

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4740 HJUD HB 521 - HB 545

31

POSITION PAPER
ON
HOUSE BILL NO. 521

"An Act relating to open containers of alcoholic beverages in motor vehicles."

The intent of this bill is to assist in lowering the alcohol related traffic accidents and fatalities by prohibiting operators of motor vehicles from consuming alcoholic beverages while driving.

Analysis

Expert testimony at the Presidential Commission on Drunk Driving, Governor's Task Force on Drunk Driving, and the Anchorage Mayor's Drunk Driving Advisory Committee a few years ago, indicated a strong need for this legislation. The testimony shows a strong relationship between consumption of alcohol and accidents. The act of operating a motor vehicle requires individuals to be free of other activities that may take away from their concentration. Furthermore, consumption of alcohol, a central nervous system depressant drug, often interferes with brain functions required to make special/peripheral judgements while driving.

This statute would bring state law in line with many local ordinances. In Alaska, many roads and highways traverse districts with local jurisdictions as well as state enforcement areas. House Bill 521 is needed for continuous and uniform enforcement.

The statute would give authority for action prior to a driver obtaining the minimum legal limit blood alcohol level. Under a variety of conditions, individuals may become less functional drivers yet not have reached a blood alcohol level of .10 ratio. This statute, with probable cause, allows authorities to take preventive enforcement actions.

Nineteen other states have open container statutes. Other states have more restrictive laws such as "in and about an automobile." When consideration is given to Alaskans' rate of alcohol consumption, alcohol related fatalities, and attitude regarding alcohol abuse, this statute becomes very necessary.

Recommendation

The Department is impressed with public testimony in favor of this concept, the Presidential Commission Report's recommendation, and the action of other states in this regard, and accordingly is supportive of HB 521.

Myra M. Munson

Myra M. Munson, Commissioner
3/4/88

Matthew C. Felix

For Matthew C. Felix, Coordinator

BILL NO: HB 521

DATE: 2/29/88

TITLE: "An Act relating to open containers of alcoholic beverages in motor vehicles."

CONT. CT: Col. Robert E. Jent
269-5641

DEPARTMENT OF PUBLIC SAFETY

This bill makes it an infraction for a person to drive a motor vehicle while there is an open container of alcoholic beverages in the passenger compartment. The basic purpose of the legislation is to discourage drinking while driving.

Nationally, the majority of serious and fatal accidents are connected with alcohol use by the driver. This measure will provide law enforcement officers with an additional deterrent to address this problem, although effective enforcement on a constant basis may prove difficult.

This bill provides that a person is deemed to have consented to a preliminary breath test (PBT) if he drives with an open container in the vehicle. In Leslie v. State, 711 p. 2d 575 (Ct. App. 1986) the court of appeals held that a PBT result could not be used to help an officer decide whether to arrest a subject; the officer already has to have probable cause to arrest before he can require the driver to take a preliminary breath test. The bill, as presently drafted, does not address this issue.

The Department of Public Safety supports this legislation.


Arthur English
Commissioner



ALASKA COUNCIL ON PREVENTION OF ALCOHOL AND DRUG ABUSE, INC.

March 1, 1988

Rep. Fran Ulmer, Chairwoman
House State Affairs Committee
P.O. Box V
Juneau, AK 99811

Dear Chairwoman Ulmer:

I understand that two bills regarding alcohol will be considered in House State Affairs Committee on Friday, March 4. The Alaska Council supports both pieces of legislation and asks that the following comments be read into the record at that time, if at all possible.

HB 500:

The Alaska Council on Prevention of Alcohol and Drug Abuse supports HB 500 which relates to membership on the Alcoholic Beverage Control Board. Public awareness of the severity of alcohol abuse in Alaska is increasing and this bill will help continue that process. The Alaska Council is encouraged by the proposed changes which would require that one member of the board be knowledgeable of alcohol and substance abuse problems. The presence of a substance abuse professional on the ABC Board would be a responsible step toward increasing awareness of the effects of alcohol on individuals and communities.

The Alcoholic Beverage Control Board's decisions impact the health and well being of the citizens of Alaska. The Alaska Council feels that informed, responsible decision making at the state level is crucial to alcohol prevention efforts. Passage of HB 500 will send a positive message that legislators recognize the need for continued awareness of the problems associated with alcohol use and abuse.

HB 521:

The Alaska Council supports HB 521, relating to open containers of alcoholic beverages in motor vehicles. Drinking and driving are a dangerous, often fatal, combination which should be strongly discouraged.



A United Way Agency

7521 OLD SEWARD HWY., SUITE A ANCHORAGE, ALASKA 99518 (907) 349-6602

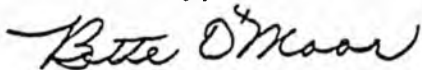
March 1, 1988
Page Two

In 1987, 58 traffic accidents resulted in 69 alcohol-related deaths in Alaska. Youth under age 21 accounted for 14 percent of these driving fatalities even though this same age group only holds 7.1 percent of the drivers licenses. Measures, such as enacting HB 521, need to be taken to reduce the number of lives that are lost each year in alcohol-related accidents.

The Alaska Council hopes that the House State Affairs Committee will act favorably on HB 521 and take this opportunity to help protect the lives of Alaskans.

Thank you, Chairwoman Ulmer, for sponsoring HB 500 and hearing other bills in House State Affairs Committee which support prevention of alcohol and drug abuse in our state.

Sincerely,

A handwritten signature in cursive script that reads "Bette O'Moor".

Bette O'Moor
Executive Director

cc: Rep. Steve Frank



FAIRBANKS NATIVE ASSOCIATION, INC.

310½ First Avenue
Fairbanks, Alaska 99701
Phone: (907) 452-1648 / 456-5151

February 29, 1988

Representative Fran Ulmer
Chairman, House State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representative Ulmer:

The abuse of alcohol and the resulting tragedies associated with this abuse are a primary concern to the Fairbanks Native Association. Among the perils related to alcohol abuse are those which happen due to drunk driving.

FNA is aware of Representative Steve Frank's proposed "Open Container Law", HB 521. In our continuing work towards eliminating alcoholism we do support HB 521. FNA sees this as an important step towards curbing drunk driving and the related deaths, accidents and other tragedies.

We hope you will support this bill in the interest of Alaska's efforts to combat drunk driving and alcohol abuse.

Sincerely,

Samuel S. Demientieff
Acting Executive Director

cc: Representative Steve Frank

ADMINISTRATION/ACCOUNTING
452-1648 or 456-5151
JOHNSON O'MALLEY
EDUCATIONAL PROGRAM
"SAAKI AAYA CENTER"
451-6201 or 451-6211
BUSINESS AND MANPOWER
DEVELOPMENT
452-1648
WOMEN'S EDUCATION PROGRAM
451-8592

COMMUNITY SERVICES
452-1648
Counseling Services
452-1648
Child Welfare
452-1648
Family Focus
452-5802
Small Business Assistance
451-8466

ALCOHOL AND DRUG ABUSE SERVICES
Drop-In Center
456-7948
Out-Patient Services
456-1041
456-1101
Fairbanks Alcohol Safety
Action Program
452-6144
Youth Drug Abuse Prevention
452-5085
Substance Abuse Regional Counselor Training Program
452-7045

Director
452-1648 Ext. 15
RCAOA Detox Center
456-1053
RCAOA Treatment Center
456-1045
RCAOA Halfway House
452-8761

MADD

MOTHERS AGAINST DRUNK DRIVERS

Fairbanks Northern Lights Chapter

P.O. Box 1167

Fairbanks, Alaska 99707-1167

(907) 456-3964

March 3, 1988

Rep. Frances Ulmer, Chairman
House State Affairs Committee
P.O. Box V
Juneau, Alaska 99811

Dear Rep. Ulmer,

The Fairbanks Northern Lights Chapter of Mothers Against Drunk Driving strongly supports passage of HB 521, the Open Container Bill.

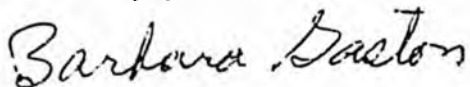
MADD's stand against drinking and driving is well known. Drinking while driving is a doubly dangerous activity. It not only contributes to a higher blood alcohol level, but is a distraction from the serious business of safely operating a motor vehicle.

We constantly read vehicle crash reports wherein the investigating officer has inserted comments such as, 'numerous empty beer cans were observed in the vehicle', or 'strong odor of an alcoholic beverage was apparent in the vehicle'. Beer cans or liquor bottles are found stuffed under seats, or close by vehicles at crash sites, where they have obviously been tossed out after a crash. Partially empty six packs are common currency in vehicle crash reports.

The only safe place for alcohol in a motor vehicle is in a sealed container, or mixed in the tank with gasoline. Please give an assist to safety on the highways, airways and waterways of Alaska by passing out HB 521 with a 'do-pass' endorsement from the House State Affairs Committee.

We ask that you share these comments with other committee members.

Sincerely yours,



Barbara Gaston, President
Fairbanks Northern Lights
Chapter MADD

✓ cc: Rep. Steve Frank, Prime Sponsor HB 521

SCOTT & WESLEY GERRISH
MEMORIAL

MADD

ANCHORAGE, ALASKA
CHAPTER

MAILING ADDRESS:
733 West 4th Avenue, Box 821
Anchorage, AK 99501

(907) 258-MADD

BUSINESS ADDRESS
733 West 4th Avenue, Suite 304
Anchorage, AK 99501

March 1, 1988

Rep. Steve Frank
P.O. Box V
Juneau, AK 99811

Dear Rep. Frank,

On behalf of the Anchorage Chapter of Mothers Against Drunk Driving, I would like to endorse House Bill #521. This bill regarding open containers of alcoholic beverages in automobiles is long overdue in Alaska. There are very few states in our country that have not passed similar legislation. This bill would give the message to the citizens, especially the teenagers, of this state that the legislature is committed to eliminating the drunk driving problem in Alaska. I wish you the best in passing this bill into law.

Sincerely,

Barbara B Mills
Barbara B. Mills, President
Anchorage Chapter MADD

MODIFYING
ATTITUDES
TOWARDS
DRIVING AND
DRINKING

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

May, 1988

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

Mary Van Nimwegen

H. JUD.	3-17-88	1:30p.m.
H. JUD.	3-16-88	1:30p.m.

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/7/88

FURTHER REFERRALS:

DATE: March 17, 1988

The Judiciary Committee has considered HB 521

"An Act relating to open containers of alcoholic beverages in motor vehicles."

RECOMMENDS:

- replace with CS H3521 (Jud) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 3/7/88
- zero with analysis

SIGNING DO PASS:

[Signature]

John Palmer

[Signature]

John Otk

Mike Gavane

SIGNING OTHER RECOMMENDATIONS:

[Signature]

Chairman's signature

Original sponsors: Frank, Miller,
Koponen, et al.

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 521 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to open containers of alcoholic
7 beverages in motor vehicles."

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

9 * Section 1. AS 28.35 is amended by adding a new section to article 2
10 to read:

11 Sec. 28.35.029. OPEN CONTAINER. (a) A person may not drive a
12 motor vehicle on a highway or vehicular way or area, when there is an
13 open bottle, can, or other receptacle containing an alcoholic beverage
14 in the passenger compartment of the vehicle, except as provided in (b)
15 of this section.

16 (b) A person may transport an open bottle, can, or other recep-
17 tacle containing an alcoholic beverage in the trunk of a motor vehicle
18 or, if the open bottle, can, or other receptacle is enclosed within
19 another container,

20 (1) behind the last upright seat in a motor home, station
21 wagon, hatchback, or similar trunkless vehicle; or

22 (2) on a motor-driven cycle.

