every Alaskan will know that in the event of a proper claim in tort against a licensee, coverage will exist to satisfy a proved claim between \$50,000 and \$500,000. This would be a great benefit to all Alaskans, since no one knows who may be the victim of a drunk driver, and it would be a great benefit to the industry as well.

I am enclosing two documents. The first is a section-by-section analysis of the draft. The second is the draft itself.

I invite your review of these materials, and your co-sponsorship in the Senate or sponsorship or co-sponsorship in the House of Representatives on April 18, 1985, the day I will offer legislation in the Senate.

JOE P. JOSEPHSON - ALASKA STATE SENATE

The Honorable Katie Hurley
April 12, 1985
Page Four

Time is short, and a true emergency does exist. I hope you will join me in this important effort.

Finally, I should add that representatives of both "CHARR" and "MADD" have expressed support for the concept (prior to having the enclosures available for study). I therefore believe that all segments of the community will recognize the need to provide coverage for claims, for all the reasons of which you and I are aware.

Your comments, reactions and suggestions, of course, as well as your sponsorship or co-sponsorship, would be deeply appreciated.

With best wishes, I am

Sincerely,



Joe P. Josephson
State Senator

JPJ:rak
Enclosures

cc: The Honorable Bill Sheffield, Governor
Mr. Jerry Reinwand, CHARR
Mrs. Katherine Bigler (Mothers Against Drunk Driving)
Alcoholic Beverage Control Board
Mr. John George, Director, Division of Insurance,
Department of Commerce
Mr. "Tiny" DeSapio, CHARR

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 11, 1985

SUBJECT: Sectional analysis of liquor license holders' insurance bill (Work Order No. 14-1049)

TO: Senator Joe Josephson

FROM: George W. Edwards *GWE*
Legislative Counsel

This is in response to your request for a sectional analysis of the draft bill; an Act relating to liquor license holders' insurance; providing for increased alcoholic beverage taxes; and providing for an effective date.

Section 1 AS 04.11.320(a) is amended to require denial of an application for a new liquor license if the applicant has less than \$500,000 in liability insurance coverage.

Section 2 AS 04.11.370 is amended to require the revocation of a liquor license if the licensee fails to maintain at least \$500,000 in liability insurance coverage.

Section 3 AS 21.78.050 is amended to permit the director of the Division of Insurance (the director) to become a court ordered receiver for the Liquor License Holders' Indemnity Corporation (the Corporation) if the director has ordered termination of the business under AS 21.85.055.

Section 4 AS 21.78.100(b) is amended to exclude the Corporation from domestic insurance corporations that may be dissolved by the director following liquidation.

Section 5 AS 21.80.180(5) is amended to exclude the Corporation from insurers that may be defined as "insolvent insurers" under this chapter.

Section 6 AS 21.80.180(6) is amended to exclude the Corporation from insurers included within the definition of "member insurers."

Section 7 AS 21 is amended by adding a new chapter 85 entitled, Liquor License Holders' Insurance Corporation. The chapter includes the following new sections.

Sec 21.85.010 states the purpose of the chapter is to provide a means of furnishing state liquor license holders with adequate liability insurance for acts or omissions that concern customers on licensed premises.

Sec 21.85.020 provides for the creation of the Corporation as a public corporation. Its existence is independent of the state and it cannot encumber the state with any debt, liability, or obligation.

Sec 21.85.030(a) provides for the exercise of corporation powers through a board of governors. The board shall be made up of Alaska residents appointed by the governor of the state and confirmed by the legislature. Four board members must be liquor license holders. Of these, two must have obtained their liability coverage from the Corporation and no more than two may reside in municipalities with more than 100,000 people. Two board members must be professionals from the insurance industry authorized or licensed to do business in the state. The remaining two board members must be persons who have no financial interest in a liquor license and are not representatives of the insurance industry.

Subsection (b) establishes a three year term of office for board members and provides for appointment to staggered terms. It requires that an outgoing member be replaced by a new member from the same class, as described in subsection (a).

Subsection (c) provides that upon early termination by a board member, the governor of the state shall appoint a replacement from the same class, as described in subsection (a).

Subsection (d) provides that the director or a designee may participate in all board meetings without having the right to vote.

