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recover for self-inflicted injuries, or, at a minimum, not bar a wrongful death suit by his or her beneficiaries.

### B. Commercial Sales to Minors

California's statutory immunity does not apply where a licensee furnishes alcohol to an obviously intoxicated minor.<sup>53</sup> Based on the express language of the statute, an obviously intoxicated minor, as well as those injured by him, retains a cause of action against the seller.<sup>54</sup>

Despite the Supreme Court's efforts to clarify commercial server liability, later cases have raised new issues concerning service to minors. *Burke v. Superior Court*<sup>55</sup> held that a liquor store retailer selling alcohol to a sober minor was not immune from liability to persons injured by the underaged purchaser of the intoxicants.<sup>56</sup> However, the *Burke* case was recently disapproved by the California Supreme Court in *Strang v. Cabrol*.<sup>57</sup> The court read the 1978 statutory amendments broadly and held that no civil liability may not be imposed on one who furnishes alcoholic beverages to a minor who is not obviously intoxicated at time of service.<sup>58</sup> In his dissent, Justice Kaus construed the 1978 statutory amendments differently and found that the revival of the pre-*Vesely* rule concerning proximate cause was limited to situations covered by two specific immunities: the social host and the person who serves common drunkards and obviously intoxicated persons. (Bus. & Prof. Code, § 25602, scbd. (a)).<sup>59</sup> Thus, by inference, the "sober minor" situation was not abrogated by the 1978 legislation and should not bar plaintiff's cause of action against the licensee.

The *Strang* case raises additional issues, including other potential

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53. CAL. BUS. & PROF. CODE § 25602.1 (West Supp. 1984).

54. *Cory v. Shierloh*, 29 Cal. 3d at 430, 440, 629 P.2d at 8, 13, 174 Cal. Rptr. at 500, 505 (1981). Despite the court's clarity in *Cory*, two subsequent appellate cases stated that an intoxicated minor cannot maintain an action against a licensed seller for injuries he himself sustains as a result of his intoxication. *Hagen v. Dias*, 185 Cal. Rptr. 530 (1982) (ordered Decertified Oct. 28, 1982); *Calendrino v. Shakey's Pizza Parlor Co.*, 198 Cal. Rptr. 597 (1984) (ordered Decertified March 22, 1984). *Calendrino* failed to address this part of *Cory*, whereas *Hagen* found that the view suggested in the *Cory* dicta would amount to "rewrit[ing] the statute in a manner contrary to the clear purpose of the remedial legislation." *Hagen*, 185 Cal. Rptr. at 532. However, the California Supreme Court immediately decertified both opinions, which can connote that the appellate courts misread the statute.

55. 129 Cal. App. 3d 570, 181 Cal. Rptr. 149 (1982), *disapproved*, 37 Cal. 3d 720, 728 (1984).

56. The court also defined a minor for purposes of CAL. BUS. & PROF. CODE § 25602.1 (the "drunk minor" exception to dram shop immunity). The court determined that previous legislative intent in changing the legal minority age from twenty-one to eighteen was the general rule, except in the specific area of alcohol beverage sales, where the term "minor" in the statutory provisions regulating alcohol beverage sales would continue to refer to persons under twenty-one, rather than under eighteen. See *Burke*, 129 Cal. App. 3d at 577-78, 181 Cal. Rptr. at 153.

57. 37 Cal. 3d 720, —, — P.2d, — Cal. Rptr. —, (1984).

58. *Id.* at 728.

59. *Id.* at 729-730 (Kaus, J., dissenting).

areas of liability. Although the "*Burke*" cause of action has been abrogated, the *Strang* majority noted that service to a minor who is "incompetent, incapable of voluntary action, or otherwise suffers from some peculiar mental disability"<sup>60</sup> could be held to proximately cause injury under the reasoning in *Cole*.<sup>61</sup> Thus, even with explicit legislative language, significant openings have been created to enable recovery by persons under dram shop rationale.

### C. *Respondeat Superior*

One potential theory of recovery outside the statutory immunity is "respondeat superior." The doctrine of respondeat superior provides that the employer is liable for the wrongful acts of his employee,<sup>62</sup> and has been used in California cases involving alcohol-related accidents.<sup>63</sup> An illustrative case is *Harris v. Trojan Fireworks Co.*,<sup>64</sup> where persons injured by defendant's employee, who became drunk at an office party, were able to assert a triable cause of action against the employer. *Harris* court found a sufficient connection between the employment, the party, and the negligent act to justify holding the employer financially responsible for the accident, even though the employee was driving home from work.<sup>65</sup> The court stated that liability attaches where a nexus exists between the employment and the activity which results in foreseeable injury.<sup>66</sup> Although the accident did not occur on the employer's premises, the court did infer that the activity in question, the party (and, by inference, the consumption of alcohol), could be for the benefit of the employer-principal. This case illustrates but one factual sequence where dram shop immunity is inapplicable.

Other jurisdictions have also allowed complaints to stand under a respondeat superior theory. For example, in *Romeo v. Van Otterloo*,<sup>67</sup> a Michigan Court of Appeals case, the decedent was killed after a collision

60. *Id.* at 726. See, *infra* notes 76-77, and accompanying text.

61. See *Cole*, 45 Cal. 2d at 356, 289 P.2d at 457 (as to competent persons, it is the voluntary consumption of alcohol which proximately causes injury) (emphasis added). See, *infra* notes 74-77, and accompanying text for a discussion of incompetent persons.

62. See generally, W. PROSSER, LAW OF TORTS, § 69 (4th ed. 1971).

63. See *Harris v. Trojan Fireworks Co.*, 120 Cal. App. 3d 157, 174 Cal. Rptr. 452 (1981); *Brockett v. Kitchen Boyd Motor Co.*, 264 Cal. App. 2d 69, 70 Cal. Rptr. 136 (1968) (plaintiff injured by employee after office party where employer directed employee to drive home), *rev'd on other grounds*, 24 Cal. App. 3d 87, 100 Cal. Rptr. 752 (1972).

64. 120 Cal. App. 3d 157, 174 Cal. Rptr. 452 (1981), *rev'd on other grounds* 155 Cal. App. 3d 830, 202 Cal. Rptr. 440 (1984).

65. *Id.* at 164, 174 Cal. Rptr. at 457.

66. *Id.* at 163, 174 Cal. Rptr. at 456. Cf. *Harris v. Trojan Fireworks Co.*, 155 Cal. App. 3d 830, 202 Cal. Rptr. 440 (1984) (social functions must involve substantial employee participation to hold employer liable on respondeat superior theory).

67. 117 Mich. App. 333, 323 N.W.2d 693 (1982), *lv. to appeal denied*, 417 Mich. 1004 (1983).

with the automobile of a corporate party host. The court concluded that the existence of a dram shop statute<sup>68</sup> did not foreclose such an action.<sup>69</sup> The Alaska Supreme Court also held that an action exists under a respondeat superior theory for alcohol-related injuries. In *Fruit v. Schreiner*,<sup>70</sup> the court affirmed a jury verdict of \$635,000 awarded to plaintiff, who suffered permanent disability when an intoxicated salesman for defendant company lost control of his automobile and collided into him. The salesman had become intoxicated while attending a business convention. In holding that the employee became intoxicated within the course and scope of his employment, the court noted that the salesman's duties at the convention included socializing with possible clients.<sup>71</sup> These cases indicate that a respondeat superior theory provides a potential cause of action for alcohol-related injuries outside of dram shop statutes.<sup>72</sup>

#### D. Special Relationships

The law has long recognized that the existence of special relationships may create a duty of care between persons where no duty had previously existed.<sup>73</sup> These relationships include ones involving incompetent persons, universities, public entities, innkeepers, and common carriers. These relationships have been used to impose liability upon both licensed and unlicensed servers of alcohol apart from statutory dram shop liability.

##### 1. Incompetent Persons

The "special relationship" doctrine now utilized in California had its origins in *Pratt v. Daly*,<sup>74</sup> where plaintiff alleged that defendant served alcohol to plaintiff's husband with knowledge that the husband was a habitual drunkard and was therefore incapable of voluntary action. The

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68. MICH. COMP. LAWS ANN. § 436.22(5) (1978).

69. *Romeo v. Van Otterloo*, 117 Mich. App. at —, 323 N.W.2d at 696.

70. 502 P.2d 133 (Alaska 1972).

71. *Id.* at 142.

72. *But see*, *Sanders v. Hercules Sheet Metal, Inc.*, 385 So. 2d 772 (Louisiana 1980) (employer who provided employees with alcoholic beverages at Christmas party committed no affirmative act which increased plaintiff's peril, and was thus not negligent); *Strong v. K & K Investments, Inc.*, 216 Neb. 370, 343 N.W.2d 912 (1984) (where altercation between defendant's employees and plaintiffs occurred sometime after and at some distance from place where employer's Christmas party was held, employer could not be held liable for plaintiff's injuries on respondeat superior theory).

73. For example, RESTATEMENT (SECOND) OF TORTS § 315 (1965) states the general rule: "There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless (a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or (b) a special relation exists between the actor and the other which gives to the other a right to protection."

74. 55 Ariz. 535, 104 P.2d 147 (1940).

*Pratt* court held that the server's knowledge of the drinker's condition was enough to legitimately formulate a duty arising from a special relationship.<sup>75</sup> This 1940 case was relied upon in *Cantor v. Anderson*<sup>76</sup> to create liability where defendant served alcohol knowing that it could cause the drinker to lose control and become violent because of the drinker's mental disability. The court drew a distinction between an ordinary intoxicated person who voluntarily drinks and a consumer who is especially susceptible to alcohol use because of an exceptional physical or mental condition.<sup>77</sup>

## 2. Universities

A "special relationship" basis of liability may also be predicated upon the duty imposed on universities to protect and supervise students both on and off-campus. It is clear that primary and secondary schools owe a duty to students who are on school grounds to supervise them and to enforce rules and regulations necessary for their protection.<sup>78</sup> In addition, this duty can extend to behavior off the school grounds under certain circumstances.<sup>79</sup> In 1979 the California Appellate Court created similar duties for a state university's failure to provide a safe place for students living in residence halls. In *Duarte v. State of California*<sup>80</sup> plaintiff brought an action for the wrongful death of her daughter who had been raped and murdered in a student residence hall owned and operated by the university. The court surveyed "special relationship" case law and concluded that if the university failed to take reasonable precautions to reduce known hazards to its students, then the institution could be held liable.<sup>81</sup>

Two years later, a different district of the California Appellate Court tackled the same question in a drinking and driving context and arrived at an opposite conclusion. In *Baldwin v. Zoradi*,<sup>82</sup> the student plaintiff

75. *Id.* at —, 104 P.2d at 152.

76. 126 Cal. App. 3d 124, 178 Cal. Rptr. 540 (1982).

77. *Id.* at 132, 178 Cal. Rptr. at 546. This distinction was first recognized in *Cole v. Rush*, 45 Cal. 2d 345, 356, 289 P.2d 450, 457 (1955), which precluded liability only for providing liquor to a competent person. See, *Strang v. Cabrol*, 37 Cal. 3d 720, 726, — Cal. Rptr. —, — P.2d — (1984). See also, *Shelby v. Kock*, 85 Wash. 2d 911, 541 P.2d 365 (1975). But see *Tome v. Berea Pewter Mug, Inc.*, 4 Ohio App. 3d 98, 446 N.E.2d 848 (1982) (drunkenness does not relieve a person from exercising the degree of care of a sober man under the same circumstances).

78. *Cf.*, *Dailey v. Los Angeles Unified School Dist.*, 2 Cal. 3d 741, 747-48, 470 P.2d 360, 363, 87 Cal. Rptr. 376, 379-80 (1970).

79. *Hoyem v. Manhattan Beach City School Dist.*, 22 Cal. 3d 508, 515, 585 P.2d 851, 855, 150 Cal. Rptr. 1, 5 (1978).

80. 151 Cal. Rptr. 727 (1979). The California Supreme Court ordered that the Court of Appeal opinion not be officially published.

81. 151 Cal. Rptr. at 735.

82. 123 Cal. App. 3d 275, 176 Cal. Rptr. 809 (1981).

was injured in a car driven by another student who was intoxicated after drinking on campus. Plaintiff alleged a duty on the part of the university to control the conduct of its students and to enforce state laws that forbid the consumption of alcohol on campus. Though the court admitted that the case presented was "on the cutting edge of the tort law,"<sup>83</sup> it declined to impose such duties on the university, holding that the events that followed the drinking on campus were not foreseeable.<sup>84</sup>

In dictum, *Baldwin* discussed what actions were lacking on the part of the university in order to impose liability. If the university affirmatively encouraged underaged students to imbibe, with knowledge of their intention to operate motor vehicles, then the school would be guilty of misfeasance, a more actionable tort than nonfeasance.<sup>85</sup> This distinction, however, does not appear to justify the court's holding. If the dormitory advisors had knowingly permitted teenage students to consume alcohol in the residence halls in contravention of university rules, as alleged in *Baldwin*, the university would arguably be guilty of misfeasance and, under the court's scenario, subject to liability.