23 (c) In this section

24 (1) "alcoholic beverage" has the meaning given in AS 04.-
25 21.080(b);

26 (2) "motor vehicle" means a vehicle for which a driver's
27 license is required;

28 (3) "open" includes having a broken seal;

29 (4) "passenger compartment" means the area normally

1 occupied by the driver and passengers and includes a utility or glove
2 compartment accessible to the driver or a passenger while the motor
3 vehicle is being operated.

4 (d) A person who violates (a) of this section is guilty of an
5 infraction.

6 * Sec. 2. AS 28.35.031(b) is amended to read:

7 (b) A person who operates or drives a motor vehicle in this
8 state or who operates an aircraft or watercraft shall be considered to
9 have given consent to a preliminary breath test for the purpose of
10 determining the alcoholic content of the person's blood or breath. A
11 law enforcement officer may administer a preliminary breath test at
12 the scene of the incident if the officer has reasonable grounds to
13 believe that a person's ability to operate a motor vehicle, aircraft,
14 or watercraft is impaired by the ingestion of alcoholic beverages and
15 that the person

16 (1) was operating or driving a motor vehicle, aircraft, or
17 watercraft that is involved in an accident; [OR]

18 (2) committed a moving traffic violation or unlawfully
19 operated an aircraft or watercraft; in this paragraph, "unlawfully"
20 means in violation of any federal, state, or municipal statute, regu-
21 lation or ordinance, except for violations that do not provide reason
22 to believe that the operator's ability to operate the aircraft or
23 watercraft was impaired by the ingestion of alcoholic beverages; or

24 (3) was operating or driving a motor vehicle in violation of
25 AS 28.35.029(a).

Adopted

AMENDMENT #1

Offered in the HOUSE
TO HB 521

By Gruenberg

Page 1, line 19, after "container,":
Insert "(1)"

Page 1, line 20, after "vehicle":
Insert "; or

on
(2) [~~behind the driver's seat of~~] a motor-driven cycle"

Alaska State Legislature

STEVE FRANK

DISTRICT 20A
Finance Committee

1125 Sunset Drive
Fairbanks, Alaska 99701



White in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709

House of Representatives

TO: Representative John Sund, Chairman
House Judiciary Committee

FROM: Representative Steve Frank

RE: House Bill 521 - "An Act relating to open
containers of alcoholic beverages in motor
vehicles"

DATE: March 7, 1988

I have introduced House Bill 521 which would make it illegal to carry open containers of alcoholic beverages in the passenger compartment of a motor vehicle. A person in violation would be guilty of an infraction, which is punishable by a fine of up to \$300.

Alaska Administrative Code 13 02 545 prohibits drinking while driving; however, no statute or regulation exists prohibiting having an open container of alcohol in a vehicle. Therefore, the existing regulation cannot be enforced unless an officer actually sees the driver of a vehicle consuming an alcoholic beverage.

HB 521 passed the House State Affairs Committee on Friday March 5 with the four members present signing "do pass." I would appreciate your scheduling a hearing on the bill in the House Judiciary Committee at your earliest convenience.

Thank you very much for your consideration.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 4, 1988

SUBJECT: Sectional analysis - HB 521
TO: Representative Steve Frank
FROM: Michael F. Ford *M.F.*
Legislative Counsel

The following is a sectional analysis of HB 521:

Section 1 - Prohibits a person from driving on a highway or vehicular way with an open alcoholic beverage except when the open beverage is in the trunk, or enclosed within another container behind the last seat in a trunkless vehicle. Establishes the penalty for violating the law as an infraction.

Section 2 - Adds violation of the open container law to those offenses for which a person is considered to have given consent for a preliminary breath test.

MFF:bb
wkb3/075

Alaska State Legislature

STEVE FRANK

DISTRICT 20A
Finance Committee

1125 Sunset Drive
Fairbanks, Alaska 99701



While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709

House of Representatives

TO: House Judiciary Committee

FROM: Rep. Steve Frank *AF*

RE: penalties for violation of local ordinances
regarding open containers

DATE: March 16, 1988

The following information was obtained from the House Research Agency regarding local penalties for open container violations in some Alaskan communities.

Anchorage - violation is considered a misdemeanor, you lose 2 points from your drivers license, and the maximum fine is \$50.

Nome - violation is considered a misdemeanor, and you can receive a maximum fine of \$500 or a jail term of up to one year.

Juneau - violation is considered an infraction, the maximum fine is \$300, and a court appearance is mandatory.

Fairbanks - violation is considered an infraction and a court appearance is mandatory.

Seward - violation is punishable by a maximum fine of \$50.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

March 4, 1988

MEMORANDUM

TO: Representative Steve Frank

ATTN: Teresa Sager-Stancliff

FROM: Patricia Brawley *pb*
Legislative Analyst

RE: Open Container Laws in Other States and Alaska Communities
Research Request 88.200

You asked this agency to provide the names of states with laws prohibiting possession of open containers of alcoholic beverages in vehicles. You also wished to know which Alaska communities have ordinances prohibiting the same. Because of increased national awareness of public health and safety problems associated with drinking and driving, more stringent legislation is the trend throughout the country. The attached information, updated to January 1988, from the National Highway Traffic Safety Administration's, Digest of State Alcohol--Highway Safety Related Legislation, shows which states currently prohibit the possession of open containers in vehicles, as well as which states have laws prohibiting consumption of alcoholic beverages in motor vehicles.

State Laws

~~Some states prohibit possession of open containers which prohibit the possession of open containers and prohibit consumption of alcoholic beverages in motor vehicles.~~ These states are California, Hawaii, Iowa, Kansas, Michigan, Minnesota, Montana, North Dakota, Oklahoma, Oregon, South Carolina, Utah, Washington, and Wisconsin.

~~Three states, Idaho, Illinois, and South Dakota prohibit open containers in motor vehicles but are silent on consumption--consumption being implicitly prohibited in the absence of an open container.~~

~~Maryland and North Carolina prohibit open containers from driver access in motor vehicles and prohibit consumption of alcoholic beverages by drivers.~~

Representative Frank
March 4, 1988
Page 2

~~Four states, including the District of Columbia, do not prohibit open containers,~~
~~but do prohibit any consumption~~ by passenger or driver--of alcoholic
beverages within a motor vehicle. These states are Arkansas, Colorado,
Kentucky, Nebraska, New Hampshire (possession is prohibited for persons
under 20, unless accompanied by a parent or guardian), New Jersey, New
York, Ohio, Virginia, and West Virginia.

The following ~~seven states do not prohibit open containers in vehicles,~~ but
do prohibit the consumption of alcoholic beverages by drivers: Arizona,
Massachusetts, Nevada, Pennsylvania, Rhode Island, Texas (sentence for DWI
may be more severe if an open container is present at offence), and
Vermont.

~~Alaska is one of fourteen states which currently have no statutes~~
~~prohibiting the possession or transportation of open containers or the~~
~~consumption of alcoholic beverages in motor vehicles.~~ Other states
include Alabama, Connecticut, Delaware, Florida, Georgia, Indiana,
Louisiana, Maine, Mississippi, Missouri, New Mexico, Tennessee, and
Wyoming. Alabama, Mississippi, and New Mexico are also currently
considering legislation addressing these issues.

Alaska Community Ordinances

~~Anchorage, Fairbanks, Nome, and Seward have ordinances which specifically~~
~~prohibit the possession or transportation of open containers of alcoholic~~
~~beverages in motor vehicles.~~ Other communities--including Juneau, Cordova,
and Petersburg--prohibit the possession of open containers in public
places, and consider motor vehicles to be "public places." Some
communities, however--including Ketchikan, Kodiak, and Barrow--prohibit
possession of open containers in public places, but do not consider motor
vehicles to be "public places." Thus, local ordinances and enforcement
vary widely.

I hope this information is useful to you. Please contact me if you have
any questions.

Attachment

ANALYSIS BY STATES -- HIGH-INTEREST LEGISLATION
TABLE 2

STATE	Illegal Per Se (BAC Level)	Pre- sumptive (BAC level)	In Vehicle Prohibitions		Dram Shop Law ²	Legal Purch/ Sale for Alc Bev
			Open Con- tainer ¹	Anti- Consump- tion Law		
AL	0.10	0.10			Statute	21
AK	0.10	--			Statute	21
AZ	0.10	0.10		X ³	Statute	21
AR	0.10	--		X ⁴	No	21
CA	0.10	0.10	X	X	Statute ⁵	21
CO	0.15	.05-.10 ⁶		X	Statute	21
CT	0.10	--			Statute ⁸	21
DE	0.10	0.10 ⁹			No	21
DC	0.10	0.05 ⁹		X	Case Law	21 ¹⁰
FL	0.10	--			Statute ¹¹	21
GA	0.12	0.10			Possible ⁷	21
HI	0.10	--	X	X	Case Law	21
ID	0.10	>0.08	X		Statute	21
IL	0.10	0.10	X		Statute ⁸	21
IN	0.10	0.10 ⁹			Statute	21
IA	0.10	--	X	X	Statute	21
KS	0.10	0.10 ⁹	X	X	No	21
KY	--	0.10		X	Case Law	21
LA	0.10	0.10			Possible ¹²	21
ME	0.10	--			Statute ⁸	21
MD	--	.08, .13 ^{9,13}	X ¹⁴	X ³	No	21
MA	--	0.10		X ³	Case Law	21
MI	0.10	>.07, .10 ⁶	X	X	Statute	21
MN	0.10	--	X	X	Statute	21
MS	0.10	--			Statute	21
MO	0.10	0.10 ⁹			Statute ¹⁵	21
MT	0.10	0.10	X	X	Statute	21
NE	0.10	--		X	No	21
NV	0.10	0.10		X ³	No	21
NH	0.10	0.10 ⁹		X ⁴	Statute	21
NJ	0.10	--		X	Statute	21
NM	0.10	0.10			Statute	21
NY	0.10	0.08 ⁹		X	Statute	21
NC	0.10	--	X ¹⁴	X ^{14,3}	Statute	21
ND	0.10	--	X	X	Statute	21
OH	0.10	--		X	Statute	21
OK	0.10	0.10 ⁹	X	X	Case Law	21
OR	0.08	0.08 ¹⁷	X	X	Statute	21
PA	0.10	--		X ³	Statute	21
PR	--	0.10			No	18
RI	0.10	--		X ³	Statute	21
SC	--	0.10	X	X ⁴	Possible ⁷	21
SD	0.10	0.10	X		No	21 ²³
TN	--	0.10			Statute	21
TX	0.10	--		X ³	Statute ²¹	21

ANALYSIS BY STATES -- HIGH-INTEREST LEGISLATION
TABLE 2 (continued)

STATE	Illegal	Pre- sumptive (BAC Level)	In Vehicle		Dram Shop Law ²	Legal Purch/ Sale for Alc Buy
	Per Se (BAC Level)		Prohibitions	Open Con- tainer ¹		
UT	0.08	--	X	X	Statute	21
VT	0.10	0.10		X ³	Statute	21 ¹⁸
VA	0.10	0.10		X ⁴	No	21
WA	0.10	--	X	X	Case Law ^{8&19}	21
WV	0.10	0.10 ²⁰		X	No	21
WI	0.10	--	X	X	Statute ⁵	21
WY	--	0.10			Statute ²²	19
TOTAL	.08 - 2 .10 - 41 .12 - 1 .15 - 1	>.08 - 1 .10 - 21 .10 <u>prima</u> <u>facie</u> - 7 Other - 5	19	34	Case Law - 6 Statute - 33 Possible Case Law - 3	18 - 1 19 - 1 21 - 50

- ¹Laws prohibiting the possession of an open container of an alcoholic beverage in the passenger compartment of a motor vehicle.
- ²Ten (10) States do not have dram shop liability.
- ³Applies to drivers only.
- ⁴Possible.
- ⁵Applies only to the actions of intoxicated minors; previous case law as to other types of dram shop actions has been specifically abrogated by legislation.
- ⁶The lower of the two numbers is driving while impaired; the higher is driving while under the influence.
- ⁷Possible case law.
- ⁸This state has a statute that places a monetary limit on the amount of damages that can be awarded in dram shop liability actions.
- ⁹BAC level or levels which indicated prima facie evidence.
- ¹⁰Persons who were 18 before 9/30/86, may continue to purchase beer and light wine (14% alcohol or less).
- ¹¹Applies only to the actions of intoxicated minors or persons known to be habitually addicted to alcohol.

