

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672**  
**7093 HOUSE LABOR & COMMERCE**

# Pioneer Bar & Liquor Store, Inc.

CHRISTINE M. TENGS  
President

141-143 Second Ave.  
Post Office Box 190  
Haines, Alaska 99827  
(907) 766-9101 Business  
(907) 766-2474 Office  
(907) 766-3374 FAX

March 10, 1992

Representative Finkelstein, Chairman  
Labor & Commerce Committee  
Box V  
Juneau, AK 99811

Dear Representative Finkelstein:

I am writing to urge you to amend House Bill 436, introduced by Representative Cheri Davis, to include changes to correct the wording of AS 04.21.020 "Civil liability of persons providing alcoholic beverages" and AS 04.21.050 "Proof of Age."


As it now stands, the Proof of Age Statute defines acceptable I.D. as a valid Driver's License or I.D. Card encased in plastic with a photo and birthdate. The Civil Liability Statute says we may not be held civilly liable if we take a Signed Statement, Liquor I.D. Card (which we don't even have in Alaska) or Driver's License. In other words, if a person accepts a U.S. Military Card or other I.D. which meets the requirements of the Proof of Age Statute, there would be no protection from a civil suit if the I.D., accepted in good faith, turns out to be false. Please note that there would be protection from criminal charges (AS 04.21.050 (c)) if the same I.D. were taken.

The amendment being offered would replace "liquor identification card, or driver's license" in the Civil Liability Statute with "identification meeting the requirements of" the Proof of Age Statute. In addition the amendment would add to (c) of the Proof of Age Statute, regarding criminal liability, "meeting the requirements of AS 04.21.050 (b)".

As the A.B.C. Board, through regulation, redefines "valid identification" in the Proof of Age Statute, this amendment would protect licensees or their agents and employees from being held criminally and civilly liable for accepting such I.D.. For instance, the A.B.C. Board has recently adopted regulations allowing the acceptance of passports as "valid identification." Under the law, as it stands, we would not be protected from civil or criminal liability if we accepted a passport.

Please amend House Bill 436 to incorporate these changes. Thank you for your consideration of this request.

Very truly yours,

  
Christine M. Tengs  
C.H.A.R.R. Board Member

copies to: Rep. Davis  
Rep. Mackie  
Rep. Choquette

From	CHERRY TREES
City	
Phone	766-8474
Fax	766-2984
Case No.	465-3448

*Spiegel*

Sec. 04.21.050. Proof of age. (a) If a licensee or an agent or employee of the licensee questions or has reason to question whether a person entering licensed premises, or ordering, purchasing, attempting to purchase, or otherwise procuring or attempting to procure alcoholic beverages, has attained the age of 21 years or is entering without consent in violation of AS 04.16.049(A)(3) and has not attained the age of 16 years, that licensee, agent, or employee shall require the person to furnish proof of age acceptable under (b) of this section or proof of consent in a form disseminated by the board. If the person questioned does not furnish proof of age acceptable under (b) of this section, or if a licensee, agent, or employee questions or has reason to question the validity of the proof of age furnished, the licensee, employee, or agent shall require the person to sign a statement that the person is over the age of 21 or 16 years as appropriate. This statement shall be made on a form prepared by and furnished to the licensee by the board.

(b) A valid driver's license or a valid identification card is acceptable as proof of age when used for identification in the purchase of alcoholic beverages and for securing entry to and remaining on premises where alcoholic beverages are sold. If the license or identification card is made of or recessed in plastic and contains a photograph of the licensee or card holder and a statement of age or date of birth.

(c) A licensee, or an agent or employee of the licensee, may not be charged for a violation of AS 04.16.051 - 04.16.052 if a signed statement as provided in (a) of this section is secured in good faith, or a valid driver's license or identification card is presented indicating that the owner and possessor of the presented driver's license or identification card is 21 or 16 years of age or over as appropriate.

MEETING THE REQUIREMENTS OF AS 04.21.050(b)

Sec. 04.21.030. Civil Liability of persons providing alcoholic beverages. A person who provides alcoholic beverages to another person may not be held civilly liable for injuries resulting from the intoxication of that person unless the person who provides the alcoholic beverages holds a license authorized under AS 04.11.080 - 04.11.220, or is an agent or employee of such a licensee and

(1) the alcoholic beverages are provided to a person under the age of 21 years in violation of AS 04.16.051, unless the licensee, agent, or employee secures in good faith from the person a signed statement, license-identification card, or driver's license meeting the requirements of AS 04.21.050(a) and (b), that indicates that the person is 21 years of age or older; or

(2) the alcoholic beverages are provided to a drunken person in violation of AS 04.06.030.

FOR IDENTIFICATION

**CITY OF  
KETCHIKAN**



334 Front Street  
Ketchikan, Alaska 99901  
Phone 907-225-3111  
Fax 907-225-5075



January 30, 1992

Representative Cheri Davis  
Alaska State Legislature  
P.O. Box V  
Juneau, Ak 99811

Dear Representative Davis:

Ms. Jeanneane Henry has informed me that you intend to introduce legislation which would increase the seriousness of the offense of furnishing alcoholic beverages to minors if the minor subsequently under the influence of that alcohol engages in criminal behavior or comes to harm.

I think that such legislation would prove to be of benefit in the battle against the high incidence of alcohol abuse in our state. Court rulings requiring specific mental states for conviction as well as the fact that both parties to the crime are willing participants who are generally uncooperative with authorities combine to make the crime of furnishing an extremely difficult offense to enforce. Stiffening the penalty for significant violations may enhance the deterrent effect of the present law and enforcement efforts. Given the potential consequences, it certainly would appear to be worth the effort.

If I can be of assistance to you in this matter, please contact me.

Sincerely,

D. A. Anslinger, III  
Chief of Police

DAA:mp  
PDLTR61/PDLTRFIL/POLLIB

Table B-11  
Causes of Injury Death - Native

Causes of Injury Death	Male		Female		Unknown Sex		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Drowning	327	22.72	42	8.45	0	0.00	369	19.06
Suicide	313	21.75	52	10.46	0	0.00	365	18.85
Other Injuries	208	14.45	70	14.08	0	0.00	278	14.36
• Motor Vehicle	186	12.93	81	16.30	0	0.00	267	13.79
• Alcohol and Drugs	173	12.02	132	26.56	0	0.00	305	15.75
Homicide	142	9.87	65	13.08	0	0.00	207	10.69
Fire	57	3.97	39	7.85	0	0.00	96	4.97
Aircraft	33	2.29	16	3.22	0	0.00	49	2.53
Total	1,439	100.00	497	100.00	0	0.00	1,936	100.00
Percent of Total		22.37		7.73		0.00		30.09

Table B-12  
Causes of Injury Death - Non-Native

Causes of Injury Death	Male		Female		Unknown Sex		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Drowning	680	18.97	46	5.20	0	0.00	726	16.24
• Motor Vehicle	676	18.86	261	29.49	0	0.00	937	20.96
Suicide	569	15.87	122	13.79	0	0.00	691	15.46
Other Injuries	520	14.50	109	12.32	0	0.00	629	14.07
Aircraft	466	13.00	67	7.57	0	0.00	533	11.92
• Alcohol and Drugs	342	9.54	137	15.48	0	0.00	479	10.72
Homicide	263	7.34	104	11.75	0	0.00	367	8.21
Fire	69	1.92	39	4.40	0	0.00	108	2.42
Total	3,585	100.00	885	100.00	0	0.00	4,470	100.00
Percent of Total		55.73		13.76		0.00		69.49

Table B-13  
Causes of Injury Death - Unknown Race

Causes of Injury Death	Male		Female		Unknown Sex		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Drowning	8	53.34	1	9.09	0	0.00	9	33.33
Suicide	2	13.33	1	9.09	0	0.00	3	11.11
Other Injuries	2	13.33	2	18.18	0	0.00	4	14.81
• Motor Vehicle	2	13.33	0	0.00	0	0.00	2	7.41
Aircraft	1	6.67	1	9.09	0	0.00	2	7.41
Homicide	0	0.00	4	36.36	0	0.00	4	14.81
• Alcohol and Drugs	0	0.00	1	9.09	0	0.00	1	3.70
Fire	0	0.00	1	9.10	1	100.00	2	7.42
Total	15	100.00	11	100.00	1	100.00	27	100.00
Percent of Total		0.23		0.17		0.02		0.42

Table B-14  
Causes of Injury Death - Total

Causes of Injury Death	Male		Female		Unknown Sex		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
	5,039	78.33	1,393	21.65	1	0.02	6,433	100.00

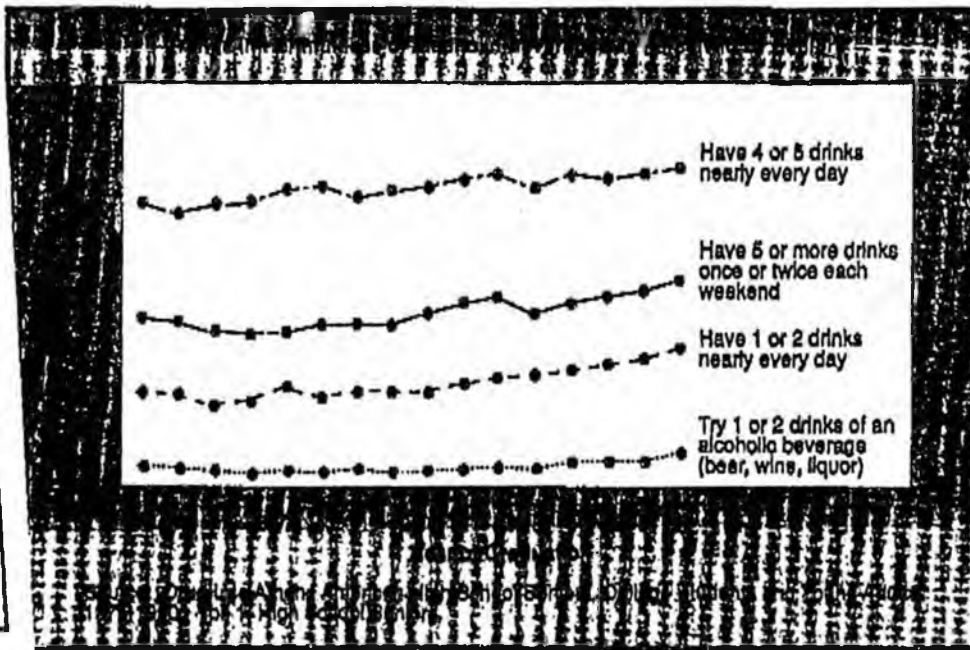
Office for Substance Abuse Prevention

October 1991

# TOO MANY YOUNG PEOPLE DRINK AND KNOW TOO LITTLE ABOUT THE CONSEQUENCES

Post-Net™ brand fax transmitted memo 7071 # of pages: 8

To Katherine Warden	From Tanya Pratt
On Wise of PEPS	On AK Council
Phone # 257-9350	Phone # 258-1052
Fax # 465-3442	Fax # 258-1052



*"We must teach our children that alcohol is a drug."*  
 —President George Bush, 1989



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
 Public Health Service  
 Alcohol, Drug Abuse, and Mental Health Administration

President Bush's citations are from the December 13, 1989, issue of Alcoholism & Drug Abuse Week.

DEB Register . 1992 REVENUE ~~15 AAC 04.425~~

15 AAC 104.425 is amended and a new subsection is added to read:

15 AAC 104.425. DETERMINING AGE OF PATRON. (a) It is the responsibility of the licensee to obtain ~~(PROOF OF AGE FORMS)~~ a ~~Statement of Proof-of-Age forms~~ required under AS 04.21.050.

DEB

Licensees must retain completed forms for 90 days and make them available upon request for inspection by the board and peace officers.

(b) ~~A~~ <sup>Valid</sup> identification ~~as~~ <sup>can</sup> used in AS 04.21.050 means an ~~unaltered passport issued by a foreign country or a license or AN identification card issued by a federal or state agency authorized to issue drivers licenses or identification cards that meet the requirements under AS 04.21.050(b).~~ <sup>AN UNALTERED PASSPORT</sup> If a licensee or ~~agent or employee of a licensee has reason to believe that~~ <sup>AN</sup> identification ~~card~~ <sup>card</sup> presented by a person is fraudulent, the licensee, agent, or employee ~~will~~ <sup>shall</sup> refuse entrance to licensed premises and ~~will~~ <sup>shall</sup> refuse service or sale to that person. (Eff. 11/29/81, Register 80, am / / Register, )

DEB

DEB

Authority: AS 04.06.090  
AS 04.06.100  
AS 04.21.050

ALCOHOLIC BEVERAGE CONTROL BOARD

TELECOPIER NUMBER (907) 272-6916

Please deliver the following pages to:

NAME: CATHERINE REARDON

LOCATION: REPRESENTATIVE FINKELSTEIN

TELECOPIER NUMBER: 465-3442

Date: 3-26-92

Number of pages 2, Including this transmittal sheet.

From: PAT SHARROCK

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL:

Cecilee

(name)

(907) 277-8638

# Crime Reported in Alaska

1990

**Uniform Crime Reporting**  
**DEPARTMENT OF PUBLIC SAFETY**

Prepared By:

**Administrative Services**

**Records and Identification**

**Information Systems**

MONTHS OF: 1/90 to 12/90

1990 STATEWIDE TOTALS

OFFENSE	CLASS	SEX	AGE					TOTAL	RACE				
			12/ UNDER	13 14	15	16	17		UNDER 18	WHITE	BLACK	IND	ASIAN
MURDER	01A	M				1	1	2					
		F			2			2	4				
MANSLAUGHTER	01B	M						0					
		F						0					
RAPE	02	M		6	1	2	6	15					
		F						0	9	1	5		
ROBBERY	03	M	1	3	2	7	8	21					
		F						0	7	9	3	2	
AGG. ASSAULT	04	M	12	19	11	15	26	23					
		F	3	5		4	4	16	56	8	31	4	
BURGLARY	05	M	112	142	89	90	85	518					
		F	19	33	9	7	10	80	428	20	148	2	
LARCENY	06	M	196	318	168	218	217	1117					
		F	88	209	98	100	89	584	1250	171	233	45	
MV. THEFT	07	M	27	58	51	45	50	231					
		F	4	25	18	17	14	78	212	17	75	5	
OTH. ABSLTS.	08	M	26	42	35	39	48	190					
		F	7	17	8	11	10	53	164	23	65	11	
ARBON	09	M	1	7	1		2	11					
		F						0	11				
FORGERY	10	M			2	3	1	6					
		F			1	1	1	3	6		3		
FRAUD	11	M	5			1	4	10					
		F					2	2	9		3		
EMBEZZLEMENT	12	M					1	1					
		F						0	1				
STOLEN PROPERTY	13	M	5	2	3	2	1	13					
		F						0	7	1	5		
VANDALISM	14	M	75	47	44	47	54	267					
		F	4	12	4	4		24	195	16	76	4	
WEAPONS	15	M	2	11	14	8	16	51					
		F		2	3			5	40	5	10	1	
PROSTITUTION	16	M	1			1		2					
		F						0			2		
SEX OFFENSES	17	M	13	17	12	11	7	60					
		F	1			1	1	3	39	9	15		
SALE/MANUFACTURE OF DRUGS								0					
NARCOTICS	18A	M				1	2	3					
		F					3	3	6				
MARIJUANA	18B	M		1	3	3	7						
		F		1	2	1	4		11				

MONTHS OF: 1/90 to 12/90

AGE, SEX AND RACE OF PERSONS ARRESTED  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

OFFENSE	CLASS	SEX	AGE					TOTAL	RACE				
			12/ UNDER	13 14	15	16	17		18 UNDER	WHITE	BLACK	IND	ASIAN
SYNTHETIC NARCOTICS	18C	M		1				1					
		F		1				1	2				
OTHER NON-NARCOTIC	18D	M						0					
		F		1	1			2	1		1		
POSSESSION OF DRUGS							0						
NARCOTICS	18E	M				1	2	3					
		F			1		1	2	3	1	1		
MARIJUANA	18F	M	2	11	19	23	28	83					
		F		4	5	8	3	20	85	3	12	1	
SYNTHETIC NARCOTICS	18G	M						0					
		F						0					
OTHER NON-NARCOTIC	18H	M						0					
		F						0					
DRUG ABUSE GRAND TOTAL		M						0					
		F						0					
GAMBLING								0					
BOOKMAKING	19A	M						0					
		F						0					
NUMBERS	19B	M						0					
		F						0					
OTHER GAMBLING	19C	M						0					
		F						0					
FAMILY/CHILD	20	M			1			1					
		F						0	1				
DRIV. INFLC.	21	M			4	11	44	59					
		F			2	3	10	15	56		18		
LIQUOR	22	M	7	39	112	136	253	547					
		F	4	73	65	79	88	309	506	6	342	2	
DISORDERLY	24	M	7	9	7	10	14	47					
		F	1	1	4	6	1	13	36	8	15	1	
CURFEW	28	M	10	38	22	16	29	115					
		F	8	21	33	12	5	79	28	1	165		
RUN-AWAYS	29	M	1	7	8	3	6	25					
		F	1	2	3	4	5	15	22		18		
ALL OTHER	26	M	20	87	110	142	217	576					
		F	12	61	33	34	64	204	569	31	148	12	
		M	523	864	717	836	1125	4068					
		F	152	450	292	311	312	1517	3744	352	1396	90	

GRAND TOTAL 1314 1669 1147 1437 8382 5764 352 1396



I heard it  
through the

TO: Representative PHONE NO.: 465-2435  
Finkelstein FAX NO.: 465-3442

FROM: Donna Schultz PHONE NO.: 465-2112  
DFYS FAX NO.: 465-3190

MESSAGE: ATTN' Katherine  
Some arrest data on  
Juveniles.

**FAX LINE**

PLEASE SEE THAT THIS IS DELIVERED  
TO THE APPROPRIATE PERSON AS SOON  
AS POSSIBLE. THANK YOU!!!



DEPARTMENT OF HEALTH & SOCIAL SERVICES  
DIVISION OF FAMILY & YOUTH SERVICES  
P.O. BOX H  
JUNEAU, AK 99811-0630

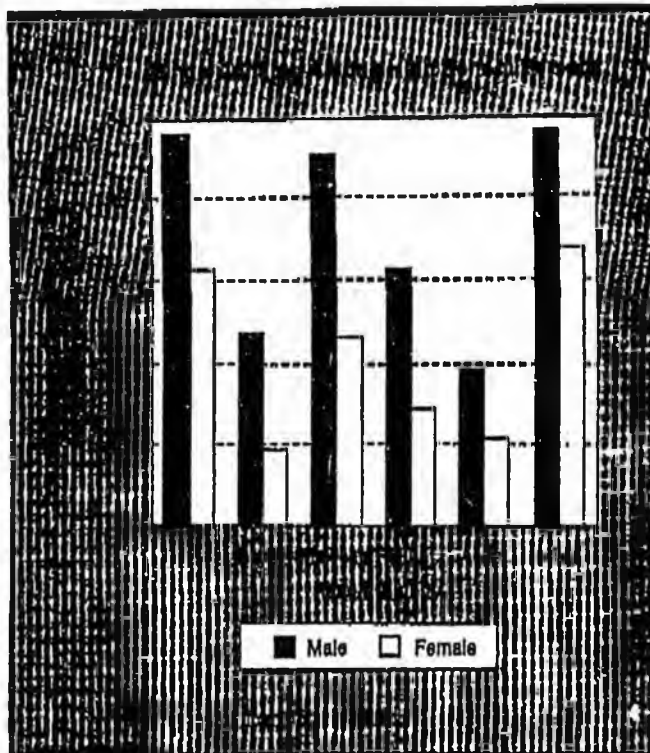
## What are the consequences of teen drinking?