### 3. Public Entities

A final series of cases embrace public entities and their duty of care toward the public. Two recent California appellate cases covered this "special relationship" in the context of intoxicated persons who are detained by law enforcement officers, then released, only to be involved in a later casualty. In *Jackson v. Clements*,<sup>86</sup> wrongful death actions were brought against the county and county law enforcement officers by heirs of victims who died in an automobile collision as a result of the driving of allegedly intoxicated minors. Despite plaintiffs' contention that the law enforcement officers undertook an investigation of a private party and clearly observed the intoxicated condition of minors, the court held the public entity owed no duty of care to the decedents to prevent the intoxicated minors from driving away from the party.<sup>87</sup>

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83. *Id.* at 295, 176 Cal. Rptr. at 821.

84. *Id.* at 291, 176 Cal. Rptr. at 819. *Accord* *Bradshaw v. Rawlings*, 612 F.2d 135, 141 (3d Cir. 1979). There, plaintiffs brought an action against college for injuries arising out of an automobile accident which occurred following a college class picnic where the driver had become intoxicated. The court determined that the college owed neither a custodial duty to its students nor a special relationship duty of care to either control the conduct of students off campus or protect a student travelling to and from off campus activities.

85. *Baldwin*, 123 Cal. App. 3d at 290, 176 Cal. Rptr. at 818. "'Misfeasance' is the improper doing of an act which a person might lawfully do," and "'nonfeasance' is the omission of an act which a person ought to do." BLACK'S LAW DICTIONARY 902 (5th ed. 1979).

86. 146 Cal. App. 3d 983, 194 Cal. Rptr. 553 (1983). *Accord* *Harris v. Smith*, 157 Cal. App. 3d 100, 203 Cal. Rptr. 541 (1984).

87. *Id.* at 988, 194 Cal. Rptr. at 556.

*Stout v. City of Porterville*<sup>88</sup> also failed to formulate any legal duties upon a police officer who stopped an obviously intoxicated man on the street, questioned and released him. The intoxicant was subsequently struck by a vehicle. Plaintiffs attempted to assert two duties of care: first, a common law duty of care to Stout;<sup>89</sup> second, a "mandatory duty" to protect against the risk of a particular kind of injury pursuant to the California Penal Code.<sup>90</sup> Both the *Jackson* and *Stout* courts rejected the existence of any such duty because "one owes no duty to control the conduct of another, nor to warn those endangered by conduct."<sup>91</sup> The *Stout* court failed to find the existence of a relationship between Stout and the police officer, therefore finding it unnecessary to determine whether any governmental immunities prohibited suit.

The circumstances in which a police officer or other public official would be held to have a special relationship with an injured party were set forth in *Davidson v. City of Westminster*.<sup>92</sup> In reviewing the relevant cases, the court concluded that a special relationship will be found (1) where the public official voluntarily assumes a duty toward the injured party, (2) where the police induce the victim's reliance on a promise, express or implied, that they will protect him or her; or (3) where the victim depends on the police or other public officials for protection because the official either created the peril or increased or changed the risk which would otherwise have existed.<sup>93</sup>

A slightly different scenario in *Greene v. City of Livermore*<sup>94</sup> allowed plaintiff to assert a triable cause of action against a city. There, decedent was killed and plaintiff was seriously injured when their vehicle was struck by an automobile driven by an intoxicated motorist. This accident took place shortly after the city's police officers had arrested a previous

88. 148 Cal. App. 3d 937, 196 Cal. Rptr. 301 (1983).

89. *Id.* at 941, 196 Cal. Rptr. at 304. Plaintiffs endeavored to structure a common law duty under the guise of the "Good Samaritan" Rule which states that: "One who is under no duty to care for or render service to another but who voluntarily assumes such duty, is subject to liability to the other for injury proximately caused by a failure to exercise ordinary or reasonable care in the performance of such assumed duty." *Id.* at 942, 196 Cal. Rptr. at 304. Calif. BAJI 4.45 (West 6th ed. 1977). Though this duty has been alluded to in several special relationship cases (see *Stout*, 148 Cal. App. 3d 937, 196 Cal. Rptr. 301; *Williams v. State*, 34 Cal. 3d 18, 664 P.2d 137, 192 Cal. Rptr. 233 (1983)) reliance on this doctrine as the sole basis of a duty owed has been disputed. (See *id.* at 33, 664 P.2d at 146, 192 Cal. Rptr. at 242, n. 1 (Bird, C.J., dissenting).

90. CAL. PENAL CODE § 647(f) (West Supp. 1985) within the meaning of the CAL. GOV'T CODE § 815.6 (West 1980) provides that a public entity is liable for an injury resulting from a breach of a mandatory duty imposed by an enactment designed to protect against the risk of a particular kind of injury. *Stout*, 148 Cal. App. 3d at 945, 196 Cal. Rptr. at 306.

91. *Id.* at 942, 196 Cal. Rptr. at 555; *Jackson v. Clements*, 146 Cal. App. 3d at 986-987; 194 Cal. Rptr. at 555.

92. 32 Cal. 3d 197, 649 P.2d 894, 185 Cal. Rptr. 252 (1982).

93. *Jackson v. Clements*, 145 Cal. App. 3d at 988, 194 Cal. Rptr. at 556 (quoting *Davidson v. City of Westminster*, 32 Cal. 3d at 206-08, 649 P.2d at 898-900, 185 Cal. Rptr. at 256-258).

94. 117 Cal. App. 3d 82, 172 Cal. Rptr. 461 (1981).

driver of the same automobile which subsequently struck plaintiff's car. Plaintiff's asserted that the officers were under a mandatory duty to disable the intoxicant's car, pursuant to statute.<sup>95</sup> The court held that the officers were under such a duty, even though no specific enactment compelled their conduct.<sup>96</sup> Thus, *Green* is a clear example of a factual situation that implicates a public entity for breach of a statutory duty of care.

At least one other state has analyzed the duty owed to an injured party by police officers. In *Irwin v. Town of Ware*,<sup>97</sup> a jury awarded an \$873,000 verdict for plaintiffs against the public entity because the law enforcement officers breached a mandatory duty to remove an intoxicated driver from the public highway, either by arrest or some other means. The Massachusetts Supreme Court declared that a town or city may be held liable in damages for the negligence of its police officers if they failed to remove a driver from the roadways whom she knows or has reason to know is intoxicated.<sup>98</sup>

It is clear that prospective plaintiffs may have a cause of action against public entities under either a statutory duty, or a duty created by the formation of a special relationship. As Chief Justice Bird recently reaffirmed, "The 1963 Tort Claims Act did not alter the basic teaching of *Muskopf v. Corning Hospital District*: 'when there is negligence, the rule is liability; immunity is the exception.'"<sup>99</sup> Hence, despite the legislature's efforts to eliminate all civil liability, there do exist several theories of recovery that are outside the legislative scheme. In the amorphous world of tort law an attorney can be imaginative and even utilitarian when s/he feels that the resulting harm to innocent victims should be apportioned among all possible tortfeasors. Courts have taken an active role in the liquor liability field and have been increasingly reluctant to deny liability for alcohol-related injuries when it is clear that the furnisher of the alcoholic beverages had a significant role in causing and/or increasing the intoxication of the primary tortfeasor.<sup>100</sup>

95. See, *supra* note 90.

96. *Green*, 117 Cal. App. at 89, 172 Cal. Rptr. 461 (quoting *Quelvog v. City of Long Beach*, 6 Cal. App. 3d 584, 86 Cal. Rptr. 127 (1970)).

97. 392 Mass. 745, 467 N.E.2d 1292 (1984).

98. *Id.* at \_\_\_, 467 N.E.2d at 1298-99. The main issue regarding the liability of the defendant town was whether the decision of a police officer to remove from the roadways a driver whom he knew or had reason to know was intoxicated was a discretionary act within the meaning of MASS. GEN. LAWS ANN. Ch. 258 § 10(b) (West Supp. 1984). In holding the decision of the police officers to be mandatory (thus overriding governmental immunity), the court noted that all acts that require a judgment are not by definition discretionary because the performance of all governmental functions will necessarily involve the exercise of discretion in some degree. (*Id.*, at \_\_\_, 467 N.E.2d at 1298-99).

99. *Williams v. State*, 34 Cal. 3d at 34, 664 P.2d at 147, 192 Cal. Rptr. at 243 (quoting both *Johnson v. State*, 69 Cal. 2d 782, 798, 447 P.2d 352, 363, 73 Cal. Rptr. 240, 251 (1968) and *Muskopf v. Corning Hospital District*, 55 Cal. 2d 211, 219, 359 P.2d at 457, 462, 11 Cal. Rptr. at 89, 94).

100. See, *supra* note 37, and *infra* note 120.

### E. *The Role of Insurance*

When discussing California dram shop law one important variable has not yet been stressed, which is the role that insurance companies play in litigation. An insurance company's decision to settle cases before trial has the practical effect of resurrecting dram shop liability and boosting liquor liability insurance premiums. In fact, the question of rising premiums was a topic discussed in the 1978 legislative scenario. Proponents of the legislation pointed out that premiums had increased dramatically since the *Vesely* case was decided in 1971.<sup>101</sup> Although this increase can be quantitatively established,<sup>102</sup> another rationale for higher premiums was that prior to *Vesely* insurers were apprehensive about taking cases to trial for fear of establishing server liability precedent.<sup>103</sup> This concern is again relevant with the adoption of the 1978 amendments. Policy-holders might also have been paying higher premiums to account for losses based on simple economic reasons, such as poor management and investments by the insurance companies.<sup>104</sup>

Insurance companies have been generally insensitive to discounting liquor liability premiums for responsible licensed servers. These are businesses that take pro-active measures to promote responsible drinking and they should be rewarded for their conscientious actions. However, in at least two states—Michigan and Minnesota—insurers have begun to show interest in cooperating with those insured establishments instituting server training programs and comprehensive management policies.<sup>105</sup> Thus, companies that write liquor liability policies have an opportunity to take an active role in public health issues.

## III. REFORM—ENCOURAGING PREVENTIVE APPROACHES

Current dram shop statutes, including California's, ignore the rele-

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101. See, *supra* note 43, and accompanying text.

102. See D. Jarman, *Dram Shop Liability Preliminary Report*, The Special Joint Committee on Tort Liability (1978). (The Joint Committee report recommended that the policy of the state should recognize a civil duty on the part of the furnisher of alcoholic beverages).

103. Critics of insurers bent towards settlement also say the amounts agreed upon are exorbitant, and that going through a trial would at least induce moderate amounts, if not reject unsubstantiated claims.

104. See "Liquor Liability Churns Up the Coast," WESTERN FOODSERVICE, Sept. 1977, at 13-17.

105. In Minnesota, active negotiation is occurring between a "trainee" and one insurance company to reduce rates for establishments with server intervention policies. Interview with James Schaefer, Director, Office of Alcohol and Other Drug Abuse Programming, University of Minnesota, St. Paul, Minnesota in St. Paul, Minn. (Nov. 23, 1983). In Michigan, insurance company representatives are actively participating in a statewide effort to institute server training. Interview with Sgt. M.A. Plaszek, Washtenaw County Sheriff's Department, Ann Arbor, Michigan in Ann Arbor, Mich. (November 3, 1983).

vant serving context.<sup>106</sup> Consumers of alcohol must bear responsibility for their actions, but it is unsound public policy to let all commercial servers escape liability with a total disregard for the willfulness or negligence of their actions. By providing for almost complete dram shop immunity, the 1978 California legislature ignored an opportunity to utilize a public health approach and enact a dram shop law that would both deter irresponsible serving practices and aid in compensating innocent victims. Current dram shop statutes, including California's, rely almost solely upon the "obviously" or "visibly" intoxicated state of the tortfeasor and ignore the relevant drinking context. A more sensible approach in California would have been imposing immunity upon unlicensed servers only,<sup>107</sup> or to establish standards of care that realistically represent the social host's role in furnishing alcohol.<sup>108</sup> Instead, a blanket immunity for both commercial and non-commercial servers was installed, singularly eliminating seven years of California common law.

#### A. *Encouraging Preventive Behavior by Commercial Establishments*

California needs a dram shop law which would impose liability on licensed alcohol servers, but provide a defense for licensees who adhere to responsible business practices.<sup>109</sup> Focusing on the server and the

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106. The only statute that incorporates the serving context is North Carolina. N.C. GEN. STAT. § 118B-122 (1983). For text of the relevant provision in the statute, see *infra* note 109.

107. New Mexico immunizes the social host except in cases of willful misconduct. See N.M. STAT. ANN. § 41-11-1(D) (Supp. 1983): "No person who has gratuitously provided alcoholic beverages to a guest in a social setting may be held liable in damages to any person for bodily injury, death or property damages arising from the intoxication of the social guest unless the alcoholic beverages were provided recklessly in disregard of the rights of others, including the social guest."

108. The New Jersey Supreme Court certainly tried to take a reasoned approach in the social host liability question. There the court narrowly defined a common law duty on the part of the host, with liability imposed only when the provider of alcohol directly served his guest alcohol, and knew that the guest would have to drive in order to get home. Triers of fact would play a significant role in determining whether the particular situation warranted a breach of the duty of care owed by the social host. *Kelly v. Gwinnell*, 96 N.J. at 556, 476 A.2d at 1228. See also, *supra* notes 28-40, and accompanying text.