ANALYSIS BY STATES -- HIGH-INTEREST LEGISLATION
TABLE 2 (continued)

- 12 Possible case law based upon the actions of minors.
- 13 The lower of the two numbers is prima facie evidence of driving while under the influence; the higher is prima facie evidence of driving while intoxicated.
- 14 Limited application.
- 15 Cause of action limited to licensees who have been convicted of selling alcoholic beverages either to minors or to intoxicated individuals.
- 16 The statute applies specifically to the actions of intoxicated minors, but the law does not foreclose developing case law as to other types of dram shop actions.
- 17 Not less than 0.08 constitutes being under the influence of intoxicating liquor.
- 18 Persons who were 18 as of 6/30/86 may continue to purchase alcoholic beverages.
- 19 Applies only to the actions of (1) intoxicated minors and/or (2) adults who have lost their will to stop drinking.
- 20 This state has both prima facie and presumptive evidence laws with BAC levels of 0.10.
- 21 Statutory law has limited dram shop actions.
- 22 Liability limited only to the actions of persons who are under 19 years old.
- 23 Until 4/1/88, persons who are at least 19 years of age can purchase 3.2% beer.

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Op. No. 687 (File Nos. A-1392, A-1413),
P.2d (1987).
Stated in *Kavorkian v. Tommy's Elbow
Room, Inc.*, Sup. Ct. Op. No. 2906 (File
Nos. S-62, S-79), 694 P.2d 160 (1985).
Cited in *Effenbeck v. State*, Ct. App.
Op. No. 479 (File No. A-597), 700 P.2d 811
(1985); *Anderson v. State*, Ct. App. Op.

No. 585 (File No. A-1028), 713 P.2d 1220
(1986); *Morris v. State*, Ct. App. Op. No.
694 (File No. A-1668), P.2d (1987);
Brown v. State, Ct. App. Op. No. 714 (File
No. A-1715), P.2d (1987); *Clark v.
State*, Ct. App. Op. No. 716 (File No.
A-1840), P.2d (1987).

Sec. 28.35.031. Implied consent. (a) A person who operates or drives a motor vehicle in this state or who operates an aircraft as defined in AS 28.35.030(g)(1) or who operates a watercraft as defined in AS 28.35.030(g)(2) shall be considered to have given consent to a chemical test or tests of the person's breath for the purpose of determining the alcoholic content of the person's blood or breath if lawfully arrested for an offense arising out of acts alleged to have been committed while the person was operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated. The test or tests shall be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person was operating or driving a motor vehicle or operating an aircraft or a watercraft in this state while intoxicated.

(b) A person who operates or drives a motor vehicle in this state or who operates an aircraft or watercraft shall be considered to have given consent to a preliminary breath test for the purpose of determining the alcoholic content of the person's blood or breath. A law enforcement officer may administer a preliminary breath test at the scene of the incident if the officer has reasonable grounds to believe that a person's ability to operate a motor vehicle, aircraft, or watercraft is impaired by the ingestion of alcoholic beverages and that the person

(1) was operating or driving a motor vehicle, aircraft, or watercraft that is involved in an accident; or

(2) committed a moving traffic violation or unlawfully operated an aircraft or watercraft; in this paragraph, "unlawfully" means in violation of any federal, state, or municipal statute, regulation or ordinance, except for violations that do not provide reason to believe that the operator's ability to operate the aircraft or watercraft was impaired by the ingestion of alcoholic beverages.

(c) Before administering a preliminary breath test under (b) of this section, the officer shall advise the person that refusal may be used against the person in a civil or criminal action arising out of the incident and that refusal is an infraction. If the person refuses to submit to the test, the test shall not be administered.

(d) The result of the test under (b) of this section may be used by the law enforcement officer to determine whether the driver or operator should be arrested.

(e) Refusal to submit to a preliminary breath test at the request of a law enforcement officer is an infraction.

(f) If a driver or operator is arrested, the provisions of (a) of this section apply. The preliminary breath test authorized in this section is in addition to any tests authorized under (a) of this section. (§ 1 ch 83 SLA 1969; am § 11 ch 129 SLA 1980; am § 16 ch 117 SLA 1982; am § 16 ch 77 SLA 1983; am §§ 1 — 4 ch 76 SLA 1985)

Revisor's notes. — The last clause of (b)(2) of this section was enacted as AS 28.35.031(g). Reorganized in 1985.

Effect of amendments. — The 1985 amendment in subsection (b) inserted "or who operates an aircraft or watercraft" in the first sentence, inserted "aircraft, or watercraft" in the second sentence, in paragraph (1) inserted "operating or" and

"aircraft, or watercraft," and in paragraph (2) added the language beginning "or unlawfully operated"; and in subsections (d) and (f) inserted "or operator."

Opinions of attorney general. — The Intoximeter 3000, an infrared alcohol breath test apparatus, is a "chemical test" under this section. 1984 Op. Att'y Gen. No. 01.

NOTES TO DECISIONS

Section constitutional. — The portable breath test authorized by this section does not constitute an unreasonable search under the fourth amendment to the United States Constitution. *Leslie v. State*, Ct. App. Op. No. 570 (File No. A-866), 711 P.2d 575 (1986).

The imposition of criminal penalties upon a motorist for his peaceful refusal to submit to a breath test does not violate his right to equal protection under the law. *Burtt v. Municipality of Anchorage*, 654 F. Supp. 1029 (D. Alaska 1986).

The implied consent statute clearly serves a legitimate state interest. All drivers lawfully stopped are treated equally, and, from the perspective of the fourth and fourteenth amendments, those drivers are treated no differently from other sorts of persons suspected of committing criminal acts. *Burnett v. Municipality of Anchorage*, 806 F.2d 1447 (9th Cir. 1986).

Legislative intent. — In the implied consent statutes, the legislature has gone to great lengths to avoid authorizing the police to make blood alcohol tests forcibly from defendants charged with driving while intoxicated; the legislature has, instead, provided extremely strong incentives to a defendant to take a breath test for blood alcohol by providing criminal penalties. *Bass v. Municipality of Anchorage*, Ct. App. Op. No. 429 (File No. A-273), 692 P.2d 961 (1984).

Consent to breathalyzer test, etc.

Just as a driver's failure to cooperate in the search conducted by means of a breathalyzer test is no impediment to the classification of the proceeding as a search

incident to arrest, the absence of cooperation is no bar to the characterization of the taking of breath as a consent search for which consent has already been supplied by the act of driving on Alaska roads. *Burnett v. Municipality of Anchorage*, 634 F. Supp. 1029 (D. Alaska 1986).

Request for counsel before breathalyzer test. — District court judge's finding that defendant, convicted of driving while intoxicated under municipal code, did not request counsel prior to taking the breathalyzer examination where he never asked to speak to an attorney but asked whether he might need an attorney, with testimony supporting the conclusion that he wondered if he needed an attorney in order to make bail, not because he wanted advice about submitting to a breathalyzer exam, was not clearly erroneous, and superior court judge should not have reversed the conviction. *Anchorage v. Erickson*, Ct. App. Op. No. 417 (File No. A-512), 690 P.2d 20 (1984).

Right to counsel before breathalyzer test.

See note to AS 28.35.030 under this catchline, *Van Wormer v. State*, Ct. App. Op. No. 473 (File No. A-320), 699 P.2d 895 (1985).

Use of search warrant.

Implied Consent Statutes in effect at the time of the arrests of defendants in 1980 and 1981 precluded the admission into evidence of chemical sobriety test results obtained pursuant to a search warrant after the arrestees had refused to take such a test. *Pena v. State*, Sup. Ct. Op. No. 2851 (File Nos. 6174, 7052), 684 P.2d 864 (1984).

(f) If a driver or operator is arrested, the provisions of (a) of this section apply. The preliminary breath test authorized in this section is in addition to any tests authorized under (a) of this section. (§ 1 ch 83 SLA 1969; am § 11 ch 129 SLA 1980; am § 16 ch 117 SLA 1982; am § 16 ch 77 SLA 1983; am §§ 1 — 4 ch 76 SLA 1985)

Revisor's notes. — The last clause of (b)(2) of this section was enacted as AS 28.35.031(g). Reorganized in 1985.

Effect of amendments. — The 1985 amendment in subsection (b) inserted "or who operates an aircraft or watercraft" in the first sentence, inserted "aircraft, or watercraft" in the second sentence, in paragraph (1) inserted "operating or" and

"aircraft, or watercraft," and in paragraph (2) added the language beginning "or unlawfully operated"; and in subsections (d) and (f) inserted "or operator."

Opinions of attorney general. — The Intoximeter 3000, an infrared alcohol breath test apparatus, is a "chemical test" under this section. 1984 Op. Att'y Gen. No. 01.

NOTES TO DECISIONS

Section constitutional. — The portable breath test authorized by this section does not constitute an unreasonable search under the fourth amendment to the United States Constitution. *Leslie v. State*, Ct. App. Op. No. 570 (File No. A-866), 711 P.2d 575 (1986).

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Legislative intent. — In the implied consent statutes, the legislature has gone to great lengths to avoid authorizing the police to take blood alcohol tests forcibly from defendants charged with driving while intoxicated; the legislature has, instead, provided extremely strong incentives to a defendant to take a breath test for blood alcohol by providing criminal penalties. *Bass v. Municipality of Anchorage*, Ct. App. Op. No. 429 (File No. A-273), 692 P.2d 961 (1984).

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Just as a driver's failure to cooperate in the search conducted by means of a breathalyzer test is no impediment to the classification of the proceeding as a search

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Right to counsel before breathalyzer test.

See note to AS 28.35.030 under this catchline, *Van Wormer v. State*, Ct. App. Op. No. 473 (File No. A-320), 699 P.2d 895 (1985).

Use of search warrant.

Implied Consent Statutes in effect at the time of the arrests of defendants in 1980 and 1981 precluded the admission into evidence of chemical sobriety test results obtained pursuant to a search warrant after the arrestees had refused to take such a test. *Pena v. State*, Sup. Ct. Op. No. 2851 (File Nos. 6174, 7052), 684 P.2d 864 (1984).

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to open containers of alcoholic beverages in motor vehicles."
 Sponsor: Frank
 Requestor: N/A
 Agency Affected: Health & Social Services
 BRU: Alcoholism & Drug Abuse
 Components: Alcohol Abuse Grant

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Matthew Felix by George Mundell Phone: 586-6201
 Division: Alcoholism and Drug Abuse Date: 3/3/88

Approved by Commissioner: *Myka M. Munn* DHSS Date: 3/4/88
 Agency: *George Mundell*

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL NOTE

REQUEST

Revision Date: _____
Title: "An Act relating to open containers
of alcoholic beverages in vehicles."
Sponsor: Rep. Frank
Requestor: House State Affairs

Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Detachments

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY88	FY89	FY90	FY91	FY92	FY93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan *F.C.A.*
Division: Alaska State Troopers

Phone: 269-5691
Date: 2/23/88

Approved by Commissioner: _____
Agency: Public Safety

Date: _____

Distribution: (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/15/88

FURTHER REFERRALS: Judiciary

DATE: 3-4-88

The State Affairs Committee has considered HB 521

"An Act relating to open containers of alcoholic beverages in motor vehicles."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

AD PTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Handwritten signatures]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signature]

Chairman's signature

H B

536

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

H. JUD.	4-18-88	1:30 p.m.
H. JUD.	4-12-88	6:30 p.m.
H. JUD.	4-8-88	1:30 p.m.

5-0828L ✓

Ford
4/15/88

Original sponsor: Labor and Commerce
Committee

Adopted
4-18

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 536 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the sale, pricing, and marketing
7 of alcoholic beverages; and prohibiting persons from
8 being on premises involving alcoholic beverages under
9 certain circumstances."