Subsection (e) provides for compensation and expense reimbursement of board members under a policy that requires approval by the director.

Subsection (f) holds harmless past and present board members and employees of the Corporation for business related conduct unless the conduct was knowingly outside the scope of authority, knowingly against the interests of the Corporation, or criminal and knowingly or recklessly committed.

Subsection (g) provides that a board member or employee entitled to protection under this section is entitled to defense by the state in a court action. The board member or employee shall be required to reimburse the state for the defense if it is established that the person's conduct was knowingly outside the scope of authority, knowingly against the interests of the Corporation, or criminal and knowingly or recklessly committed.

Subsection (h) defines "knowingly" and "recklessly" with the meaning found in AS 11.81.900.

Sec 21.85.040(a) provides that the board of governors shall prepare a plan for the operation of the Corporation which will become effective upon approval by the director. In the event the board fails to submit a plan or necessary amendments the director shall, after notice and hearing, adopt such plan or amendments as necessary to carry out the provisions of the chapter. Adoption of the plan is not subject to the Administrative Procedure Act.

Subsection (b) provides that the plan of operation shall establish procedures for the performance of corporation duties, procedures for handling assets and liabilities, meeting schedules for the board of governors, record keeping, awarding of contracts, issuing contracts of insurance, and determining rates.

Sec 21.85.050(a) provides that the Corporation shall issue to all liquor license holders who are acceptable risks and who pay premiums, insurance contracts of indemnification for themselves and their employees against losses in excess of \$50,000 for covered claims. The Corporation shall also defend its insureds in actions for damages. Coverage is limited to \$500,000 and the Corporation need not indemnify for punitive damages on a covered claim. Coverage may be provided for an earlier period if approved by the director. It may not be provided for a claim already made or for which the liquor license holder had or reasonably should have had notice. Insurance premiums shall be determined by the board of governors and approved by the director. The Corporation

must comply with all applicable general insurance regulations but is exempt from the Alaska Insurance Guaranty Corporation. It must honor its contracts to its insureds. It must establish standards for the acceptability of risks and may exclude applicants on risk selection factors.

Subsection (b) provides that the Corporation may employ and compensate persons and that these persons are not state employees. It may procure reinsurance from private insurers, borrow or advance funds, enter into contracts for corporation purposes, litigate in the name of the Corporation, provide risk management advice, contract for management services, and perform other necessary acts.

Sec 21.85.055(a) provides that the director may hold a public hearing to determine whether the Corporation should be terminated if the Corporation posts less than 35 percent of the premiums written in the state for liquor license holders' liability insurance for two consecutive years or less than 20 percent for one year.

Subsection (b) provides that upon an order of termination by the director the terms of the members of the board expire, the members obligations end, and the Corporation shall be liquidated.

Subsection (c) provides that after termination of the Corporation it may be reactivated by the director if it is determined that liability insurance is unavailable for liquor license holders on the voluntary market. The reactivated Corporation shall commence business upon appointment of a new board of governors by the governor of the state.

Subsection (d) provides that in determining whether to terminate or reactivate the Corporation the director shall consider the level of expected premiums and losses, the requirement for state funds needed to operate, the availability of alternative insurance markets, the costs of continued operation, the impact of continued operation on rates, and the expected number of policy holders in the event of continued operation.

Subsection (e) provides that the director may order termination of the Corporation if after public hearing it is determined that continued business would result in substantial

underwriting losses unless excessive premiums are charged to participants.

Sec 21.85.060 provides that the Corporation shall be taxed in the same manner as a domestic insurer.

Sec 21.85.070 requires that the Corporation maintain records sufficient to determine losses for rate making and to maintain loss control. Information regarding reserves, premiums, expenses, and claims shall be reported annually and made available to the public. The director may require supplemental reports that include the names of insured persons and claimants.