109. North Carolina has made significant strides in this direction by stating that:

Proof of good practices (including but not limited to, instruction of employees as to laws regarding the sale of alcoholic beverages, training of employees, enforcement techniques, admonishment to patrons or furnishing of alcoholic beverages), . . . is admissible as evidence that the permittee was not negligent. N.C. GEN. STAT. § 18B-122 (1983). Several of the authors have also participated in drafting a Model Dram Shop Act, officially entitled "The Model Alcoholic Beverage Retail Licensee Liability Act of 1985." [hereinafter cited as "Model Act"]. Preparation of the Model Act was supported by a grant to the Medical Research Institute of San Francisco, Berkeley, California. The relevant section reads as follows:

##### 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 determin-

drinking environment emphasizes a preventive approach that has the strong potential to reduce alcohol-related injuries. Furthermore, once such a defense is successfully used in litigation, insurance companies should develop confidence in providing discounted premiums for such qualified licensees.

California law should encourage the employment of "server intervention strategies"—actions taken by alcohol servers which are designed to reduce the likelihood that those being served will harm themselves or others.<sup>110</sup> Server intervention strategies are an important element in the search for a new approach to reduce alcohol-related injuries, primarily those caused by drinking and driving. One intervention strategy would

ing whether a defendant who does not have such 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; and

(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 the identity of all the 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.

110. For an article which provides the basic conceptual framework for server intervention, see Mosher, *Server Intervention: A New Approach for Preventing Drinking Driving*, 15 *Accident Analysis and Prevention*, 483 (1983).

be to encourage licensed purveyors of alcoholic beverages to adopt server and management training as part of their business makeup. The incentive for licensees to maintain such "responsible business practices" could be provided by offering the dram shop defendant a means of protection from liability if it can be shown that, at the time of service of alcoholic beverages, the defendant was following those business practices which can ordinarily prudent person would follow under like circumstances. While the authors concede the difficulties inherent in fulfilling defendant's duty not to serve intoxicated persons and minors, a responsible business practices defense also recognizes that the defendant server, as a member of a legitimate business, is in a position to take practical steps in the operation of that business to reduce the risk of harm to others.

Although maintaining responsible business practices may appear common sense and even simplistic, most licensed establishments ignore this aspect of training. For example, the recent case of *Cunningham v. Shortstop, Inc., et al.*<sup>111</sup> illustrates a classic case of negligence on the part of an off-sale licensee. On Saturday, March 13, 1982 at approximately 4:40 a.m., a fifteen-year-old passenger was severely and permanently injured in a single-car accident. The driver, a nineteen year old male, died shortly after the accident. According to the California Highway Patrol and the Marin County Coroner, the accident was caused solely by the driver's intoxicated state. His blood level was at a .16 blood alcohol level, well above the .10 level, which is the presumed level of legal intoxication.

The remaining two teenage occupants in the vehicle survived the accident virtually unscathed. Their pre-trial testimony revealed that the driver was at least legally, if not visibly, intoxicated for several hours prior to the catastrophe. The intoxicated state of the driver was proximately caused by the illegal furnishing of beer from a clerk in a franchised convenience store. On the night prior to the accident, the young motorist had procured, free of charge, two twelve-packs of beer from the convenience store clerk, a close friend of his. This alcohol was then imbibed *in toto* the following fateful evening. The decedent driver then purchased or was given a third twelve-pack from the same employee at approximately 3:30 a.m. Soon after, the driver failed to negotiate a curve in the road and ran the automobile into a tree stump.

Suit was filed on July 19, 1982 in Marin County Superior Court. The party defendants included the convenience store clerk who furnished the beer, the estate of the driver of the automobile, and the convenience

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111. Marin County Superior Court No. 108600 (1982). The case was settled for 10.5 million dollars without any admissions of liability. Plaintiff was represented by attorney Bruce E. Krell.

store itself. During discovery, plaintiffs learned that the convenience store had employed the clerk in question just twelve days prior to the accident. Though the employment application was incomplete, most notably the section on prior criminal convictions, the applicant was hired to begin work that same night (11 p.m. to 7 a.m.). The "graveyard" shift carried many serious responsibilities because of the lack of direct managerial supervision. The clerk, who worked alone, had complete access to both the case register and alcohol. If the convenience store had followed routine hiring procedures, they would have discovered that the applicant had numerous criminal convictions, including malicious mischief, petty theft, battery, burglary and three driving under the influence. A routine check of the applicant's listed references would have revealed applicant's lengthy criminal background.

The new employee received negligible training, especially considering the responsibility of the position. Initially, the clerk was given no guidance beyond being shown how to operate the cash register, stock shelves and follow clean up procedures. After working for one week he was told on one occasion to check the identification of anyone buying alcohol who he felt was underage, and not to sell alcohol between 2:00 a.m. and 6:00 a.m. Four days later, defendant clerk furnished alcohol after hours to an obviously intoxicated minor, leading to the tragic accident.

In the *Cunningham* case evidence of responsible business practices would involve several factors:

1. *Hiring Procedure.* The manager of a franchised convenience store must require that a prospective employee's references be checked in full. If the applicant is minimally qualified, then the store could introduce such evidence to establish its care in hiring the employee.<sup>112</sup>
2. *Training.* Once hired, an off-premises licensed establishment must provide its employees with detailed training in order to insure that workers know the serious nature of alcoholism and related problems,

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112. Other factors to be considered when hiring include the age and address of applicant. Hiring one who is in their early twenties and who lives in the community where the store is located might create ongoing dilemmas for the young employee when s/he is approached by underaged friends, especially after hours. The employer, in hiring a youthful employee, would need to provide special attention and training to insure that illegal sales are avoided. Off-sale establishments, in particular, pose difficult problems for undercover monitoring by Alcoholic Beverage Control (ABC) officials. According to one ABC official, underaged drinkers are attracted to such convenience stores for at least two reasons. First, they are actually only a limited number of patrons in the store at one time, and an undercover agent would be conspicuous either inside or nearby. Thus detection is less likely. Second, because of the low wages paid to employees, those selling alcohol are usually young, even underaged themselves, and are therefore less likely to ask for identification. Presentation given by Ronald Lockyer, District Director, California Department of Alcoholic Beverage Control, at a workshop sponsored by the Prevention Research Group, Medical Research Institute of San Francisco, January 25, 1983.

particularly late night sales,<sup>113</sup> serving and selling to minors, serving to obviously intoxicated persons, and the legal liabilities for violation of these rules and regulations.<sup>114</sup> Such a curriculum must explain to employees the signs of intoxication, teach the identification of false ID cards and train employees to handle situations where a customer demands to be sold alcohol.

3. *Adequate Supervision.* Although supervision of employees is more pertinent in on-sale situations, several caveats are necessary for off-sale stores. Instituting spot checks of employees who sell to "customers" who demand alcohol after hours would be appropriate, along with regular meetings of the entire staff to discuss both real and potential alcohol-related sales problems.<sup>115</sup>

4. *Management Training.* Every licensed commercial establishment should be concerned with the formal training of store managers to set up his/her employee and store structure so the laws regarding the sale of alcohol will be adhered to.

5. *Corporate Policies.* A manager needs strong and enlightened corporate support. For instance, a policy of separating the alcohol from other beverages and then independently locking up the alcohol after 2:00 a.m. can be decided at the corporate level. Common sense dictates that management must exercise more care in hiring, training, and supervising employees, who will surely encounter problems in the sale and service of alcohol.

Proof of responsible business practices shall be based on a totality of circumstances, including the availability of training programs, defendant's type and size of establishment, and identifying whether defendant server had previous contacts with the intoxicated person or minor who is served.<sup>116</sup> All relevant factors must be considered by the fact-finder when evaluating the negligence of a commercial purveyor of alcohol. Such an approach would abrogate the immunity statutes in California as well as encourage licenses to maintain responsible business practices.

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113. Recent statistical evidence indicates that most alcohol-related accidents occur at night, particularly on weekend nights; and the highest fatality rates for young drivers occur at night, also notably on weekend nights. Voas and Moulden, *Historical Trends in Alcohol Use and Driving by Young Americans, Minimum-Drinking-Age Laws*, at 64-65 (1980).

114. Before a commercial server of alcoholic beverages can be found liable for actions taken by an intoxicated patron, it must be shown that the patron, when served, was "obviously" or "apparently" intoxicated. Such intoxication requires more evidence than a .10 Blood Alcohol Level (BAL); many cases have listed "obvious" signs—as those which are easily discovered, apparent, manifest. *People v. Johnson*, 81 Cal. App. 2d Supp. 973, 975-76, 185 P.2d 105, 106 (1947).

115. A manager does not comply with a server training program by pronouncing, "Do not sell to minors and drunks. Now sweep the floor." A manager and/or corporation must research their clientele and the alcohol-related predicaments they create. The money saved on wages by scheduling only one employee on the 11 p.m. - 7 a.m. shift could be offset by the problems that understaffing creates. Also, any training done must be incorporated into the daily practice, because in a problem situation it is always easier to serve than not to serve.

116. See Model Act § 10(g) (Final Draft 1985).

### B. *The Status of Social Host Liability*

Asserting that unlicensed furnishers of intoxicating liquors can be held liable for injuries they help to cause is perhaps the most controversial area of liquor liability. The authors will briefly review the different tacks taken by states.

Courts and legislatures have taken three approaches to the issue of social host liability. First, statutes can specify that no unlicensed servers shall be held liable under any circumstances.<sup>117</sup> Second, all furnishers of alcohol, licensed or not, can be included within the state dram shop act.<sup>118</sup> The third approach would be to set out a standard of care that legitimately encompasses a social host's role in furnishing intoxicating liquors.<sup>119</sup>

Courts are beginning to impose liability in some social host settings,<sup>120</sup> particularly when furnishing alcoholic beverages to minors,<sup>121</sup> or in employment settings.<sup>122</sup> Standards for furnishing alcohol in unlicensed situations, however, are far from clear. Even in commercial settings, where standardized policies and procedures are becoming more accepted, the empirical connection between the implementation of management and server training programs and its effects in reducing alcohol-related injuries is yet unknown. As standards for furnishing alcoholic beverages in social settings are developed, social host liability would appear appropriate under ordinary principles of common law negligence. The imposition of liability for the negligent furnishing of intoxicating liquors to minors, or in employment settings, which can be supported by equitable notions of public policy and changing social mores, is emerging as a tentative first step in this process.

## VII. CONCLUSION

Current California dram shop laws are unfair to innocent victims of alcohol-related injuries, and exact high public health costs upon society. While the rest of the country attempts to alleviate the incidence of alco-

117. See CAL. CIV. CODE § 1714(c), *supra* note 41.

118. See OR. REV. STAT. § 30.955 (1983) ("No private host is liable for damages incurred or caused by an intoxicated social guest unless the private host has served or provided alcoholic beverages to a social guest when such guest was visibly intoxicated.") See also, New Mexico, which prohibits social host liability unless alcoholic beverages are provided "recklessly in disregard of the rights of others, including the social guest." N.M. Stat. Ann. § 41-11-1(D) (Supp. 1983).

119. See *supra*, note 108.

120. The most recent example is *Kelly v. Gwinnell*, 96 N.J. 538, 476 A.2d 1219 (1984).

121. *Holmquist v. Miller*, 382 N.W.2d 47 (Minn. 1984); *Longstreth v. Fitzgibbon*, 125 Mich. App. 261, 335 N.W.2d 677 (1983); *Congini v. Portersville Valve Co.*, — Pa. —, 470 A.2d 515 (1983).

122. *Congini*, — Pa. —, 470 A.2d 515 (1983); *Meany v. Newell*, 352 N.W.2d 779 (Minn. 1984).

hol-related problems by methods that necessarily include the imposition of dram shop liability,<sup>123</sup> California and other states linger in the dark ages of liquor liability immunity. In the interim, catastrophic accidents involving alcohol will persist, innocent victims will remain undercompensated, creative trial attorneys and courts will unravel yet another stitch in dram shop immunity, and servers will have little or no incentive to change procedures to reduce the risk of drunk driving and related accidents.

An effective dram shop law would lend a preventive focus to the imposition of liquor liability. Commercial alcohol servers should be able to demonstrate the establishment's commitment to responsible business practices, thereby establishing a defense to dram shop liability. Statutes incorporating server intervention strategies can effectively change the serving habits of licensees, which can reduce alcoholism, drunk driving and the incidence of other alcohol-related accidents.

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123. See, e.g., *Congini v. Portersville Valve Co.*, — Pa. —, 470 A.2d 515, 518 (Pa. 1983) (social host was negligent per se in serving alcohol to the point of intoxication to person less than 21 years of age); *Meany v. Newell*, 352 N.W.2d 779 (Minn. 1984) (there is a direct negligence action against an employer who provides intoxicating beverages to an employee on the employer's premises.) *Sorensen v. Jarvis*, — Wis. 2d —, 350 N.W.2d 108 (1984) (a third party injured by an intoxicated minor has a common law negligence action against a retail seller for the negligent sale of an intoxicating beverage).

# GOVERNOR'S TASK FORCE ON DRUNK DRIVING

“Although we have some of the toughest laws in the nation, far too many Alaskans continue to be victims of drunk driving.”

“It's crucial that we explore every option available to remedy this plague on our highways.”