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

11 * Section 1. AS 04.16.015(a) is amended to read:

12 (a) On premises where alcoholic beverages are sold by the drink,
13 a licensee or a licensee's agent or employee may not

14 (1) offer or deliver, as a marketing device to the general
15 public, free alcoholic beverages to a patron;

16 (2) deliver an alcoholic beverage to a person already
17 possessing two or more;

18 (3) sell, offer to sell, or deliver [ALCOHOLIC BEVERAGES TO
19 A PERSON OR GROUP OF PERSONS AT A PRICE LESS THAN THE PRICE REGULARLY
20 CHARGED FOR THE BEVERAGES DURING THE SAME CALENDAR WEEK, EXCEPT AT
21 PRIVATE FUNCTIONS NOT OPEN TO THE GENERAL PUBLIC;

22 (4) SELL, OFFER TO SELL, OR DELIVER] an unlimited number of
23 alcoholic beverages to a person or group of persons during a set
24 period of time for a fixed price;

25 (4) except at private functions not open to the general
26 public, [(5)] sell, offer to sell, or deliver a particular type or
27 brand of alcoholic beverage [BEVERAGES] to a person or group of per-
28 sons on any one calendar day

29 (A) at a price [PRICES] less than that [THOSE] charged

1 the general public on that day; or

2 (B) during only part of the hours that the licensed
 3 premises are open during that day [, EXCEPT AT PRIVATE FUNCTIONS
 4 NOT OPEN TO THE GENERAL PUBLIC];

5 (5) [(6)] encourage or permit an organized game or contest
 6 on the licensed premises that involves drinking alcoholic beverages or
 7 the awarding of alcoholic beverages as prizes.

8 * Sec. 2. AS 04.16.015(c) is amended to read:

9 (c) This section may not be construed as prohibiting a licensee
 10 or a licensee's agent or employee from

11 (1) offering free food or entertainment at any time;

12 (2) [, FROM] serving wine by the bottle or carafe or beer
 13 by the pitcher with or without meals;

14 (3) [, OR FROM] including an alcoholic beverage as part of
 15 a meal package; or

16 (4) increasing prices during times when entertainment is
 17 provided; in this paragraph, "entertainment" means a live performance,
 18 or a television broadcast of an event that actually occurs at the time
 19 it is viewed and for which the licensee pays a one-time fee for the
 20 right to show the event on the licensed premises.

21 * Sec. 3. AS 04.16 is amended by adding a new section to read:

22 Sec. 04.16.025. ILLEGAL PRESENCE ON PREMISES INVOLVING ALCOHOLIC
 23 BEVERAGES. (a) A person may not knowingly enter or remain on prem-
 24 ises

25 (1) in which alcoholic beverages are manufactured, sold,
 26 offered for sale, possessed for sale or barter, trafficked in, or
 27 bartered in violation of

28 (A) AS 04.11.010; or

29 (B) a municipal ordinance adopted under AS 04.21.-

1 010(a) or (b); or

2 (2) licensed under this title during hours in which the
3 person's presence on the premises is a violation of a municipal ordi-
4 nance adopted under authority of AS 04.16.010(d) providing for hours
5 of closure that are outside the hours of closure prescribed by AS 04.-
6 16.010(c).

7 (b) A person who violates this section is guilty of a violation.

8 * Sec. 4. AS 04.16.180(a) is amended to read:

9 (a) Except as provided in AS 04.16.025 and 04.16.200 - 04.16.-
10 210, a person who violates a provision of this title or a regulation
11 adopted by the board is guilty, upon conviction, of a class A misde-
12 meanor. Each violation is a separate offense.

[Arena] Public Facility

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2

HOUSE BILL NO. 536

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the sale, pricing, and marketing
of alcoholic beverages; and prohibiting persons from
being on premises involving alcoholic beverages under
certain circumstances."

7

8

9

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

11

* Section 1. AS 04.11.080 is amended by adding a new paragraph to read:

12

(20) arena license.

13

* Sec. 2. AS 04.11 is amended by adding a new section to read:

14

Sec. 04.11.225. ARENA LICENSE. (a) An arena license authorizes

15

a municipality to sell beer and wine at public conventions, sporting
events, concerts, trade shows, or exhibitions for consumption only on
the licensed premises.

16

17

18

(b) The board may not issue a license under this section unless
the board determines that the premises to be licensed are used for
public conventions, sporting events, concerts, trade shows, or exhi-
bitations.

19

20

21

22

(c) The annual fee for an arena license is \$500.

23

* Sec. 3. AS 04.16.015(a) is amended to read:

24

(a) On premises where alcoholic beverages are sold by the drink,
a licensee or a licensee's agent or employee may not

25

26

(1) offer or deliver, as a marketing device to the general
public, free alcoholic beverages to a patron;

27

28

(2) deliver an alcoholic beverage to a person already
possessing two or more;

29

Sullivan
arena

1 (3) sell, offer to sell, or deliver [ALCOHOLIC BEVERAGES TO
2 A PERSON OR GROUP OF PERSONS AT A PRICE LESS THAN THE PRICE REGULARLY
3 CHARGED FOR THE BEVERAGES DURING THE SAME CALENDAR WEEK, EXCEPT AT
4 PRIVATE FUNCTIONS NOT OPEN TO THE GENERAL PUBLIC;

5 (4) SELL, OFFER TO SELL, OR DELIVER] an unlimited number of
6 alcoholic beverages to a person or group of persons during a set
7 period of time for a fixed price;

8 (4) except at private functions not open to the general
9 public, [(5)] sell, offer to sell, or deliver a particular type or
10 brand of alcoholic beverage [BEVERAGES] to a person or group of per-
11 sons on any one calendar day

12 (A) at a price [PRICES] less than that [THOSE] charged
13 the general public on that day; or

14 (B) during only part of the hours that the licensed
15 premises are open during that day [, EXCEPT AT PRIVATE FUNCTIONS
16 NOT OPEN TO THE GENERAL PUBLIC];

17 (5) [(6)] encourage or permit an organized game or contest
18 on the licensed premises that involves drinking alcoholic beverages or
19 the awarding of alcoholic beverages as prizes.

20 * Sec. 4. AS 04.16.015(c) is amended to read:

21 (c) This section may not be construed as prohibiting a licensee
22 or a licensee's agent or employee from

23 (1) offering free food or entertainment at any time;

24 (2) [, FROM] serving wine by the bottle or carafe or beer
25 by the pitcher with or without meals;

26 (3) [, OR FROM] including an alcoholic beverage as part of
27 a meal package; or

28 (4) increasing prices during times when entertainment is
29 provided; in this paragraph, "entertainment" means a live performance,

1 or a television broadcast of an event that actually occurs at the time
2 it is viewed and for which the licensee pays a one-time fee for the
3 right to show the event on the licensed premises.

4 * Sec. 5. AS 04.16 is amended by adding a new section to read:

5 Sec. 04.16.025. ILLEGAL PRESENCE ON PREMISES INVOLVING ALCOHOLIC
6 BEVERAGES. A person may not knowingly enter or remain on premises

7 (1) in which alcoholic beverages are manufactured, sold,
8 offered for sale, possessed for sale or barter, trafficked in, or
9 bartered in violation of

10 (A) AS 04.11.010; or

11 (B) a municipal ordinance adopted under AS 04.21.-
12 010(a) or (b); or

13 (2) licensed under this title during hours in which the
14 person's presence on the premises is a violation of a municipal ordi-
15 nance adopted under authority of AS 04.16.010(d) providing for hours
16 of closure that are outside the hours of closure prescribed by AS 04.-
17 16.010(c).

Class A
Misdemeanor

A M E N D M E N T

Ellis

Offered in the HOUSE

TO: HB 536

Page 1, line 12:

Delete "arena"

Insert "public facility"

Page 1, line 14:

Delete "ARENA"

Insert "PUBLIC FACILITY"

Delete "An arena"

Insert "A public facility"

Page 1, line 22:

Delete "an arena"

Insert "a public facility"

HBS36

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3892

October 22, 1987

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee *DB*

Re: Proposed amendments to Alaska's "happy hour" law

On September 18, the House Labor and Commerce Committee held a public hearing on proposed changes to Alaska's "happy hour" law.

During that hearing, Committee staff was instructed to draft proposed legislation in response to testimony taken during the hearing. That new draft bill is attached, along with a copy of the draft bill under discussion during the hearing, and a copy of the minutes from the proceedings.

This material has been distributed among participants of the hearing and other interested parties. A copy is also included in your files retained in the Committee office. If there is anyone else you would like us to contact, please give me or Ginger at call at 561-7629.

I'd appreciate hearing from you by Friday, December 4 as to whether you find the present version acceptable so that I may instruct our legal services to prepare the measure in final for introduction as a Committee bill next session.

cc: Participants, September 18, 1987
House L&C Hearing

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to pricing and marketing alcoholic
7 beverages."

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

9 * Section 1. AS 04.10.015(a) is amended to read:

10 (a) On premises where alcoholic beverages are sold by the
11 drink, a licensee or a licensee's agent or employee may not

12 (1) offer or deliver, as a marketing device to the general
13 public, free alcoholic beverages to a patron;

14 (2) deliver an alcoholic beverage to a person already
15 possessing two or more;

16 (3) sell, offer to sell, or deliver

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18
19
20
21 an unlimited number of
22 alcoholic beverages to a person or group of persons during a set
23 period of time for a fixed price;

24 (4) except at private functions not open to the general
25 public, sell, offer to sell, or deliver a particular type or
26 brand of alcoholic beverage to a person or group of per-
27 sons on any one calendar day

28 (A) at a price less than that charged
29 the general public on that day ; or

(B) during only part of the hours that the licensed

1 premises are open during that day

2
3 (5) encourage or permit an organized game or contest
4 on the licensed premises that involves drinking alcoholic beverages or
5 the awarding of alcoholic beverages as prizes.

6 * Sec. 2. AS 04.16.015(c) is amended to read:

7 (c) This section may not be construed as prohibiting a licensee
8 or a licensee's agent or employee from

9 (1) offering free food or entertainment at any time;

10 (2) serving wine by the bottle or carafe or beer
11 by the pitcher with or without meals;

12 (3) including an alcoholic beverage as part of
13 a meal package; or

14 (4) increasing prices during times when entertainment is
15 provided; in this paragraph, "entertainment" means a live performance,
16 or a television broadcast of an event that actually occurs at the time
17 it is viewed and for which the licensee pays a one-time fee for the
18 right to show the event on the licensed premises.

HOUSE LABOR AND COMMERCE COMMITTEE
September 18, 1987
1:30 p.m. (Anchorage, Alaska)

MEMBERS PRESENT:

Rep. Dave Donley, Chairman
Rep. Niilo Koponen, Vice Chair
Rep. Walt Furnace
Rep. Johnny Ellis

MEMBERS ABSENT:

Rep. Red Boucher
Rep. Cliff Davidson
Rep. Curt Menard

COMMITTEE CALENDAR:

Proposed Committee legislation (Work Draft 5-082B) making amendments to the state "happy hour" law (AS 04.16.015)

WITNESS REGISTER:

Barbara Mills
Mothers Against Drunk Driving (MADD)
Anchorage Chapter
19445 Middleton Loop Road
Anchorage, Alaska
694-3269
Position Statement: Opposes any changes to current law.