Sec 21.85.080 provides that policy rates shall be determined by license categories. A minimum rate may be set for each category of liquor license holder. Rates may not be excessive in terms of premiums unjustifiably exceeding losses. Rates may not be inadequate in terms of losses exceeding premiums. Rates may not be discriminatory. They shall be adjusted annually based upon actual experience of the Corporation over the previous four years. Rate considerations shall include national trends in damages, income from the investment of reserves, individual risk underwriting factors, classifications within license categories, and amounts necessary for loan repayments. If the Corporation suffers excessive claim losses for a given year, the Corporation may levy a special assessment, subject to approval by the director, against policy holders for that year which may be made in installments within three years and may not exceed 150 percent of the insured's premium for the given year. The obligation is not cut-off by policy termination. If earned premiums for a given year prove excessive, the Corporation may, subject to approval by the director, pay or credit the excess to persons insured during the given year. The director may extinguish special assessments under this section upon the finding of a sound actuarial basis.

Sec 21.85.090 provides for installment payments of premiums. It permits the cancellation of policies for nonpayment of premiums by delivery of notice to the insured and to the Alcoholic Beverage Control Board. Cancellation is not effective until 30 days after notice.

Sec 21.85.095 permits the Corporation, subject to approval by the director, to transfer its assets and liabilities to a

company that is certified to transact casualty insurance business in the state, pays full value to the state for any surplus in the Corporation, reinsures all policy obligations, and meets other reasonable requirements of the director. A written statement of compliance with these requirements must be submitted to the board of governors by the company.

Subsection (b) provides that while the company to which the Corporation assets and liabilities have been transferred continues to write premiums at levels required in AS 21.85.055, it may carry forward and offset against its premium tax obligation to the state the amount by which the aggregate claims paid on reinsurance assumed exceeds aggregate reserves on business established at the date of the reinsurance agreement.

Sec 21.85.210 provides that the Corporation shall establish a reserve fund as required by the Department of Commerce to provide surplus in respect to policyholders.

Sec 21.85.900 provides definitions for terms found within the chapter.

Section 8 This section provides that the alcoholic beverage tax established under AS 43.60.010(a) shall be increased by 100 percent, during the 1986 tax year only, for the purpose of compensating the state for appropriations made to establish the reserve fund required under AS 21.85.210.

Section 9 This section provides for an effective date on the effective date of a special appropriation to establish the reserve fund required under AS 21.85.210.

GWE:csh
c3/097

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

Marsh & McLennan

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.

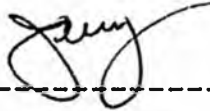
Jerry Reinwand
Consultant • Lobbyist
14 Marine Way • Suite 219
Juneau, Alaska 99801

MEMORANDUM

TO: The Honorable Katie Hurley
Chairman
House State Affairs Committee

DATE: January 28, 1986

FROM: Jerry Reinwand



SUBJ.: H.B. 345

As a follow-up to our meeting today, I have attached copies of both a February 8, 1985 letter and written testimony from Bob Whitmarsh, Assistant Vice President of Marsh & McLennan. Marsh & McLennan was--prior to the liability insurance crisis--a major underwriter of liquor liability insurance in Alaska.

Mr. Whitmarsh plans to testify before your Committee in Juneau on February 5, and would be available for any questions which you may have either before or after the hearing.

McLennan

Marsh & McLennan, Incorporated
2550 Denali Street, Suite 1400
P.O. Box 4-A
Anchorage, Alaska 99509
Telephone: (907) 278-5424

February 8, 1985

TO: Interested Legislators

SUBJECT: Liquor Liability/Dram Shop Acts

Since 1972, Marsh & McLennan, Inc. has been actively involved with CHARR and the liquor industry in providing markets for liquor liability insurance. Since 1977, we have witnessed a constant increase in costs for this coverage, but the changes in the last six months have been the most dramatic.

During the twelve months prior to September, 1984, the average liquor liability rate for our clients was \$.25 per \$100 of sales. This figure includes all bars, taverns, restaurants, etc. It does not include package stores, which averaged about \$.08 per \$100 of sales. Today, if a company will write this coverage, they will charge at least \$1.25 on restaurants with 50% food sales and up to \$2.50 for all other Beverage Dispensary sales. The package stores are getting prices of \$.40 and up.

Not only are rates rising, but market availability has decreased to a frightening level. Many companies who previously entertained this coverage have withdrawn. At present, three or four companies will still write restaurants with at least 50% food, but we only know of one or two that will entertain a bar or tavern. When they will quote, they are very particular and decline a large percentage. The managing general agent for this company believes they also will withdraw when they begin getting a large influx of applications. This will occur this month as one large writer is cancelling all inforce business this month.