- The number one killer of teens and young adults is alcohol-related highway death (National Highway Traffic Safety Administration, 1988).
- Alcohol is the major cause of all fatal and nonfatal crashes involving teen-aged drivers (Centers for Disease Control, *Morbidity and Mortality Weekly Report*, 1990). Nearly eight young people died each day—one every 3 hours—in 1989 in an alcohol-related vehicular crash (Office of the Inspector General Survey, 1991).
- Alcohol use also is associated with homicides, suicides, and drownings—the other three leading causes of death among youth (National Commission on Drug-Free Schools, 1990).
- In 1989, 9% (about 120,000) of State-funded alcohol treatment admissions were clients under the age of 21 (National Association of State Alcohol and Drug Abuse Directors, 1990).
- Among sexually active teens, those who averaged five or more drinks daily were nearly three times less likely to use condoms, thus placing them at greater risk for HIV infection. Among all teens who drink, 16% use condoms less often after drinking (*American Journal of Public Health*, 1990).
- A significant proportion of violent crimes among students—such as date or acquaintance rape, robbery, and assault—has been shown to involve alcohol. A survey of college administrators indicates that more than one-half of campus incidents, which ranged from violent behavior to damage to residence halls and other property, were related directly to alcohol use (National Commission for Drug-Free Schools, 1990).



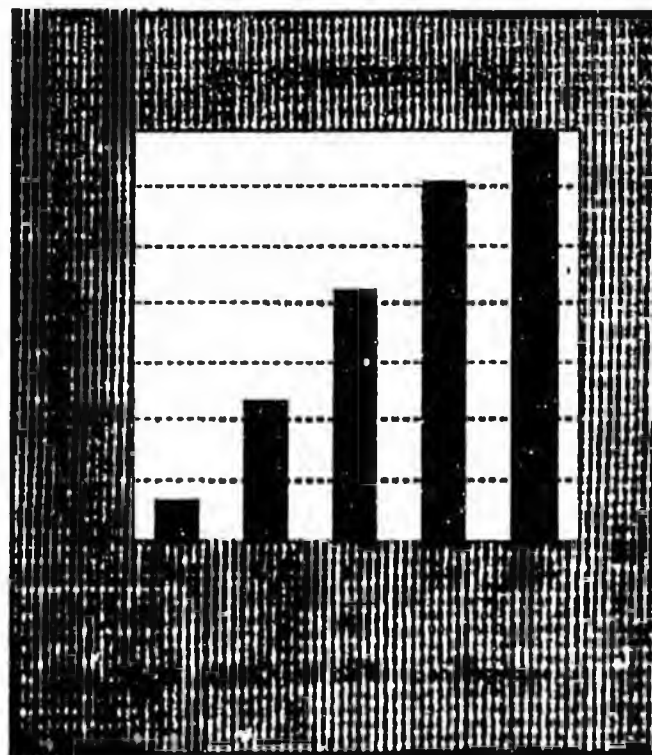
## How Many People Binge Drink?

- Among 12- to 17-year-olds who drink, 27% "down drinks fast to get an effect," and 28% experience blackouts (National Institute on Drug Abuse, National Household Survey on Drug Abuse, Main Findings, 1990).
- About one-third of twelfth-grade students engage in binge drinking at least once every 2 weeks and 4% drink daily (National High School Senior Survey, 1990).
- About 40% of college students engage in binge drinking regularly; 4% of college students, or about 0.5 million, drink every day (National High School Senior Survey, 1990).



## How big is the problem of teen drinking?

- According to a poll conducted by the National Association of Student Councils, alcohol is the leading school problem today: 46% say that alcohol is their school's most serious problem (*USA Today*, June 25, 1991).
- A 1990 survey of the American public, sponsored by the Century Council, found that 95% said "teenage drinking is a problem," and 75% agreed that the problem has become worse in the past 5 years. In this same survey, 73% said they "strongly" or "somewhat" agree that alcohol advertising is a "major contributor to underage drinking" (*Wall Street Journal*, August 21, 1991).
- Alcohol use increases dramatically through the teen years until age 21, when 61% of 18- to 21-year-olds are regular drinkers (National Institute on Drug Abuse, National Household Survey on Drug Abuse, 1988).
- About nine out of every ten high school seniors have tried alcohol, and nearly six



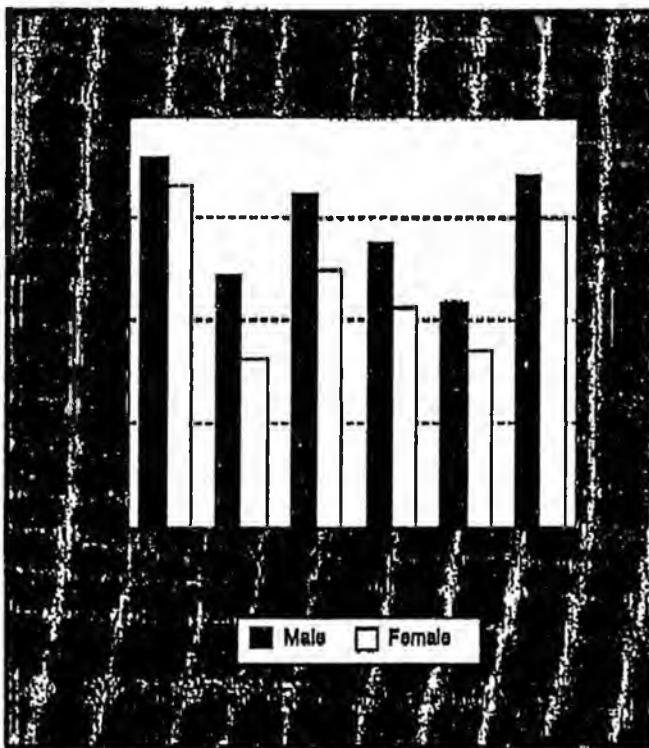
• About nine out of every ten high school seniors have tried alcohol, and nearly six



out of every ten are regular (at least monthly) users of alcohol (National High School Senior Survey, 1990).

- Over 75% of eighth-grade students have tried alcohol, and 55% of them have tried it by sixth grade. By tenth grade, nearly 90% of students report having tried alcohol; of these, 69% report first use by eighth grade (National Adolescent Student Health Survey, 1987).

### What are the race/ethnicity and gender differences?



- The highest drinking rates (defined as use in the last 30 days) are among White and American-Indian male and female high school seniors and Mexican-American males. These same groups are among the heaviest drinkers (*American Journal of Public Health*, 1991).

- Although drinking is less overall among female high school seniors, the use pattern follows that of males by race/ethnicity. In other words, current and heavy alcohol use is higher among White, American-Indian, and Mexican-American females and lower among African-American, Puerto Rican/Latin American, and Asian-American males and females (*American Journal of Public Health*, 1991).

- Nondrinking rates are highest among African-American and Asian-American youth (National Institute on Alcohol Abuse and Alcoholism, *Seventh Special Report to the U.S. Congress on Alcohol and Health*, 1990).

### What kind of alcoholic beverages do young people drink?

- Junior/middle and senior high school students drink 35% of all wine coolers sold in the United States (31 million gallons) and 11 billion cans of beer (102 million gallons) or 2 percent of the 62 billion bottles/cans of beer sold each year (Office of the Inspector General Survey, 1991).
- Teenagers prefer wine coolers (their drink of choice) because they like the fruity, non-alcoholic taste and because they think wine coolers don't contain much



alcohol. They drink more beer, however, because it is cheap and easy to get (Office of the Inspector General Survey, 1991).

### How do young people obtain alcoholic beverages?

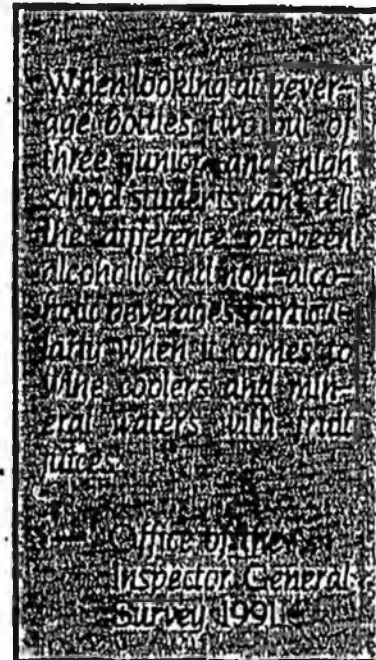
- Almost 7 million young people who drink (about two-thirds) buy their own alcoholic beverages. Students as young as ages 12 or 13 report buying alcoholic beverages in a store (Office of the Inspector General Survey, 1991).
- Young people get around purchase laws by having older friends buy alcoholic beverages for them, by using fake identifications, and by buying from stores that don't obey minimum purchase laws or that have young clerks (Office of the Inspector General Survey, 1991).
- Teenagers frequently find alcoholic beverages at parties without parental supervision and at friends' homes. Older teenagers who drink usually obtain alcohol from their friends, whereas younger ones get it from their parents (Office of the Inspector General Survey, 1991).

### Do young people have trouble buying alcoholic beverages?

- According to a recent study, 19- and 20-year-olds who tried to buy beer in Washington, D.C., were successful in 97 out of 100 attempts. Earlier research in Westchester, New York, had similar results. Nineteen- and 20-year-olds bought beer successfully 80% of the times they tried. These youths rarely were asked for identification to verify that they were age 21 (Insurance Institute for Highway Safety, 1991).

### What misconceptions do young people have about alcoholic beverages?

- Minimum purchase age: 5.6 million teenagers don't know that the minimum legal age for purchasing alcohol is age 21 in every State; even worse, 2 million don't even know that such a law exists (Office of the Inspector General Survey, 1991).
- Alcohol's intoxication effects: 26 million teenagers don't know that a person can die from an overdose of alcohol. One-third believe that drinking coffee, taking a cold shower,

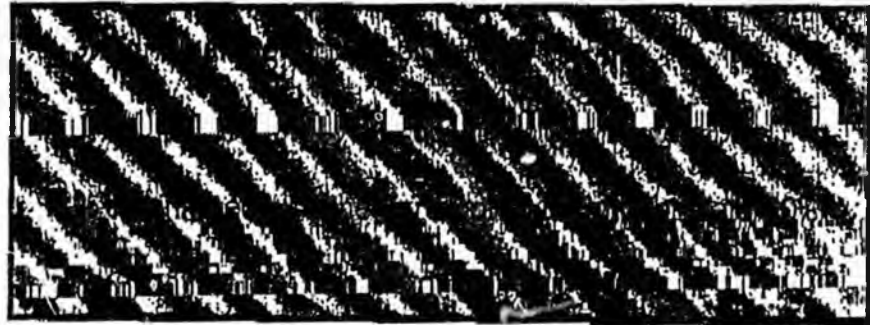


or getting fresh air can 'sober you up' (Office of the Inspector General Survey, 1991).

- Relative strengths/equivalencies: 80% of teenagers don't know that a can of beer has the same amount of alcohol as a shot of whiskey or a glass of wine, and 55% don't know that a 5-ounce glass of wine and a 12-ounce can of beer have the same amount of alcohol. Almost one-half mistakenly believe that a can of beer contains more alcohol than a shot of whiskey or a glass of wine (Office of the Inspector General Survey, 1991).

## Why do young people drink alcoholic beverages?

According to the Office of the Inspector General's 1991 survey, many teenagers drink to handle stress or to change the way they feel:



## Are young users of alcohol more likely to use other drugs?

- Young people who start using alcohol within the critical 13- to 16-year-old age period have a higher tendency to be current users of alcohol, cigarettes, or marijuana than do those who start drinking when they are older (Yu and Willford, 1990).
- The majority of young people who use illegal drugs first used alcohol. And, they continue using alcohol along with regular use of other drugs. As a result, these young people have higher-than-average rates of alcohol-related injury and death (National Commission on Drug-Free Schools, p. 64).
- Delaying the age of first use of alcohol beyond childhood and adolescence reduces the risk of alcohol and other drug problems later (Robins and Przybeck, 1985).

## RESOURCES

ARROW/Native American Development Corporation  
1000 Connecticut Ave., Suite 1206  
Washington, DC 20036  
(202) 296-0685

Hispanic Information and Telecommunications Network  
449 Broadway, Third Floor  
New York, NY 10013  
(212) 966-5660

Indian Health Service  
Colorado River Service  
Route 1, Box 12  
Parker, AZ 85344  
(602) 669-2137

Institute on Black Chemical Abuse  
2616 Nicollet Ave. S.  
Minneapolis, MN 55407  
(612) 871-7878

Marin Institute for the Prevention of Alcohol and Other Drug Problems  
24 Belvedere St.  
San Rafael, CA 90013  
(415) 456-5692

Multi-Media Center  
Morehouse School of Medicine  
720 Westview Dr. S.W.  
Atlanta, GA 30310-1495  
(404) 752-1530

National Asian Pacific American Families Against Substance Abuse  
420 E. Third St., Suite 909  
Los Angeles, CA 90013  
(213) 617-8277

National Prevention Network  
c/o Louisiana Division of Alcohol and Drug Abuse  
P.O. Box 3868  
Baton Rouge, LA 70821-3868  
(504) 342-9351

National Association for Children of Alcoholics  
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National Coalition of Hispanic Health and Human Service Organizations  
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Atlanta, GA 30345  
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National Federation of Parents  
9551 Big Bend  
St. Louis, MO 63122  
(314) 968-1322

Resource Center on Substance Abuse Prevention and Disabilities  
1331 F St. N.W., Suite 800  
Washington, DC 20004  
(202) 783-2900



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Historical and Statutory Notes Intent—Laws 1987, ch. 202: See Historical Note following § 2.04.190.  
1987 Legislation  
Laws 1987, ch. 202, § 223, throughout the section, substituted "deputy" for "conatable".

## CHAPTER 66.44—ENFORCEMENT—PENALTIES

Section  
66.44.328. Preparation or acquisition and supply to persons under age twenty-one of facsimile of official identification card—Penalty.  
66.44.365. Juvenile driving privileges—Alcohol or drug violations.  
66.44.800. Compliance by Washington wine commission.

### 66.44.010. Local officers to enforce law—Authority of board—Liquor enforcement officers

(1) All county and municipal peace officers are hereby charged with the duty of investigating and prosecuting all violations of this title, and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all fines imposed for violations of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor shall belong to the county, city or town wherein the court imposing the fine is located, and shall be placed in the general fund for payment of the salaries of those engaged in the enforcement of the provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

(2) In addition to any and all other powers granted, the board shall have the power to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. The board may appoint and employ, assign to duty and fix the compensation of, officers to be designated as liquor enforcement officers. Such liquor enforcement officers shall have the power, under the supervision of the board, to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. They shall have the power and authority to serve and execute all warrants and process of law issued by the courts in enforcing the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. They shall have the power to arrest without a warrant any person or persons found in the act of violating any of the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor.

Amended by Laws 1987, ch. 202, § 224.

Historical and Statutory Notes Intent—Laws 1987, ch. 202: See Historical Note following § 2.04.190.  
1987 Legislation  
Laws 1987, ch. 202, § 224, near the end of subsec. (1), substituted "district court" for "justice court".

### 66.44.180. General penalties—Jurisdiction for violations

Every person guilty of a violation of this title for which no penalty has been specifically provided shall be liable, on conviction, for a first offense to a penalty of not more than five hundred dollars, or to imprisonment for not more than two months, or both; for a second offense to imprisonment for not more than six months; and for a third or subsequent offense to imprisonment for not more than one year. If the offender convicted of an offense referred to in this section is a corporation, it shall for a first offense be liable to a penalty of not more than five thousand dollars, and for a second or subsequent offense to a penalty of not more than ten thousand dollars, or to forfeiture of its corporate license, or both.

Every district judge and municipal judge shall have concurrent jurisdiction with superior court judges of the state of Washington of all violations of the provisions of this title and may impose any punishment provided therefor.

Amended by Laws 1987, ch. 202, § 225.

Historical and Statutory Notes substituted "district judge and municipal judge" for "justice of the peace and magistrate".  
1987 Legislation  
Laws 1987, ch. 202, § 225, near the beginning of the second paragraph, substituted "district judge and municipal judge" for "justice of the peace and magistrate".  
Intent—Laws 1987, ch. 202: See Historical Note following § 2.04.190.

### 66.44.200. Sales to persons apparently under the influence of liquor

Notes of Decisions  
Negligence per se 3  
Obviously intoxicated 2

Purchase v. Meyer (1987) 108 Wash.2d 220, 737 P.2d 661.

Exceptions to general rule of nonliability for furnishing intoxicants to able-bodied persons exist for obviously intoxicated persons, persons in state of helplessness, or persons in special relationship to furnisher of intoxicants. Rhea v. Grandview School Dist. No. JT 116-200 (1985) 39 Wash.App. 557, 694 P.2d 666.

#### 3. Negligence per se

Liquor establishment was not negligent per se in violating West's RCWA 66.44.200 and 66.44.320 by furnishing intoxicating liquor to intoxicated person who was also minor, for purposes of assault victim's action against liquor establishment based upon intoxicated patron's assault of victim; prevention of driver error was obvious and legitimate purpose behind legislation and thus, statutes were not intended to protect against particular hazard of subsequent criminal assault by patron. Christen v. Lee, Wash.1980 113 Wash.2d 479, 780 P.2d 1307.

#### 2. Obviously intoxicated

Results of alcohol breath test taken hours after minor was served alcoholic beverages at restaurant and pharmacologist's affidavit which, based on breath test results, purported to relate minor's blood alcohol content back to time minor was last served at restaurant did not show that minor appeared "obviously intoxicated," for purpose of this section, when she was served at restaurant. Purchase v. Meyer (1987) 108 Wash.2d 220, 737 P.2d 661.

Investigating officer's testimony as to how minor appeared to him at scene of motor vehicle accident an hour or two after minor was last served alcohol at restaurant did not show that minor appeared "obviously intoxicated" to those around her when she was served liquor at restaurant, for purpose of this sec-

### 66.44.270. Furnishing liquor to minors—Possession, use—Exceptions

(1) It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control.

(2) It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor.

(3) This section does not apply to liquor given or permitted to be given to a person under the age of twenty-one years by a parent or guardian and consumed in the presence of the parent or guardian. This subsection shall not authorize consumption or possession of liquor by a person under the age of twenty-one years on any premises licensed under chapter 66.24 RCW.

(4) This section does not apply to liquor given for medicinal purposes to a person under the age of twenty-one years by a parent, guardian, physician, or dentist.