Charlene Konte
MADD - Anchorage Chapter
4510 Wright Street, #16
Anchorage, Alaska
561-2459
Position Statement: Opposes changes to current law.

Evelyn A. Livesay
1213 E 26th Avenue
Anchorage, Alaska
272-2884
Position Statement: Opposes changes to current law.

Jim E. LeTasky
6820 Foothill Drive
Anchorage, Alaska
333-1524
Position Statement: Drunk Driving victim - Opposes changes to current law.

Alan Schmiedeberg
6820 Foothill Drive
Anchorage, Alaska
333-1524
Position Statement: Observer

Patrick L. Sharrock, Executive Director
Alcohol Beverage Control Board
550 W 7th Ave
Anchorage, Alaska 99501
277-8638
Position Statement: Explained ABC Boards experience with
current law - answered questions from
the committee.

Don Adams, ABC Board
550 W 7th Ave.
Anchorage, Alaska 99501
277-8638
Position Statement: Observer

Katherine Bigler
MADD - Alaska Chapter
2526 Arlington Drive
Anchorage, Alaska
277-5835
Position Statement: Opposes changes to current law.

Stuart Bigler
2526 Arlington Drive
Anchorage, Alaska
277-5835
Position Statement: Observer

Mike Gordon, Owner
Chilkoot Charlies
2435 Spenard Road
Anchorage, Alaska 277-3374
Position Statement: Supports proposed changes to current law.

Kristie Keelf
Cabaret, Hotel & Restaurant Owners Association (CHAR)
P.O. Box 104839
Anchorage, Alaska
272-8133
Position Statement: Observer

PREVIOUS ACTION:

ACTION NARRATIVE:

TAPE ONE, SIDE ONE
Number 000

NOTE: The following section (in parenthesis) was omitted when the tape malfunctioned.

(Rep. Donley called the meeting to order at 2:38 p.m. Present were: Representatives Ellis, Koponen, Furnace and Donley.)

Barbara Mills, President, Anchorage Chapter of Mothers Against Drunk Driving (MADD), testified in opposition to any changes to current law.

Rep. Donley reminded the witness that the draft bill before us (Work Order 5-0828) was a draft for the purposes of discussion only and that the Committee had not taken any position on the issue of amending current law.

Barbara Mills said she believed the current law works well as it stands now. Alcohol related deaths are down. This draft allows loopholes. She questioned the definition of live entertainment. She objected to proposed changes in language in AS 04.16.15(a)(1) and said she preferred the existing language on page 1, line 12-13 "as a marketing device to the general public", and also preferred existing law that requires prices to be set by the week instead of by the day, as proposed in the work draft.

Number 052

Charlene Konte, Vice President - Anchorage Chapter of MADD - spoke in opposition to the proposed amendments and spoke in support of existing law.

Number 060

Evelyn Livesay, member of MADD, spoke in opposition to any changes in existing "happy hour" law.

Number 066

Jim Letasky spoke in opposition to any changes in existing law. He said he was a victim of a drunk driver and said he supported any law that kept alcohol away from people who couldn't handle it. He attributed his accident to happy hour liquor promotion.

Number 085

Rep. Donley said that under the proposed draft it would still be illegal to give away free alcohol or to encourage people to drink.

Number 093

Rep. Donley said they needed to change the proposed language allowing prices to be set by the day instead of the week so that a beverage had to be available at the set price for the entire day, not just specific times of the day.

Number 104

Barbara Mills said she was concerned that by allowing prices to be set by the day we would go from "happy hours" to "happy days"

Number 118

Katherine Bigler, State Coordinator for MADD, said every MADD chapter was against any changes in existing law. She said MADD did have a lawyer look at the existing law and at the draft bill and they were very concerned about potential problems will nickel beer and "women's night".

Number 146

Katherine Bigler testified that she preferred existing language in AS 04.16.015. She reiterated that MADD opposed any changes in existing law but if "you have to change the law" MADD would like to work on the proposed draft. She also said alcohol deaths were down, the existing law had been in effect just over a year, and it should be given a chance to work before we changed it.

Number 162

Representative Donley said the prime sponsor of the existing law told him the way the law was being interpreted was not what the legislature had in mind when they adopted the bill.

Number 168

Katherine Bigler agreed that the intent of the legislature was to allow prices to be raised but not lowered but the way the law was written prohibited any changes in prices at all.

Number 180

Katherine Bigler said MADD did not oppose proposed language that would allow prices to be raised when entertainment was present.

Number 190

Rep. Donley said the draft made three changes to current law. One, it cleared up questions about when certain behavior was prohibited on the part of licensees, two, it allowed pricing

by the day instead of by the week, and three, it allowed prices to be raised when live entertainment was present.

Number 211

Representative Donley suggested that the Committee draft a letter of intent to clarify what a licensee is permitted to do under certain circumstances such as whether they can replace a spilled drink for free.

Number 222

Katherine Bigler said that every industry is hurting right now, not just the alcohol industry.

Number 225

Barbara Mills, asked about language defining live entertainment and objected to language that included live broadcasts aired in liquor establishments.

Number 246

Rep. Donley said the intent of the language was to include broadcasts that cost the licensee money to air, not just soap operas or regular television.

Number 249

Rep. Furnace asked about taped sports events and Rep. Donley replied that those would be taped, and not live, and were not included in the definition.

Number 259

Katherine Bigler supported the definition if it was amended to only include events that involved some kind of one-time-only fee to the licensee to air.

Number 284

Rep. Johnny Ellis observed that simple market economics would dictate that people would drink less if the price were higher and that he was confused as to why there was concern about allowing higher prices if the purpose of the law was to discourage immoderate drinking.

Number 304

Katherine Bigler reiterated that MADD did not want the law changed at all but if you were going to change it, MADD had no objections to allowing prices to be raised for live entertainment.

Number 319

Rep. Ellis said it may be in the best interests of all of us if we encourage live entertainment because people would drink less if the prices were higher they would be dancing and drinking less. He said it didn't matter, therefore, how we defined live entertainment.

Number 342

Rep. Donley explained that the concern was if prices could be set at a certain price for the day, the licensee could turn a television on between the hours of noon and 5:00 p.m. and raise the price, turn the television off during the hours of 5:00 p.m. to 7:00 p.m., thus lowering the price, then raising it again after 7:00 p.m. by reinstating the "entertainment". The effect of this would be to create an artificial happy hour.

Number 349

Katherine Bigler said MADD was very leery about changes in the law because last year the dram shop bill had only two words changed (criminal intent) and it "made that bill absolutely useless".

Number 372

Mike Gordon, testifying on behalf of the industry, made reference to an agreement he had made with Katherine Bigler about the proposed changes and said he supported the existing "marketing device to the general public" language in AS 04.16.015(a)(1) as opposed to the proposed changes.

Mike Gordon said of the three changes proposed in the draft, the first, allowing prices to be set by the day, was asked for by the industry, and the other two were asked for by MADD.

Mike Gordon said that the Anchorage municipal ordinance prohibited happy hours but did allow him to set different prices in a given day by permitting prices to change during a shift change so that prices could go down after 9:00 p.m when the night shift began.

Number 448

Mike Gordon said that he had also agreed with MADD that language should be incorporated in the draft to prohibit setting a certain discounted price on a particular type or brand of alcohol such as a "Hamm's night". He referred to draft language prepared by MADD's attorney, Mr. White, that prohibited this practice and further said he supported the language.

Number 514

Rep. Furnace asked if Mr. Gordon and representatives of MADD thought that when a licensee bought the rights to air a broadcast of a sporting event that constituted live entertainment because of the additional cost.

Both Mike Gordon and Katherine Bigler indicated to the affirmative in reply.

Number 526

Rep. Donley suggested amending the proposed language so that when prices were set by the day drinks had to be available at that price for the entire calendar day.

Number 564

Mike Gordon said they had already had a problem with licensee's who also sell food because the food wasn't always available for the entire day.

Number 576

Rep. Donley agreed that the existing language in AS 04.16.015(a)(1) is superior to the proposed changes and again suggested that the committee adopt a letter of intent to clarify prohibited behavior on the part of licensee's

Number 609

Representative Donley asked if there was a concern in the industry that innocent acts would be misinterpreted under existing law.

Number 620

Mike Gordon said he did not think there was a serious problem with the current interpretation of the law at this time.

Number 655

Discussion continued between Mike Gordon, Katherine Bigler, and members of the committee about how to amend the live entertainment definition.

Number 675

Rep. Donley suggested "entertainment" means a live performance or a television broadcast of an event actually occurring at the time it is viewed and representing a one-time expenditure on the part of the licensee.

Number 704

Rep. Ellis asked if the language from MADD's attorney regarding pricing of specific brands was available. Committee staff replied that it was available and would be incorporated in the new draft bill.

Number 714

Rep. Donley asked for a new draft bill that returned to existing language under AS 04.16.015(a)(1), that allowed pricing by the calendar day as long as the beverage was available for the entire calendar day, and that included live broadcasts under the definition of live entertainment so long as it involved a one-time cost to the licensee.

Number 724

Representative Ellis asked that the new draft be circulated among concerned parties as soon as it was prepared.

Number 732

Patrick Sharrock, Executive Director of the Alcoholic Beverage Control Board, testified that the new draft bill Rep. Donley requested would adequately address the issues and questions about the happy hour statute that the ABC Board has seen.

Number 750

Rep. Donley said the committee staff would draft up another bill and circulate it among concerned parties in order to prepare it for introduction as a committee bill next session.

Number 764

Katherine Bigler reiterated the desire of MADD to work with the committee on any proposed changes to existing law.

Number 773

Rep. Donley adjourned the meeting at 3:35 p.m.

LAW OFFICES OF

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April 7, 1987

NOTE: Suggested language regarding pricing by brand or type (see page 3) is incorporated in new bill draft dated 9/30/87.

Ms. Katherine Bigler
President, Statewide Chapter
Mothers Against Drunk Drivers
2205 E. Tudor Road
Anchorage, Alaska 99504

Dear Ms. Bigler:

You have asked me to review certain amendments that have been proposed to AS 04.16.015(c), which is known as the "happy hour" law. The proposed amendments are contained in a document entitled Work Draft 5 - 0828A Ford 3/12/87 by Donley. Attached to the work draft is a memorandum from Representative Donley to the members of the House Labor and Commerce Committee.

In sum, the amendments would enable establishments that serve alcoholic beverages to easily evade the purposes of the "happy hour" law. As I view the proposed amendments, the most significant change is that which would allow increased prices for alcoholic beverages during times that entertainment is provided, AS 04.16.015(c)(4). The effect of this will be very significant. Assuming that many establishments which serve alcoholic beverages have entertainment from 8:00 p.m. on, this amendment would allow differing price structures based upon the time of day. In other words, an establishment could have "special" prices for drinks prior to 8:00 p.m. The only requirement would be that those prices be in effect the entire time the establishment is open, with the exception of that period of time in which entertainment is provided. Since such a large percentage of drinking occurs in the afternoon, post-work time period, establishments could offer "happy hour" pricing up until the entertainment starts as long as the prices are consistent during all of the pre-entertainment hours. This amendment would change the effect of the "happy hour" law to enlarge the period of time during which special pricing occurs in regard to the sale of alcoholic beverages.

Significantly lacking is a definition of what constitutes "entertainment". Is a jukebox entertainment? Is a humorous cocktail waitress entertainment? These questions need to be

Page 2.
Ms. Katherine Bigler
April 7, 1987

addressed or else establishments will be able to have "entertainment" from opening until 5:00 p.m., and from 8:00 p.m. until closing. The effect, of course, would be to allow special pricing from 5:00 p.m. until 8:00 p.m. If establishments wish to recoup the cost of the entertainment they provide, an alternative to this proposal is the imposition of a cover charge during the entertainment.