Marsh & McLennan, Inc. is still working with several carriers to provide this coverage. Several facts cause concern with underwriters:

- If the word "criminal" is deleted in the statutes pertaining to negligence by an owner, all carriers contacted have advised they will not entertain this coverage at any price. They believe such a change would increase the liability to such a degree that court costs alone would be prohibitive.

- Alaska courts have been quite liberal in awarding damages, even when there is some doubt as to the situation. A major problem for the owner is that most liquor liability suits do not appear until 12 to 24 months after an occurrence. It is difficult, and sometimes impossible, to verify who was served a drink, and how many, after that length of time. In a large establishment a patron may be served by two or three different waitresses, making identification later very difficult.
- When the social servers of alcohol, such as the homeowner or non-liquor business, are not held liable for their actions, the licensed premises carries their burden. For example, a person can attend a private party at a friends home after drinking at a licensed premises. If he then has an accident and injures another person, the injured person can file suit against the licensed premises but not the homeowner. This is inequitable.
- Underwriters believe, as do we, that at some point the individuals must be responsible for their own actions. The public cannot rely on insurance companies to cover all aspects of society.

On a more positive note, underwriters are impressed with the TAM program which was brought to Alaska by the liquor industry. Education is a big key to the resolution of the problem. We are still negotiating with underwriters to prepare a program which would make TAM a requirement if insurance is placed. We hope this will help the industry if we are successful.

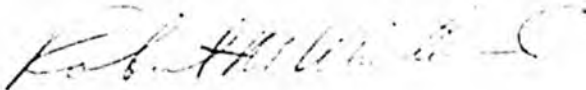
The position of underwriters will not be improved if a Dram Shop Act is enacted, unless the Act limits the potential liability to under \$250,000, reduces the statute of limitations for filing a suit from two (2) years to one (1) year, and makes all servers of alcohol equally responsible when criminally negligent.

There is no easy solution. The government can help by putting more responsibility on individuals. The liquor industry can help through education and stringent rules for serving alcohol. If both do not help, we predict that many establishments will not purchase liquor liability because of the cost and will then have to close if they are sued. This will cause jobs to be lost, revenues to the State to be decreased and more illegal establishments to appear. Everyone will lose.

Please contact me if you have any questions. I have spent many years working with this problem and will be happy to help in any way I can.

Sincerely,

MARSH & McLENNAN, INC.

A handwritten signature in cursive script, appearing to read "Robert M. Whitmarsh".

Robert M. Whitmarsh
Assistant Vice President

RMW/cc

TESTIMONY AGAINST H. B. 345

My name is Bob Whitmarsh and I am the head of Marsh & McLennan, Inc. in Anchorage. Marsh & McLennan has been very active in the liquor industry insurance in Alaska since 1972. We have developed a lot of data on liquor liability over the years and have worked with more insurance companies on this issue than most Brokers in the state.

In February of this year I sent a letter to interested legislators that advised them of the potential outcome if this bill is passed. We have discussed this issue directly with underwriting companies and with reinsurers. The unanimous opinion is that liquor liability would not be available if this bill is passed. Margie Johnson touched on these points in her testimony today but I want to clarify the issue.

Governor Sheffield stated in his introduction letter that this bill is not the problem but rather the national insurance is the problem. That position is only partly true. The national loss situation is a factor. Most all companies have backed down or withdrawn on many types of coverages, including liquor liability. However, it must also be stated that the carriers are withdrawing on the unfavorable lines in those states where a problem exists. Alaska's court system frightens the insurance companies with their liberal awards. Alaska's tendency to go for the "deep pockets" in suit situations causes grave concern. The liquor liability situation in Alaska was borderline at best without this bill. With it, the underwriters have stated they would have no actuarial basis to even try to set rates because the wording of this bill is so open that a suit could be made, and won, very easily. Defending such a suit would be nearly impossible two years after the fact.