(5) This section does not apply to liquor given to a person under the age of twenty-one years when such liquor is being used in connection with religious services and the amount consumed is the minimal amount necessary for the religious service.

(6) Conviction or forfeiture of bail for a violation of this section by a person under the age of twenty-one years at the time of such conviction or forfeiture shall not be a disqualification of that person to acquire a license to sell or dispense any liquor after that person has attained the age of twenty-one years.

Amended by Laws 1987, ch. 458, § 3.

#### Historical and Statutory Notes

##### 1987 Legislation

Laws 1987, ch. 458, § 3, rewrote the section.

Severability—Laws 1987, ch. 458: See Historical Note following § 48.21.160.

#### Notes of Decisions

##### Consumption 2.6

##### Possession 2.5

#### 2. In general

State v. Hornaday (1984) 98 Wash. App. 431, 685 P.2d 653 [main volume] reversed 105 Wash.2d 120, 713 P.2d 71.

This section does not protect third parties injured by intoxicated minors; rather, section protects minors from injuries to themselves stemming from their alcohol consumption. Mills v. Estate of Schwartz (1986) 44 Wash.App. 578, 722 P.2d 1363.

#### 2.5. Possession

Once alcohol is within person's system, power of person to control, possess, use or dispose of it is at an end. "possession" of liquor does not include liquor which has been assimilated by the body. State v. Hornaday (1986) 105 Wash.2d 120, 713 P.2d 71.

#### 2.6. Consumption

Alcohol which has already been swallowed and is in process of being assimilated into person's body is not being consumed for purposes of this section. State v. Hornaday (1986) 105 Wash.2d 120, 713 P.2d 71.

#### 5. Negligence per se

Even if county violated statute [§ 66.44.270] making it unlawful for anyone to permit any person under age of 21 to consume liquor on premises or any premises under his control, motorcyclist who was struck by vehicle driven by minor who allegedly became intoxicated in county park and who drove out of park at direction of park official was not member of class of persons statute was designed to protect and, therefore, violation of statute was not actionable by motorcyclist under theory of negligence per se. Hostetler v. Ward (1985) 41 Wash.App. 343, 704 P.2d 1193.

County in its role as property owner did not have sufficient control over activities in park to justify finding that it permitted minor to consume liquor on its premises and, therefore, county could not be held liable for injuries sustained by motorcyclist who was struck by vehicle driven by minor after minor allegedly became intoxicated in park and had been directed to leave by park official. Hostetler v. Ward (1986) 41 Wash.App. 343, 704 P.2d 1193.

Decedent, who was killed when automobile driven by minor was involved in accident, was not member of class protected by this section, for purpose of minor's estate's contribution claim against deceased victim's employer, which had held Christmas party which decedent and minor had attended, and at which minor had consumed alcoholic beverages, so that employer could not be

held liable for decedent's death on negligence per se theory based on its alleged violation of section and therefore, since no joint and several liability could exist between employer and minor's estate, minor's estate failed to state claim for contribution. Mills v. Estate of Schwartz (1986) 44 Wash.App. 578, 722 P.2d 1363.

#### 66.44.291. Minor purchasing or attempting to purchase liquor—Penalty against persons between ages of eighteen and twenty, inclusive

Every person between the ages of eighteen and twenty, inclusive, who is convicted of a violation of RCW 66.44.290 is guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community service shall require not fewer than twenty-five hours of such service.

Amended by Laws 1987, ch. 101, § 1.

#### Historical and Statutory Notes

##### 1987 Legislation

Laws 1987, ch. 101, § 1, rewrote the section.

#### 66.44.316. Certain persons eighteen years and over permitted to enter and remain upon licensed premises during employment

It is lawful for:

(1) Professional musicians, professional disc jockeys, or professional sound or lighting technicians actively engaged in support of professional musicians or professional disc jockeys, eighteen years of age and older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment as musicians, disc jockeys, or sound or lighting technicians;

(2) Persons eighteen years of age and older performing janitorial services to enter and remain on premises licensed under the provisions of Title 66 RCW when the premises are closed but only during and in the course of their performance of janitorial services;

(3) Employees of amusement device companies, which employees are eighteen years of age or older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment for the purpose of installing, maintaining, repairing, or removing an amusement device. For the purposes of this section amusement device means coin-operated video games, pinball machines, juke boxes, or other similar devices; and

(4) Security and law enforcement officers, and fire fighters eighteen years of age or older to enter and to remain in any premises licensed under Title 66 RCW, but only during and in the course of their official duties and only if they are not the direct employees of the licensee. However, the application of the [this] subsection to security officers is limited to casual, isolated incidents arising in the course of their duties and does not extend to continuous or frequent entering or remaining in any licensed premises.

Citation	Rank(R)	Page(P)	Database	Mode
--- P.2d ----	R 1 OF 28	P 1 OF 16	WA-CS	P

(Cite as: 1992 WL 28858 (Wash.))

Judith HANSEN, individually and as Personal Representative of the Estate of  
Keith Hansen, Petitioner,

v.

Robert Anthony FRIEND and Jane Doe Friend, husband and wife; Robert M. Petty  
and Jane Doe Petty, husband and wife; and John and Jane Does 1-10, husbands  
and wives. Respondents.

No. 57658-1.

Supreme Court of Washington.

En Banc.

Feb. 20, 1992.

Kargianis, Austin & Osborn, Bruce A. Wolf, Sim Osborn, Seattle, for  
petitioner.

Murray, Dunham & Murray, Harold B. Field, Ronald L. Unger, Reed & McClure,  
William Robert Hickman, Pamela A. Okano, Marilee C. Erickson, Seattle, for  
respondents.

JOHNSON, Justice.

> \*1 Fifteen-year-old Keith Hansen drowned in an alcohol-related incident.  
The petitioner, Hansen's mother, seeks review of the Court of Appeals opinion  
affirming the trial court's summary judgment dismissal of her wrongful death  
suit. 59 Wash.App. 236, 797 P.2d 521. In her suit, she alleges the  
respondents, two adult social hosts, negligently furnished liquor to her minor  
son, causing his intoxication and death. The Court of Appeals held that social  
hosts could not be held liable as a matter of law. We reverse the Court of  
Appeals and remand the case to the trial court.

On April 24, 1987, 15-year-old Keith Hansen and 21-year-old Robert Friend  
drank liquor at Friend's house in Kent, Washington. Hansen supplied the liquor  
from his parents' house. The two drank through the night and into the morning.

When 21-year-old Robert Petty arrived at Friend's house that morning, both  
Hansen and Friend were visibly intoxicated. Petty and Friend had planned to  
leave that day for Lake Jameson in Eastern Washington for an overnight fishing  
trip. When Petty arrived, he had with him two or three half-cases of beer.  
Friend asked Petty if Hansen could go on the fishing trip with them, and Petty  
agreed.

On the way to Lake Jameson, the three stopped at a store where Petty bought  
another 6-pack of beer. The three arrived at Lake Jameson around 6:30 p.m.,  
set up camp and had dinner. Petty stated in his deposition that he and Friend  
had some beer at this time, but that Hansen did not. Friend's deposition  
indicates, however, that Hansen may also have consumed alcohol at this time.  
Clerk's Papers, at 64-65. Petty went to sleep around 9 p.m., after having two  
or three beers. By this time, Friend had consumed from two to four beers.  
Hansen's access to the beer does not appear to have been restricted in any way  
at the campsite.

Around 11 p.m., Hansen and Friend entered an adjacent campsite. Both were visibly and severely intoxicated. They stumbled back toward their own campsite around 11:30 p.m. Alan Petty, Robert's brother, arrived at the lake about this time. Shortly after Alan Petty's arrival at the campsite, Hansen left once again, stating he was going to another campsite to steal a beer.

Sometime afterward, the campers at the adjacent campsite heard a loud splash. They then heard something or someone splashing in the water, going up and down gasping for air. They ran to Hansen's campsite to get help. Alan Petty and one of the other campers got in a boat and searched the lake, but they found nothing. Hansen's body floated to the surface of Lake Jameson about 2 weeks later.

(1) The petitioner contends Friend and Robert Petty negligently furnished liquor to her minor son. In order to prove actionable negligence, a plaintiff must establish: (1) the existence of a duty owed to the complaining party; (2) a breach of that duty; (3) a resulting injury; and (4) that the claimed breach was the proximate cause of the injury. *Pedroza v. Bryant*, 101 Wash.2d 226, 228, 677 P.2d 166 (1984). At issue here is whether Friend and Petty owed a duty of care to Hansen.

> \*2 (2)(3) Whether a defendant owes a duty of care to the complaining party is a question of law. *Pedroza*, at 228, 677 P.2d 166. The standard of conduct required of a reasonable person may be prescribed by legislative enactment. *Young v. Caravan Corp.*, 99 Wash.2d 655, 659, 663 P.2d 834, 672 P.2d 1267 (1983) (citing *W. Prosser, Torts* s 36 (4th ed. 1971)). The  
>petitioner argues RCW 66.44.270(1) provides the relevant duty of care in this case. This statute provides, in part, that:

It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control. (FN1)

The Legislature has thus established that both commercial hosts and social hosts commit a criminal act if they furnish liquor to a minor. See also RCW 66.44.320 (also prohibiting the sale of liquor to any minor). This court has held that commercial hosts can be held liable in a civil cause of action for breaching their statutory duty not to sell liquor to minors. See *Young*, at 660, 663 P.2d 834. We are thus faced with the question of whether RCW  
>66.44.270(1), which makes it a criminal act for "any person" (FN2) to furnish liquor to a minor, also defines the standard of conduct required of a reasonable person in a social host position.

The Washington courts have adopted the 4-part test from the Restatement (Second) of Torts s 286 (1965) for determining when the court may adopt a legislative enactment as a reasonable person's standard of conduct. *Young*, at 659-60, 663 P.2d 834.

The Restatement indicates:

The court may adopt as the standard of conduct of a reasonable (person) the requirements of a legislative enactment ... whose purpose is found to be exclusively or in part

(a) to protect a class of persons which includes the one whose interest is invaded, and

(b) to protect the particular interest which is invaded, and

(c) to protect that interest against the kind of harm which has resulted, and

(d) to protect that interest against the particular hazard from which the harm results.

Restatement (Second) of Torts s 286 (1965).

The first question under this test is whether Hansen was a member of the class >protected under the statute. RCW 66.44.270(1) prohibits persons from furnishing liquor to a minor. The statute defines "minor" as any person under >the age of 21 years. RCW 66.44.270(1). A rational basis exists for setting the legal drinking age at 21 years. *Houser v. State*, 85 Wash.2d 803, 808, 540 P.2d 412 (1975), overruled on other grounds in *State v. Smith*, 93 Wash.2d 329, 336, 610 P.2d 869, cert. denied, 449 U.S. 873, 101 S.Ct. 213, 66 L.Ed.2d 93 (1980). Hansen was 15 years old when the incident occurred and therefore was a member of the protected class.

The second question under the Restatement is whether the statute protects the particular interest which was invaded. The purpose behind the Washington State Liquor Act is to protect "the welfare, health, peace, morals, and safety of the >people of the state". RCW 66.08.010. RCW 66.44.270(1) protects a minor's health and safety interest from the minor's own inability to drink responsibly. The Legislature believed that persons under 21 years of age are neither physically nor mentally equipped to handle the consumption of intoxicating liquor. *Young*, 99 Wash.2d at 660, 663 P.2d 834 (citing *Callan v. O'Neil*, 20 Wash.App. 32, 39, 579 P.2d 890 (1978)). Hansen's health and safety interest was invaded by the effects of alcohol. The statute was thus designed to protect the particular interest which was invaded.

> \*3 The third question is whether the statute protects a minor's health and >safety interest against the kind of harm which resulted. RCW 66.44.270(1)'S prohibition against giving alcohol to minors protects a minor's interest against physical harm which could result from his or her abuse of alcohol. Hansen suffered physical harm in this case, allegedly as a result of his intoxication. The statute therefore protects against the kind of harm suffered here.

The final question is whether the purpose of the statute is to protect a minor's health and safety interest from the particular hazard from which the harm resulted. The particular hazard the statute regulates is alcohol in the hands of minors. The statute was therefore designed to protect Hansen from the particular hazard at issue.

The statute thus meets the Restatement's 4-part test for adoption as a reasonable person's standard of conduct. The respondents argue, however, that *Burkhart v. Harrod*, 110 Wash.2d 381, 755 P.2d 759 (1988) should still bar a cause of action in this case. In *Burkhart*, this court held that social hosts who served liquor to an adult guest could not be sued for injuries resulting from the guest's intoxication.

This court reasoned in *Burkhart* that the only indication of legislative intent in the area of social host liability was the disinclination to impose such liability due to the fact that the Legislature repealed the dramshop act in 1955. (FN3) *Burkhart*, at 387-88, 755 P.2d 759. In this case, however, the Legislature has acted to prohibit both social hosts and commercial hosts from furnishing liquor to minors. The Legislature has enacted criminal penalties on "any person" who gives, sells or otherwise furnishes liquor to minors.

(4)(5) This case involves furnishing liquor to a minor, not an adult, and is thus distinguishable from *Burkhart*. The Legislature established that persons under 21 years of age are a protected class under the Washington State Liquor Act, RCW Title 66. *Young*, 99 Wash.2d at 660, 663 P.2d 834 (citing *Callan v. O'Neil*, supra ). We therefore conclude that RCW 66.44.270(1) imposes a duty >

of care on social hosts not to serve liquor to minors. A minor may maintain an action against a social host where this duty is breached, and the injuries sustained by the minor are proximately caused by this breach.

(6) If a social host breaches his or her duty not to furnish liquor to a minor, the trier of fact may consider the breach as evidence of negligence, rather than as negligence per se. See RCW 5.40.050. The Legislature has abolished the common law doctrine of negligence per se for cases filed on or after August 1, 1986. See RCW 5.40.050; (FN4) Laws of 1986, ch. 305, s 910, p. 1367. Because the petitioner filed this suit in 1988, the negligence per se doctrine does not apply.

(7)(8) The practical effect of RCW 5.40.050 is:

to eliminate what might be called the "strict liability" character of statutory violations under the old negligence per se doctrine, (and) to allow

jury to weigh the violation, along with other relevant factors, in reaching its ultimate determination of liability.

See *Doss v. ITT Rayonier, Inc.*, 60 Wash.App. 125, 129-30, 803 P.2d 4, review denied, 116 Wash.2d 1034, 813 P.2d 583 (1991). In weighing the relevant factors, the trier of fact may find a statutory violation is not negligence where the violation is due to some cause beyond the violator's control, and ordinary care could not have guarded against the violation. See

6 Wash.Prac., WPI 60.03 (3d ed. 1989); *Young*, 99 Wash.2d at 661, 663 P.2d 834 (interpreting the above language as an exception under the former negligence per se standard) (citing *Brotherton v. Day & Night Fuel Co.*, 192 Wash. 362, 369-70, 73 P.2d 788 (1937)). Whether or not ordinary care could have guarded against the statutory violations alleged here is a question for the trier of fact.

(9)(10) Petty argues that a social host's duty not to furnish liquor to a minor should be limited only to minors who subsequently drive while intoxicated. We note, however, that the concept of foreseeability determines the scope of the duty owed. *Christen v. Lee*, 113 Wash.2d 479, 492, 780 P.2d 1307 (1989). Foreseeability is normally an issue for the trier of fact. *Christen*, at 492, 780 P.2d 1307. In order to establish foreseeability:

the harm sustained must be reasonably perceived as being within the general field of danger covered by the specific duty owed by the defendant.

*Christen*, at 492, 780 P.2d 1307 (quoting *Maltman v. Sauer*, 84 Wash.2d 975, 981, 530 P.2d 254 (1975)). Many minors do not drive, as they are ineligible to obtain drivers' licenses until the age of 16 years, RCW 46.20.031(1). It therefore remains a question for the trier of fact whether the harm 15-year-old Hansen sustained was foreseeable.

(11)(12) Although a minor may maintain a suit against a social host, two factors may limit the extent of a minor's recovery. First, minors can be found contributorily negligent for violating RCW 66.44.270(2) which provides: "It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor." In *Young*, this court held that the 19-year-old decedent who consumed alcohol in a commercial host setting was contributorily negligent as a matter of law. *Young*, 99 Wash.2d at 661-62, 663 P.2d 834. The issue of contributory negligence for minors from 6 to 16 years of age, however, is generally a question for the trier of fact. *Bauman v. Crawford*, 104 Wash.2d 241, 244, 704 P.2d 1181 (1985). Therefore, whether 15-year-old Hansen was contributorily negligent in this case is an issue for the trier of fact.

(13) Second, a minor's recovery may be limited by RCW 5.40.060 which provides that:

It is a complete defense to an action for damages for personal injury or wrongful death that the person injured or killed was under the influence of intoxicating liquor ... at the time of the occurrence causing the injury or death and that such condition was a proximate cause of the injury or death and the trier of fact finds such person to have been more than fifty percent at fault....

> \*5 A minor is thus barred by statute from receiving damages from a social host where the trier of fact finds the minor more than 50 percent at fault.

(14)(15)(16) Even in view of social host liability for furnishing liquor to minors, Friend and Petty both argue that the trial court's summary judgment in their favor is still appropriate. A court will grant summary judgment only when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *Wilson v. Steinbach*, 98 Wash.2d 434, 437, 656 P.2d 1030 (1982). The court must consider all facts submitted and all reasonable inferences from the facts in the light most favorable to the nonmoving party. *Wilson*, at 437, 656 P.2d 1030. The motion will be granted only if reasonable persons could reach only one conclusion from all of the evidence. *Wilson*, at 437, 656 P.2d 1030.

Friend argues summary judgment in his favor is appropriate because he did not give or otherwise supply liquor to Hansen. However, it is unclear from the record whether the liquor at the campsite was Petty's or both Friend's and Petty's. Questions of material fact remain in Friend's case. Summary judgment as to Friend is therefore inappropriate.

Petty argues summary judgment in his favor is appropriate for two reasons. First, he argues the record reflects he did not give any liquor to Hansen; rather, Hansen merely took the liquor without Petty's knowledge. Second, Petty argues the record does not reflect he knew or had reason to know Hansen was a minor. Petty failed to raise either of these arguments before the trial court. An appellate court will generally not consider arguments raised for the first time on appeal, and we decline to do so here. See *Smith v. Shannon*, 100 Wash.2d 26, 37, 666 P.2d 351 (1983). Summary judgment is inappropriate as to both Petty and Friend.

In conclusion, under RCW 66.44.270(1), it is a criminal act for any person, acting as a social host, to furnish liquor to a minor. Pursuant to this statute, social hosts owe a duty to exercise ordinary care not to furnish liquor to a minor. A minor may maintain an action against a social host where this duty is breached, and the injuries sustained by the minor are proximately caused by this breach. The minor's recovery, however, may be limited by a finding of contributory negligence. Moreover, if the trier of fact finds the minor more than 50 percent at fault, the minor's recovery is entirely barred by statute.

Because questions of material fact remain in this case as to both respondents, we remand the case to the trial court for proceedings consistent with this opinion.

UTTER, BRACHTENBACH, ANDERSEN and SMITH, JJ., concur.

DOLLIVER, Justice (dissenting).