Bill Sheffield, Governor  
September 1984



Highway Safety Planning Agency  
Department of Public Safety

Office of Alcoholism and Drug Abuse  
Department of Health and Social Services

## State of Alaska



## REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

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Dear Governor Sheffield:

It was a genuine pleasure and challenge to serve as Chairman of the Governor's Task Force on Drunk Driving. The level of participation both in-person in Anchorage and via the statewide teleconference was particularly gratifying.

The mission of the Alaskan Task Force was somewhat unique in that Alaska is a national leader in its efforts to deal with drunk drivers. Such strategies as raising the legal drinking age to 21, providing for victim compensation, mandatory jail, fines, and license suspension, administrative revocation of licenses, alcohol information in the drivers' manual, alcohol questions on the license examination, and mandatory education or treatment as a part of the sentence are currently in place in Alaska.

Much of the testimony presented to this Task Force focused upon the alcohol abuse treatment system and prevention/education strategies. Additionally considerable testimony was heard on how to make the existing system work better.

When you appointed the Task Force, you called for specific strategies that could be addressed legislatively or by policy statements to impact the drinking and driving problem. All five of the primary recommendations arrived at by this Task Force meet that criteria.

The individual members of Task Force are to be commended for their commitment to this process. They worked long hours dealing with complex issues in a professional and courteous manner. In all they heard testimony from forty-six different persons. Alaska is most fortunate to have citizens of this caliber so willing to volunteer their time to this important issue.

All sessions of the meeting were taped, and those tapes are available for public review by contacting the State Office of Alcoholism and Drug Abuse.

My thanks also to the fine staff who assisted your Task Force. George Mundell, Mike Lewis and others made the meetings go smoothly.

Again, it was my pleasure to serve as Chairman of this Task Force.

Sincerely,

A handwritten signature in cursive script that reads "Don Clocksin".

Representative Don Clocksin

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## TASK FORCE MEETING PROCESS

The eighteen member Task Force appointed by Governor Bill Sheffield met at the Egan Convention Center, Anchorage, on November 27, 28, and 29, 1984. By live video telecommunication Governor Sheffield personally greeted the Task Force and thanked members for their participation. Chairman, Representative Don Clocksin then reviewed the mission and objective of the Task Force as well as a recent history of legislative changes in the drinking and driving laws.

All Task Force members individually commented on their area of experience or interest in the drinking and driving problem. A current status of the State of Alaska DWI program was presented by Emily McKenzie, Alcohol Safety Action Program, Alaska Court System; Michael Lewis, Highway Safety Planning Agency, Department of Public Safety; and Matthew Felix, Office of Alcoholism and Drug Abuse, Department of Health and Social Services.

To serve as the basis for the Task Force deliberations, presentations were made on work that to date has already been accomplished by other individuals and groups. The Presidential Commission on Drunk Driving Report was presented by Curt Winston, Region X, National Highway Transportation Safety Administration. The Mayor's Task Force on Drunk Driving Report was presented by its Chairman, Jerry Hood, and Lewis Sears Ph. D., Assistant Commissioner, Department of Health and Social Services. Summaries of DWI deterrence and recidivism studies were presented by Dennis Kelso Ph. D., Center for Alcohol and Addiction Studies, University of Alaska - Anchorage. The Alaska Judicial Council Report on Alaska Misdemeanor Sentences: 1981, Special Report on Driving While Intoxicated Sentence, 1984 was presented by Francis L. Bremson, Executive Director, and Researcher Theresa Carns. The legislative agenda of the Mothers Against Drunk Driving was reported on by Katherine Bigler, President, Anchorage Chapter.

The next order of business was to accept public testimony. In person testimony was heard from nineteen individuals at the Egan Convention Center on November 27, and 28. An additional twenty-seven persons from sixteen communities around the state provided testimony during an evening statewide teleconference on November 27. The total of forty-six persons providing public testimony included representatives of enforcement, prosecution, defense, judiciary, treatment, licensing, persons with administrative responsibility, students, teachers, DWI offenders, parents, the alcohol beverage industry and other interested persons from the general public.

The afternoon of November 28 was set aside for a discussion among Task Force members. Each member summarized what they felt were important issues based upon the testimony and their experience. Additionally all members listed specific actions they were interested in seeing the Task Force take action upon.

The morning of November 29 the Task Force adopted the procedure they would use to prioritize their actions. It was decided each Task Force member would propose one idea for formal consideration. All Task Force members were limited to voting for only five of the issues proposed. The five primary recommendations were arrived at following this process. Coincidentally it worked out that only five proposals received 50% or more of the Task Force vote. Many of the issues the Task Force addressed are quite complex and several recommendations not included in the top five are worthy of consideration.

The Task Force recognized that many recommendations contained in both the Mayor's Task Force Report and the President's Task Force Report have been enacted or otherwise implemented in Alaska in recent years. These actions include the following items.

- Raised the legal drinking age to 21
- Child Restraint Law
- Implied consent statute
- Allow for preliminary breath-testing on roadway
- Administrative license revocation upon arrest
- Breath-test refusal penalty same as DWI conviction
- Citizen reporting i.e. REDDI
- Definition of BAC
- .10 illegal per se
- Mandatory sentencing
- Mandatory fines
- Victim compensation
- Driver licensing information
- Rehabilitation and education
- Compliance with conditions of court order
- Mandatory liability insurance
- Four new judges in Anchorage area
- Decrease time between arrest and sentence

GOVERNOR'S TASK FORCE ON DRUNK DRIVING  
RECOMMENDATIONS

## RECOMMENDATIONS

### 1. REVISE EXISTING DRAM SHOP LAW.

#### Motion

That the standard of conduct be amended to increase civil liability of liquor licensees for damages caused by serving alcohol illegally. Standard to be changed from "criminal negligence" to "simple negligence". Motion also recommended the Governor consider filing legislation prohibiting the defences of comparative negligence and complicity (see AS 4.16.030 and AS 4.21.020) and expanding civil liability to "social hosts". Motion was amended to recommend the law be expanded to social hosts - not that it just be considered. Adopted by 15 affirmative votes.

#### Discussion

Revising the Alaska Dram Shop law is a priority of the Mothers Against Drunk Driving (MADD). It is an approach that is also recommended in both the President's Commission and Mayor's Task Force reports. Currently six other states are reviewing this issue as a deterrent to drunk driving as well. It was unclear to the Task Force why liquor licensees in Alaska were afforded such extraordinary protection against negligent behavior when the alcohol beverage statute was rewritten in 1980. Testimony indicated businesses such as gas stations, grocery stores, and clothing retailers are held to a stricter standard of negligence than are alcohol licensees.

Most members of the Task Force consider this proposal to be an effort to deter alcohol servers from serving drunken persons, not a punitive measure. If we can prevent drunkenness in situations likely to result in drunk driving (i.e. drinking in bars and at parties) we will reduce number of drunk drivers on our highways.

The proposal is self-enforcing because it is the possible private liability - not a criminal sanction - which is more likely to produce the desired conduct.

### 2. ENCOURAGE COMPLETION OF COURT-ORDERED ALCOHOL TREATMENT.

#### Motion

That the Alcohol Safety Action Program or the provider of court-ordered treatment notify the court if the defendant fails to complete treatment; further, the court be required to act on the notice; and, further, that there be funding for service of outstanding arrest warrants for failure to complete court-ordered treatment. Adopted by 15 affirmative votes.

### Discussion

Testimony indicated that completion of a court-ordered alcohol treatment program tended to reduce the recidivism rate for drunk drivers. Testimony also showed that a substantial number of convicted DWI offenders do not complete treatment. The system seemed to be breaking down at three points: 1) the treatment programs in some areas are not immediately reporting to the court the failure of an offender to appear at or complete treatment; 2) the courts are not acting decisively to enforce their court orders requiring completion of treatment; and 3) when an arrest warrant is issued, the offender is not arrested. The motion is intended to improve the system at all three points.

The recommendation is designed to improve the relationship between the judicial system and the alcohol treatment system. The more effective we are at getting offenders to complete court-ordered treatment, the fewer repeat offenders will be on our streets.

### 3. PROVIDE ADEQUATE FUNDING FOR LONG-TERM ALCOHOL TREATMENT PROGRAMS.

#### Motion

To recommend adequate funding - through state or private sources - for alcohol treatment programs so that additional long-term (residential) treatment is available. Adopted by ten affirmative votes.

#### Discussion

In his remarks at our first meeting, Governor Sheffield asked the Task Force to focus on the problem drinker. Testimony indicated that many repeat offenders are problem drinkers who need long-term treatment to reduce the likelihood that they will drink and drive again. The testimony also pointed to the existence of waiting lists for residential treatment programs in urban and rural Alaska. The proposal is intended to focus the State's attention on the problem drinker by providing court-ordered treatment appropriate to his/her needs.

### 4. CONTRACT OUT THE INCARCERATION AND TREATMENT OF DWI OFFENDERS TO PRIVATE ENTERPRISE.

#### Motion

To authorize the Department of Corrections to contract with private enterprise for the incarceration and treatment of offenders convicted of DWI. Adopted by ten affirmative votes.

#### Discussion

Adult correctional facilities in Alaska are overcrowded. As we improve enforcement of drunk driving laws and place more offenders in jail for mandatory minimum sentences, the cost of providing correctional facilities increases.

Generally, DWI offenders are minimum security risks, and could safely be placed in less expensive, private-operated facilities. This proposal would continue the incarceration and treatment of offenders but at less cost to the state.

In addition, testimony established that in some areas of the state, lack of jail beds has resulted in postponement of many offenders' commitment to jail. This delay hampers the deterrent effect of jail time.

5. REQUIRE LICENSING AND TRAINING OF ALCOHOL SELLERS AND SERVERS.

Motion

To require the licensing of retail sellers and servers of alcohol and to establish standards for training as well. The licensing and training is to be monitored by the ABC Board or a law enforcement agency. Adopted by nine affirmative votes.

Discussion

AS 04.21.030 presently requires that alcohol licensees assure that their agents and employees are advised of the liquor laws in Title 4. However, no state law requires training in alcohol and physiology, detecting and dealing with a drunk person, etc. Furthermore, no license is required for the servers of alcohol.

The Task Force believes a licensing system will assure that servers of alcohol are trained in recognizing when they should stop serving a person. Possible revocation of a license will be a strong deterrent to serving drunken persons. It is hoped that training can be conducted at no state cost by the liquor industry under standards set by the ABC Board or a law enforcement agency. Such training is being made available in the Anchorage area now.

## OTHER ISSUES

These issues were identified by one or more Task Force members as important. While they received insufficient votes to be a priority, or were not voted on, many of them deserve careful consideration.

--Issue: Legislation to encourage completion of court-ordered treatment, education or restitution, by denying reissue of driver's license, reimposing suspended sentences and fines, vehicle forfeiture, or possible involuntary commitment of the DWI offender.

--Issue: That mandatory education be initiated for all persons receiving a new license, renewal or reinstatement of their driver's license. The education shall relate to the effects of alcohol and drugs and the impact of alcohol and drugs and its effects on driving.

--Issue: The State should direct and fund a continuing public awareness program on alcohol and drug use and responsible motor vehicle operation.

--Issue: AS.28.35.033(d) should be amended to transfer supervision of the Alaska breath-test program in the Department of Health and Social Services to the Department of Public Safety and that this transfer be accompanied by funding sufficient to allow administration of an accurate, scientifically sound and legally defensible State breath-test program.

--Issue: Probation officers should be established for misdemeanors.

--Issue: Legislation be enacted in which automobile seat belt usage be mandatory for driver and passengers for all age groups with a fine for not wearing them.

--Issue: Legislation for an open container law - no person may drink alcoholic beverages while driving a vehicle on a roadway or street and no person may drive a vehicle at such time as there is an open container of alcoholic beverage in the vehicle. Open means when the seal of the lid, cap, or cork has been broken or removed.

- Issue: Legislation to regulate bar hours across the State, and those hours to be 2 a.m. on weekdays and 4 a.m. on weekends and nights preceding holidays (i.e. New Years Eve, 4th of July, and Memorial Day).
  
- Issue: Upon a conviction for drunk driving, upon restoration of that license and after completion of the mandatory training, that the background on the driver's license be color coded to indicate the number of convictions.
  
- Issue: The legislature should improve the involuntary commitment act.
  
- Issue: Conduct a review of the Alcoholic Beverage Control Board function and effectiveness.
  
- Issue: Establish mandatory restitution payments and vehicle forfeiture for persons convicted of multiple DWI offenses.
  
- Issue: Amend law to allow suspension of fines for DWI convictions if the same amount of money is paid to the treatment agency providing services to the convicted person.