From an insurance standpoint, there are steps which could be taken to ease the situation. As currently written, Senator Josephson's bill will not stop or ease the problem. I would like to see our legislators put teeth into the current mandatory auto law. If they also would remove the comparative negligence from liquor liability and make liquor liability excess of all valid and collectible automobile liability, the drunk driver would carry the primary burden, but the licensed liquor establishment would still carry the responsibility and duty to protect his patrons because his own insurance would have to step in if there was no automobile liability.

At the same time, it is an unfair situation when known "after hours" places serve liquor and social hosts serve liquor, but they are not responsible for serving their guests. No solution will be absolute, but equality in the way liability is imposed would be a great start. Lets make Alaska a leader in correcting the social ills and quit trying to use insurance to pay for those ills.

Marsh & McLennan, Incorporated

Testimony Against H. B. 345
Page 2 of 2

H.B. 345 will not help. I am against this bill. We will be happy to work with the Legislature and the Governor to draft a bill which protects everyone equally and that would allow reasonable insurance to protect the imposed liabilities.

Thank you for your time.

1000103/345

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
Bill/Resolution No.: HB 345
Title: "An Act...returning...civil liability...to ordinary negligence..."
Sponsor: By Request of the Governor
Requestor: Office of the Gov./OMB
Date of Request: March 19, 1985

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: General Government
BRU, Program or Subprogram(s) Affected: Legal Services

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	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

This bill returns the standard for civil liability of vendors of alcoholic beverages to ordinary negligence under the common law. Civil liability is a matter between private parties. In this case, it is between vendors of alcoholic beverages and their customers. Consequently, the bill will not have a fiscal impact on the Department of Law.

Richard I. Pegues

Prepared By: Richard I. Pegues, Director
Division: Administrative Services

Phone: 465-3672
Date: 3/19/85

Approved by Commissioner: *Richard I. Pegues/PR* Norman C. Gorsuch
Agency: Department of Law

Date: 3/19/85

- Distribution (by Agency preparing fiscal note):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

Agency

ALASKA STATE LEGISLATURE

Katie Hurley, House of Representatives



Pouch V
Juneau, Alaska 99811
Ph: (907) 465-4763
Box 870157
Wasilla, Alaska 99687

*Chair, State Affairs Committee
Member, Health Education & Social Services
Member, Alaska Legislative Council
Member, House Special Committee on Fisheries*

DRAM SHCP LEGISLATION

The word "dram" is an old english term for a shot or glass of liquor.

Nationally, one half of all highway deaths are alcohol related. In the state of Alaska between 1978 and 1983, 386 people died in alcohol related traffic deaths and 7,329 people were injured. Dram shop laws are drafted for the purpose of reducing the number of these deaths, injuries and social costs by encouraging liquor servers to share responsibilities associated with drinking and driving. Dram shop laws do not result in any cost to the state and are self-enforcing.

DEFINITION

Dram shop laws are laws which establish the civil liability of a bar or liquor store owner who sells alcohol to an intoxicated person or minor who subsequently is involved in an accident in which a third party is injured or killed. Dram shop laws enable a victim to recover damages against a bar or liquor store owner by making them liable should they violate state laws making it illegal to serve or sell alcohol to intoxicated people.

BACKGROUND

Prior to the temperance movement in the early 1800's an alcohol server could not be held liable for any damages caused by an intoxicated customer because the server was judged too far removed from the situation to be considered responsible. Basically, the old common law rule held that only the drunk person could be held responsible for their actions. This principle of law still holds today in many states, generally prohibiting recovery of damages against the supplier even if that person knowingly served an intoxicated person or minor who later went on to injure or kill another person.

Dram shop laws were spawned from the temperance movement in the early 19th century. Throughout a number of states, the old common law has given way to a doctrine of common law liability which assumes that the server can be reasonably expected to foresee damages resulting from the actions of an intoxicated customer and that the illegal sale of alcohol can be considered a proximate cause of the damages in legal terms.

The first dram shop law was adopted in Wisconsin in 1849. Today, 38 states and the District of Columbia have some form of dram shop liability.

Alaskan Law

Alaska has provided for dram shop liability since statehood. In 1980, the alcohol beverage statute was rewritten to change the standard of civil liability of alcohol beverage vendors from ordinary negligence to criminal negligence. The criminal negligence provision requires that the server must act with "gross negligence"--instead of "ordinary negligence" which is applied in most other cases. As a result, very few vendors have actually been held liable since criminal negligence is often difficult to prove. The action by the legislature in 1980 took place in the Senate Finance committee with little or no public input. The provision itself was actually part of a larger bill.