Like Julia, in *Burkhart v. Harrod*, 110 Wash.2d 381, 755 P.2d 759 (1988), the court whispered, "I will ne'er consent". Now, like Julia, it has consented.

As is so many times the case in contemporary society, the court chooses to use as its vehicle for significant doctrinal change the presumed welfare of persons under the age of majority. In doing so, the court completely disconnects itself from its previous analysis of the duty of care for a social host who serves alcoholic beverages.

> \*6 The underpinnings for Burkhart, which rested upon the belief that (1) the Legislature had effectively preempted the field relative to all aspects of alcoholic beverages (Burkhart, at 390, 755 P.2d 759 (quoting *Settlemyer v. Wilmington Veterans Post 49, Am. Legion, Inc.*, 11 Ohio St.3d 123, 127, 464 N.E.2d 521 (1984))), and (2) the "judiciary is ill equipped" to impose social host liability, have been scuttled. Burkhart, 110 Wash.2d at 388, 755 P.2d 759. While the analysis of the majority moves briskly to the point and suggests considerable authority as it imposes a duty on a social host relative to minors, it is idle to infer the Legislature in enacting RCW

>66.44.270(1) (Laws of 1933, 1st Ex.Sess., ch. 62, s 37(1), p. 193) somehow thought it was imposing a duty of care, actionable in tort, for a social host who serves liquor to minors; or that nearly 60 years hence that duty would be discovered by this court.

I have consistently held to the belief that without legislative mandate no tort action should lie against a host, either commercial (*Dickinson v. Edwards*, 105 Wash.2d 457, 482, 486, 716 P.2d 814 (1986) (Callow, J., dissenting; Durham, J., dissenting)) or social (*Burkhart v. Harrod*, supra) (but see *Young v. Caravan Corp.*, 99 Wash.2d 655, 663 P.2d 834, 672 P.2d 1267 (1983)), and continue to do so. Nothing which has occurred in the months since Burkhart persuades me otherwise. Furthermore, the Legislature has failed to act. Nonetheless, the majority, apparently transfixed by the facts before it and harboring a belief that "youth must be served", has determined it can and, indeed, should "take on a more creative role in usurping powers of (the Legislature)." Burkhart, 110 Wash.2d at 390, 755 P.2d 759. This is an odd way to maintain continuity in the law and surely does little to engender respect.

Thus, given the action of the court today, I do not believe it can any longer, with integrity, maintain its previous position. To do so would be a transparent charade. Although I dissent here, it seems more than likely that in the next case involving a social host the court will declare the doctrine of social host immunity has ceased to exist in this state and hold there is a duty by any social host toward those to whom the host has furnished alcoholic beverages. *Christen v. Lee*, 113 Wash.2d 479, 510, 780 P.2d 1307 (1989) (Utter, J., concurring in part, dissenting in part); Burkhart, 110 Wash.2d at 391, 755 P.2d 759 (Utter, J., concurring); Recent Cases, Negligence--Social Host Liability--Social Hosts Not Liable for Accidents Caused by Intoxicated Guests.--Burkhart v. Harrod, 110 Wash.2d 381, 755 P.2d 759 (1988), 102 Harv.L.Rev. 549 (1988).

DORE, C.J., and GUY and DURHAM, JJ., concur.

FN1. A previous version of this statute was in effect at the time of Hansen's death. See Laws of 1955, ch. 70, s 2. The previous version, like the present version, prohibited giving or otherwise supplying liquor to minors. As such, the two versions of the statute do not differ materially for the purpose of our analysis.

> FN2. RCW 66.44.270 provides for the following narrow exceptions where minors may be given liquor, none of which apply in this case:  
"(3) This section does not apply to liquor given or permitted to be given to a person under the age of twenty-one years by a parent or guardian and consumed in the presence of the parent or guardian....  
"(4) This section does not apply to liquor given for medicinal purposes to a person under the age of twenty-one years by a parent, guardian, physician, or dentist.  
"(5) This section does not apply to liquor given to a person under the age of twenty-one years when such liquor is being used in connection with religious services and the amount consumed is the minimal amount necessary for the religious service."

FN3. The dramshop act formerly provided a cause of action to anyone injured by an intoxicated person against anyone who sold or gave the liquor to the intoxicated person. See Laws of 1905, ch. 62, s 1, p. 120.

FN4. RCW 5.40.050 allows for the following limited exceptions where the negligence per se doctrine continues to apply: "any breach of duty as provided by statute, ordinance, or administrative rule relating to electrical fire safety, the use of smoke alarms, or driving while under the influence of intoxicating liquor or any drug, shall be considered negligence per se."

Wash., 1992.

Hansen v. Friend

--- P.2d ----, 1992 WL 28858 (Wash.)

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# Primary election test continu

By JOHN KING

THE ASSOCIATED PRESS

**NEW LONDON, Conn.** — The primary calendar offers likely Democratic nominee Bill Clinton a chance to test themes in a handful of major states critical to party hopes of breaking the Republican lock on presidential elections.

Provided he keeps his commanding delegate lead over lone rival Jerry Brown, Clinton could campaign in late primaries with an eye on the fall, targeting moderate suburban voters who have deserted the Democratic Party in recent presidential contests.

The results could play a major role in picking fall target states and perhaps his choice of a vice presidential running mate.

First, the Arkansas governor is trying to stretch his 7-to-1 delegate lead over Brown in Tuesday's Connecticut primary. Clinton has kept a busy schedule, including a frenetic statewide bus tour today, because of what aides

say was a shift to Brown among supporters of former Massachusetts Sen. Paul Tsongas, who quit the race last week.

Brown, campaigning today in Bristol, Conn., called Clinton the "greatest bluffer to enter American politics in my lifetime" and accused his strategists of putting out "propaganda" that the Arkansas governor had a lock on the nomination.

"I think it would be an alarming situation if the spin doctors of Bill Clinton were able to adopt a Politburo-type, one-candidate strategy for the Democrats," he said.

After Connecticut, the Clinton camp hopes to begin targeting voters critical to upsetting President Bush. The campaign has set a \$12 million fund-raising goal between now and the Democratic convention in July, with the money to be used for advertising in key late primary states and to build an organization for the fall.

"It so happens that there are huge opportunities that are huge for Clinton strategist Paul Tsongas when we get the opportunity to build for.

Five of the coming primary targets became attractive targets because of prizes: New York, New Jersey and Ohio, although California. President Michael Dukakis in 1992.

Bush won California by 9 million cast and Pease cast. Bush's margins in New Jersey and Ohio, although possibly New Jersey, are of the struggling economy more than half the 27 win the presidency.

The Clinton camp

## BRIEFLY

### National

**Surgeon General criticizes alcohol ads:** Surgeon General Antonia Novello today demanded that the alcohol industry drop advertising meant to appeal to young people.

"I have asked them to stop using any ads that lead our youth to think they can ski, swim, scuba dive or race cars better if they drink," the surgeon general said at a national conference on alcohol abuse prevention.

"In short, we are doing everything we can to change the way Americans think and act with regard to the use and misuse of alcohol," she said.

This is the second time in two weeks Novello has attacked advertising she believes entices the young to engage in behavior that will hurt them. Earlier this month, she and the American Medical Association asked RJR Nabisco to withdraw Camel cigarette advertising featuring "Old Joe," the suave cartoon camel used to promote the brand.

Today, Novello said that people who drink too much have accidents: They fall, get burned, get shot or drown.

\*\*\*\*\*

**Fuel leaks scrub shuttle mission:** NASA called off today's launch of space shuttle Atlantis from Cape Canaveral, Fla., because of fuel leaks. The flight was rescheduled for Tuesday morning.

"If all the data associated with these leaks end up the way we think it will, we'll go ahead and start tanking (Monday night) and hopefully proceed to a launch" on Tuesday morning, said launch director Bob Sieck.

High levels of both hydrogen and oxygen were detected in the engine compartment shortly after NASA began pumping more than a half-million gallons of the fuel into the shuttle for an eight-day atmospheric research mission.

Sieck halted the countdown about five hours before the scheduled 8:01 a.m. liftoff. The seven astronauts had not yet boarded.

The eight-day mission — shuttle flight No. 46 — is part of a long-term NASA program to study the environment from space.

## Bush: Economy c

By CHRISTOPHER CONNELL

THE ASSOCIATED PRESS

**WASHINGTON** — President Bush says "doing nothing" about the economy is better than raising taxes, and he is prepared to do just that unless Democrats quit trying to raise the bite on wealthy Americans.

Bush, after a truculent veto Friday of the recovery bill fashioned by Congress, said Sunday he still wants the lawmakers to move on his proposals to spur business investment.

White House Chief of Staff Samuel H. Skinner said flatly earlier Sunday "there's not going to be a package" if the Democrats insist on raising taxes.

Bush said, "I'm perfectly prepared to work with the Congress. But we've got to be realistic about politics."

"The best thing would be to do something that would stimulate investment, but if that can't happen, then the next choice would be do nothing, and the worst choice would be to pass a tax and spend bill," the president said at an East Room news conference.

Bill Clinton, the likely Democratic nominee, quickly seized on Bush's comments.

Holding up a newspaper with Bush's "do nothing" quotation, Clinton told reporters during a campaign stop today in Groton, Conn.: "In his own two words, George Bush has

stated the big difference between my approach and mine. It is a campaign of 'Do-nothing' versus 'Do-nothing.'"

At the White House, Vice President Al Gore, German Chancellor Helmut Kohl, who met with Bush last weekend, said he did not want to interfere in the U.S. election. Gore warned Americans "to vote very carefully" if they believe "the people's destiny is in the hands of a foreign policy front."

Citing the tide of de Gaulle, who has swept Europe and the Soviet Union, Kohl said, "I am convinced that foreign policy is going to be a big issue in the fall. ... The de Gaulle has been joined on that."

Skinner, appearing on "Face the Nation," took issue with Clinton's Democratic front-runner. "You're talking about the error of a state that's run by the nation in many categories," he said. "Arkansas has made ... progress under George Bush."

Skinner, appearing on "Face the Nation," took issue with Clinton's Democratic front-runner.

"You're talking about the error of a state that's run by the nation in many categories," he said. "Arkansas has made ... progress under George Bush."

## 'Alarming' ozone depletion found

See page 11

## SPORTS

## Magic no All-Star, says Charles Barkley

See page 7

## Imelda says far comes from hid

See page 8

# Ketchikan Daily

REP CHERI DAVIS  
P.O. BOX V  
KETCHIKAN, AK. 99911  
2722 05/13/92

Vol. 57 No. 029, (UPS 293-940), 12 Pages

Ketchikan, Alaska, Tuesday, February 4, 1992

# Mother wants stiffer 'furnishing' laws

By TOM MILLER  
Daily News Staff Writer

"We must change laws to save our kids."

"Furnishing alcohol kills our kids."  
"Make providing a felony."  
"Providers endanger us all. Make it a felony."

Those messages were scrawled on placards carried by two women outside the Alaska courthouse Monday afternoon. Inside, 23-year-old James C. Porter was being arraigned on a charge of furnishing alcohol to a minor. Ketchikan District Court was packed as 50 or more people came to watch the arraignment. Most of them were there to support the two mothers of Joshua Smith, 17, and Michael Nygard, 17. The two teens were killed instantly on New Year's Eve when a motorcycle they were riding crashed into another vehicle at high speed on North Tooguss Highway.

Troopers said that alcohol was involved, and they appealed to the public to help find the person responsible for providing a 1.75 liter bottle of Smirnoff vodka to the boys.

Troopers announced on Jan. 27 that Porter had been charged with the misdemeanor that is punishable by up to one year in jail, a \$5,000 fine or both.

District Judge George Guckler read Porter his rights and asked him if he would obtain his own attorney or if he wanted a court-appointed lawyer. Porter chose to ask for a court-appointed attorney. He offered no plea. Then Guckler disqualified himself from the case because he is familiar with one of

the families, he said. Porter was scheduled to appear again in court on Tuesday at 1:30 p.m. to learn if he qualifies for a court attorney.

Porter left the courtroom. Approximately 35 other people walked out behind him.

### Wants stiffer penalties

Jeanne Henry, the mother of Joshua Smith, said after the proceedings that she will aggressively seek to change Alaska's laws concerning people who furnish alcohol to minors. Rather than being classified as a misdemeanor, she says the crime should be a felony. Further, Henry wants violators to be punished for the consequences of teen drinking, whether it be alcohol-related accidental deaths, assault, rape or other crimes.

That change in the law should be followed by a law providing that signs be posted in liquor stores which state that buying booze for youngsters is a felony, she said.

"Kids are immature. They are part children and part adults. They are unable to handle alcohol," Henry said. "If a buyer felt the danger of being jailed for the consequences, they'd think twice."

"An adult can't just give a gallon of vodka to kids and say, 'Have a good time.'"

Henry told her children that if someone ever gave them drugs or alcohol, she would "make a big stink over it," she said. Now, she said, her oldest of three children is dead because someone gave him alcohol. She holds her son responsible.

See "Mother" on page 2



Colleen Eliza, along with Joyce Silberling (background) picketed outside the State Office Building Monday afternoon when James C. Porter was in court on a charge of selling alcohol to minors Michael Nygard and Josh Smith, both 17. The youths died in a motorcycle accident on Dec. 31, 1991. The women want selling alcohol to a minor changed from a misdemeanor to a felony.

Staff photo by Bill Anderson

## Check the record

When Jeanne Henry was interviewed by the Daily News in the halls of the state office building, she pointed back toward the district courtroom and said: "Almost every case happening in there is alcohol related."

As if to help emphasize her point, the Ketchikan Police Department report for Monday was full of alcohol related "public record" material.

### CITY POLICE

Jan. 30

Police took a woman into protective custody after a caller said someone was passed out in the bus stop at Sea Level Drive.

Jan. 31

Police investigated a report that rocks were thrown by kids at a window at Ketchikan High School. Damage to a window was estimated at \$200. Police stopped two juveniles,

aged 16 and 15, in connection with the vandals at Kyrhi and charged them with minor consuming alcohol. One of them, a 15-year-old girl, said she had been given a tequila drink by a 26-year-old man.

Janis T. Evans, 61, was arrested and charged with being drunk on a licensed premises.

Feb. 1

Charles R. Hodges, 33, and Curtis A. Arvola, 21, were arrested in front of the Marine Bar and charged with disorderly conduct after an officer allegedly observed them punching each other's faces. They didn't stop fighting when ordered until they were both hospitalized, the report said.

An officer was waved over by a person who pointed to a man who was passed out on the sidewalk on

See "Records" on page 2

able for making a bad choice to use alcohol, but she is committed to following through now and raising the issue.

"I'm not going to stop talking until we get a stiff law against providing alcohol to kids here, and until we get some options. We have 22 bars here," Henry said. "I'm not saying close them, but look at it. What's wrong with this picture?"

"We're being totally irresponsible. We want to just say, 'Just say no,' and then close our eyes."

Industry shares blame

The liquor industry is partly responsible, Henry said, because it pays for lobbying that keeps the laws loose. The industry's advertising promotes attitudes that keep people drinking, said Henry. They glorify it. They make kids think drinking is cool and fun, she said.

Ketchikan society is responsible because it fails to provide kids with alternatives to drug and alcohol abuse, she said.

"There are 22 bars, one theater, and one bowling alley," she said.

The bowling alley is full of drinking adults and a family night at the movies is expensive, she said.

"They get run out of the mall," Henry said. "But at some point, they don't want to sit at home with you and watch movies. They want somewhere to go."

Nazis

studies. "I think it's very important to prove what happened."

Richmann was kidnapped by Israeli commandos in 1960, taken to Jerusalem for trial, convicted and hanged. Mengele's family say he drowned in Brazil in 1979.

Josef Schwammerberger, a commandant at labor camps in Poland, was extradited in 1990 and now is on trial in Stuttgart, Germany, for war crimes.

Schwammerberger, now 79, lived here under his own name. So did Mengele, who obtained a driver's license and an identity card from police, the magazine Somos reported over the weekend, after apparently having had

Kids need to have a place where they can socialize, eat, dance, and be with their dates, said Henry.

Henry said she has been told that Ketchikan can't afford a roller rink or similar place for kids because the money needs to be spent on economic development instead.

"How economically developed are we going to be when business people look at Ketchikan and say: 'I don't want to move there to raise my kids — not on a bet.'"

Henry wants more education that will make teens think twice before drinking. "Kids need to read the coroner's reports," she said. "We're protecting them from the ugliness of what it does, but we don't protect them from the option (of drinking)."

Henry will be traveling to Juneau to lobby state legislators on behalf of House Bill 436, filed last Thursday by Rep. Cheri Davis, R-Ketchikan. The bill, entitled "Penalty for providing alcohol to a minor," would make the crime a class C felony punishable by up to five years in jail and/or a \$50,000 fine.

"It can't be just a senseless thing," Henry said. "There's got to be something positive that comes out of this."

"I'm not saying prohibition. I'm saying responsible," Henry said.

Federal Police files on display at the news conference included folders with faded news clippings, photographs and typed statements about Mengele, Hermann and others. Reporters were allowed to photograph the folders, but not examine them.

It's unclear how many Nazis found shelter here. Some reports put the number in the thousands, but Manzano, the interior minister, said it was "much, much less."

He also insisted that those who came did so on Red Cross passports and not — as has been reported — on Argentine passports issued by Peru

Davis.

Dec. 17

Robert L. Sellards and Nancy Mona Haldane.

Dec. 23

Robert A. Gunselman Jr and Coralyn M. Fitzsimmons.

Dec. 29

Delain A. Tate and Dawn J. Francisco.

Dec. 30

Marvin B. Dewitt and Rita Marie Braz.

Record

Front Street. The man was taken into protective custody. Michael W. Paulsen, 20, and Pamela Metcalf, 18, were cited for minor consuming alcohol. Paulsen was also arrested and charged with driving while intoxicated. The charges were made after an officer stopped Paulsen for speeding. Neither Paulsen nor Metcalf would say where they obtained the alcohol they had been drinking. A man was taken into protective custody after a taxi driver complained that an occupant of the cab wouldn't pay a fare and that the man had been thrown out of a downtown bar.

Feb. 1

Police searched the Potlatch Bar for \$5,000 in cash and a checkbook that a man said he was missing after drinking there from 3:15 p.m. to 8 p.m. The man said he didn't know if someone might have picked his pocket or if he could

TLMP

and look at the economical impact of their (U.S. Forest Service) decision," he said.

The final FIS of the Tongass Land Management Plan is in the works and the Forest Service hopes to have a Record of Decision on the plan by July, said Steve Brink, U.S. Forest Service team leader for the plan.

The Forest Service is now processing the 7,000 individual responses to the plan. A summary of the comments will be categorized by resource, such as timber, wildlife issues, etc., said Brink.

The state's position on the plan also is being reviewed.

Jan. 17 Samuel Barber pleaded innocent to driving with a suspended license. Rex Seley, reckless driving.

Jan. 21

Dave Snyder pleaded innocent to third-degree criminal mischief. Nancy Martin, disorderly conduct. John M. Crippen, fourth-degree assault.

Jan. 22

Frank Jones, one count of third-degree misconduct involving a controlled substance. Bail was set at \$10,000.

have lost the money, police said. The money had been in a white envelope in the man's pocket, he told police.