The other significant change to the "happy hour" law is that contained in AS 04.16.015(a)(6). Under current law, that provision provides that the holder of a license to sell alcoholic beverages may not:

encourage or permit an organized game or contest on the licensed premises that involves drinking alcoholic beverages or the awarding of alcoholic beverages as prizes.

The proposed change would read:

encourage or promote an organized game or contest on the licensed premises that involves drinking alcoholic beverages or the awarding of alcoholic beverages as prizes.

The change proposed would have the effect of allowing such promotions to occur on premises which serve alcoholic beverages as long as it was not encouraged or promoted by the license holder. The license holder would be free to allow and permit the activity on the premises as long as the establishment did not encourage or promote the acts.

If holders of alcoholic dispensary licenses are concerned about their culpability for private contests between two individuals sitting in a bar of which they are not aware, there is a simpler solution than that proposed by Representative Donley. The provision in question could be changed to provide that license holders may not:

knowingly encourage or knowingly permit an organized game or contest on the licensed premises that involves drinking alcoholic beverages or the awarding of alcoholic beverages as prizes.

This change would protect the license holder from what may be a legitimate fear of punishment for acts committed by patrons of which the license holder reasonably is not aware.

Page 3.
Ms. Katherine Bigler
April 7, 1987

If any amendments are contemplated to AS 04.16.015(a), changes should be sought by MADD which would close some of the loopholes. I am told that one method of evading the law that some local establishments have been utilizing is that there are promotions on certain types of drinks during the day. To evade the provisions of the law, those drinks simply are not sold at night. For instance, Brand X beer will only be sold from 5:00 p.m. until 8:00 p.m. Brand X will sell for a price significantly lower than for other brands sold by the establishment. Since Brand X is not sold any other time of day, their "price break" during "happy hour" is not prohibited by the law. Thus, I would suggest if AS 04.16.015 is going to be amended, that another section be added which would provide that a license holder may not:

(7) sell a particular brand of an alcoholic beverage or a particular type of an alcoholic beverage unless that brand or type is available at the same price during all hours that the establishment is open.

This change would solve what has been reported to me as a means of evading the intent of the legislature as expressed in its passage of AS 04.16.015.

In sum, the proposed changes to AS 04.16.015 would eviscerate the "happy hour" law.

If I can be of further assistance to you in your efforts to save lives, please don't hesitate to contact me.

Sincerely,

PRESTON, THORGRIMSON,
ELLIS & HOLMAN

By:


Michael N. White

1320.MNW/mmm
cc: Barbara Mills

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3892



September 14, 1987

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Committee packet for September 18, 1987 hearing
on proposed amendments to the "happy hour" law

Attached is backup material and a draft bill for the September 18 hearing before the House Labor and Commerce Committee on proposed amendments to Alaska's law prohibiting "happy hours" and certain other alcohol promotion practices.

The hearing will begin at 2:30 p.m. at the Anchorage LIO groundfloor conference room on Friday, September 18.

The draft bill makes three changes to existing law: 1) amends language prohibiting certain practices by license holders when those practices constitute "a marketing device to the general public" so that the practices are prohibited if they are done "in order to encourage the consumption of alcoholic beverages", 2) allows prices to be set by the day instead of the week, as required by current law and, 3) allows prices to be raised when "live" entertainment is present.

The Committee discussed proposed amendments to the happy hour law several times during the last session. Since that time, representatives from Mothers Against Drunk Driving and the liquor license industry have met and agreed to the live entertainment and pricing by the day amendments.

The change in the "marketing device to the general public" language was incorporated in response to requests by some license holders and is presented in the draft for the purposes of discussion. As you know, some license holders have experienced difficulty with the existing language (see enclosed memo to Tam Cook) and have asked that we try to clarify the language.

The attorney who drafted the original law and representatives from MADD have not agreed that the current language needs changed. Further, Pat Sharrock, Executive Director of the ABC Board, said that he is unaware of any widespread problem with the interpretation of current law in so far as the "marketing device" language is concerned. Mr. Sharrock will be available for questions at Friday's hearing.

Please call me or Ginger at 561-7629 if you have any questions or need additional information before the hearing.

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to pricing and marketing alcoholic
7 beverages."

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

9 * Section 1. AS 04.16.015(a) is amended to read:

10 (a) On premises where alcoholic beverages are sold by the
11 drink, a licensee or a licensee's agent or employee may not

12 (1) offer or deliver [, AS A MARKETING DEVICE TO THE
13 GENERAL PUBLIC,] free alcoholic beverages to a patron in order to
14 encourage the consumption of alcoholic beverages;

15 (2) deliver an alcoholic beverage to a person already
16 possessing two or more;

17 (3) [SELL, OFFER TO SELL, OR DELIVER ALCOHOLIC BEVERAGES TO
18 A PERSON OR GROUP OF PERSONS AT A PRICE LESS THAN THE PRICE REGULARLY
19 CHARGED FOR THE BEVERAGES DURING THE SAME CALENDAR WEEK, EXCEPT AT
20 PRIVATE FUNCTIONS NOT OPEN TO THE GENERAL PUBLIC;

21 (4)] sell, offer to sell, or deliver an unlimited number of
22 alcoholic beverages to a person or group of persons during a set
23 period of time for a fixed price;

24 (4) [(5)] sell, offer to sell, or deliver alcoholic bever-
25 ages to a person or group of persons on any one day at prices less
26 than those charged the general public on that calendar day, except at
27 private functions not open to the general public;

28 (5) [(6)] encourage or permit an organized game or contest
29 on the licensed premises that involves drinking alcoholic beverages or

1 the awarding of alcoholic beverages as prizes.

2 * Sec. 2. AS 04.16.015(c) is amended to read:

3 (c) This section may not be construed as prohibiting a licensee
4 or a licensee's agent or employee from

5 (1) offering free food or entertainment at any time;

6 (2) [, FROM] serving wine by the bottle or carafe or beer
7 by the pitcher with or without meals;

8 (3) [, OR FROM] including an alcoholic beverage as part of
9 a meal package; or

10 (4) increasing prices during times when entertainment is
11 provided; in this paragraph, "entertainment" means a live performance
12 or a television broadcast of an event actually occurring at the time
13 it is viewed.

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HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3892



September 3, 1987

M E M O R A N D U M

To: Tam Cook, Director
Legislative Legal Services

From: Representative Dave Donley, Chair D
House Labor and Commerce Committee

Re: Bill drafting request and

I am writing to request draft legislation amending Alaska's current "happy hours" statute, to be introduced as a House Labor and Commerce Committee bill next year.

Mike Ford prepared several drafts for us last year, none of which satisfied the Committee or other concerned members of the public. (No reflection on Mr. Ford, only on our inability to reach a consensus).

The Committee asked that representatives from the liquor industry and from Mothers Against Drunk Driving work out a compromise and it appears that they have done so. Consequently, we've scheduled a public hearing in Anchorage on Friday, September 18 to consider draft legislation making the following changes in existing law:

1. Liquor prices can be set (and changed) by the day as opposed to the week as required by current law.
2. Daily prices may be changed when "live" entertainment is present. The draft should incorporate a definition of "live entertainment" that includes televised broadcasts when the event being broadcast is actually occurring at the time it is being viewed.

There is a third change to existing law that should be incorporated in the bill draft, and it is a difficult one. Current law prohibits liquor license holders and/or their agents from certain acts when those actions constitute "a marketing device to the general public".

This qualifying language was incorporated into the original bill (SB 138, adopted in 1986) in order to give licensees "room to move" in unusual circumstances.

For instance, a bar owner in Skagway gives a visiting tour boat captain a drink "on the house", as a gesture of good will. Or a cocktail waitress spills a drink while delivering it and gives the customer a "free" drink to replace it. Or a couple on the way to a honeymoon suite stop by the local pub and the owner gives them a free glass of champagne, or your mom stops in your bar on the way home and you "buy" her a beer, etc.

It is the intent of our Committee (and the sponsor of the existing law) to prohibit marketing and promotion practices to the general public that encourage irresponsible drinking. The Committee did not feel that the above described activities are prohibited under current law since they occur on a case by case basis and are not "a marketing device for the general public".

However, license holders are understandably troubled by the vagueness of existing statute and are apparently getting mixed signals from the ABC Board as to what they are allowed or not allowed to do. They have asked that we "fix it" by adopting a clearer definition of prohibited and permitted activity.

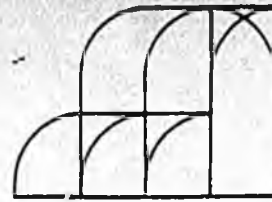
I leave it to you and Mr. Ford to work out a perfect solution and give us language that everyone (including the license holder, patrons, MADD, and the ABC Board) can easily understand.

I'd appreciate a bill draft as soon as possible in order to prepare for the September 18 hearing. Please contact me or Ginger Baim at 561-7629 if you have any questions or need additional information.

And thanks.



sullivan
arena



William A. Egan
civic and
convention center

February 11, 1988

Mr. Michael W. Gordon
Chairman
ALCOHOL BEVERAGE CONTROL BOARD
2207 Sorbus Way
Anchorage, Alaska 99508

Dear Mr. Gordon,

Ogden Facility Management of Alaska, Inc. operates the Sullivan Arena and Egan Center under a management contract with the Municipality of Anchorage. Over the years, we've experienced frustration and added expense to our dispensing of beer and wine due to the limitations of our present license and procedures necessary to use other licensees.

At the Arena, we presently have a limited recreational license. This allows us to sell beer and wine at professional sporting events, including collegiate events. The present situation is workable, but in the future we would like the Board and the Legislature to consider an "Arena license". As you know, there presently is no provision in the law or regulation for a license of this type that would allow sale of beer and wine in all areas of the Arena without the present requirement of designated or "wet" areas. This type of license is in place in every other Arena in the country, including the Kingdome, Tacomadome, Forum in Los Angeles, Superdome in Louisiana, etc.

Due to the present attitude on alcohol, the timing may not be right for an Arena license such as I described. I would appreciate your thoughts on what options we have in exploring improvement in this area.

The biggest problem in the Arena in terms of administration and revenue is beer and wine events other than professional sports. We have numerous events, such as concerts, trade shows, and exhibitions, where the public, the promoter, and the building, would all like the availability of beer and wine. Presently, this requires the Arena to work out an arrangement with a holder of a beverage dispensary license, and a catering permit must be obtained, all requiring extra time and money. The result is extra administration and loss of revenue to the Arena.

MANAGED BY  Ogden Facility Management of Alaska, Inc.

555 West 5th Avenue, Anchorage, Alaska 99501 907 /263-2800

Michael W. Gordon
February 11, 1988
Page 2


In addition, many of these events are not cost-effective in terms of the time and effort of the beverage dispensary licensee. Consequently, in many cases licensees are not interested in working with us, therefore we end up without beer and wine at these events. In the hospitality industry such as arena management, it's critical that our client, the public, be happy and enjoy their visit to the event. Beer and wine, in many cases, add to this enjoyment even though from a cost effective standpoint, it may not be a big revenue producer.

Due to the fact we can, through the catering permit process, obtain the right to sell beer and wine, it appears to me that there should be a way for the Arena to shortcut this process and obtain some type of license that would allow us to dispense, without going through the process of obtaining a catering permit, etc. I consider this a priority item, and respectfully request the Board to consider a regulation that would allow the Sullivan Arena to obtain a license that would allow the sale of beer and wine under these circumstances.

In considering the Sullivan Arena, you might also consider the Egan Convention Center, the Valdez Convention Center, the Centennial Hall in Juneau, and the Big Dipper Ice Rink in Fairbanks as facilities that have the same general problems. Representatives from these areas have discussed with me the same frustrations they've had on the law and how it affects their operation and bottom line.