HB 345

HB 345 was introduced by the Governor at the recommendation of his appointed Task Force on Drunk Driving chaired by Representative Clocksin. HB 345 simply returns the standard of negligence from criminal to ordinary negligence under common law, thus eliminating the necessity of proving criminal intent. Servers of alcoholic beverages would carry a greater burden of responsibility to ensure that intoxicated customers are not served if they plan to drive. Alaskan bar and liquor store owners would be forced into playing an active role in preventing injuries and deaths caused by drunk drivers. HB 345 also includes bootleggers.

Liquor Liability Insurance

An associated issue is the high cost and reduced availability of liquor liability insurance in Alaska. As in many states which have enacted dram shop laws, liquor liability in Alaska is available through only one company. In the past two years, the cost of insurance has increased significantly. However, the Governor's Office and the Division of Insurance maintain that the insurance problems facing the liquor industry are also facing many other industries and professions through out the state including fishing, health care and law practices. An insurance task force has been working during the past few months to review insurance problems in the state and recommend solutions. Liquor liability insurance problems are also a problem in states that do not have dram shop laws.

SECTIONS 1. & 2. These sections establish a temporary, nonexclusive ~~Joint Underwriting Authority~~ (JUA). The members of the JUA shall include all insurers who write personal liability insurance in Massachusetts. The JUA is to ~~provide Liquor Legal Liability Insurance in the Commonwealth.~~ In order to continue writing personal injury liability in this state, an insurer must be a member of the JUA.

SECTION 3. The powers of the JUA shall include: The power to issue policies of insurance, the power to underwrite, the power to adjust and pay losses, the power to appoint service companies, the power to assume reinsurance to its members, and the power to assign reinsurance. (the policies stated above shall include incidental coverages and be subject to limits not to exceed \$500,000 for each claimant under one policy and \$1 million for all claimants under one policy in any one cause of action)

SECTION 4. A plan of operation shall be promulgated by the Commissioner of Insurance. This plan will become effective no later than thirty days from the legislatures effective date. Included in this plan of operation shall be provisions for: a preliminary assessment of all members for initial expenses necessary to commence operations, the establishment of necessary facilities, the management of the association, the assessment of members to defray losses and expenses, the commission arrangements, the underwriting standards, the acceptance and cession of reinsurance, the appointment of insurance carriers, and the procedures for determining amounts of insurance to be provided. This plan of operation will set coverage limits according to type of license, gross volume of liquor sales, employee alcohol awareness programs, and other criteria developed by the Commissioner. The plan shall also provide for sufficient levels of reserves achieved by the association.

This plan of operation may be amended by the JUA directors upon approval by the Commissioner. In addition, the Commissioner may make

his own amendments. Any profit shall be added to the JUA reserves or returned to the policy holders as a dividend.

SECTION 5. Any licensee, who after reasonable effort was rejected insurance coverage, may apply for JUA coverage. A broker or agent may act on behalf of the applicant. Coverage will be issued if the applicant meets JUA standards and has no unpaid, uncontested premiums due on prior insurance policies. There shall be a mandatory offer with criteria thereto taken into consideration.

SECTION 6&7 All insurers of the JUA shall participate in its operation proportionally to net direct premiums each member contributed to the aggregate amount written in Massachusetts.

This proportion will be calculated with information supplied in annual statements and reports of the preceding year that are filed with the Commissioner.

Any deficit sustained by the JUA shall not be charged to any person other than the insured under a policy of liquor legal liability insurance. The JUA shall collect premiums to make it self-supporting. If the JUA does not have sufficient funds to cover the cost of operation the members will temporarily contribute to fulfill the financial requirements. This contribution will be reimbursed to the members through recoupment.

SECTION 8. The JUA Board of Directors shall consist of 13 members. The JUA shall elect 8 members from its ranks with voting weights determined by proportional participation. The Commissioner shall appoint 4 members as representatives of the licensees. The Commissioner shall appoint 1 member as representatives of the insurance agents.