STATE TASK FORCE ON DRUNK DRIVING

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| Jerry Hood                          | Mayor's Task Force on Drunk Driving  |
| Lewis Sears Ph. D.                  | Assistant Commissioner<br>Department of Health and Social Services                                     |
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| Francis L. Bremson<br>Theresa Carns | Alaska Judicial Council  |
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PROVIDED TESTIMONY AT EGAN CONVENTION CENTER

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| Jack Anderson      |                                 | 1430 W. 12th Ave.<br>Anchorage                  | 99501 |
| Russell Babcock    | Assistant District Attorney     | Suite 520, 1031 W. 4th Ave.<br>Anchorage        | 99501 |
| Jim Henderson      |                                 | Anchorage                                       |       |
| Joe Graham         |                                 | Anchorage                                       |       |
| Phil Volland       |                                 | 211 "H" St. - Anchorage                         | 99501 |
| Tom Miller         | Assistant District Attorney     | Room 247, 604 Barnette St.<br>Fairbanks         | 99701 |
| George Taft        | Dept. Public Safety             | 5700 E. Tudor Road<br>Anchorage                 | 99502 |

TESTIFIED VIA TELECONFERENCE

|                       |  |                             |       |
|-----------------------|--|-----------------------------|-------|
| Tom Church            | President, Cordova Teachers                            | Box 406 - Cordova           |       |
| Virgil Carroll, Jr.   | Student Representative                                 | Box 281 - Cordova           |       |
| John Crowley          | Director, Cordova Mental Health and Alcoholism Center  | Box 160 - Cordova           |       |
| Muriel Kronowitz      | Counselor, Cordova Mental Health and Alcoholism Center | Box 160 - Cordova           |       |
| Jennifer Ronenhildt   | Student Representative                                 | Box 741 - Cordova           |       |
| Doreen Silvasy        | ASAP   | Box 3055 - Barrow           | 99723 |
| Edith Nashoolook      | NSH Health Department                                  | Box 69 - Barrow             | 99723 |
| Donna Suden           | PATC Safety Action Program                             | Box 388 - Bethel            |       |
| Fred Pete, Sr.        | Yukon-Kuskokwim Health Corp.                           | Box 528 - Bethel            |       |
| Henry Friday          | Hooper Bay Police Dept.                                | Box 195 - Hooper Bay        | 99604 |
| Ralph Bell            | Hooper Bay Police Dept.                                | Box 134 - Hooper Bay        | 99604 |
| Charles Paul          |  | P.O. Box 726 - Delta Jct.   | 99737 |
| Chief Glenn H. Herbst | City of Dillingham                                     | Box 191 - Dillingham        | 99576 |
| Patty Wallman         | ASAP Program<br>Bristol Bay Area Health Corp.          | Box 209 - Dillingham        | 99576 |
| Norbert Dean Haase    | B.A.D.D. Co.   | Box 83574 - Fairbanks       | 99708 |
| Mike Daku             | FNA  | 1550 Gillam Way - Fairbanks | 99708 |
| Bud Willard           | FNA  | 301 1st St. - Fairbanks     | 99708 |
| Sheldon Sprecker      |  | Box 283 - Glenallen         | 99588 |
| Marcia Honea          | Cook Inlet Council on Alcoholism                       | Box 2241 - Homer            | 99603 |
| John R. Pugh          | Commissioner, Dept. of H&SS                            | Pouch H-01 - Juneau         | 99811 |
| Bob Konet             | National Federation of Parents for Drug Free Youth     | Box 1021 - Ward Cove        | 99828 |
| Marvin Ronimous       | Petersburg Police Department                           | Box 329 - Petersburg        |       |
| Carl Heinmiller       | Magistrate   | Box 120 - Haines            | 99827 |

TESTIFIED VIA TELECONFERENCE CONT.

|                      |   |                        |       |
|----------------------|---|------------------------|-------|
| Susan Magone/USAFV   |   | Box 36 - Unalaska      |       |
| Gawaine Lafevers     | Dept. of Safety                           | Box 253 - Dutch Harbor |       |
| Lonnie White         | Dept. of Safety                           | Box 89 - Unalaska      |       |
| Emil Wegner          |   | Box 363 - Valdez       | 99686 |
| Merry Warner         | Director Wrangle<br>Council on Alcoholism | Box 1108 - Wrangle     | 99929 |
| Annette Gillispie    |   | Seward                 |       |
| Elizabeth Richardson |   | Seward                 |       |
| Anonymous Person     |   | Palmer                 |       |

ATTENDED AT EGAN CENTER

|                      |   |                                    |       |
|----------------------|---|------------------------------------|-------|
| Jim McMichael        | Office of Alcoholism/Drug Abuse                       | Pouch 633, Anchorage               | 99502 |
| Susan Jannusch       | Alaska Council on Prevention                          | Anchorage                          |       |
| Claudia S. Brunner   | Alaska Council on Prevention                          | Anchorage                          |       |
| Barbara Bailey       | Alaska Council on Prevention                          | Anchorage                          |       |
| H.P. Gazaway         |   | 1521 W. 14th Ave.<br>Anchorage     | 99501 |
| Myriam Larson        | Mayors Office   | Pouch 6-650 - Anchorage            | 99507 |
| Jim Parsons          | Anchorage Health Department                           | 825 "L" Street - Anchorage         | 99507 |
| Susan Lowe           | Department of Corrections                             | 2200 E. 42nd Ave.<br>Anchorage     | 99508 |
| Ray Dexter           | Clitheroe Center                                      | P.O. Box 6567 - Anchorage          | 99502 |
| Lu Ann Simms         | Alaska Council on Prevention                          | Anchorage                          |       |
| James A. Williams    |   | P.O. Box 101260 - Anchorage        | 99510 |
| Karen Lawfer         | NCA - Juneau  | 110 Seward Street - Juneau         | 99801 |
| Stanley Austin, M.D. |   | 2412 West Marstan Dr.<br>Anchorage | 99503 |
| Berkeley J. Ide      | Anchorage Restaurant &<br>Beverage Association        | 3350 Commercial Dr.<br>Anchorage   | 99501 |
| Greg Kimura          | Students Against Drunk Driving<br>Chugiak High School | Box 132, Eagle River               | 99577 |
| Tom Keenan           |   | 2716 Lone Road - Anchorage         | 99507 |
| Joyce the Voice      |   | 1806 Arctic Blvd.<br>Anchorage     | 99503 |
| Carol Heussler       | Office of Alcoholism/Drug Abuse                       | Juneau                             | 99811 |
| Roslyn Reeder        | Office of Alcoholism/Drug Abuse                       | Anchorage                          | 99502 |
| Jim Gorman           | Office of Alcoholism/Drug Abuse                       | Juneau                             | 99811 |

|                   |                                 |                                       |       |
|-------------------|---------------------------------|---------------------------------------|-------|
| Nancy Carlson     | Sitka Teen Club                 | P.O. Box 1034, Sitka                  | 99835 |
| Kathy Wolgemuth   | Dept. of Public Safety          | 5700 E. Tudor Road<br>Anchorage       | 99502 |
| Edward C. Wilmoth |                                 | 5910 E. 6th Ave. Sp. 224<br>Anchorage | 99504 |
| Bob Nestel        |                                 | 405 W. 36th Suite 103<br>Anchorage    | 99503 |
| Loren Jones       | Office of Alcoholism/Drug Abuse | Juneau                                | 99811 |

OBSERVED VIA TELECONFERENCE

|                     |   |                               |        |
|---------------------|---|-------------------------------|--------|
| Rick Leland         | City Manager, City of Cordova                       | Box 1210 - Cordova            |        |
| Gene Smith          | Dept. of Health & Social Services                   | Juneau                        | 99811  |
| Cindy Plant         |   | Box 671 - Cordova             |        |
| Nancy Davis         | Social Worker - Dept. of Health and Social Services | Box 1227 - Cordova            |        |
| Blanche Jacobs      | PATC Community Education                            | Box 388 - Bethel              |        |
| Geoffrey T. Comfort | Magistrate  | Box 209 - Dillingham          | 99576  |
| Barbara Gaston      |   | 1825 Sheldon - Fairbanks      | 99701  |
| September Laakso    | Boater Bar  | P.O. Box 124 - Fairbanks      | 99707  |
| Clay Weaver         |   | P.O. Box 2488 - Fairbanks     | 99707  |
| Clara Peters        |   | Drawer H - Copper Center      | 99573  |
| Herbert Mitchell    |   | Box 207 - Naknek              |        |
| David Hamilton      |   | Naknek                        |        |
| Lois R. Irvin       |   | 167 W. Bayview - Homer        | 99603  |
| Doris Robbins       | People Family Support Group                         | Box 1011 - Juneau             |        |
| Karen Lawfer        | Nat'l Council on Alcoholism                         | 110 Seward St. - Juneau       | 99801  |
| James E. Fisher     |   | Pouch KC - Juneau             | 99811? |
| Ken Goodrich        | ASAP  | 415 Main, Rm. 305 - Ketchikan | 99901  |
| Jim Galley          |   | Rt. 1 Box 877 - Ketchikan     | 99901  |
| Mike Madill         |   | P.O. Box 5946 - Ketchikan     | 99901  |
| Arlene McCary       |   | 623 A Grant St. - Ketchikan   | 99901  |
| Constance Griffith  |   | 2509 4th Ave. - Ketchikan     | 99901  |
| Amelia Pero         |   | Box 2225 - Kodiak             | 99615  |
| Julie Holden        |   | Box 2225 - Kodiak             | 99615  |
| Barbara Ayler       | Petersburg Council on Alcoholism                    | Box 1066 - Petersburg         |        |

OBSERVED VIA TELECONFERENCE CONT.

|                  |                             |                             |       |
|------------------|-----------------------------|-----------------------------|-------|
| Barbara Morford  |                             | Box 277 - Haines            | 99827 |
| Gary Neubauer    | Sergeant, Police Department | Box 450 - Hoonah            | 99829 |
| Gerry Shanahan   | State Troopers F&G          | Box 360 - Hoonah            | 99829 |
| Jerah Chadwick   |                             | General Delivery - Unalaska |       |
| Jeff Hiatt       | City Finance Director       | Box 89 - Unalaska           |       |
| Denise Johnson   |                             | General Delivery - Unalaska |       |
| Lyle Von Bargaen |                             | Box 870 - Valdez            | 99686 |
| William Klein    | Chief of Police             | Box 531 - Wrangell          | 99929 |
| Sue Rappleye     | KSTK Radio                  | Box 809 - Wrangell          | 99929 |

GOVERNOR'S TASK FORCE  
ON DRUNK DRIVING

EGAN CONVENTION CENTER  
ANCHORAGE

November 27, 28, and 29, 1984

Tuesday  
November 27

8:00 - 8:30 a.m. Coffee - Social Time

8:30 - 9:00 a.m. Task Force Introductions

9:00 - 9:30 a.m. Governor Sheffield - Welcoming

9:30 - 10:00 a.m. Define mission and recent legislative history  
Representative Donald Clocksin, Chairman

10:00 - 10:30 a.m. Current status - State of Alaska DWI Program  
Matt Felix - Office of Alcoholism and Drug Abuse  
Emily McKenzie - Alcohol Safety Action Program  
Mike Lewis - Highway Safety Planning Agency

10:30 - 12:00 noon President's Task Force Report  
Curt Winston - Region X National Highway Transportation  
Safety Administration

Mayor's Task Force Report  
Jerry Hood - Chairman, Mayor's Task Force on Drunk Driving  
Louis Sears - Department of Health and Social Services

Recidivism and deterrent studies  
Dennis Kelso - Center for Alcohol and Addiction Studies,  
University of Alaska, Anchorage

12:00 noon-1:00 p.m. Lunch

1:00 - 1:30 p.m. Public Service Announcements

1:30 - 2:00 p.m. MADD Agenda of Recommendations - Katherine Bigler, President

2:00 - 2:30 p.m. Judicial Council Study on Drunk Driving  
Francis L. Bremson, Executive Director, Alaska Judicial Council

2:30 - 5:00 p.m. Public Testimony

5:00 - 7:00 p.m. Dinner Recess

7:00 - 10:00 p.m. Statewide Teleconference  
Anchorage Public Testimony

10:00 p.m. Recess

Wednesday  
November 28

9:00 a.m. - 12:00 noon      Public Testimony  
12:00 noon - 1:30 p.m.      Lunch recess  
1:30 p.m. - 5:00 p.m.      Task Force Discussion  
5:00 p.m. - 6:30 p.m.      Social Hour  
Charter North Hospital

Thursday  
November 29


9:00 a.m. - 12:00 noon      Develop specific legislation package and policy statements  
12:00 noon                      Adjourn

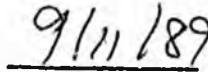


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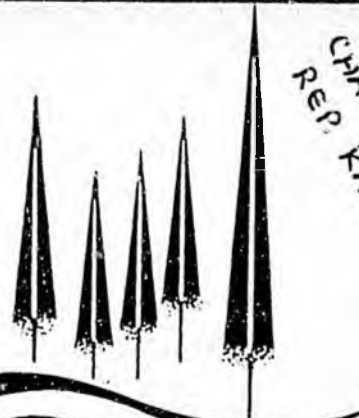
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(3 of 3)

FEB 18 1986

# Evergreen Inn

P.O. BOX 485, DELTA JUNCTION, ALASKA 99737



CHAIRMAN STATE AFFAIRS  
REP. KATIE HURLEY

FAMILY RESTAURANT  
COMFORTABLE ROOMS  
CREW FACILITIES  
REFRESHING BEVERAGES  
LIVE ENTERTAINMENT

February 5, 1986

Phone (907) 895-4666

Testimony of Bob Cramer  
Delta Junction

Presented to the Alaska House, State Affairs Committee by  
Teleconference from Delta Junction to Juneau, Feb. 5, 1986

Relating to CSHB 345

My name is Bob Cramer. I am owner of the Evergreen Inn, located in Delta Junction.