Nick Brneloff, 57, was arrested and charged with disorderly conduct, and open container after an officer reportedly saw him drinking white port wine from a bottle in the spruce mill parking lot.

Feb. 2

One 17-year-old boy, two 15-year-old boys, and two 14-year-old girls were in a van that was stopped for having a bright spotlight turned on that was pointed backwards into the eyes of following motorists. All but one of the 14-year-old girls were subsequently charged with minor consuming alcohol and curfew violation. The 14-year-old was charged only with curfew violation. They all refused to say where they had gotten the alcohol they drank.

done, it could be another year before the Record of Decision is reached.

"We hope that isn't necessary, but we won't know until we get information back on the market demand," Brink said.

The FIS is expected to address old-growth areas, wildlife habitat changes, biological diversity, socioeconomic affects, recreation and tourism, timber supply and subsistence.

The plan is being done to manage the 17-million acre Tongass National Forest. Forest planning is much like a local Comprehensive Plan where zoning or

# Ketchikan Daily

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Ketchikan, Alaska, Tuesday, January 28, 1992

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## In brief

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### Porter charged

Alaska State Troopers have charged James C. Porter, 23, with furnishing alcohol to a minor in connection with a fatal Dec. 31, 1992 motorcycle accident on North Tongass Highway. Joshua Smith, 17, and 17-year-old Michael Nygard died instantly when the motorcycle they were riding went out of control, crossed the center line and collided with another vehicle.

"Alcohol is believed to have been the main contributing factor in the accident," Trooper 1st Sgt. Ted Bachman said in a Monday press release.

Porter is to appear in Ketchikan District Court on Feb. 2.

The maximum penalties for furnishing to a minor are one year or \$5,000 or both, said Bachman. The judge could also impose community work service and treatment.

**SPORTS**

**Angell, Misschiefs meet for third**

See page A-8

**Relief flights to republics begin**

See page C-1

**WEEKEND**

REP. CHERI DAVIS  
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2722 05/13/92

#\*JU0

**EDITION**

Juneau, Alaska, Saturday-Sunday, February 8-9, 1992

\$1.25

**'How many have to die?'**  
*Smith's mother campaigns for stiffer liquor laws*

By TOM MILLER  
Daily News Staff Writer

Jeanneane Henry, the mother of a teen-ager who died in a motorcycle accident after drinking, carried her demand for stiffer laws against furnishing alcohol to minors to the Governor's Advisory Board on Alcoholism and Drug Abuse Friday. She was backed up by Cara Nygard, whose son died in the same New Year's Eve accident.

The board was in its second day of a three-day meeting in Ketchikan and took testimony here and from around the state by teleconference at the Cape Fox Hotel.

Henry passed a picture of her family around the board table as she told them that she wants the crime of furnishing to be a felony instead of a misdemeanor as it is now.

Her son, Joshua Smith, 17, and his friend Michael Nygard, also 17, died instantly when the motorcycle they were riding went out of control, crossed the center line and collided with another vehicle.

"Alcohol is believed to have been the main contributing factor in the accident," Alaska State Trooper 1st Sgt. Ted Bachman said in a press release after the incident.

Henry called her son a "miracle child" because she had been told that she couldn't have children, then she had three, beginning with Joshua.

She said he was a bright, wonderful boy. He made a bad choice, she said, when he drank; but blame should also go to the adult who bought a bottle of vodka and gave it to teen-agers.

James C. Porter, a 23-year-old restaurant cook, admitted to Alaska State Troopers that he purchased a 1.75 liter bottle of vodka on Dec. 30 and gave it to Richard Knasmu, 17, according to Assistant District Attorney Thomas Wagner. Porter knew Knasmu was a minor, Wagner said. According to Porter, Nygard and Smith drank vodka from that bottle the night they were killed. A jury trial for Porter is scheduled for April 20 and 21.

Because they drank, Henry said their sons were killed in a horrible way. She said her boy was decapitated and that his chest organs were



Members of the Governor's Advisory Board on Alcoholism and Drug Abuse listen to Cara Nygard tell of her son's death in a motorcycle accident on New Year's Eve. Alcohol was involved in the incident, according to Alaska State Troopers. Pictured from left are: Boardmember Reggie L. Joule, Nygard, Boardmember Frank O. Williams and Boardmember E. Dwain McKenzie. A photograph of Nygard's deceased son Michael rests on the corner of the table. Staff photo by Tom Miller

crushed. The only parts of him that were not mangled were a kidney, his bladder, his genitals and his right hand, she said.

"I'm not telling you this to gross you out," Henry added. "But it was the result of a legal drug that we glorify."

Kids don't manufacture, distribute or advertise alcohol — adults do, she said.

"How many kids have to die before we learn to say 'no.'"

A bar can be held liable if an adult staggers out of it and is hurt, she said. If he breaks his ankle or is killed in a fall or drowns because he got too drunk in the bar, the bar can be sued, she said.

Henry called for a law making it a felony to furnish alcohol to minors and for a law that would make the furnisher an accomplice in any crimes committed by a teen-ager under the

See 'Alcohol,' page A-4

# Alcohol

Continued from page A-1

influence.

With a felony furnishing law in place, warning signs should be posted in liquor stores that tell potential furnishers of the felony consequences of the act, she said. Liquor ads should be taken off television just as cigarette ads were removed; and she wants warnings placed on bottles.

Kids need a place to hang out, she said.

"We as adults have to focus on this problem," Henry said.

"Why is there no place for them to hang out? Are they such a low priority?" she asked the board.

Boardmember Dr. William Browner agreed with Henry's argument about liquor advertising and said: "There is great concern about the promotion of alcohol on television and that it should be treated like cigarettes."

**Nygaard speaks**

Cara Nygaard placed a large portrait of her son on the table before she spoke. She emphasized Henry's assertion that society glorifies alcohol: "They've got these stinky chicks and beautiful guys who are looking real good and saying alcohol is great."

She also illustrated the gruesomeness of the accident that killed the two mothers' sons: "It took two days to figure out which parts belonged to which kids," she said.

Nygaard told the board that she works for the public defenders agency and that 95 percent of the cases handled by the agency are alcohol related.

The minor consuming cases come in and out, she said. The same kids keep showing up in court. New kids keep showing up too.

"They're lucky," she said. "As a parent, I wish my kid was able to show up in court."

After listening to the controlled but emotional presentations by both women, Boardmember George W. McNeven spoke to Nygaard in a soft voice, saying: "I want you to know, we don't come to this looking through rose-colored glasses."

He said he was born into a family of nine children of alcoholic parents. The parents died because of alcohol when he was aged six, he said. Three of his siblings died because of alcohol, he said.

"I've never had a drink in my life," McNeven said. "We want to see your suggestions. We will support you."

Sitting to McNeven's left, boardmember Charles Clay said "That's right. That's right."

Henry's plans include speaking to Rotary 2000 Tuesday at noon; and on a special town meeting radio program entitled: "Ketchikan and Alcohol," on KRBD-FM, Feb. 24.

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August 22, 1992 Johnny Summers

June 20, 1992 Marreen Gilman

June 20, 1992 Kelly Lane

June 20, 1992 Doug

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# Liquor burden widened

## Court takes hard line on furnishing minors

By James Wallace  
P-I Reporter

In a case that could have broad social implications, the state Supreme Court ruled yesterday that a person who furnishes liquor to a minor in a social setting can be held responsible if the minor is injured or killed as a result of intoxication.

Previously, legal responsibility was limited to commercial settings, such as a restaurant or bar.

"It sends a message to adults out there, and to the public," said Sim Osborn, the Seattle attorney who represented Judith Hansen of Kent in a wrongful death suit dismissed in 1988 by a King County Superior Court judge. Her 15-year-old son drowned while on a fishing trip after a night of drinking. His access to beer at the campsite had not been restricted by the two 21-year-old men he was with, according to court records. They also were drinking.

The state Supreme Court split 5-4 in sending the case back to King County for trial.

Judith Hansen said she always held out hope that the case would go before a jury. "I don't believe minors know right from wrong. They don't know at what point they should stop," she said. "Adults should not be allowed to give minors alcohol or drugs."

In a strongly worded dissent, Justice Jim Dolliver wrote that the majority was "usurping" the powers of the state Legislature, which in 1955 repealed a law that imposed liability on social hosts.

"The majority, apparently transfixed by the facts before it and harboring a belief that 'youth must be served,' has determined it can and, indeed, should take on a more creative role in usurping the powers of [the Legisla-



KURT SMITH/VP-I

Judith Hansen filed suit after her 15-year-old son drowned while intoxicated.

ture)," Dolliver wrote. "... It seems more than likely that in the next case involving a social host the court will declare the doctrine of social host immunity has ceased to exist in this state and hold there is a duty by any social host toward those to whom the host has furnished alcohol beverages."

But Justice Charles Johnson, writing for the majority, said the crux of the case must be determined on existing state law that makes it a crime to give or sell liquor to anyone under 21. "The Legislature has thus established that

See LIQUOR, Page B4

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## Cancer: Others urged to demand the treatment

From Page B1

"a human life," said the Michigan State University graduate who grew up in Seattle, California and Michigan as the eldest of three children.

Federal judges in other parts of the country have ordered insurers to pay for the procedure.

Although the settlement of LeRoux's case means won't set a formal precedent she wants to see other women with breast cancer take note of her suit.

"I hope that women like me that need to have a bone-marrow transplant and are denied by their insurance companies can find the courage to take them on," LeRoux said.

Already, she said, the case has "generated a huge reaction," bringing telephone calls of support.

## Liquor: Social hosts have responsibility

From Page B1

both commercial hosts and social hosts commit a criminal act if they furnish liquor to a minor," Johnson wrote. "Pursuant to this statute, social hosts owe a duty to exercise ordinary care not to furnish liquor to a minor."

Hansen drowned April 24, 1987, the opening day of fishing season, at Lake Jameson in Eastern Washington. He went there with Robert Friend and Robert Petty, both of Kent. After a night of drinking beer, he apparently wandered away from the campsite and fell into the lake. His body was not found for several weeks. An autopsy determined his blood-alcohol level was twice the legal limit for intoxication.

There is still dispute over who fur-

nished the beer the three drank before and during the fishing trip. The state Supreme Court, said that issue will have to be determined by a jury. Harold Field, the attorney for Friend, said yesterday he is convinced the evidence will show the beer was supplied by Petty, and thus his client is not liable.

The attorney for Petty was not available for comment yesterday.

Yesterday's ruling reversed the decision of King County Superior Court Judge Charles Burdell to throw out the wrongful death suit. Joining Johnson in the majority opinion were Justices Jim Andersen, Bob Brachtenbach, Charles Smith and Bob Utter. Signing Dolliver's dissent were Justices Rich Guy, Barbara Durham and Chief Justice Fred Dore.

## Deaths

ALEX: Clifford E., 71, of Seattle, Feb. 13.  
ANDERSON: Carl J., 78, of North Bend, Feb. 12.  
BEAUDREAU: Helene M., 98, of Federal Way, Feb. 11.  
BERGNER: Vivian E., 88, of Seattle, Feb. 17.  
BESK: Patricia M., 66, of Seattle, Feb. 12.  
BEYERS: Willard L., 76, of Seattle, Feb. 13.  
BOE: Dorothy L., 59, of Sumner, Feb. 12.  
BOUK: Lillian A., 83, of Seattle, Feb. 16.  
BROWN: Eva, 91, of Seattle, Feb. 18.  
ALDERON: Victor E., 65, of Seattle, Feb. 17.  
CHRISTIANSON: Charles O., 80, of Seattle, Feb. 12.  
OATNEY: Edna N., 77, of Kirkland, Feb. 15.  
COON: W.E., 65, of Seattle, Feb. 15.  
LOS ANGELES: Juan, 80, of Woodinville, Feb. 14.

ELLISON: Elaine S., 66, of Seattle, Feb. 13.  
ELLSWORTH: Doris B., 91, of Des Moines, Feb. 12.  
FLEURY: Michael G., 33, of Seattle, Feb. 11.  
FOLEY: Alice, 89, of Seattle, Feb. 14.  
GAMBLE: Faith L., 73, of Kent, Feb. 13.  
GARCIA: Dominga T., 80, of Seattle, Feb. 18.  
GENTRY: Nettie, 77, of Des Moines, Feb. 11.  
GREEN: Nancy L., 23, of Kent, Jan. 21.  
HALEY: Alexander P.M., 70, of Seattle, Feb. 9.  
HARRISON: Harold W., 77, of Renton, Feb. 13.  
HAUGLAND: Sigfred E., 41, of Seattle, Feb. 16.  
HERZOG: Marianne H., 56, of Bellevue, Feb. 14.  
HOFSTAD: Mary L., 65, of Seattle, Feb. 14.  
HUDSON: Wynona E., 84, of Mercer Island, Feb. 14.

Feb. 14.  
JOHNSON: Vera M., 60, of Kent, Feb. 14.  
KAMIYA: Jon K., 44, of Kent, Feb. 17.  
KRUMBACH: Lowell D., 80, of Kirkland, Feb. 13.  
KUMMERFELDT: Walter J., 66, of Redmond, Feb. 15.  
LARRIMER: Mary M., 73, of Kirkland, Feb. 13.  
LEIER: Greta M., 74, of Seattle, Feb. 17.  
LEO: Agnes V., 92, of Seattle, Feb. 14.  
MacDONALD: Fredrick A., 74, of Tukwila, Feb. 13.  
MARSHALL: William W., 91, of Mercer Island, Feb. 16.  
MARTIN: Kathryn B., 76, of Seattle, Feb. 11.  
McNALLY: Vivian, 80, of Seattle, Feb. 18.  
OLSEN: Ray L., 87, of Seattle, Feb. 14.  
ROWE: Helen G., 95, of Des Moines, Feb. 14.

SANCHEZ: Cristobal S., 77, of Seattle, Feb. 16.  
SCHURMAN: Esther M., 83, of Renton, Feb. 13.  
SCHWARTZ: Oliver, 66, of Kent, Feb. 15.  
SHARPE: Edgar A., 69, of Seattle, Feb. 15.  
SLADEK: Richard O., 66, of Snohomish, Feb. 13.  
STOOPS: Ricky A., 38, of Seattle, Feb. 13.  
TRUEBLOOD: Kara O., 94, of Des Moines, Feb. 11.  
URCH: Kathryn M., 76, of Redmond, Feb. 14.  
VAUGHN: William M., 71, of Woodinville, Feb. 17.  
WATT: Dolores J., 70, of Bellevue, Feb. 15.  
WOJTCWICZ: Bernice C., 72, of Seattle, Feb. 13.  
WOOD: Julia V., 55, of Redmond, Feb. 15.

## Funerals and Deaths

### Paid Notices

#### Hilda M. ANDERSON

Age 87. Beloved wife of Victor, Seattle. Aunt of Karen Nelson, California. One sister, two brothers and several nieces and nephews in Sweden. Member of Kilpan No. 278 V.O.A. and Swedish Club. Cremation services Tuesday, 11 a.m. at Washelli Cemetery directed by Wiggen and Son. In lieu of flowers, memorials to American Heart Association.

#### Forrest W. MARRIOTT

Age 79, died February 19, 1992. Beloved father of Carol Gillon and Robert Marriott. Two grandsons. At his request, no services. Cremation.  
EVERGREEN-WASHELLI FUNERAL HOME

#### Robert Sanford MUTTER

Of Federal Way, died Feb. 18, 1992, of age 34. He was

#### Gill Otto OAK

Age 85, of Renton, died February 19, 1992. Services Saturday, February 22, 1992 at 11 a.m. at BONNEY-WATSON Washington Memorial 14445 Pacific Highway South

#### Alvin J. SPADAFORE

Died February 19, 1992. Arrangements pending.  
BONNEY-WATSON

#### Joseph T. THOMAS, Lt. Col., U.S.A.F., retired

Age 47, of Edmonds, passed away February 20, 1992 at Swedish Hospital in Seattle. He was the youngest of ten children born to Mr. and Mrs. Lewis Thomas, Greensboro, North Carolina. He graduated from living school in Naper, Alabama in 1943 and served 22 years in the Air Force Tactical Air Command as a fighter pilot. Following military retirement he was a program director at Northrup Corporation for

HB

437

(7)

**HOUSE COMMITTEE REPORT**

Date Referred: February 21, 1992

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-12-92

The LABOR AND COMMERCE Committee considered:

HB 437

HOUSE BILL NO. 437

REGULATION OF PRACTICE OF NATUROPATHY

"An Act relating to the regulation of the practice of naturopathy; and providing for an effective date."

RECOMMENDATIONS:

be replaced with

CS HB 437 (L+C)

the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

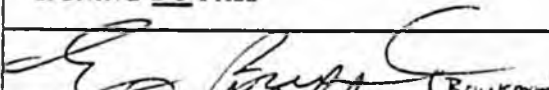
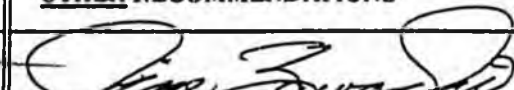
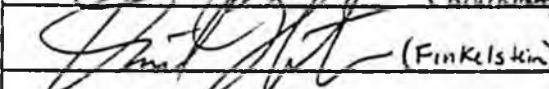
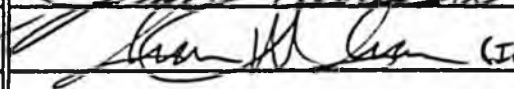
APPROVES PREVIOUS: (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
 (Bruce Kimm)				<input checked="" type="checkbox"/>	
 (Finkelstein)	<input checked="" type="checkbox"/>	 (Ivan)		<input checked="" type="checkbox"/>	

  
CHAIRMAN'S SIGNATURE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO. CSHB 437(HES)

Revision Date: \_\_\_\_\_ Department Affected: Commerce & Economic Development  
 Title: An Act relating to the regulation of the BRU: Occupational Licensing  
practice of naturopathy... Component: Administration  
 Sponsor: Rep. Gruenberg  
 Requestor: House HES COMPONENT SERIAL NO. 

0	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	1.0	1.0	1.0	1.0	1.0	1.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	1.0	1.0	1.0	1.0	1.0	1.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER - GF/PR	1.0	1.0	1.0	1.0	1.0	1.0
TOTAL	1.0	1.0	1.0	1.0	1.0	1.0

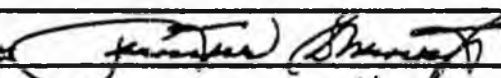
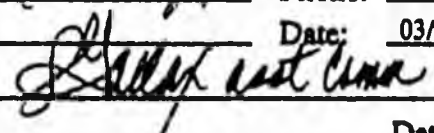
POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

CSHB 437(HES) repeals and reenacts requirements for a license to practice naturopathy, and to provide for temporary licenses while waiting to take an examination or examination results. Costs identified result from updating applications, statute books, and public noticing of regulations regarding temporary licenses and other necessary items.