The Commissioner shall designate a time and place for the 8 member JUA election. The other 5 members shall be appointed on or before this election.

SECTION 9 & 10. Any decision by the Commissioner may be appealed within 30 days after such ruling. In addition, further action may be taken to the superior court in the county of the claimant within 30 days of the appeal decision.

SECTION 11 & 12. The JUA shall file a statement of transactions, condition, operations and affairs during the preceding year on or before March 1st. The Commission may request additional information. The Commissioner shall make at least an annual examination into the affairs of the JUA.

The concept of breach of confidentiality applies to the JUA and those connected with it.

SECTION 11A. Allows the Commissioner to assess the participating insurers for the costs incurred by the Commissioner in approving the rates and operation of the JUA. The rates will be calculated in accordance with Chapter 175A using a file and use method. This allows the Commissioner the opportunity to review and approve or disapprove the rate filings.

Definition: The coverage provided for in this section would not include recovery where the incident occurred off of and away from the premises of the licensee excluding however, those causes of action arising out of the intoxicated individual's operation of a motor vehicle.

SECTION 13. Section 1-12 shall expise on December 31, 1987.

SECTION 14. This section would require that notice of where a defendant acquired his last drink also be sent to the establishment so named.

SECTION 15. Would limit coverage under a policy of liquor liability insurance so that a payment for loss may not be made as the result of the actions of an intoxicated person which occurred off of and away from the premises of the licensee excluding those causes of action arising out of the intoxicated individual's operation of a motor vehicle.

It would also require a sixty day notice of intention of cancellation.

SECTION 16. If an insurer makes a payment, the Office of Attorney General must be notified within 10 days. This notice must include the name of the insured (s), the name of the claimant (s), the amount paid the date (s) of the incident. Again, the concept of breach of confidentiality relates to all parties involved.

SECTION 17. Would establish a show cause procedure under the Mass. Rules of Civil Procedure. This process would take place before a single justice of superior court for the purpose of weeding out frivolous actions. A showing of facts giving rise to a legitimate question of liability appropriate for judicial inquiry must be made. In the absence thereof, an appeal process may be undertaken.

SECTION 18. Would preclude an intoxicated individual from recovering damages caused by the negligent serving of alcohol nor may they bring an action against a licensee in the absence of willful, wanton or reckless conduct on the part of the licensee.



PREVENTION RESEARCH CENTER

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

Ms. Patty Macklin
Alaska Legislature
House State Affairs Comm.
1024 West Sixth
Anchorage, Alaska 99501

August 19, 1985

Dear Ms. Macklin:

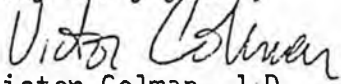
Pursuant to our conversation of today I am sending you further information regarding both myself and Prevention Research Center. Please let me know if you require any further materials to this end. Additionally, I am sending you another copy of the Model Dram Shop Act, as it appeared in a recent law review article (also enclosed). Finally, enclosed also is a briefing paper on AB 2005, the most recent dram shop bill in the California legislature. The paper was originally intended to be our written testimony but the bill was pulled shortly before its first committee hearing. It is expected that the bill will be heard this year, in the House Judiciary Committee.

Thank you again for inviting me to address the House State Affairs Comm. As I told you on the telephone I will be addressing the Wisconsin and Vermont legislatures as well. I anticipate that my role will be similar in each of my appearances, which would be to explain the current status of dram shop liability, and how reform of the law can directly aid in preventing alcohol-related injuries.

Again, to reiterate, our approach is one of public health, and cannot be linked to the specific interests of plaintiff's attorneys groups or the alcohol beverage industry.

I look forward to hearing from you in the near future. Please let me know if you and the committee require any additional information.

Very truly yours,


Victor Colman, J.D.
Legal Research Analyst

cc. James Mosher, J.D.

enc

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A
COMPILATION
OF
DRAM SHOP STATUTES
AND
JUDICIAL RULINGS

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(703) 578-4200

TABLE OF CONTENTS

	<u>Page</u>
Highlights of 1984 Activity	1
Dram Shop Liability (A Background)	2
Chart Overview of Dram Shop Liability	6
State-by-State Listing of Statutes, Case Summaries	9
Federal Government Liability	85