Good afternoon, Chairman Hurley, Vice-Chairman Navarre, and members Cato, Boucher, Miller, Collins and Jenkins.

The Evergreen Inn provides lodging, meals, and beverage, on a year around basis for highway traveler, construction crews, military personnel, local residents, and visitors to Alaska. A number of legislators have been served meals in my restaurant, including your committee member, Bette Cato.

As a supplier of lodging, meals, and beverage to residents and visitors, I would like to talk with you on CSHB 345 as it refers to the ALASKA VISITOR INDUSTRY.

My business is a provider of hospitality services to the visitor industry....and I am an advisor to the Alaska Visitors Association Board of Directors.

As we all appreciate, the Visitor Industry is the second largest industry in Alaska, generating over \$700 million per year.

Each one of you who traveled to Juneau, from your home in Anchorage, or Kenai, Wasilla or Valdez is a part of the Visitor Industry. That is because everyone who travels 100 or more miles from home is by definition, a visitor.

Therefore, every one of us is a part of the Visitor Industry.

The Visitor Industry creates thousands of "local hire" jobs in Alaska. For example, the Alaska Dept. of Labor states that 9,000 jobs are created in Alaska from non-resident visitors and 7,000 jobs from residents traveling within the state. This totals 16,000 jobs directly dependent upon the Visitor Industry.

In addition to these 16,000 direct jobs, another 22,000 jobs are partially supported by the Visitor Industry. This total of 38,000 jobs in Alaska is documented by Dept. of Labor studies. The Visitor Industry is the fourth largest employer in Alaska.

The point is, we are all part of the Visitor Industry...as residents, as business people, and as Legislators...and we all benefit.

In the Visitor Industry in Alaska, the Dept. of Labor again tells us there are 14,500 people employed in "stand-alone" food and beverage operations and another 4,500 people employed in the hotel (lodging + food + beverage) operations, for a total of some 19,000 people. Thus, 50 percent of the state's Visitor Industry employees are working for the lodging and food and beverage portion of the Visitor Industry.

The majority of the lodging and food establishments in Alaska have licenses to serve alcoholic beverages to our state's residents and visitors.

With the present crisis in liability insurance in our state, it is estimated that less than 20 percent of the licensed premises are covered by liability insurance.

Insurance counselors advise that without liquor liability insurance, premise insurance will not be available.

Therefore, at least 19,000 workers in Alaska may be working for employers that are not properly insured.

It would appear that legislation such as CSHB 345, that would create a further loss of insurability for the Visitor Industry, and force workers to be employed by uninsured employers, would not be in the best interest of the State of Alaska.

Further, the former Tourism Revolving Loan Fund, as developed by the Alaska Industrial Development Authority (AIDA), has financed and is now carrying the paper on millions of dollars of loans to many of the hotel, lodging, food and beverage businesses in our state.

Legislation such as CSHB 345, would further create loss of insurability of the visitor facilities financed by the state. This would not be in the best interest of the state either.

For example, if the state was holding the loan on a visitor facility and that loan amounted to \$500,000.....a million dollar liquor liability suit and judgement against the uninsured visitor facility would cause the state to loose up to \$1 million for that facility.

How many such visitor facilities is the state now financing?

Chairman Hurley, it is respectfully suggested to your State Affairs Committee, that additional time and research be devoted to resolving the reality of the affect on the Visitor Industry and the 19,000 employees in the state, and the large dollar amount of loans carried by the Tourism Revolving Loan Fund.

Is it possible to work with the Dept. of Labor and the Dept. of Revenue to determine the potential affects of creating a further loss of insurance coverage and larger damage awards against the Visitor Industry?

It seems a direct conflict for the state to be encouraging visitor travel to and within Alaska, while at the same time writing legislation that harms the Visitor Industry, it's visitor facilities, 19,000 employees, and threatens the state's loan funds.

In conclusion, please explore the affect on the employees and the loan fund as part of your legislative mission.

Thank you,

*Bob Cramer*

# McLennan

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

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.

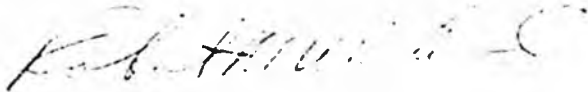
The position of underwriters will not be improved if a Dram Shop Act is enacted, unless the Act limits the potential liability to under \$250,000, reduces the statute of limitations for filing a suit from two (2) years to one (1) year, and makes all servers of alcohol equally responsible when criminally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



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.

# Marsh & McLennan

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

January 31, 1986

To: Interested Legislators

Re: HB 345

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

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

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

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

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

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



Robert M. Whitmarsh  
Marsh & McLennan, Inc.

Marsh & McLennan, 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

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 coverage at all. If this is the situation under existing standards of negligence, how can H.B. 345 but worsen the situation?

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

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

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

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

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

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

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

Thank you.

September 18, 1985

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. I provided written testimony at the first hearing and want to advise you today that the situation has become even worse. The national insurance market has become cause for concern by all classes of business.

Governor Sheffield stated in his introduction letter that this bill is not the problem but rather that 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.

At this time, another problem has developed. Most insurance companies will not insure a Beverage Dispensary establishment for General Liability unless the bar or restaurant also carries liquor liability. At the same time, only one underwriter is currently writing liquor liability and the premiums are substantial for low limits. This one underwriter can only provide \$300,000 limits. To buy an excess policy of \$200,000 over the \$300,000, the minimum premium is \$15,000. Therefore, if you can convince the underwriters that you are an average or better owner, your liquor liability premium for one year, based on \$500,000 receipts, would be \$35,100 if you carried \$500,000 limits. You can imagine the costs for those businesses with \$1 or \$2 million receipts.

Marsh & McLennan, Incorporated

Testimony Against H. B. 345 - 9/18/85

Page 2 of 2

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. Let's make Alaska a leader in correcting the social ills and quit trying to use insurance to pay for those ills.

This bill will not protect the people of Alaska. This bill will force the premiums up or make coverage not available. The end result is the same: owners of licensed premises will simply not purchase insurance. Then who will protect the innocent third party hit by a drunk driver?

I am against this bill. We will be happy to work with legislators to draft a bill which will protect everyone equally.

Coleman

make  
workable  
law

Collin  
Drunk is  
unable to  
reason to  
or make  
for himself

"obviously"  
Drunk

self insurance  
learn as the  
physician have  
gone because  
of high ins.

TESTIMONY  
FROM  
K. BIGLER

Ram Shop

Alaska Statute Title 4 Alcoholic Beverages  
Section 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, etc.

MADD would urge that the standard  
of proof ~~in court~~ be changed to  
simple or ordinary negligence. This is the same  
standard that applies to doctors, lawyers,  
store owners and others in the routine  
conduct of their daily business activities.

The intent of the law is to assign responsibility  
to those who sell to patrons who are obviously  
drunk, then after leaving the premises commit  
a criminal act such as causing personal  
injury or death. A drunk driving accident is  
a good example. The customer who was  
served too many drinks, leaves an establishment  
and climbs behind the wheel of a car, he's  
risking a lot more than getting pulled over  
by the local police. He's risking his life  
to say nothing of everyone else's.

The present state statute (law)

Business of profit  
to prove the negligence  
That no other industry has  
comprehension of protection

requires proof that the server is criminally negligent when serving an already drunk person. Proving criminal negligence or intent in court is virtually impossible. The change to simple negligence would make a significant contribution toward reducing the incidence of criminal acts by those who are obviously drunk.

Alcohol industry is the only industry to be under such an umbrella of protection

The burden of proof still rests on the victim to prove there was negligence in <sup>the</sup> serving of alcohol but they should be relieved of the impossible task of trying to prove that the server had criminal intentions.

~~Call of these efforts~~  
Changing attitudes —

This should include anyone who sells alcohol with or without a license.

Collins  
EMPHASIZE  
next to  
secondary  
committee  
— seg. 11.

F



*make copy for folders*

Telegram

12011

1986 FEB 3 13 14

NL FAIRBANKS ALASKA 300 02-03 1236P AST

PMS

CHAIRPERSON KATIE HURLEY--ST AFFAIRS COMMITTEE PLSE DLVR 7.95 PD  
RM 102 CAPITAL  
JUNEAU AK 99811

0009

FEB 3 1986

MONDAY, FEBRUARY 3, 1986

THE HONORABLE KATIE HURLEY:

I AM SORRY I CANNOT TESTIFY VIA LEGISLATIVE CONFERENCE ON HB345. I HAD THE PRIVILEGE OF SERVING ON THE GOVERNOR'S TASK FORCE ON DRUNK DRIVING AND TOOK PART IN THE PROCEDURE THAT RESULTED IN THE CURRENT FORM OF HB345 WHICH IS BEFORE YOUR COMMITTEE. ALTHOUGH THE PRESENT BILL IS NOT IN ITS ORIGINAL FORM AS PRESENTED TO THE GOVERNOR, IT IS A GIANT STEP IN THE RIGHT DIRECTION TO HELP STOP THE PAIN, SUFFERING AND GRIEF THAT HAS, AND CONTINUES TO, EXIST IN THE STATE OF ALASKA.

REPRESENTATIVE HURLEY, THE TIME HAS COME TO STOP THE SLAUGHTER ON OUR ROADS AND HIGHWAYS AND FORCE THOSE WHO ARE RESPONSIBLE TO BE ACCOUNTABLE FOR THEIR NEGLIGENCE.

THE LIQUOR LOBBY PROBABLY HAS BROUGHT MUCH PRESSURE ON ALL THE



Telegram

PAGE 2

LEGISLATORS TO STOP THIS BILL, AND TO BE QUITE HONEST, IF I WERE DISPENSING LIQUOR AND ENJOYED THE UNBELIEVABLE STANDARD OF NEGLIGENCE THAT THEY CURRENTLY ENJOY, I WOULD FIGHT IT ALSO. BUT ANOTHER OBLIGATION HAS TO BE MENTIONED, AND THAT IS THAT EVERY LEGISLATOR IS ALSO MANDATED TO PASS LAWS THAT PROTECT SOCIETY. THIS BILL, IF ENACTED TEN YEARS AGO COULD HAVE SAVED THE LIFE OF MY WIFE, AND THE LIFE OF 15 YEAR OLD TONYA BRANTINGHAM WHO WERE BOTH MURDERED BY A DRUNK DRIVER ON OCTOBER 5, 1981. IN ADDITION, MY DAUGHTER SARAH KAVORKIAN WAS SEVERELY INJURED IN THAT CRASH, AND DISFIGURED FOR LIFE.

ALTHOUGH THIS BILL IS NOT THE STRONGEST BILL THAT SHOULD BE ENACTED, I CAN LIVE WITH IT AS WRITTEN AT THIS TIME. IF GIVEN A CHANCE TO WORK, IT WILL HAVE A FAVORABLE IMPACT ON SOCIETY. NEEDLESS TO SAY

I URGE YOU AND YOUR COMMITTEE TO SUPPORT HB345.

THANKING YOU FOR YOUR SUPPORT,

RALPH KAVORKIAN

PO BOX 2782

FAIRBANKS AK 99707

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\*  
\* DELIVER TO: JFOM \*  
\*  
\* ORIGINAL \*  
\* SENT: 04/17/85 TIME: 16:27 \*  
\* FROM: VERNITA VESTAL \*  
\* SUBJECT: POM \*  
\* PRINT DATE: 04/17/85 TIME: 16:28 \*  
\*  
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cl

TO: ALL LEGISLATORS

APR 18 1985

FROM: STEVE BILBREY  
2811 SPENARD ROAD  
ANCHORAGE, ALASKA 99503 (H) 276-7810 (W) 561-5368

RE: HB 345-DRAM SHOP

I AM A BARTENDER. I HAVE WORKED IN THE SAME ESTABLISHMENT FOR NINE YEARS. PLEASE DEFEAT HB 345-DRAM SHOP. LIQUOR INDUSTRY NEEDS APPROVAL OF SENATOR JOSEPHSON'S PROPOSED STATE OWNED INSURANCE CORPORATION. I CANNOT SURVIVE ON UNEMPLOYMENT BENEFITS.

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\* DELIVER TO: JFOM \*  
\* \*  
\* \*  
\* ORIGINAL \*  
\* SENT: 04/18/85 TIME: 09:15 \*  
\* FROM: BARBARA NORRELL \*  
\* SUBJECT: POM \*  
\* PRINT DATE: 04/18/85 TIME: 09:16 \*  
\*  
\*\*\*\*\*

TO: ALL LEGISLATORS

APR 18 1985

FROM: JERRY WITTMAN, 3408 LOIS DRIVE, ANCHORAGE, ALASKA 99503  
276-2642

SUBJECT: HB 345, DRAMSHOP LAW; LIABILITY OF ALCOHOL VENDORS

PLEASE DEFEAT THIS BILL, IF THIS BILL IS PASSED IT WILL RUN SMALL  
BUSINESSES OUT OF BUSINESS. IT WILL UNEMPLOYEE THE PRESENTLY  
EMPLOYED. INSURANCE PRICES WILL BE OUT OF REACH FOR THE SMALL  
BUSINESSES. VERY IMPORTANT THAT THIS IS NOT PASSED.