Prepared By: Jennifer Strickler  Phone: 465-2144  
 Division: Occupational Licensing Date: 03/02/92  
 Approved by Commissioner: Glenn A. Olds   
 Agency: Commerce & Economic Development Date: 3.3.92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

STATE OF ALASKA

FISCAL NOTE

BILL NO. HB 437

1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Department Affected: Commerce & Economic Development  
 Title: An Act relating to the regulation of the BRU: Occupational Licensing  
practice of naturopathy... Component: Administration  
 Sponsor: Rep. Gruenberg  
 Requestor: Rep. Gruenberg COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	1.0	1.0	1.0	1.0	1.0	1.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	1.0	1.0	1.0	1.0	1.0	1.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER - GF/PR	1.0	1.0	1.0	1.0	1.0	1.0
TOTAL	1.0	1.0	1.0	1.0	1.0	1.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

HB 437 repeals and reenacts requirements for a license to practice naturopathy, and to provide for temporary licenses while waiting to take an examination or examination results. Costs identified result from updating applications, statute books, and public noticing of regulations regarding temporary licenses and other necessary items.

Prepared By: Jennifer Strickler Phone: 465-2144  
 Division: Occupational Licensing Date: 02/11/92  
 Approved by Commissioner: Glen A. Olds Date: 2-18-92  
 Agency: Commerce & Economic Development

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CS FOR HOUSE BILL NO. 437 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVE GRUENBERG

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the regulation of the practice of naturopathy; and providing for an  
2 effective date."

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

4 \* Section 1. AS 08.45.030 is repealed and reenacted to read:

5 Sec. 08.45.030. ISSUANCE OF LICENSE. The division shall issue a license to practice  
6 naturopathy to an applicant who provides proof satisfactory to the division that the applicant has  
7 received a degree from an accredited four-year college or university, and

8 (1) on or before December 31, 1987, has graduated from a school of naturopathy  
9 that required four years of attendance at the school and after graduation has received a license  
10 in another state after passing an examination for licensure in that state and is licensed by a state  
11 at the time of application; or

12 (2) after December 31, 1987, has

13 (A) graduated from a school of naturopathy that required four years of  
14 attendance at the school and at the time of graduation the school was accredited or a

1 candidate for accreditation by the Council on Naturopathic Medical Education or a  
2 successor organization recognized by the United States Department of Education; and  
3 (B) passed the Naturopathic Physicians Licensing Examination sponsored  
4 by the American Association of Naturopathic Physicians.

5 \* Sec. 2. AS 08.45 is amended by adding a new section to read:

6 Sec. 08.45.035. TEMPORARY LICENSES. (a) The division shall issue a temporary  
7 license to practice naturopathy to an applicant who agrees to take the next Naturopathic  
8 Physicians Licensing Examination offered after the date of application and provides proof  
9 satisfactory to the division that the applicant

10 (1) meets the requirements of AS 08.45.030(2)(A); and

11 (2) has not previously failed the Naturopathic Physicians Licensing Examination  
12 sponsored by the American Association of Naturopathic Physicians.

13 (b) A temporary license issued under (a) of this section terminates on the date

14 (1) the results of the examination the applicant agreed to take under (a) of this  
15 section are reported by the testing authority if the applicant failed the examination; or

16 (2) of the Naturopathic Physicians Licensing Examination that the applicant  
17 agreed to take under (a) of this section if the applicant fails to take the examination.

18 (c) A temporary license holder may practice only in association with a naturopath  
19 licensed by this state.

20 \* Sec. 3. AS 08.45 is amended by adding a new section to read:

21 Sec. 08.45.100. REGULATIONS. The Department of Commerce and Economic  
22 Development shall adopt regulations to implement this chapter.

23 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

(7)  
Date Referred: January 30, 1992

FURTHER REFERRAL:

Labor & Commerce  
Finance

Date of Committee Action: 2/19/92

The HEALTH, EDUCATION AND SOCIAL SERVICES has considered:

HB 437

HOUSE BILL NO. 437

REGULATION OF PRACTICE OF NATUROPATHY

"An Act relating to the regulation of the practice of naturopathy; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 437 (HES) [-] the same title  
[ ] a new title

[ ] have attached amendments(s)

[X] do pass

[ ] do not pass

[ ] no recommendations

[ ] individual recommendations

[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[X] fiscal impact DCE D

[ ] fiscal note(s) \_\_\_\_\_

[ ] zero fiscal note \_\_\_\_\_

[ ] zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
Mary Miller	✓				
Beth Davis	✓				
J. C. Boyles	✓				
Cheri Davis	✓				
Mark Haley	X				

*[Signature]*  
CHAIRMAN'S SIGNATURE

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

MEMORANDUM

January 31, 1992

**SUBJECT:** Sectional Summary - HB 437 (W.O.17LS-1847D))  
**TO:** Representative Max Gruenberg  
**FROM:** Jerry Luckhaupt *JEL*  
Legislative Counsel

You have requested a sectional summary of HB 437, an relating to the practice of naturopathy. Be advised that a sectional summary is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill repeals and reenacts AS 08.45.030 and revises the requirements for a naturopathy license for an applicant who completed naturopathic studies on or before December 31, 1987.

Section 2 of the bill adds AS 08.35.035 which permits the division of occupational licensing to issue temporary licenses.

Section 3 of the bill adds AS 08.45.100 which requires the department of commerce and economic development to adopt regulations for AS 08.45.

Section 4 of the bill provides an effective date.

JL:gc  
92-082.glc

*Sectional analysis*

HB 487: "An Act relating to the regulation of naturopathy; and providing for an effective date."

This bill provides for licensure in Alaska of applicants who do not hold a license in another state, as currently is required. This will benefit Alaska residents who apply for initial licensure in Alaska.

In section 1, the department is concerned with the express distinction between "completed naturopathic studies" and the date of graduation from a school of naturopathic. If completion of studies is intended to be recognized as the date of graduation, the department suggests the following amendments:

Page 1, line 7, [completed naturopathic studies] graduated from school of naturopathy on or before December . . . .

Page 2, line 3, [completed naturopathic studies] graduated from school of naturopathy after December . . . .

In section 2, as currently worded, an applicant who has failed the Naturopathic Physician Licensing Exam in Alaska would not be eligible for a temporary permit. However, if the candidate has failed the same examination in another state, it appears they would be eligible for a temporary permit since the statute only addresses exams failed in Alaska. The Department recommends removing the specific reference to having failed the exam in Alaska.

Page 2, line 18, . . . by the American Association of Naturopathic Physicians [in Alaska].

Finally, the department is concerned with allowing naturopaths to practice independently prior to proving minimum competency through passing the Naturopathic Physician Licensing exam. The department recommends that practice under a Temporary License be in association with a Alaska licensed Naturopath while awaiting taking the examination/examination results.

Recommend adding a letter (c) to 08.45.035. (c) A temporary license holder may practice only in association with an Alaska licensed Naturopath.

Support bill as amended.



Glenn A. Olds, Commissioner

Date: 9-13-92

HB

439

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL VERSION: HB-439  
PUBLISH DATE: 2/3/92

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Relating to development of  
railroad land of the Alaska Railroad Corp.  
Sponsor: Rep. Brown  
Requestor: \_\_\_\_\_  
Agency Affected: Alaska Railroad Corp.  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL						
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REVENUE	(SEE NOTE BELOW)					
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Currently, revenue generated by the Alaska Railroad's real estate holdings account for over 90% of net income. This legislation, if passed, would only add another layer of approval that could substantially limit the income of the ARRC and probably would require legislative subsidy for operating.

Prepared by: J. Blasingame Director, Administration Phone: 265-2680  
Division: Alaska Railroad Corp. Date: 4/22/92

Approved by Commissioner: Robert S. McInnis, Jr. CEO Date: 4/22/92  
Agency: Alaska Railroad Corp.

Distribution (by preparer):

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

FISCAL NOTE

3

Bill Version: CS SCR 32 (RES)

(S) Publish Date: 3-25-92

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Department Affected: DNR, DOT&PF  
 Title: SYHMS NATIONAL RECREATION BRU: PARKS & RECREATION  
TRAILS ACT, STATE ELIGIBILITY Component: PARK MANAGEMENT  
 Sponsor: Cottler, et al  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL	5.0	5.0	5.0	6.0	7.0	7.0
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	5.0	5.0	5.0	6.0	7.0	7.0

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

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND			**	**	**	**
FEDERAL FUNDS	5.0	5.0	5.0	6.0	7.0	7.0
OTHER						
FUND SOURCE:						
TOTAL	5.0	5.0	**	**	**	**

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.) Travel pays cost of appointed six member State Recreational Trails Advisory Board. \*\*By FY'95, the state must appropriate funds for recreational trails in the amount equal to the revenue collected from non-highway recreational fuel taxes. A February 1992 statewide survey of 600 households indicates one-third of Alaskans own off-road recreational vehicles. A minimum of \$100,000 in FY'95 from state gas taxes must be appropriated to the recreational trails program to continue eligibility to receive \$291,000 annually from the federal government.

Prepared By: Neil C. Johansen Phone: 10071 762-2600  
 Division: Parks & Outdoor Recreation Date: March 20, 1992

Approved by Commissioner: Harold C. Heide Date: 3/21/92  
 Agency: Department of Natural Resources

FISCAL NOTE

No. 2

Bill Version: CSSCR 32 (RES)

BILL I

(S) Publish Date: 3-25-92

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: March 23, 1992  
Title: Eligibility for benefits of the  
Symms National Recreational Trails Act  
Sponsor: Sen. Cotten et al  
Requestor: \_\_\_\_\_

Department Affected: Department of Revenue  
BRU: Revenue Operations  
Component: Income and Excise Audit

COMPONENT SERIAL NO. | 1 | 1 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
FUND SOURCE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: CSSCR 32 requests the governor to take appropriate steps to make the state eligible for benefits from the federal Symms National Recreational Trails Act. In order to be eligible, the state would be required to allocate nonhighway recreational fuel taxes for recreational trails.

Prepared By: Paul Dick Phone: (907) 465-2300  
Division: Income and Excise Audit Date: March 23, 1992

Approved by Commissioner: Darrel J. Rexwinkel Date: \_\_\_\_\_  
Agency: Department of Revenue

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

No. 1

Bill Version: SCR 32

Revision Date: March 9, 1992

Department Affected: \_\_\_\_\_

(S) Publish Date: 3-11-92

Title: Requesting governor to take steps

BRU: \_\_\_\_\_

NONE

to make state eligible for benefits of the \_\_\_\_\_ Component: \_\_\_\_\_

Summs National Recreational Trails Act

Sponsor: Cotten  
Requestor: Senate Resources

COMPONENT SERIAL NO. 

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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 FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
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-

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Changes in SCR 32 (POS) have no fiscal impact. This fiscal note is appropriate.

3-11-92 date Terry Olms TCO Comte Aide (initial)

Prepared By: Senator Lloyd Jones

Phone: 465-3743

Division: Senate Resources

Date: March 9, 1992

Approved by Commissioner: \_\_\_\_\_

Agency: Senate Resources

Date: March 9, 1992

# Representative Kay Brown

ALASKA STATE LEGISLATURE

Legislative Information Office  
3111 C Street #435  
Anchorage, Alaska 99503  
(907) 561-7627

During Session  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-4998

TO: Representative David Finkelstein  
Chair, House Labor & Commerce Committee

FROM: Representative Kay Brown

DATE: May 3, 1992

RE: Packet for House Bill 439

Thank you for scheduling HB 439, which relates to the development of land owned by the Alaska Railroad Corporation.

In anticipation of the hearing, I have assembled background information on the proposal. Attached are:

- HB 439
- Sponsor Statement
- Sectional Analysis of HB 439
- News release from Rep. Kay Brown regarding introduction of HB 439
- Public notice of the Railroad's intention to execute a lease with Ship Creek Crossing Developers, Inc. (for Ship Creek Redevelopment Project)
- Long-Term Lease Policy of the Alaska Railroad Corporation
- Various news articles relating to Ship Creek development
- Testimony of Robert Hatfield, President and CEO of the Alaska Railroad Corporation, at the Anchorage Caucus meeting of February 6

DISTRICT 12

Downtown • Fairview • City View • Bootleggers Cove • Inlet View • South Addition • Thunderbird Terrace  
Eastridge • Penland Park • Airport Heights • Government Hill

4/16/92  
Rep. Kay Brown

## Sponsor Statement

HB 439

### Local government involvement in public land decisions by the Alaska Railroad

HB 439 would provide for local government participation in development decisions made by the Alaska Railroad Corporation where the Railroad proposes to develop its public land holdings for other than transportation purposes.

HB 439 would require the Alaska Railroad, a public corporation of the state, when developing its land for commercial purposes other than Railroad transportation purposes, to obtain from the local governing body with land use regulation powers over the area a public interest finding that the proposed development

- offers beneficial economic development for the area,
- will not unreasonably compete with existing private businesses, and
- is in the best interest of the people of the area.

The bill does not affect the Railroad's authority to develop its land for Railroad transportation purposes.

#### Need for Legislation

Current procedures for disposing of long-term interests in Railroad land do not adequately protect the public interest. The "Long Term Lease Policy" established by the Railroad's Board in 1986 sets policies and guidelines when leasing real property for terms of five or more years. The "Long Term Lease Policy" provides [Section 2.02 (a)]:

(a) Published Notice. Notice will be published in a newspaper of general circulation, serving the community where the property is located, for three (3) consecutive days, ending fifteen (15) days prior to the effective date of the proposed long-term lease. The notice will only describe the parcel to be leased, the proposed Lessee, date of proposed action, and the name, address, and telephone number of the Alaska Railroad Corporation representative. (emphasis added)

This provision is not adequate to provide meaningful notice to the public.

In addition, concerns have been expressed by the business community about activities of the Alaska Railroad that compete with the private sector, such as construction of a new Comfort Inn Hotel near Ship Creek in Anchorage. Because of its status as a public corporation, the Railroad is generally exempt from taxation.

#### Statutory provisions governing land transactions

AS 42.40.285 provides that legislative approval is required for the Railroad to "exchange, donate, sell, or otherwise convey its entire interest in land;" and also to "lease land for a period in excess of 35 years unless the corporation reserves the right to terminate the lease if the land is needed for Railroad purposes."

As 42.40.350 also governs Railroad land transactions. Subsection (d) provides that a lease or disposal of land approved by the legislature under AS 42.40.285 by the corporation to a party other than the state shall be made at fair market value as determined by a qualified appraiser or by competitive bid.

Because of these provisions, the Railroad relies on long-term leases as the mechanism of choice for commercial development of its land.

#### Background

The Alaska Railroad Corporation (ARC) owns approximately 36,000 acres of land that were transferred with the Railroad when the state purchased it from the federal government in 1984.

As an example of the type of commercial development that would be subject to the finding required by HB 439, the Railroad presently is undertaking a major commercial development along the industrial waterfront near downtown Anchorage, called the Ship Creek development.

The Ship Creek project was represented to the Legislature in 1990 and 1991 as a "public-private partnership" involving the Municipality of Anchorage, the Railroad, the Anchorage Economic Development Corporation (AEDC), the legislature, and not-yet-identified private developers.

Within the last two years, the Legislature has appropriated \$8 million for site improvements and upgrades at Ship Creek. Specifically, \$5.5 million was secured last year for access, tideland fill and utility upgrades. This

appropriation was specifically contingent upon the approval by AEDC and the Railroad of a development agreement that includes private investment commitments equal to or exceeding the appropriation.

This public infrastructure investment was needed, the project's backers said, to attract a major developer for the project. It was to be a case of government encouraging business development by affording the opportunity to initiate the project, providing land and support for infrastructure, and then letting a private sector developer develop the project, attracting new private capital, under a development agreement approved by *all* parties.

The Railroad's handling of the public review of its long-term lease with the developer shows the need for changes in its process.

The Railroad Board on March 4 approved a long-term lease with LoPatin, which was rated second of two bidders by the Ship Creek Project Committee. While the public comment period on the lease expired on March 23, the contract was made retroactive to March 1, 1992.

The Railroad was slow to release for review the provisions of the proposed lease. Although the public comment period began March 6, it was not until March 12 that I was able to obtain a copy of this public document. Although I made several requests to the Railroad, I was not able to obtain a copy of the published notice or details about its timing and placement until March 17.

The public comment period closed March 23. Not surprisingly, the Railroad received no public comment.

*Public comment should be taken before, not after, a commitment of this magnitude is approved.*

With no opportunity to review proposed land use plans and lease provisions before the Board approved the contract with LoPatin, neither the Municipality of Anchorage nor the general public was given adequate opportunity to determine whether the proposal was consistent with prior representations, such as commitments for pedestrian access and other public amenities, and whether the proposal was compatible with sensitive environmental areas within the development area.

A court injunction is being sought by Intergroup, the other bidder, against the Railroad and its contract with LoPatin. The suit alleges several violations of procurement rules and a violation of the Constitution relating to public notice and protection of the public interest.

Questions and concerns have been raised about the development: Will the Railroad promote the development of the Ship Creek area solely for its own gain without regard for the desires of the community?

The Alaska Railroad Corporation holds title to 36,000 acres of land in Alaska, of which almost 40% are unused or are leased. Will the Railroad control the fate of these lands for nontransportation purposes without a meaningful public process?

Why give the final decision to the local governing body?

Local interests, as represented by locally elected representatives, should be part of long-range decisions made by the Railroad about commercial development of public lands.

Who better than the local elected body can assess whether a commercial development proposal will benefit the community?

The best interest finding that would be required by HB 439 would ensure a public process, which is presently lacking, on major long-range commercial development decisions made by the Railroad on public lands within the boundaries of local governments.

3/16/92  
Rep. Kay Brown

# SECTIONAL ANALYSIS

## House Bill 439

An Act relating to development of railroad land of the Alaska Railroad Corporation; and providing for an effective date.

### Section 1

Amends Sec. 42.40.250 (8) (General Powers of Alaska Railroad Corporation) to require that the railroad, when developing rail land for commercial purposes other than railroad transportation purposes, obtain a finding from the local governing body with land use regulation powers over the area in which the proposed development is located that the proposed development offers beneficial economic development for the area; will not unreasonably compete with existing private businesses in the area; and is in the best interest of the people of the area unless otherwise expressly authorized by the legislature under AS 42.40.285 as amended by Section 2.

### Section 2

Amends Sec. 42.40.285 (Legislative Approval Required) by adding a new subsection (5) which requires the Railroad, unless otherwise approved by the Legislature, to obtain the local government finding required by Section 1 prior to the development of rail land for commercial purposes (i.e, purposes other than railroad transportation).

### Section 3

Immediate effective date.

**HB-439**

**"An Act relating to development of railroad land of the Alaska Railroad Corporation; and providing for an effective date."**

The Alaska Railroad Corporation was created as an independent corporation by the Alaska State Legislature in 1984. This independence was intended to insure that the Railroad become a self-sustaining business enterprise, operated without a state subsidy. The Corporation has a seven member Board of Directors appointed by the Governor; the Board has a fiduciary responsibility for management of the Corporation and to insure that all assets of the Corporation are managed properly.

HB-439 as it is proposed destroys one of the basic elements of maintaining this viable, self-sustaining enterprise envisioned by the Legislature in 1984. It proposes that the Railroad may not develop rail land for commercial purposes, other than transportation purposes, without having previously obtained a finding from the local governing body with land use regulation powers that the proposed development (1) offers beneficial economic development for the area, and (2) will not unreasonably compete with existing private businesses in the area.