Your review and recommendations would be greatly appreciated.

Sincerely yours,



Tom Anderson
General Manager

TA/vg

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/2/88

FURTHER REFERRALS:

HESS
Judiciary

DATE: 3/8/88

The Labor & Commerce Committee has considered HB 536

"An Act relating to the sale, pricing, and marketing of alcoholic beverages; and prohibiting persons from being on premises involving alcoholic beverages under certain circumstances."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

David Douley
W. Furnace
Scott H. ...
D. B. ...
Mike Kosma
H. ...

SIGNING OTHER RECOMMENDATIONS:

Cliff Davidson (no rec)
W. Furnace
...

David Douley
 Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to the sale, pricing, and marketing of alcoholic beverages; prohibiting persons from being on the premises involving alcoholic beverages under certain circumstances."
Sponsor: Labor & Commerce Committee
Requestor: Labor & Commerce Committee

Agency Affected: Revenue
BRU: ABC Board
Components: Operating

EXPENDITURES, REVENUES: (Thousands of Dollars)

	FY 86	FY 85	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Patrick L. Sharrock, Director Phone: 277-8638
Division: Alcoholic Beverage Control Board/Division Date: 03/07/88

Approved by Commissioner: Hugh Malone Date: 03/07/88
Agency: Department of Revenue

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

H B

540



Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

March 23, 1988

Representative John Sund
Chairman, House Judiciary Committee
Capitol Building, No. 122
P.O. Box V
Juneau, Alaska 99811

Re: CS for HB 540

Dear Representative Sund:

The court system would like to express its concern about section 1(b) of this bill which prohibits the maintenance of personnel information without notification to the employee. This section fails to address the need to keep confidential personnel information gathered during an ongoing investigation. This type of information should be expressly exempt from employee access.

I would be happy to discuss this issue with you or to answer questions about it.

Very truly yours,

Jan Strandberg
Jan Strandberg

c: Committee members

POSITION PAPER
HB 540

This bill adds a new article to Chapter 10 (Employment Practices and Working Conditions) of Title 23 (Labor and Workers' Compensation). The new article would guarantee that secret files could not be kept on an employee. An employee would be entitled to inspect and copy the employee's personnel file (subsection (a)). Employees would be prohibited from maintaining personnel information on an employee unless the information is placed in the employee's personnel file (subsection (b)). Violations are made a class A misdemeanor (subsection (c)). Employees and employers would be covered by the new provision (subsection (d)).

From a layperson's reading, it is unclear whether the State, as an employer, would be covered by this bill. "Employer" is defined in paragraph (d)(2) as "a person who employs one or more other persons" (emphasis added). As defined in AS 01.10.060(7), "person" does not include the "state" (as state is defined in AS 01.10.060(13)). When the state is included under other provisions of Title 23, it is specifically included. AS 23.10.037(c).

This position paper assumes the state will be covered by the provisions of HB 540. The question of "secret" personnel files has been of serious concern to the state and its employees. Over the years, the state and its employees have mutually agreed on the treatment of files. Collective bargaining contracts provide elaborate processes and procedures relating to personnel files. The state is undoubtedly in compliance with proposed subsection (a).

Subsection (b) presents considerable administrative problems for the state. While the official personnel file on employees in the classified and partially exempt service are maintained by the Division of Personnel, there is "information" about employees in virtually every office in the state. There is no desire, in fact opposition, by employees and management to keep that information in offices and not in the personnel file. To illustrate, suppose a supervisor verbally reprimands an employee for horseplay in a maintenance shop. In addition, the supervisor tells the employee and makes a note of the incident. The note is information to be used in preparing the next performance evaluation or to justify further constructive and progressive discipline should the offense be repeated. If there is no repeat of the offense, the performance evaluation may not even mention it, and the information is ultimately discarded.

In this example, the note is available for inspection and copying under subsection (a), but it is not placed in the employee's personnel file under subsection (b). It is the state's best interest and employee's best interest to maintain this kind of process.

Subsection (c) would make the state guilty of a class A misdemeanor for its current practices. Compliance with subsection (b) would have three results depending on individual responses from supervisors: some would create truly secret files in defiance of the proposed law; some would cease recording information or cease taking actions that should be recorded; and trivial

POSITION PAPER (continued)

information will be recorded and forwarded by the thousands to the Division of Personnel for placement in the employee's personnel file. Obviously, each of these results is undesirable.

If the state is to be covered by the provisions of HB 540, the Department of Administration must take a position in opposition to it. Administrative difficulties, the undesired results, and the disruption of mutually agreed processes with our employees are the reasons for our opposition.

for Michael P. Tom

Bruce Cummings, Director
Division of Labor Relations

3/17/88

Date

J.M.A.

Commissioner John M. Andrews
Department of Administration

3/18/88

Date

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

H. JUD.	4-29-88	1:30p.m.
H. JUD.	4-5-88	6:30p.m.

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/23/88

FURTHER REFERRALS:

DATE: April 29, 1988

The Judiciary Committee has considered HB 540

"An Act relating to access to an employee personnel file."

RECOMMENDS:

- replace with CS HB540 (Jud) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 3/23/88
- zero with analysis

SIGNING DO PASS:

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]
 Chairman's signature

Original sponsor: Labor & Commerce
Committee

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 540 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act requiring employers to permit employees and
7 former employees to have access to their personnel
8 files."

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

10 * Section 1. AS 23.10 is amended by adding a new section to read:

11 ARTICLE 7. EMPLOYEE RIGHTS.

12 Sec. 23.10.430. ACCESS TO PERSONNEL FILES. (a) An employer
13 shall permit an employee or former employee to inspect and make copies
14 of the employee's personnel file and other personnel information
15 maintained by the employer concerning the employee under reasonable
16 rules during regular business hours. The employer may require an
17 employee or former employee who requests copies of material under this
18 subsection to pay the reasonable cost of duplication.

19 (b) This section does not supersede the terms of a collective
20 bargaining agreement.

21 (c) In this section,

22 (1) "employee" means a person employed by an employer;

23 (2) "employer" means a person who employs one or more other
24 persons and includes the state, the University of Alaska, the Alaska
25 Railroad, and political subdivisions of the state.

5-2031L✓

Cramer
-4/28/88

Original sponsor: Labor & Commerce
Committee

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 540 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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25 Railroad, and political subdivisions of the state.

Original sponsor: Labor & Commerce
Committee

*Suggested
Amendment*

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2

CS FOR HOUSE BILL NO. 540 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

(no employees)

6

For an Act entitled: "An Act relating to access to an employee personnel
7 file."

8

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

9

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14

~~maintained by the employer~~ concerning the employee under reasonable

15

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16

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17

subsection to pay the reasonable cost of duplication.

18

(b) An employer may not maintain personnel information concern-

19

ing a specific employee or former employee unless the employer makes

20

diligent efforts to notify the employee or former employee that the

21

information is being maintained.

22

(c) This section does not supersede the terms of a collective

23

~~bargaining agreement.~~

24

(d) In this section,

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(1) "employee" means a person employed by an employer;

26

(2) "employer" means a person who employs one or more other

27

persons and includes the state, the University of Alaska, the Alaska

28

~~Railroad, and political subdivisions of the state.~~

~~ADDED~~

Original sponsor: Labor & Commerce
Committee

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2

CS FOR HOUSE BILL NO. 540 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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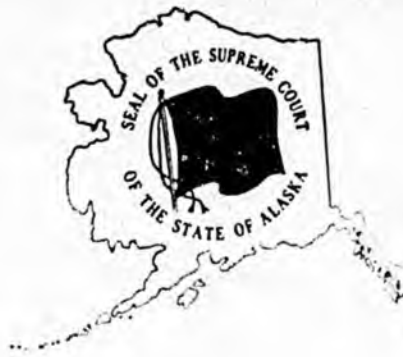
27

persons and includes the state, the University of Alaska, the Alaska

28

Railroad, and political subdivisions of the state.

*① notify and
employers
② terminate*



Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

March 23, 1988

Representative John Sund
Chairman, House Judiciary Committee
Capitol Building, No. 122
P.O. Box V
Juneau, Alaska 99811

Re: CS for HB 540

Dear Representative Sund:

The court system would like to express its concern about section 1(b) of this bill which prohibits the maintenance of personnel information without notification to the employee. This section fails to address the need to keep confidential personnel information gathered during an ongoing investigation. This type of information should be expressly exempt from employee access.

I would be happy to discuss this issue with you or to answer questions about it.

Very truly yours,

Jan Strandberg
Jan Strandberg

c: Committee members

JOHN SUND, REPRESENTATIVE

2504 2nd Avenue
Ketchikan, Alaska 99901
(907) 225-5552

While in Juneau
P. O. Box V
Juneau, Alaska 99811
(907) 465-4919

File
HB 540

April 26, 1988

Mr. John Taggart
2139 Third Ave
Ketchikan, Alaska 99901

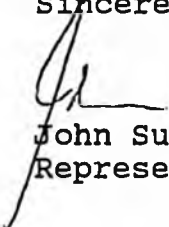
Dear John:

Thank you for your message in support of HB 540 "An Act relating to an employee access to personnel files."

I am in complete agreement with your position. HB 540 is currently in the House Judiciary Committee, which I chair. We are working out some of the issues raised during a recent hearing on the bill.

It is my intention to move the bill out of committee and onto the floor of the House for a vote.

Sincerely,


John Sund
Representative

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUND

NAME: JOHN TAGGART
ADDRESS: 2139 THIRD AVENUE
CITY: KETCHIKAN, AK
PHONE: N/R-

Logos

ZIP: 99901

BILL NO: HB 540
SUBJECT: EMPLOYEE ACCESS TO OWN PERSONNEL FILE
MESSAGE: I WOULD LIKE TO SHOW MY SUPPORT FOR HOUSE BILLS 540 AND 542 AND ASK FOR YOUR SUPPORT ON THESE TWO BILLS. I AM A UNION MEMBER AND I THINK THESE BILLS WOULD HELP THE WORKING PERSON AT HIS/HER JOB.

POMID: 08093841
DATE: 04/14/88
TIME: 09:38:41
LIONAME: KETCHIKAN LIO

*We agree
work on a memo
- Help keep
law committees
def support
- Completed
we will see
what we can do
small office*

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUND

NAME: IAN LOSBY
TITLE:
ADDRESS: 6019 MOORE
CITY: ANCHORAGE
PHONE: 333-3321

ZIP: 99504

BILL NO:
SUBJECT: 4 AAC 06.065
MESSAGE: I AM 15 YEARS AND I OPPOSE THE BAN ON CORPORAL PUNISHMENT IN PRIVATE SCHOOLS. THE CHILDREN TODAY WOULD BE BETTER OFF IF SPANKING WERE USED IN THE PUBLIC SCHOOLS ALSO. I URGE YOU TO USE YOUR INFLUENCE TO CHANGE DOE COMMISSIONER DEMMERT'S MIND ON THIS IMPORTANT ISSUE.

POMID: 03093907
DATE: 04/14/88
TIME: 09:39:07
LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

REPRESENTATIVES	REPRESENTATIVES	SENATORS
ADAMS	BARNES	ABOOD
BOUCHER	BOYER	BINKLEY
BROWN	CATO	COGHILL
COLLINS	COTTEN	DUNCAN
DAVIDSON	DAVIS	ELIASON
DONLEY	ELLIS	FAHRENKAMP
FRANK	FURNACE	FAIKS
GOLL	GRUENBERG	FANNING
GRUSSENDORF	HANLEY	FISCHER
HERRMANN	HOFFMAN	HALFORD
HUDSON	KOPONEN	HENSLEY
LARSON	MARTIN	JONES
MENARD	MILLER	JOSEPHSON
NAVARRE	PEARCE	KELLY
PETTYJOHN	PHILLIPS	KERTTULA
POURCHOT	RIEGER	RODEY
SHULTZ	SPRINGER	STURGULEWSKI
SWACKHAMMER	TAYLOR	SZYMANSKI
ULMER	WALLIS	UEHLING
ZAWACKI		ZHAROFF

JH

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: An act relating to access to an BRU: Labor Relations
employee personnel file.
 Sponsor: House Labor & Commerce Committee Components: Labor Relations
 Requestor: House Labor & Commerce Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Any additional copying required by this bill for this division, or any Executive Branch agency, will either be charged to an employee or absorbed as a nominal increase in copy charges.