WORKING 345

TO: ALL MEMBERS OF THE HOUSE STATE AFFAIRS COMMITTEE

FROM: Kerwin Tschetter  
P.O. Box 81343  
Fairbanks, Alaska 99708  
479-8275

RE: HB 345, "DRAM SHOP"

I am opposed to the "Dram Shop Laws" and other legislation that directs the responsibility to others than the individual directly responsible. I am not in the alcohol beverage industry nor have I ever had a financial interest in the industry. But I resent the singling out of one particular segment of the economy for special prosecution. I work in Prudhoe Bay and other "Dry" bush communities where alcohol is supposedly totally banned. If this is the ideal situation, why is alcohol one of the main driving problems there? Without a liquor industry, you go from a situation where you have some control, to no control what so ever. Secondly, I ask the alcohol abuse professionals if one of their main goals in leading to the recovery of alcoholics is getting them to accept their own responsibility for their own actions? Thirdly, Alcohol, like many other drugs, has a dose-tolerance relationship. The greater history of its use, the greater the dosage required to produce the same psychological response. Is it any wonder then why bartenders and other professionals have trouble subjectively determining a .10% of blood alcohol content. Fourthly, anyone who has tried to get a belligerent drunk to allow them to drive them home realizes that the present laws are unrealistic.

APR 19 1988

TELECOPY COVER SHEET  
FAIRBANKS INFORMATION OFFICE

TO: SMU FOR: Rep Hurley PHONE: \_\_\_\_\_

FROM: Kerwin Tschatter PHONE: 479-8275

ADDITIONAL INSTRUCTIONS: Please distribute to committee

DATE/TIME SENT: 4/18 SENT BY: RC

PLEASE ACK. RECEIPT: X HOLD FOR PICK-UP: \_\_\_\_\_

NUMBER OF PAGES: 1 (NOT COUNTING COVER SHEET)

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 \* DELIVER TO: JFOM \*  
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 \* ORIGINAL \*  
 \* SENT: 04/18/85 TIME: 16:51 \*  
 \* FROM: LIOFBX \*  
 \* SUBJECT: FOM FBX/LS \*  
 \* PRINT DATE: 04/18/85 TIME: 16:52. \*  
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2

TO: REP. HURLEY APR 19 1985  
 FROM: GORDON E. DEPUE, PO BOX 531, FBX, AK 99707 #488-6012-H  
 #452-5161-W  
 RE: HB 345, DRAM SHOP TELECONFERENCE

THE CHAIRPERSON SPENT 27 MINUTES OF THE TIME TALKING ABOUT WHO MIGHT BE GOING TO SPEAK AND CHECKING BACK TO SEE IF ANY VILLAGES HAD CHANGED THEIR MINDS. AS A RESULT MANY OF THOSE WHO WAITED COULD NOT TESTIFY.

EOM

4-21-85

talked to Mr. Depue - Insurance Broker  
 has call AK. Ins Co underwriters  
 (opposed) they feel this bill is poorly written  
 & will open them up to court suits....  
 nuisance lawsuits - has talked to J. Stively.  
 been Ins Agent 26 yrs.

*Call - who's a friend  
 and who's the  
 pros & cons*

[22 people testified]

State of Alaska  
THE LEGISLATURE

April 18, 1985

APR 19 1985

LEGISLATIVE AFFAIRS AGENCY  
DIVISION OF PUBLIC SERVICES

HB-345-

AGAINST:

I feel the bill needs to be totally revised and individual responsibility added. I also disagree that the establishments are totally responsible when we have home entertainment, liquor stores with people consuming liquor at home or on the road. Yet this bill is discriminatory against the liquor establishments only. Please review the bill and put blame where the blame lies.

Thank you

Judy Rutterbock  
P.O. Box 63

King Salmon, AK

99413

STATE AFFAIRS

Chairman: Katie HURLEY  
Vice-Chairman: Mike NAVARRE  
Members: Bette CATO  
Red BOUCHER  
M.M. MILLER  
Virginia COLLINS  
Roger JENKINS

April 10, 1985

LEGISLATIVE AFFAIRS AGENCY  
DIVISION OF PUBLIC SERVICES

HB 345 - Civil liability of alcoholic  
beverages.

Against-

The bill does not hold the drinker  
at fault. ~~with~~ Only addresses one side.

Does not hold the ones that serve  
alcohol to minors, that are not licensed  
liable.

James K. Phelps

STATE AFFAIRS

Chairman: Katie HURLEY  
Vice-Chairman: Mike NAVARRE  
Members: Bette CATO  
Red BOUCHER  
M.M. MILLER  
Virginia COLLINS  
Roger JENKINS

April 18, 1955

LEGISLATIVE AFFAIRS AGENCY  
DIVISION OF PUBLIC SERVICES

HB 345 - Civil Liability of Alcoholic Beverages

Several Comments about this bill:

- 1 - It discriminates against the license holders and does not hold private individuals responsible if a person is obviously drunk.
- 2 - The bill is a blanket ticket for law suits and does not place the heavy responsibility on the individual. Drunk People kill people.

This bill is worded in a manner that is too easy to misread.

Please get all people drinking off the road.

John J. [Signature]

Andrew LUNDQUIST  
Owner Tony's BAR KODIAK.  
AGAINST HB345

P.O. Box 589

KODIAK

APR

APR 22 1985

We now have a dram shop law which places financial liability upon bar OWNER for the negligent serving of Alcohol.

The issue is drunk driving accidents and the source of financial liability to injured 3<sup>rd</sup> parties.

The solution that HB 345 provides is the shifting of this financial liability to the server of the alcoholic beverages vs. the consumer.

I disagree with HB 345 because it ~~is~~ is not specifically directed at the source of the problem and will not act as a deterrent to the drinking driver.

In most instances Alcohol ABUSE and the decision to drive while intoxicated is a PERSONAL decision and the consequences of such actions should be largely PERSONAL.

If the legislature is concerned, in the case of drunken driving accidents, that added financial resources should be available to injured 3<sup>rd</sup> parties let's direct our attention to some of the following considerations

1. Increasing the mandatory auto insurance limits from the present \$50/100/25,000 to some more realistic levels
2. Pass laws which provide for forfeiture of driving licenses and Autos of individuals

2nd Point - Insurance (LIQUOR LIABILITY)

Even under present dram shop legislation, liquor liability insurance to bar OWNERS is in short supply. Many bar OWNERS are presently without such coverage because OF the insurance companies refusal to write it.

If the legislature shifts the liquor liability further from the drinking patron to the licensed establishments, then I feel that consideration should be given first to whether these establishments can insure themselves against the serious financial impact of this change.

Adrian Lindquist  
4/19/85

APR 22 1985

I am opposed to House Bill 348  
because of the ultimate effect  
it will have on labor.

Making the licence owners unanimous  
will force them to close and thereby  
leave a large # of employees  
out of work.

Harriet Joubert  
# E.R.E. Local 878

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\*  
\* DELIVER TO: JFOM \*  
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\* ORIGINAL \*  
\* SENT: 04/17/85 TIME: 16:27 \*  
\* FROM: VERNITA VESTAL \*  
\* SUBJECT: POM \*  
\* PRINT DATE: 04/17/85 TIME: 16:28 \*  
\*  
\*\*\*\*\*

TO: ALL LEGISLATORS

FROM: STEVE BILBREY  
2811 SPENARD ROAD  
ANCHORAGE, ALASKA 99503 (H) 276-7810 (W) 561-5369

RE: HB 345-DRAM SHOP

I AM A BARTENDER. I HAVE WORKED IN THE SAME ESTABLISHMENT FOR NINE YEARS. PLEASE DEFEAT HB 345-DRAM SHOP. LIQUOR INDUSTRY NEEDS APPROVAL OF SENATOR JOSEPHSON'S PROPOSED STATE OWNED INSURANCE CORPORATION. I CANNOT SURVIVE ON UNEMPLOYMENT BENEFITS.

FR: NUNAN-CENALIULRIIT  
ANNA PHILLIP, PROJECT COORDINATOR  
PO BOX 2068  
BETHEL, ALASKA 99559 543-2856

RE: HB93-ESTABLISH SYSTEM OF RECREATION RIVERS

NUNAM WANTS THIS BILL TO CHANGE BACK TO RECREATION RIVERS FROM SPECIAL USE RIVERS OR THE BILL BE KILLED. WE DO NOT WANT ANYMORE POLLUTED AND DESTROYED RIVERS IN ALASKA. LETS KEEP ALASKA WILD AND NATURAL AS POSSIBLE.

THANK YOU.

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\* DELIVER TO: JFOM \*  
\*  
\* ORIGINAL \*  
\* SENT: 4/17/85 TIME: 13:55 \*  
\* FROM: VERNITA VESTAL \*  
\* SUBJECT: POM \*  
\* PRINT DATE: 04/17/85 TIME: 13:56 \*  
\*  
\*\*\*\*\*

TO: ALL LEGISLATORS  
FROM: DENNIS MORGAN  
P.O. BOX 3859 ECB  
ANCHORAGE, ALASKA 99501 (H) 344-7141 (W) 562-3532

RE: HB 345-DRAM SHOP

I WOULD LIKE TO SEE IT DEFEATED. AND PLEASE SUPPORT SENATOR JOSEPHSON'S INSURANCE PROPOSAL.

FR: SUE UNIN  
LOWER KUSKOKWIM SCHOOL DISTRICT  
POUCH 305  
BETHEL, AK. 99559 543-3611

RE: HEADSTART FUNDING

PLEASE SUPPORT THE AVCP HEADSTART PROGRAM FUNDING FOR OUR AREA. CHILDREN BENEFIT FROM THE PRESCHOOL EDUCATION HEADSTART GIVES AND I FEEL FUNDING SHOULD CONTINUE FOR THIS NEEDED EDUCATION PROGRAM. YOUR HELP IS GREATLY APPRECIATED.

THANK YOU.

\*\*\*\*\*  
\*  
\* DELIVER TO: JFOM  
\*  
\* ORIGINAL  
\* SENT: 04/15/85 TIME 17:08  
\* FROM: BARBARA WERRELL  
\* SUBJECT: POI  
\* PRINT DATE 04/15/85 TIME 17:08  
\*  
\*\*\*\*\*

TO ALL LEGISLATORS

FROM: JIM DICKEY, 3500 LOIS DRIVE, ANCHORAGE, AK 99502,  
277-1305 (H) OR 561-5238 (M)

SUBJECT: 345, DRANKSHOP LAW

APR 16 1985

PLEASE DEFEAT THIS BILL. SMALL LIQUOR BUSINESSES CAN NOT SURVIVE WITH INCREASED INSURANCE COST DUE DRANKSHOP LA'. PLEASE SUPPORT JOE JOSEPHSON'S PROPOSAL TO ESTABLISH A STATE OWNED INSURANCE CORPORATION.

workans / 345

**Alaska Cabaret, Hotel,  
Restaurant & Retailers Association**  
P.O. Box 104839 • Anchorage, Alaska 99510



6-10-85

The Honorable Katie Hurley  
Chairman  
State Affairs Committee  
House of Representatives  
Alaska State Legislature  
P.O. Box 870157  
Wasilla, Alaska 99687

Dear Madam Chairman,

It is my understanding that you are considering interim work on the dram shop bill, H.B. 345. As you know, members of CHARR and the state's 1600 liquor license holders strongly oppose H.B. 345 in its present form. In addition, the State Alcoholic Beverage Control Board--in an April 12, 1985 letter to Senator DeVries-- went on record as opposing H.B. 345 by stating, "Retain present law for determining the measure of civil liability". I have enclosed a copy of the ABC Board's letter for your review.

If your Committee plans to work on H.B. 345 during the interim, I would appreciate being notified of any informal or formal sessions which are to be scheduled. CHARR plans to actively participate in these sessions. However, our members are small businessmen and would have to take time away from an already busy schedule to attend the Committee's sessions.

Therefore, I would appreciate as much lead time as possible in being notified of Committee meetings which will focus on H.B. 345, liability insurance, or other related issues. Please contact the CHARR office in Anchorage at 272-8133 by phone, or at the address above, so that all Board Members can be advised of any meetings and have ample time to make plans to attend.

Representative Hurley, in closing I want to thank you for the time and courtesy which you have extended to me and other members of CHARR. We greatly appreciate your willingness to listen to our concerns.

Sincerely,

Tiny DeSapio  
President



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*

May 2, 1985

Mr. Bob Whitmarsh  
Marsh & McLennan  
2505 Denali  
Anchorage, Alaska 99503

Dear Mr. Whitmarsh:

Thank you for your very informative letter regarding liquor industry insurance.

We will be working on House Bill No. 345 in the House State Affairs Committee, which I chair, in the interim between sessions and will certainly take your views into consideration.

Sincerely,

Katie Hurley  
Representative

APR 30 1965

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.

*acknowledged  
✓ copy will  
be made  
during  
interview*

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.

# Alaska Cabaret, Hotel, Restaurant & Retailers Association

P.O. Box 104839 • Anchorage, Alaska 99510



JAN 21 1986

1-15-86

The Honorable Katie Hurley  
Chairman  
State Affairs Committee  
House of Representatives  
Pouch V  
Juneau, Alaska 99811

Dear Madam Chairman,

It is my understanding that the House State Affairs Committee will begin debate as soon as possible on H.B. 345. Members of CHARR and the state's 1600 liquor license holders strongly oppose H.B. 345 in its present form, as does the State Alcoholic Beverage Control Board, Reference April 12, 1985 letter to Senator DeVries, copy attached, stating, "retain present law for determining the measure of civil liability".