Public notice is currently given for every tract of land leased by the Corporation; a 15 day comment period is provided prior to effective action being taken. Each lease with a term of three or more years must have Board approval, affording the public an additional opportunity to comment prior to the lease being approved. In new developments, the Corporation complies with the planning & zoning approval process in each community where it owns and leases property to the public, thereby already assuring conformance to the standards established by the local governing body.

The Corporation Board of Directors meetings are public and provide an additional forum for the individuals to be heard on any given subject pertaining to the Alaska Railroad.

This legislation would add another layer of approval to the process and would put the Railroad at a competitive disadvantage with comparable land in private hands. Real estate deals are slow to develop by this nature; if there is additional uncertainty and delay as the result of additional public review, our lands will not be sought for development. HB-439 would allow special interests to unnecessarily delay or in extreme cases, prohibit a good project from becoming a reality. Such a requirement is incompatible with the Railroad's very existence, which causes it to compete with the rest of the transportation industry; moreover development of our real estate currently provides over 90% of the railroad's net income which allows this Corporation the opportunity to maintain its self-sustaining existence. This legislation would severely hamper the Railroad's ability to remain self-sustaining.

Anchorage Caucus Minutes  
February 6, 1992

Mr. Robert Hatfield, President & CEO, Alaska Railroad Corporation: I come here today primarily to answer the questions of this Caucus, and I certainly appreciate the opportunity to be here to clarify those things that have been done and the direction that we're heading at the moment. I was favored with a copy of some questions that I know are foremost in the minds of several of you, and to the extent that they are answerable I'm in a position to try to answer those.

I think that many of us, including myself, are now seeing the first time the announcement that was in the paper this morning about the Board's action yesterday. Yesterday morning or yesterday afternoon the Board of Directors of the Alaska Railroad Corporation approved a resolution which authorized Railroad management to continue on negotiating with LoPatin to become the master developer of the Ship Creek Project. The basic tenet of the lease were set forth as an attachment to that resolution, and we are now charged with the responsibility of going forward and putting the legal language in place that will ultimately be approved by the Board for a second time. This is a similar step that we took with one of the other projects that we did earlier in the year so that we get a good sense of the Board and there are two opportunities for the Board to hear public comment before the lease is actually finalized and ok.

We are quite pleased with the depth of the capabilities of the LoPatin group and the vision that they seem willing to bring to the project. And, of course, as time goes forward their master plan will be presented to the Ship Creek Committee, which many of you know consists of Heather Flynn (Anchorage Assembly), Mayor Tom Fink, Ken Gain (AEDC), and Marvin Yetter (ARRC). In speaking of the Ship Creek Committee, I believe it was Monday or Tuesday, we met and reviewed the basic tenets of the lease and the response to some of the input. We changed some of the foundation of the lease and they in turn, will also have another opportunity to review this in subsequent meetings between now and the time the Board meets to actually ok and finalize the lease.

Because it's unclear to me exactly what each of you may be specifically interested in with regard to the Ship Creek Project, which I understand is the focus of this meeting, I don't know if it's limited to that or not. At this point, I'm ready to simply answer questions, if that's appropriate. Now that's not exactly what you had in mind, I know. So perhaps I'll just leave it back to you.

Sen. Collins: Did you plan to address the questions that were presented to you?

Hatfield: They appear to me to be an outline and I thought that in all probability that they would be asked again of individual Representatives or Senators, so I have no specific agenda myself.

Sen. Collins: What might be easier, in terms of focusing our questions and maybe be more efficient with our time, if you would address the questions that were posed to you at this time. And the members of the Caucus, after Mr. Barnett has made his statement, if they have any follow up questions they can ask them of you. So if you would please go through the questions, we'd appreciate it very much. I think that would help to focus the group.

Hatfield: Fine, I will do that. One of the things that would be most useful for me to do that would be to have a list of the questions.

*The first question is why were negotiations with Intergroup, the top ranked respondent to the RFP, severed? Did any negotiations actually occur? Were the Railroad's procurement regulations followed?*

The reason that we severed negotiations with Intergroup was because we felt that the proposals that had been put forth by Intergroup in our subsequent discussions and negotiations, that their proposal was far too expensive for the Railroad to undertake.

The first proposal indicated that the Railroad should take the entire Ship Creek property and make it available for development. We would then pay the Intergroup people a fee and I don't know if its important at the moment to go into specific number, I can certainly do that. But to pay Intergroup in excess of \$20,000 fee per month plus development fees and all the rest, and then share whatever profits were gained equally with Intergroup. We thought that was a little bit expensive and would probably subject us to severe criticism to using the assets of the Corporation in that regard.

We attempted to set up a basis for development that called for the Railroad in essence, paying a commission to Intergroup and that was of concern to the Ship Creek Committee, specifically those that we spoke to. We met with AEDC, they felt that the Railroad was then in the position of being the developer and would have too much at risk in that type of development.

We then sought to develop a fee proposal. The fee proposal that was brought about was a great deal more expensive than that. It required us to pay a fee similar for the first one plus some all of the overhead, the office fees, vehicles, and all the rest. We felt that with no commitment of any assets or any performance on the part of Intergroup. We felt that, and I said this earlier today as you were all getting a sense of me because I don't know many of you,

in the course of negotiations we get a sense of who our partner is to be and we felt that the need for such upfront funds were of some cause to us or gave us pause.

So what we did at the time was we convened the Ship Creek Committee, told them that we were in effect, suspending negotiations with Intergroup until such time as we went over to speak to the other respondent to the RFP, which was LoPatin, to see if we got similar circumstances and numbers from LoPatin. We negotiated with LoPatin back and forth for a period of time and subsequently came up with the foundation of the agreement that the Board authorized us to finalize, to put in final form yesterday.

I think it would be important for me to add that throughout the process that was designed to bring about a master developer for the Ship Creek development. It was contemplated all the way along that the Alaska Railroad would be responsible for negotiation of the lease, the final master lease.

I think that was for two reasons. One, of course, it is Railroad land that is being considered, that makes us the ultimate equity holder if you will in the process. And the other is negotiations are difficult enough when two people are negotiating, when more than that are involved in negotiations they can become rather unfocused rather quickly.

We're pleased with the arrangement that we have with LoPatin, it certainly upon examination will not make us abundantly wealthy in the short term. Frankly, its a fairly based, I would say a needs based lease with some income coming to the Railroad for lease land, a very small amount with just about an equal amount of money going from the Railroad to the lease holder for their fees and services.

... I will quickly then say that our legal department has said that the situation that we have right now with LoPatin is in accordance with our procurement regulations.

I will quickly run through the basic tenants of the lease, if I may. The lead architect will be Helmoth, Obotto and Castlebaum (sp?). The management company that will manage the facilities is Ogden Corporation. They are the same people that manage the Egan Center and the Sullivan Arena. The effective date is open. This says Feb. 21, but obviously it will not be effective until such time as we have the final oks. The area includes the 120 gross acres. Those 60 that the Municipality of Anchorage has control of through a lease from us and the 60 upstream acres, the lease term is 5 years with two 35 year options. The base annual rent is \$1,000 per acre. The developer's incentive is such that the developer will receive a 5% fee for public amenity projects, one time only. And the rest will be those things that the developer can get from the buildings as they are put up. No fees will be

paid to the developer until such time that whatever it is that is built, gets a certificate of occupancy. There will be rent credits to the developer not to exceed \$150,000 per year. Those will only be for expenses, those are not going to be soft expenses such as individual's time. Those will only be hard expenses that can be deemed in compliance with Internal Revenue Code Section 195. Some of you may know frankly, you may know a lot more about Internal Revenue Code 195 than I do, but essentially it is only hard costs, development costs, travel related things. Directly related to the construction of the building. As far as the long-term annual rent, the Alaska Railroad Corporation will receive the minimum fair amount ground rents for each component. The Railroad will have a project by project option for an equity participation. Existing rents on two parcels that are over in the corner will be made available, will be assigned to LoPatin.

Our legal department has reviewed the agreement as it stands now and has approved it. The development agreement is to be completed by March 15, 1992. The general master plan is to be completed by April 15, 1992.

This last paragraph that I'm going to read to you is important because we discussed this at length with the Ship Creek Committee earlier this week. This says intended use but we intend to have this language incorporated into the lease to give everybody a level of comfort. It says: The project will include the public amenities such as a world class aquarium or planetarium, highlighting the natural wonders of Alaska. Other likely uses include a petroleum visitor center, a conference center, tourist-orientated speciality shops, commercial offices, and a residential component. The development will carefully integrate current Alaska Railroad Corporation projects and the Ship Creek Point property. The intent and thrust of this master plan is not to reshuffle existing tenants but to develop new markets for both tourists and residents of Alaska. That will be in the lease.

*The time line for completion of negotiations?*

I think it would be prudent for me to read to you a copy of a memo that came to us yesterday from Ken Gain and it basically summarizes the understanding that we have with the Ship Creek Committee. Which again is Assemblymember Heather Flynn, Mayor Tom Fink, Marvin Yetter and Ken Gain.

As to what we decided the time line will be for closing this particular set of negotiations. This says: The suggested activities and approximate time frame to complete these activities are as follows: 1) Finalization of development and agreement between the Alaska Railroad and LoPatin - early March. 2) Meeting with LoPatin and Municipality Director of Public Works to review list of proposed improvements and hopefully reach agreement as soon as possible. 3) LoPatin will prepare a master plan for the project spelling

out development concepts in early to mid April. 4) Schedule of a presentation to interested legislators, Assemblymembers and other interested parties, approximately mid April. 5) After completion of items 1-5 above, sign off on the final agreement for distribution of the grant money, if that is deemed appropriate.

*Has LoPatin been "tentatively selected" as the master developer? If so, what are the major elements of the agreement?*

I think I've covered that, if you all agree. That they have, yes, then tentatively selected, subject to Board approval. And I've just, of course, read the basic components of the agreement.

*Will the proposal review committee, the AEDC Board, the Anchorage Assembly and the public have an opportunity to review the final proposal before the Railroad makes binding commitments?*

I've read to you the time line we have set up for that process.

*What are the specific elements (including mix and location of commercial, residential and public use areas) of the Ship Creek development plan proposed by LoPatin? How many and which acres are included in the LoPatin plan?*

The first part, I've summarized in the final paragraph of the pillar. If that is good enough for the moment, for the purposes of my statement right now, I would go on to say then that the acreage that is to be included comprises the gross acreage. The 60 acres, the upstream portion of the Railroad's property that is south of Ship Creek and the 60 acres that includes that portion of the Railroad's land that is leased to the Municipality. It does not include those portions of the Ship Creek Point that have the boat dock and other amenities that were put out there a few years ago by the Municipality.

*What equity investment will LoPatin make in the project? What parties will share the "upside risk" in the project, and in what proportions?*

LoPatin will take an equity position in each of the projects that is developed down there. How much, I think, is going to end up, of course, being subject to how strong they feel the project is and how many investors they can bring to the table. That will be a typical investment decision that would be made by any business person. As I've said, it may very well be that if it's appropriate that the Alaska Railroad Corporation might take an equity position if its appropriate.

The "upside risk" in the project, I don't know what "upside risk" is. Upside usually says good, and risk I'm not sure what that means. But as far as the risk is concerned, it is largely held by the developer. Cash risk. The cash at risk will be that of the developer. Obviously the real estate that's at risk is ours. But if the developments fail, they then because it's on lease property, the lease improvements become the first call of the Railroad. All of our leases are structured in that way.

*What prior experience has LoPatin had with similar development projects? What is the size and reputation of the company?*

I only have a couple of these and I'll pass them out later. They're brochures. Frankly a brochure tells you what the brochure author would like you to read. But LoPatin has been in business for 40 years. They've built some very large buildings and projects, raceways in Michigan. They've been involved, built and developed the Riverside Raceway in California. Buildings in several locations around the world. We feel that they have not only the deep pockets but deep experience enough to come to this development and bring with them the types of amenities that we want to see in place. I think it's important to add that they have been chosen in processes much like this for several projects around the country. Not all of them are underway. Some of them have been held up because of environmental reasons or other legislative or municipal reasons. But nevertheless, in a competitive bidding process, they have been selected the developer. Most of their work has been done in the Michigan area, which does include some cold climate experience as well.

*Does the LoPatin proposal depend upon the availability of the \$5.5 million state appropriation or future appropriations? Have private sector investments equal to or exceeding \$5.5 million been obtained?*

Does our arrangement with LoPatin specifically depend on the \$5.5 million? I think not. Would it be important to further the development of the property? I think it is.

Have private sector investments equal to or exceeding \$5.5 million in place? As you know there are several projects that are currently underway down there at Ship Creek. One is a joint venture with the Alaska Railroad, the other are facilities the Railroad has cause to have built. And there is a restaurant and a brew pub and a number of other things. Those are appropriate to count when we have the other investment in place.

*Does the project as now conceived deviate from the original scope of the project as presented to the Legislature in support of the \$5.5 million state appropriation?*

We think it does. It brings to the project every element that was originally conceived by the original appropriation.

*Exactly what land is to be traded for what land? Why is a land trade deemed necessary or desirable at this time? How does the trade effect ongoing negotiations to secure a master developer for the project? If the trade is not completed, will the waterfront acreage be included in the master developer's plan?*

Many of you are probably very well aware that the Municipality of Anchorage has a lease from the Railroad for 60 gross acres of land and that includes land that needs to be filled in order to be constructible. That lease calls for payments of \$300,000 to be made to the Railroad starting in 1997. What the land that's swapped proposal calls for is the land at Ship Creek Point other than that land that has been improved. As I understand it, about \$12 million has been spent to build a boat dock out on the Point and some fill in the parking area. That is not included in the land swap. That remains with the Municipality. The net remaining land is to be swapped for 98 acres that is north of the Point. It is largely tide lands that the Port of Anchorage wants for further expansion. Another component of the land swap is because the Railroad will in essence be forsaking \$300,000 per year in projected income, we also will be exchanging (and these are lease exchanges by the way, not actual title exchanges). The Railroad will get a lease for 25 acres of municipal land that is off of Reeve Blvd. So if everybody is with me on that. That is the basis of the land that is being swapped. Why is the land trade deemed necessary or desirable at this time? Quite simply it's easier to develop the property and make commitments when you know exactly what the ownership situation is with one parcel of land vis-a-vis the next.

*How does the trade effect ongoing negotiations to secure a master developer for the project?*

It obviously is of importance to us to have the land swap. We did not or could not assume that it was going to take place, which is why the way we originally spoke to, until we met with the Ship Creek Committee the other day, our original discussions were to set up a lease for that land that the Railroad could commit a lease to with an option to include the 60 acres that were in the control of the Municipality. It was contemplated all along that the 60 municipal-controlled acres could be or would be included in the lease, if under that circumstance the Municipality was willing to commit to the inclusion of that property.

*If the trade is not completed, will the waterfront acreage be included in the master developer's plan?*

The answer to that question is, for the most part, yes. We have contemplated that, I go back to what I just said, it was an option available or built into the lease so that they would be or could be included in the event that that's what the Municipality wanted to do.

*Under the land trade proposal being considered, would the Railroad gain control of the acreage at the Ship Creek Point where about \$12 million of public money (local G.O. bonds) has been spent on improvements?*

No. I think I already the next question.

*Does the Railroad view itself as a financial "developer" that will make equity investments and shoulder the resulting risks? Will the Railroad assume this role in the Ship Creek development?*

I don't mind having a small equity piece in these types of developments. There are two reasons for that. One, it's the fact that if the Railroad has a small equity piece, we don't want a majority of anything, and I'm thinking more in terms of 10% or less of an equity piece. It does two things. One, it affords us the opportunity to increase our lease otherwise lease income which is of benefit not only to the Railroad but also benefits the community in other ways. The other thing is when you're going out or when folks are going out for financing for a project, they feel a heck of a lot better when there are more than one equity holder in the project. When the land holder actually has an equity position and the land holder believes in the project enough to invest some money in it then it does give the financiers a little bit more of a level of comfort that this is a project that has some support.

The risk that we would be shouldering under that circumstance would be merely that that we would be contributing to the equity. And of course, as an example, if we had a 10% share we would share also equally, we would share 10% of whatever the failure might be as well. And that comes right along with the positive, unfortunately.

*Will the Railroad assume the developer's role in the Ship Creek development?*

No. We don't intend for the Railroad to shoulder the development role. We intend for the developer to shoulder the developer role. That's why we got them.

*What efforts, if any, has the Railroad made to avoid undue competition with the private sector? Does the Railroad think this is a problem?*

The efforts that we've made to avoid competing unfairly, which is really the issue of the private sector, are fairly easy to document. The most visible example of this was what I refer to as our hotel adventure down in Ship Creek. This is where we took the net present value of a 35 year lease and applied that as equity towards the operation, construction and ownership of the hotel. As partners, in the joint venture, that is building and operating this hotel, will pay all applicable taxes. That includes the bed tax and it also includes property taxes. Our performance figure that we will pay is something just short of \$200,000 in taxes in the first year. And roughly \$240,000 in taxes of various types in years thereafter. All taxes that should be paid to the federal government or anybody else that's involved will be paid before the Railroad gets any share, that we hope will be substantial, of income from the hotel operation.

We are borrowing money. The Railroad has an opportunity to borrow money at pretty attractive rates because of the financial soundness of the organization. We are borrowing money for this particular project, the partnership is borrowing its mortgage money at 9 1/2 %. I just shopped for a mortgage and I did better than that.

What I'm trying to communicate here is that we did not use any leverage that we might have to bring a lower operating cost for the project to the project.

Yes, obviously, should the project fail the faith and credit of the Alaska Railroad Corporation is on the line. Obviously that gives the lender a level of comfort that may not otherwise be there. But, that is something that frankly we're somewhat proud of, it's something we can bring to bear because of the way the property has been managed since transfer. But, the money that we're borrowing is at market rates from a market institution.

Further, I know it was a topic of some discussion for which I probably should take more responsibility that some recognize, was our effort to be included in the RFP for the city hall. The only reason I bring up that topic again, is to say that we had baked into our figures for the city hall a fair market lease of \$180,000 a year for the property. I probably shouldn't have said that number. But anyway, for the property, so as to be sure that, and we had intended to sell that project or turn it over to a developer. The time line that was in play for the RFP for city hall mandated that we start before we can turn it over to a developer. But it was our intent to turn it over to a developer to do. And in order to do that, obviously, we couldn't make it so tight that the developer would not be interested. So we had baked in the fair market value of the lease.

I tell you these things only because we do, we think that we're very sensitive to the issue of competing unfairly in the market place. We think we do a responsible job of operating our transportation company without being predatory as the term of the transportation industry. We take very little advantage of our situation, well, not little, we don't take any advantage of the situation. Rates, probably many of you know in the transportation industry, are dictated by the market. Our track record there is quite good.

*Does the Railroad view its lands as publicly-owned lands that should be managed in accordance with principals of public land management (e.g., opportunity for public comment on proposed actions)?*

Good question. The Railroad and its Board of Directors, its management and ultimately its Board of Directors is charged with the responsible management of the real estate assets of the Alaska Railroad Corporation.