Prepared By: Bruce A. Cummings *Bruce Cummings* Phone: 465-4404
 Division: Labor Relations Date: March 21, 1988

Approved by Commissioner: John M. Andrews *John M. Andrews* Date: 3/21/88
 Agency: Department of Administration

Distribution (by preparer):

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 540
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
Title: "An Act relating to an BRU: Labor Standards and Safety
employee personnel file."
Sponsor: House Labor & Commerce Components: Wage and Hour
Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director Phone: 264-2452
Division: Labor Standards and Safety Date: 3/18/88

Approved by Commissioner: Jim Sampson Date: 3/18/88
Agency: Department of Labor

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/11/88

FURTHER REFERRALS: Judiciary

DATE: 3/22/88

The Labor & Commerce Committee has considered HB 540

"An Act relating to access to an employee personnel file."

RECOMMENDS:

- replace with CS HB 540(L+C) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]

Chairman's signature

H B

545



ADVOCACY SERVICES OF ALASKA

325 East 3rd, 4th Floor
Anchorage, AK. 99501-2606
(907) 274-3658 TTD

127 S. Franklin
Juneau, AK. 99801
(907) 586-1627 TTD

250 Cushman, Suite 3H
Fairbanks, AK. 99701
(907) 456-1070 TTD

March 29, 1988

Representative John Sund
Chairperson
House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Sund:

I understand that your Committee is considering House Bill 545 which would change the criminal statutes relating to sexual assaults committed against mentally incapable adults. This letter is to support this bill and to commend you for taking the initiative on this important issue.

A recent incident at the Harborview Developmental Center conclusively demonstrates the need for this type of legislative action. In that case, a staff member was discovered while having sexual contact with a severely impaired resident who clearly could not consent to such activity. We were all shocked to discover that sexual contact without penetration in such circumstances is not a crime under current statutes. This loophole must be closed as soon as possible.

I also understand that your Committee's bill would increase the penalties for sexual assaults committed against mentally incapable adults by care givers. We fully support these efforts. We must send a clear message that such violations of a position of trust will not be tolerated.

Again, I appreciate and support your efforts to protect these vulnerable members of our community. Please contact me if I can be of any assistance.

Sincerely,

Jeffrey L. Jessee
Supervising Attorney

JLJ:dw

STATE OF ALASKA

PUBLIC DEFENDER AGENCY

STEVE COWPER, GOVERNOR

900 W. 5TH AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-2090
PHONE: (907) 279-7541

March 29, 1988

Rep. John Sund, Chairman
House Judiciary Committee
P. O. Box V
Juneau, Alaska 99811

Re: HB 545.

Dear Representative Sund:

Thank you for requesting my comments on HB 545.

This bill fills a significant gap in the existing criminal code by penalizing sexual contact with mentally incapable people, those who are incapable of understanding the nature and consequences of their conduct. It also increases the penalties for sexual penetration offenses committed against a mentally incapable person by someone with a legal duty to care for the person. Adults who are developmentally incapable of giving a meaningful consent to sexual conduct should be protected from being sexually victimized. The harshest penalties should be imposed on those who exploit the mentally incapable by abusing their positions of legal authority over them.

Because this bill denies a category of adults the ability to consent to the full range of voluntary sexual behavior, the elements of the offenses and the definitions which they use must be narrowly drawn to protect those who require protection but not to deny a fundamental right to those who do indeed have the capacity to consent to sexual behavior. Given the need for sensitivity in drawing lines in this area, the bill's focus on "legal authority" as a requisite for the more serious crimes is substantially preferable to using broader concepts of having any position of authority or being temporarily entrusted to care for someone, such as are used in the child sexual abuse laws. Someone entrusted by law to care for a mentally incapable adult will always be in a position to know the extent of that person's incapacity, and the professional caregiver status makes any sexual overture inherently coercive. By contrast, a neighbor or friend occasionally entrusted to care for a mentally disabled adult may develop a genuine friendship which leads to a noncoercive sexual relationship, which is fully consensual but for the one adult's being so mentally impaired that the law

defines him or her as legally incapable of consent. Though knowingly engaging in a sexual relationship with a mentally incapable person may be criminalized, the severe presumptive sentences for unclassified felonies should not apply to the neighbor or friend situation.

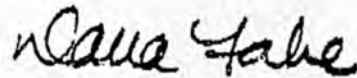
Section 2 leaves the current statute on sexual penetration with a person who is temporarily incapacitated -- e.g., a person who is extremely intoxicated -- unchanged, except that the term "incapacitated" has been eliminated. That is, former AS 11.41.420(a)(2)(B) would be .420(a)(3)(B) under this bill. The term "incapacitated" has a very different meaning in Title 13, and it is helpful to eliminate the confusion which arises from giving a term two different meanings. Section 3 creates a new offense for sexual contact with a temporarily incapable person.

Section 4 provides that a person who is himself or herself mentally incapable cannot be charged with a crime of sexual abuse of another mentally incapable person. Practically speaking, the defense of mental incapability provides a means of decriminalizing sexual conduct between mentally incapable people. Between incapable people, sexual conduct has none of the exploitive character that exists when a non-incapable person preys upon an incapable person. Such conduct is ordinarily voluntary (even if the parties lack the legal capacity to "consent"), and it occurs almost exclusively within institutions for the mentally incapable. It is better dealt with through institutional rules than through the criminal justice system.

Section 5 provides the critical definition of who is "mentally incapable." The proposed definition is far preferable to the definition in current AS 11.41.420(a)(2)(A). The present definition depends on a common morality, presuming that an incapable person's consent is invalid when the consent covers sexual activity that a "normal" (non-incapable) person would not consent to. That definition is vague; it is both hard to prove and hard to defend against in a pluralistic society. The definition in section 5 focuses on the reason why mentally incapable adults should not be capable of giving valid consents to sexual behavior: a consent is meaningless if it is given by someone who does not understand the potential harm in the situation. The proposed definition is significantly more protective of the mentally disabled than comparable statutes from other states.

I appreciate this opportunity to comment on this bill. Please let me know if I can provide any further information or assistance on this bill.

Very truly yours,



Dana Fabe
Public Defender

DF:rjb

POSITION PAPER
HOUSE BILL NO. 545

For an Act entitled: "An Act amending crimes relating to sexual assault as they relate to persons who are mentally incapable."

Effect of Bill:

The purpose of this legislation is to protect mentally incapable persons from sexual assault from care providers and from the general public.

Discussion:

The intent of this legislation is to remedy the situation in which current legislation fails to protect mentally incapable persons from sexual assault unless there is forcible rape. This legislation expands the types of sexual contact that would be construed as sexual assaults and thereby offers greater protection. The Division and the Department supports the intent of this legislation, but have some concerns.

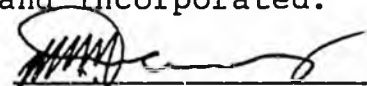
Under Sexual Assault in the First Degree, SECT. I(A)(3), lines 17 through 20 is intended to address assault by care providers. In reality it might protect only clients that are involuntary commitments. If the words "or through service in a program receiving public funds" were added to the end of line 20, this should serve to strengthen the intent. This should also be added to line 29.

This legislation may unintentionally prohibit any form of sexual contact between married persons when one of them, but not both, is mentally incapable. The same concerns are present in the situation in which the couple is unmarried, but cohabitating, dating, etc., in a "legitimate" consensual relationship.

Recommendations:

The Division and Department supports passage of this legislation if the above concerns are addressed and incorporated.

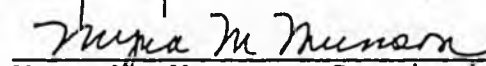
Proposed by:


Mel Henry, Director
Division of Mental Health
and Developmental
Disabilities

Date:

3/30/88

Approved:


Myra M. Munson, Commissioner
Department of Health
and Social Services

Date:

3/30/88

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Health & Social Services
 Title: ...amending crimes relating to sexual assault as they relate to...mentally incapable. BRJ: various
 Sponsor: House Judiciary Committee Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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


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


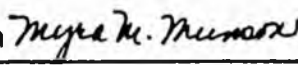
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The passage of HB 545 would have no significant fiscal impact on the Department of Health & Social Services.

Prepared by: Mel Henry, Director  Phone: 465-3370
 Division: Mental Health & Developmental Disabilities Date: 3/30/88

 Approved by Commissioner: Myra M. Munson  Date: 3/30/88
 Agency: Health & Social Services

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ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

130 Seward, No. 301 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid in Crisis (AWAIC);
Advocates for Victims of Violence (AVV);
Aiding Women in Abuse and Rape Emergencies (AWARE);
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);
Bering Sea Women's Group (BSWG); Emmonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRCC);
Maniilaq Regional Women's Crisis Program; MEN, Inc.;
Safe & Fear-Free Environment (SAFE); Sikkans Against Family Violence (SAFV);
Southwestern Alaska Council for the
Prevention of Child Sexual Assault (SWACPCSA);
South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR); Tundra Women's Coalition (TWC);
Valley Women's Resource Center (VWRC);
Women in Crisis Counseling & Assistance (WICCA);
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

SUPPORT OF HOUSE BILL 545 AN ACT AMENDING CRIMES RELATING TO SEXUAL ASSAULT AS THEY RELATE TO PERSONS WHO ARE MENTALLY INCAPABLE

The Alaska Network on Domestic Violence and Sexual Assault strongly supports House Bill 545. Current law does not sanction sexual assault of the mentally incapable unless the assault involves penetration. This bill would close this significant gap by criminalizing a sexual assault that involves sexual contact.

It also changes the statutes to most severely penalize a person in a position of legal authority over a mentally incapable person who sexually victimizes their charge. A caretaker has a special trust relationship with his or her charge that carries with it power over and knowledge of the mental incapacity of the victim. Caretakers who abrogate this trust by preying on this special relationship should be the most severely penalized.

Mentally incapacitated people are very vulnerable to sexual assault. The Network is aware of two studies on this subject. The first was the Seattle Rape Relief Disabilities Project completed in 1981. In this study, 75% of the developmentally disabled people surveyed had been sexually assaulted during their lifetime. 99% of the perpetrators involved were known to the victims.

The second study was conducted by the California State Committee on the Sexuality of the Developmentally Disabled in 1986. Statwide professionals working in the field in California agreed that 98% of their clients had been victims of sexual assault. The study also concluded that developmentally disabled people do not self report because of their vulnerability in general; the fact that they are frequently dependent on their assailant to meet basic needs; their lack of awareness of the benefits of reporting; and their lack of awareness of the services available to them. It was found that professionals often do not report because of a lack of knowledge about their legal obligation to report (California has a mandatory reporting law for abuse of the developmentally disabled.), and their perception that the system will not adequately respond.

This last point is extremely relevant to Alaska given the fact that there is currently no legal response to a developmentally disabled person who has been sexually assaulted unless actual penetration has occurred.

The Network strongly urges passage of this bill.

STATE OF ALASKA
THE LEGISLATURE

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May, 1988

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

Mary Van Nimwegen

H. JUD.	4-8-88	1:30p.m.
H. JUD.	3-30-88	1:30p.m.