Since we consider this legislation of vital interest not only to our members, but all representatives of our industry CHARR is requesting that State Affairs keep our organization informed of the timetable to be followed with this legislation, and/or other legislation that will affect our industry, such as liability insurance.

We would appreciate as much lead time as possible in order that our Board Members and other interested parties have ample time for planning.

Representative Hurley, in closing I want to thank you for the time and courtesy you have extended CHARR. We appreciate your willingness to listen to our views.

Best wishes during the coming session.

Sincerely,

A handwritten signature in cursive script that reads "Charles H. Selman".

Charles H. Selman  
President

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF REVENUE**

ALCOHOLIC BEVERAGE CONTROL BOARD

550 West 7th Avenue  
~~204X EASSTXSTXKXWENDE~~  
ANCHORAGE, ALASKA 99501

April 12, 1985

Senator Edna B. DeVries  
Chairman, Community & Regional  
Affairs Committee  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator DeVries:

At the March 28, 1985 meeting of your Committee Senator Vic Fischer requested that I discuss with members of the Alcoholic Beverage Control Board current problems which confront most liquor licensees in Alaska. Additionally, the Committee requested the board to render some thoughts and recommendations.

The board met in Anchorage on March 29 and discussed the request. As a result of that meeting the board directed me to develop a response for its review. Having been reviewed by the board, comments and suggestions are forwarded in this letter.

First, because of the continuing controversy about alcohol and recognizing that many persons easily become emotional, rightfully so, with exhaustive deliberations and discussion about the subject, the board must request that the contents of this communication be received not as a white paper, firm position, or policy which guides the board in exercising its responsibilities. The board fully recognizes the delicacy of the subject and certainly does not want to appear to be infringing on positions or policies of other persons, agencies or organizations. The board does not want to dilute any integrity or credibility it may presently enjoy. With these statements the board believes it is appropriate to identify itself.

Members are:

William K. Smith - chairman. Member of the board for five years and chairman for 2 1/2 years. An industry member and associated with a package store licensed business for 29 years in Anchorage.

E. L. "Red" Holloway - Twice former board member and present board member for two years. Presently retired in Juneau and former owner of the Prospector Hotel in Juneau.

Jane Perkins - Member for 1 1/2 years, retired and resident of Nome for 56 years.

James McNamee - Member designate since September 1984 from Fairbanks. Presently with a prominent insurance company and former Deputy Director with Division of Insurance, Alaska Department of Commerce.

Jack Griffin - Former member of the board from 1975 to 1978 and presently a member designate from Anchorage. Former licensee in Anchorage and presently owner of The Bayside Lounge in Homer.

At each board meeting the board reviews and decides on more than 70 agenda items for new issuance and transfer applications and other requests by licensees. Almost all licensees diligently attempt to follow the law. However, we must admit many licensees have not familiarized themselves with the law even though they may instruct employees about portions of the law which focus on responsibilities related to forbidden classes--minors and drunken persons. The board has noted many times that it is a few poor operators who create a bad climate in the public's eye. The board believes that the present record does not clearly indicate that alcohol problems, drunk driving in particular, arise from violations of law by licensees. However, the record is clear that alcohol consumption is heavy in Alaska and the source of alcoholic beverages in the state is from licensees licensed by the board.

By this letter the board is certainly not promoting enhancement of licensed business profits by suggesting that insurance expense is too high. The board is only suggesting that licensed businesses under its jurisdiction appear to be subjected to an inordinate degree of responsibility/blame/exposure for the acts/actions of the public at large and some irresponsible licensees.

The board believes that:

- 1 - Licensees, their agents and employees who violate laws which are in force to protect the public must receive swift identifiable sanctions.
- 2 - The public must be made aware that licensees are charged with operating an orderly business which distributes a controlled substance for a profit and when a licensee withholds the privilege of consuming or purchase from a customer that the licensee is enforcing a strict public policy that the public must be willing to accept.
- 3 - Licensees must also be charged without fail to:
  - a - firmly educate their people about responsibilities related to sale of alcoholic beverages.
  - b - firmly and continually educate the public that Alaska's licensed operators will not and cannot condone misuse or abuse within their premises.

These charges must of necessity be instilled in licensees by threat of loss of their licensed privilege without regard to any perceived or actual value which may have attached to the license/privilege. With this thought the board believes that with its capacity as a quasi-judicial body a specific schedule of sanctions/penalties be articulated in law. Criteria which could mitigate a prescribed penalty are suggested below. These criteria, if supported by facts before the board, are the criteria which are apparently accepted as those which could also be used to mitigate civil liability suits.

1. Formal training of employees.
2. No happy hours or reduced price drinks.
3. No advertising of alcoholic beverages.
4. Past performance policies of a licensee.
5. No rowdy house.
6. Employees consuming on duty.
7. Availability of food and non-alcoholic beverages.

Some would say that the above suggestions might place a great deal of authority/power in the board. However, the board firmly believes that the industry expects and prefers that its members who violate the law at everyone's expense must suffer penalty.

With all due respect to and consideration for all who participate in this seemingly never ending dialogue, the board submits the following recommendations for your consideration:

1. Retain present law for determining the measure of civil liability.
2. As state policy emphatically put licensees and the public on notice that illegal use of substances will not be condoned in the State of Alaska.
3. Require for incidents involving DWI that the offending party also be subjected to tests to ascertain if other substances are present in the person's body which also may have caused intoxication.
4. When possible and appropriate require DWI incident investigating officers to determine where and when an offending person last obtained an intoxicating substance. If from a licensee, this information be provided to the board.
5. Provide that an incident involving a licensed business or premises be reported in writing by the appropriate law enforcement authority having jurisdiction. If not reported by local authorities, then refund of license fees to a municipality be terminated without fail.
6. Following the Governor's Task Force on Drunk Driving, require that a mandatory course of instruction about alcohol and alcohol laws be provided by the industry to its employees.
7. Appoint an interim committee to draft amendments to law for submission during the next session of this legislature.

April 12, 1985

Unless you prefer to substantially modify Alaska's law, present law places responsibility for alcohol on everyone from health programs, schools, law enforcement, local governments, licensees, the public and the board. It is a collective problem and a collective responsibility. The present law is certainly not without its faults, but it works and has the ingredients for dealing with licensees who do not exercise their license in the best interest of the public.

The board would like to express one point for further discussion or clarification. When an intoxicated person causes injury to a third party and the level of intoxication is determined to be .10 BAC for the intoxicated person, and if it is intended that licensees, their agents or employees be held civilly liable, this is poor public policy and is tantamount to prohibition. Licensees who serve alcoholic beverages for consumption on the premises would be unable to operate. No licensee, agent or employee can determine a .10 BAC of a person without using some measuring device. Following service of one or two beverages at a licensed premises the public would not accept the imposition of having to submit to a form of electronic or physical test.

The board has traditionally convened a meeting in Juneau during the month of February of each year for two purposes. First, to fulfill its responsibility under AS 04.06.050, and second, to have the opportunity to meet with legislators and legislative committees during legislative sessions. However, because of present interest, concerns, and your request for the board's written comments, the board is scheduled to be in Juneau again this year on April 30, and following days if appropriate or necessary. The board and staff will be happy to provide you with any additional information which may be of help.

Sincerely,



Patrick L. Sharrock  
Director

PLS:vk

cc: Senator Frank Ferguson  
Senator Jack Coghill  
Senator Vic Fischer  
Senator Arliss Sturgulewski

# **R/R Associates**

Suite 217 • 2 Marine Way • Juneau, Alaska 99801 

September 19, 1985

The Honorable Don Clocksin  
Majority Leader  
House of Representatives  
1527 H Street  
Anchorage, Alaska 99501

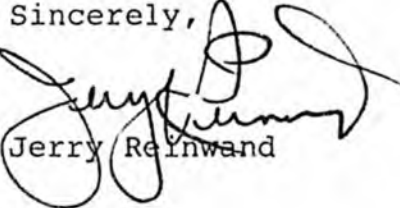
Dear Representative Clocksin:

During yesterday's teleconference on H.B. 345 you made an allegation that--if I heard it correctly--is not factual. The reason that I add the caveat about hearing it correctly is that the teleconference equipment in Juneau apparently experienced serious technical problems, and consistently went "dead" for brief periods of time during the entire day-long meeting of the Committee. As I was prevented from rebutting your allegation at the time it was made, I would like to do so in this letter.

The statement which you made to which I take exception refers to your allegation that I told your staff that CHARR would be pushing a "social host" amendment to H.B. 345 to kill the bill. That allegation is totally at odds with what I told your staff. During my discussion with your staff I stressed that if the objective of H.B. 345 is to reduce drunk driving-related accidents which result in injuries and death to third parties, then as a matter of policy all persons who serve alcohol--whether by the glass or by the can in a retail establishment, or whether in the home to friends in social situation--should be treated the same under the law and should be subject to the same liability exposure. I readily acknowledged that there may be other valid public policy reasons for excluding social hosts from the bill, and if there were, they should be injected into the public debate on the bill. I also acknowledged that the addition of social host language to H.B. 345 would make it difficult to pass the bill. However, I stressed to your staff this aspect of the legislative process turned on politics--not policy--and that it would be my strong recommendation to the CHARR board that the social host issue should be addressed by the organization on the policy level, not the political level.

Representative Clocksin, I want to add that my personal policy in representing my clients before the Legislature is to be open and above board with our legislative agenda. This means that my clients and I must engage in an open and continuing dialogue with legislators, whether or not they support our policy position. It was for this reason that I met informally with your staff to discuss H.B. 345 and other issues in which CHARR and your office have a mutual interest. I would hope that we can

continue that dialogue in the future. However, I would request that if you are going to attribute statements to me in public forums--especially statements which are based on second-hand information and given in situations in which I have no opportunity to reply--that you check with me beforehand to ascertain their accuracy.

Sincerely,  
  
Jerry Reinwand

cc: ✓ The Honorable Katie Hurley  
The Honorable Mike Navarre  
The Honorable Bette Cato  
The Honorable Virginia Collins  
The Honorable Mike M. Miller  
The Honorable Red Boucher  
The Honorable Roger Jenkins  
Mr. Charles Selman



**Red Ram MOTOR LODGE**  
FIFTH & GAMBELL  
ANCHORAGE, ALASKA 99501

*Revelle  
see me*

(907)279-1591

January 12, 1986

JAN 16 1986

Representative Katie Hurley  
Pouch V  
Juneau, AK 99811

Dear Katie:

Thank you for taking time out of such a hectic period to talk to us on Friday. It was truly appreciated.

As we discussed, I am very concerned about House Bill 345 since it would be detrimental to even the most responsible of businesses licensed for alcoholic beverage service, and this is not necessary for the fulfillment of the bill's social purpose.

It would be appreciated by me and others in my group of concerned members of the liquor industry if your office would keep me advised of the progress of this bill which is now in your committee.

If I can be of any assistance in providing needed information on the subject matter of House Bill 345, I would be happy to do so.

I wish you success in the coming legislative session and look forward to seeing you again.

Sincerely,

Susan A. Vaillancourt  
General Manager

MAIL ADDRESS: 642 E. 5th Avenue, Anchorage, AK 99501

TO: ALL MEMBERS OF THE HOUSE STATE AFFAIRS COMMITTEE

FROM: Kerwin Tschetter  
P.O. Box 81343  
Fairbanks, Alaska 99708  
479-8275

RE: HB 345, "DRAM SHOP"

I am opposed to the "Dram Shop Laws" and other legislation that directs the responsibility to others than the individual directly responsible. I am not in the alcohol beverage industry nor have I ever had a financial interest in the industry. But I resent the singling out of one particular segment of the economy for special prosecution. I work in Prudhoe Bay and other "Dry" bush communities where alcohol is supposedly totally banned. If this is the ideal situation, why is alcohol one of the main driving problems there? Without a liquor industry, you go from a situation where you have some control, to no control what so ever. Secondly, I ask the alcohol abuse professionals if one of their main goals in leading to the recovery of alcoholics is getting them to accept their own responsibility for their own actions? Thirdly, Alcohol, like many other drugs, has a tolerance relationship. The greater history of its use, the greater the dosage required to produce the same psychological response. Is it any wonder then why bartenders and other professionals have trouble subjectively determining a .10% of blood alcohol content. Fourthly, anyone who has tried to get a belligerent drunk to allow them to drive them home realizes that the present laws are unrealistic.

APR 19 1988

TELECOPY COVER SHEET  
FAIRBANKS INFORMATION OFFICE

TO: SMU FOR: Kip Hurley PHONE: \_\_\_\_\_

FROM: Kevin Tschetter PHONE: 479-8275

ADDITIONAL INSTRUCTIONS: Please distribute to committee

DATE/TIME SENT: 4/18 SENT BY: RC

PLEASE ACK. RECEIPT:  HOLD FOR PICK-UP:

NUMBER OF PAGES: 1 (NOT COUNTING COVER SHEET)