In the course of any lease real estate activity that we set forth, and I believe the State Constitution also has a play in this, there is a recognized structure for public announcement of the lease. There is, I think, a 15-day (I hope I'm correct, it's at least 15 but it may be more) of holding period for public comment. No lease in excess of 3 years without the blessing of the Board of Directors and public comment to the Board, and I can tell you when the Board of Directors is approached on the basis of a lease, they do react. Some have been changed some have been expanded. It's not a rubber stamp process.

We also, of course, are subject to as anyone else is, planning and zoning processes in the various municipalities. Permitting is another thing that we all have the privilege of going through and that is a long arduous process, as many of you know. In the development of our land we not only do we have the public process involved in comment but we also have to go through the same sorts of requirements or regulations as any private land owner does for land development.

*Has the Railroad's legal counsel determined that corporation is exempt from local bed taxes under AS 42.40.910?*

Let me put that one in context. There was a letter that was written, I believe to a motel to Fairbanks, some months ago that offered an opinion by our people that the Railroad crews, when they were staying at what we call the away from home terminal (these are locomotive engineers, conductors, maintenance, others), when they were at their away from home terminal, that the Railroad was not subject to a bed tax for those people while they were working for the Alaska Railroad. It had absolutely nothing to do with our hotel down at Ship Creek. As I mentioned earlier the hotel at Ship Creek will

pay (I think it's \$8) for bed tax for every guest that stays in the hotel. So we have determined that when it's a hotel business that we do pay it. If you're going to ask me to the answer to the other one, I'm afraid I don't know how that turned out. Thank you for your help.

Sen. Collins: I appreciate you going through the questions on an item by item basis. Probably by doing so, have answered many of the questions that members of the Caucus had.

Jim Barnett (from Anchorage): Jim Kubitz (Assembly), Vivian Hamilton (ARRC), Rhonda Roberts (Sen. Rodey) and Jerry McCutcheon are present in Anchorage. Thank you for convening this meeting. I'm sure it's been very productive. ... We understand the land trade will be before the Assembly by mid March... The key to the thing, I guess I'd recommend to the Legislature that the Railroad and LoPatin work with the Legislature and the Assembly on the deal as it progresses to ensure that there is a long-term developed agreement for the whole 120 acres. That \$5.5 million is proposed to be spent -- to that plan. I think if those things are done, the Assembly will be quite satisfied with the project....

Rep. Brown: My question is for Mr. Hatfield and it goes to the sequence of events that we can anticipate happening this spring. It's my understanding from our discussion earlier today as well as from the material that's in the newspaper that it is the plan of the Railroad Board to finalize a land lease in mid March. My concern, sir, is that the master plan concept that we thought we'd be getting as part of the original RFP will not yet have been prepared until after we've made this binding commitment with the bidder.

As I shared with you earlier, representing neighborhoods around this area, we are quite concerned about the specifics of what this proposed development is going to look like. I think it's entirely reasonable that we see something more definite before a final commitment is made to proceed with this.

My question is why are we not insisting that the winning bidder prepare a conceptual master plan as the RFP required before a commitment is made to them?

Hatfield: This was a scenario, a time line, that was approved by the Ship Creek Committee. There was a level of comfort among all of them that there would be enough specificity in the lease. Because as I've said we were going to include in the lease language some specificity about the types of things that would be developed and all the rest. That there would be a level of comfort

with that master plan. I think it was contemplated all the way along that in order for the real commitment, the release of the appropriated money, the Ship Creek Committee would have to approve of the master plan.

I cannot sit here and unilaterally change that. I suspect that the developer will say, fine if you want to wait until April 30 to sign your lease go ahead. I cannot say that, that was not what was developed, that was not what we said. As the four entities agree as to what they'd do. So I can't unilaterally change it. The reasons were I'm sure that the developer, to put in a real bona fide master plan is expensive. It's more that just taking a drawing and putting things on it. It has a good deal more that goes with it. I'm not sure how they would react to a change. I think everybody's comfortable enough with one another so that we could do that. I cannot make that unilateral change. Obviously we can discuss it with the committee and see what happens.

Sen. Pearce: Mr. Hatfield, in this morning's *Anchorage Times*, which I've suspect you've seen, there was an editorial about the legislators leaving the Railroad alone. They took a few shots at us as they often do. But the timing of these editorials has been quite interesting. Each time the Legislature has had a meeting scheduled to talk about the Ship Creek and the Railroad, there's been an editorial. The last paragraph kind of interests me, it once again brings up the idea of selling the Railroad, which as the Times says they think they out to do. Frankly, over past years I've always kind of thought so too. Before your tenure the Alaska Railroad were the ones to come to the Legislature and ask us to change the legislation. The Statutes of 1988 and delete the requirement that the Railroad actually be put up for sale. Has there been a change in the policy by the Railroad Board? Is the Railroad now interested in becoming completely autonomous and being sold by the State?

Hatfield: First, I have not seen that editorial until Representative Brown showed it to me this morning. .... As far as the Railroad being sold is concerned, as I understand it the requirement that a formal report be made to the Legislature was such that in order to do that in a bona fide way, it's very expensive. You've got to get investment bankers in. You have to have virtually every bit of your assets appraised and audited and all the rest. It costs probably, to do that right (I've been involved in the sale of a railroad) about \$500,000 a year.

Does the Governor have any point of view about the sale of the Railroad? I'm certainly in no position to answer that question. I don't know.

Would the Board of Directors entertain an effort to sell the Railroad? First of all, we're legally required to do it. We're legally required to report any offer of sale or purchase to the Legislature. Yes, we would bring it to the Board and immediately it would be communicated to you all.

I'm not sure, Senator Pearce, if I'm answering your question. Should the Railroad be sold? I don't know. That's not my decision to make. I have an opinion that as such I think it would be difficult (tape change) to work a sale through with as much public interest that there is in the Railroad. I'm not sure that the people really would want to have it sold. If they do, it wouldn't surprise me if the employees stood up to buy it.

It's a very broad question and it's difficult for me to answer it because I haven't really been exposed to that effort as some had in the part of the state ownership. I hope I answered your question.

Rep. Ellis: Mr. Hatfield you gave an explanation earlier in your comments about what came to pass in dropping the one respondent. From my reading of the points scored by the Committee was vastly superior to the developer that you've now settled on. You gave something of an explanation there. From people that are close to the project and have been following this closely, we've appropriated the money with the concept of a master developer, the entire 120 acres down there. Things were moving forward. You had that concept and that fit very well with our goals of having the private sector incentives involved in this. Private risks taking involved in making this project go.

Then the Railroad got the idea of wanting to be the developer. Whether you believe that's the case or not, that's what everyone tells us. That you all felt that you could develop the land and you weren't interested in going with the master developer concept.

Now after Intergroup has dropped, you're back to the master developer concept with the second respondent that appears to be, I mean, didn't stake up well in the point scoring. I guess I would ask you how you got through that. We're glad that you're back to the master developer concept because the right incentives are built into this project to make it go. I've never thought government agencies did a very good job of economic development, left to their own devices. When you have the private sector, that things have a better chance of working out successfully. I guess I won't ask for your comment on that unless you care to make it about how you went through that process. It looked like a way to drop Intergroup and to go with LoPatin.

Now the second part of my question is what do you really know about LoPatin? You have the brochure there that I'm interested in looking at. But I'm wondering if you or the Board have personally looked into the background of this developer?

Hatfield: Let me try to answer both of your questions in order. The negotiations with Intergroup, the first proposal was financially unworkable. We were trying to figure out a way to make Intergroup work, which is what brought us to the commission aspect that everybody said wouldn't fly as far as the development of the property was concerned because that would have in essence made the Railroad the developer. So we backed away from that. Then we went to another concept. Frankly, there were a number of things that concerned us and the details probably discussed in a smaller group. But they were so expensive and so weighted towards Intergroup with the Railroad having little or no benefit for many years to come, we worried about the motives that were driving the developer.

The next question was what do we really know about LoPatin? We have interviewed them, the Board of Directors, our Chairman, has interviewed them in the Lower 48. We know that they have worked with the Hyatt Group and they check out alright over there. We've done the cursory checks that tell us that the projects they have done or have been assigned to have all been in large part, first rate projects. We are also subjecting them to the same sort of scrutiny, background check and all the rest that we did with Intergroup. It's not done yet. We're not going to sign the lease until it is. But they are undergoing the same kind of checks and if we find a problem, then we an't going to sign up with them.

Rep. Ellis: In closing, I just encourage you to look at their resume and find out about if what they say in the resume is true. Because if it's not, you're going to have a blowup on your hands, in the media, among all the people concerned about this project being successful. So please check it out.

Hatfield: We'll do that.

Rep. Brown: I just wanted to bring up the \$5.5 million in private matching investment that is supposed to be there as a condition of the \$5.5 million state appropriation. I understood you to say that you are counting the Railroad headquarters and the Railroad hotel as part of that. Are you going to have new, different commitments other than things the Railroad is doing? The brew pub, of course, was part of the first \$2.5 million (state money) and shouldn't be counted either. At least, that was my understanding that we were looking for new equity investment coming in, not counting things the Railroad itself was doing. Could you clarify that?

Hatfield: Well, there has been in the last 12-14 months about \$30 million worth of construction down there in Ship Creek. As far as we're concerned, what does or does not count is in the eye of the beholder. If the Railroad headquarters is not counted, there's still ample to trigger the matching funds. If, on the other hand, if that work that has been brought into the Ship Creek development, which frankly, we've worked hard to do some of that, if that doesn't count, then it may be that the \$5.5 million cannot be committed. Because there is nothing on the horizon from any developer that would have that in by April 30. But it was our understanding that the Ship Creek Committee had come up with a list of the projects that met the prerequisites of the legislative group. I'm sorry, I just don't have that list in front of me. Everybody had agreed that those projects would be included.

Rep. Brown: Well I think we'll need to have some more discussion on that point and review of the record.

Sen. Collins adjourned the meeting.

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## PUBLIC NOTICE

## PROPOSAL TO LEASE

The Alaska Railroad Corporation proposes to execute a lease to Ship Creek Crossings Developers, Inc. of real property located within the Anchorage Recording District, Third Judicial District, State of Alaska, as described below:

An uncutdivided parcel of land located within the Alaska Railroad Anchorage Terminal Reserve within Section 18, Township 13 North, Range 3 West, Seward Meridian situated in the Anchorage Recording District, Third Judicial District, State of Alaska and further described as follows:

Beginning at the centerline of the south abutment of the pedestrian bridge over Ship Creek and being the True Point of Beginning. Thence in a southerly direction to the northeast corner of Lot 33 on Warehouse Avenue; thence southwesterly along the north lot lines common to Lots 32, 31 and 30 to the northwest corner of Lot 30; thence south along the west lot line of Lot 30 to the north lot line of Lot 2; thence west along the north lot line of Lot 2 to the northwest corner of Lot 2; thence south along the west lot line of Lot 2 to the north permit line for First Avenue; thence west along the north permit line of First Avenue to the southeast corner of ARRC Special Land Use Permit to Anchorage Cold Storage, ARRC Contract No. 6347; thence north along the east permit line of permit Contract No. 6347 to the northeast corner of permit contract No. 6347; thence west along the north permit line of Contract No. 6347 to the northwest corner of permit Contract No. 6347; thence north to a point 20 feet south and perpendicular to the ARRC mainline track; thence west 20 feet south and parallel to the ARRC mainline to a point adjacent to the point of switch for Team Track No. 1; thence north to a point 20 feet north and perpendicular to the ARRC mainline track; thence west 20 feet north and parallel to the mainline track to a point on line with the ARRC lease to Dresser Industries, ARRC Contract No. 4270, east lease line; thence south along the east lease line for lease Contract No. 4270 to the southeast corner for lease Contract No. 4270; thence southeasterly along the southeast lease line for Contract No. 4270 to a point on the east lease line of ARRC lease to Freightways Terminal, Contract No. 1664; thence south along the east lease line for lease Contract No. 1664 to the ARRC Terminal Reserve south boundary; thence west along the

south boundary of the Terminal Reserve to a point 50 feet west and perpendicular to the ARRC mainline track; thence northerly 50 feet west and parallel to the ARRC freight main track to the southeast corner of Track A of the Ship Creek Point Subdivision; thence northwesterly along the southwesterly boundary of Track A approximately 775 feet; thence northeasterly across Track A and Track B approximately 1,000 feet to a point on the northeasterly boundary of Track B; thence southeasterly along the north boundary of Track B approximately 1,200 feet to the northeasterly corner of Track B; thence along Track B, S 18° 49' 27" W, 447.65 feet to a point on the south bank of Ship Creek; thence along Track B, S 44° 54' 41" E, 407.40 feet to a point 50 feet north and perpendicular to the ARRC freight main track; thence south to a point 50 feet south and perpendicular to the ARRC freight main track and the normal high water mark of the south bank of Ship Creek; thence meandering easterly along the normal high water mark of the south bank of Ship Creek to the True Point of Beginning at the centerline of the south abutment of the pedestrian bridge across Ship Creek.

This file (excluding privileged or proprietary information) is available for inspection during regular business hours, Monday through Friday, at the office of the Manager of Real Estate, Alaska Railroad Corporation, 421 West First Avenue, Suite 201, Anchorage, Alaska. Comments may be submitted in writing to Manager, Real Estate, P.O. Box 107500, Anchorage, Alaska 99510-7500 and must be submitted on or before March 33, 1993. Questions may be directed to Manager of Real Estate at 265-2465.

Pub: March 6, 7 & 8, 1992

# ALASKA RAILROAD CORPORATION



P.O. Box 107500 • Anchorage, Alaska 99510-7500

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# ALASKA RAILROAD CORPORATION



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## ALASKA RAILROAD CORPORATION

### LONG TERM LEASE POLICY

The Alaska Railroad Corporation (referred to below as "Lessor" and "ARRC") will adhere to the following policies and guidelines when leasing real property for terms of five or more years. The policies and guidelines contained in this statement may be changed from time to time when the Alaska Railroad Corporation determines a change is appropriate.

#### 1. PURPOSE

The purpose of this policy statement is to set forth guidelines and principles upon which the Alaska Railroad Corporation's standard long-term lease will generally be based. This statement is intended to give prospective Lessees and other interested persons information about the ARRC's policy with respect to its land lease program. However, this statement is not intended to provide the precise language that will appear in a lease or to substitute for or override any terms of a lease. It is important for prospective Lessees and other persons interested in a particular lease to carefully review the terms of the particular lease itself, because the lease (and not this policy statement) creates the legal relationship between Lessor and Lessee and defines the rights of each of the parties.

This policy governs new leases entered by the Alaska Railroad Corporation. Section 4 of the policy identifies circumstances under which an existing lease will be replaced by a new lease conforming to this policy statement.

#### 2. PRE-LEASE MATTERS

2.01 COMMITMENTS. Long-term lease agreements require formal approval by ARRC Management. Neither letter proposals nor lease drafts will constitute a formal offer from Lessor. Such documents constitute nonfinal negotiating proposals by Lessor's representative and indicate the terms and conditions the representative is willing to recommend to Management. Lessor becomes bound only upon the execution of the typewritten lease by ARRC.

2.02 PUBLIC NOTICE AND RECORDATION OF LEASE. This provision relates to required public notice and public recording with respect to individual leases. It does not govern publication or relate to Lessor's marketing or leasing policies.

(a) Published Notice. Notice will be published in a newspaper of general circulation, serving the community where the property is located, for three (3) consecutive days, ending fifteen (15) days prior to the effective date of the proposed long-term lease. The notice will only describe the parcel to be leased, the proposed Lessee, date of proposed action, and the name, address, and telephone number of the Alaska Railroad Corporation representative.

(b) Memorandum of Lease. Upon the execution of this Agreement, both parties agree to execute a Memorandum Short Form Lease suitable for recording purposes.

2.03 ADMINISTRATIVE FEE. With Lessee's formal application to lease, Lessee will include payment of an administrative fee of Two Hundred Dollars (\$200.00). The fee will apply to the first month's rental if a lease is executed. If the application is denied, the fee will be retained to defray administrative costs. Lessor may increase the administrative fee from time to time when an increase becomes necessary to cover costs.

2.04 PERFORMANCE OR CONSTRUCTION BONDS. At Lessor's option, Lessee will, before commencing construction of any improvement, including but not limited to subsurface improvements on the premises, deposit with the Lessor a bond or certificate thereof, in a sum not less than the cost of such construction and in form and with surety satisfactory to the Lessors, guaranteeing the completion of such construction free and clear of all mechanics' and materialmen's liens, together with such information and evidence as Lessors may reasonably require to assure that the Lessee is able to and will make all payments required by contract to be made as and when the Lessee is required to do so. The performance assurance, if required, may be in the form of surety, cash, assigned deposit, or irrevocable letter of credit.

2.05 PERMITS. All permits required by municipal, state or federal law are to be secured by and at the expense of Lessee.

2.06 PARCEL MAPS. If a parcel or subdivision map is required by municipal ordinance, it must be approved by the proper governmental body and recorded prior to the execution of the lease or option to lease. The preparation and public recording of parcel or subdivision maps will be the responsibility of the Lessor; however, a nonrefundable deposit may be required of the Lessee to cover the cost.

2.07 CONDITION OF PROPERTY. Lessor will lease property "as is, with all faults", and without any representations or warranties by Lessor as to the characteristics or suitability of the Premises. Prior to execution of the Lease, Lessee will be given an opportunity to independently investigate the Premises, and to assess:

(a) the feasibility of developing the Premises for the purposes intended by Lessee;

(b) the size and dimensions of the Premises;

(c) the availability and adequacy of water, sewage and any utilities serving Premises;

(d) the presence and adequacy of infrastructure or other improvements on, near, or affecting the Premises;

(e) the extent and condition of any grading or other site work already performed or hereafter required for Lessee's possible development of the Premises;

(f) any surface, soil, subsoil or other physical conditions of or affecting the Premises, such as climate, geological, drainage, air, water or mineral conditions;

(g) easements and reservations of record affecting the title;

(h) the existence of governmental laws, regulations, ordinances, restrictions or requirements concerning the use density, location or suitability of the Premises for any existing or proposed development including such matters as zoning, building, subdivision, environmental and other regulations;

(i) the necessity or availability of any rezoning, zoning variances, conditional use permits, building permits, environmental impact reports, parcel or subdivision maps, public reports and any other governmental approval;

(j) the necessity or existence of any dedications, taxes, fees, charges, costs or assessments that may be imposed in connection with any regulation or authorization or the obtaining of any required Permits; and

(k) all matters concerning the condition, use and development of the Premises.

2.08 RELOCATION OF FACILITIES. Any necessary or desired relocation of Lessor's facilities will be made at the sole expense of Lessee. Lessee must communicate any request for relocation of Lessor's facilities before the lease is entered.

2.09 STORAGE OF HAZARDOUS MATERIALS. No leases will be granted for storage of hazardous materials (including gasoline and diesel fuel) unless Lessee first exhibits full compliance with municipal, state, and federal environmental laws and regulations, produces proof of satisfactory liability insurance naming Lessor as co-insured, and agrees to indemnify