

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9167 HOUSE JUDICIARY

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 17, 1997

SUBJECT: Civil liability for illegal alcohol sales - (HB 22)

TO: Representative Ivan Ivan
Attn: Tom

FROM: Michael F. Ford *M.F.F.*
Legislative Counsel

You have asked for a brief explanation of the effects of the above- referenced bill. The bill would impose strict liability on bootleggers, or people who sell alcohol without a license. The imposition of strict civil liability means that a person convicted of bootlegging would be liable for any civil damages regardless of the degree of care exercised by the bootlegger. This is in contrast to a situation where a person is liable only if negligence is proven. To prove negligence you must show a failure to meet a standard of care, whereas in strict liability the only issues are commission of the act and damages.

Also, civil damages would include personal injuries as well as damages for a person's death. Assuming the intoxicated person does die as a result of a bootlegger providing alcohol, the deceased person's estate would still be able to recover damages from the bootlegger. See AS 09.55.570 and 09.55.580.

The imposition of strict liability is not common in our statutes and is often not favored by the courts. However, given the public health concerns addressed by the draft I do not think that there are any legal impediments to imposing strict liability in this situation.

Please contact me if you have further questions.

MFF:pl
97-013.plm

file in Ivan's
HB 22 folder

Position Paper
Tanana Chiefs Conference, Inc.

Subject: Civil liability for illegal sale of alcohol
Date: January 22, 1996
Bill Number: House Bill 22
Sponsor: Representative Ivan
Status: (H) Jud (single committee referral)

Issue: According the sponsor's statement, current law seemingly exempts those who sell liquor without a license (bootleggers) from any civil liability for the damages that may be caused by their illegal acts. The basis of House Bill 22 is to remove that exemption and make bootleggers strictly liable for their actions.

TCC Position: In the spirit of the War on Alcohol led by the Elders and multiple convention resolutions calling for the crackdown on bootlegging, Tanana Chiefs Conference supports HB 22.

**TANANA CHIEFS CONFERENCE
BOARD OF DIRECTORS
Resolution No. 96-13**

BOOT THE BOOTLEGGERS AND DRUG DEALERS

WHEREAS, alcohol and drug abuse among the youth is the main contribution to all the tragedies affecting the youth in our villages; and

WHEREAS, bootleggers and drug dealers in our villages are providing a deadly poison to our youth; and

WHEREAS, a high number of suicides, teen pregnancies, murders and alcohol related accidents are directly related to alcohol and drug abuse; and

WHEREAS, alcohol and drug abuse is destroying our culture and tradition;

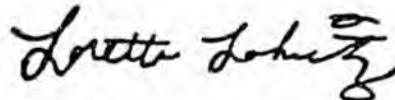
NOW THEREFORE BE IT RESOLVED that the Tanana Chiefs Conference Board of Directors direct staff to work with village councils to develop strategies to combat the alcohol and drug abuse problems; and

BE IT FURTHER RESOLVED that the VPSO's, State Troopers and other law enforcement agencies be requested to step up their efforts of booting the bootleggers and drug dealers out of our villages; and

BE IT FURTHER RESOLVED that this resolution is effective 3/14/96.

C E R T I F I C A T I O N

I hereby certify that this resolution was duly passed by the Tanana Chiefs Conference, Inc. Board of Directors on March 14, 1996 at Fairbanks, Alaska and a quorum was duly established.



Loretta Lolnitz
Secretary/Treasurer

Submitted by: Youth Delegates



TANANA CHIEFS CONFERENCE, INC.
BOARD OF DIRECTORS
Resolution No. 95-40

ADVOCATING THE PREVENTION OF BOOTLEGGING AND SALE OF ILLEGAL DRUGS

- WHEREAS,** the consumption of alcohol and use of illegal drugs is a major cause of damage to the lifestyle of Native communities in Alaska; and
- WHEREAS,** illegal sale of drugs and sale of alcohol by "bootlegging" is widely known as having an extreme negative impact on the cultural, social, and economic well being of the Native communities in Alaska; and
- WHEREAS,** tribal councils need technical assistance in developing tribal courts and ordinances as enforcement against illegal sale of drugs and sale of alcohol by "bootlegging"; and
- WHEREAS,** laws should be written to make bootleggers and drug dealers accessories to crimes committed by the people to whom they have sold liquor or illegal drugs to; and
- WHEREAS,** such laws should include the taking of any property of drug dealer or bootlegger bought by the profits of the illegal sale of drugs and sale of alcohol by "bootlegging" by the law enforcement; and
- WHEREAS,** that use of alcohol and drugs offers nothing to our Native villages, but broken spirits, homes and families; pain suffering and death;

NOW THEREFORE BE IT RESOLVED the Tanana Chiefs Conference, Inc. Board of Directors direct their staff to assist the FCC villages in developing and implementing ordinances against the illegal sale of drugs and alcohol; and

BE IT FURTHER RESOLVED that Tanana Chiefs Conference, Inc. Board of Directors request that Governor Tony Knowles and The State Legislature support the efforts of Rural Alaska in their fight against alcohol and drug abuse; and

BE IT FURTHER RESOLVED that Tanana Chiefs Conference, Inc. Board of Directors request that the State Legislature consider written law to make bootleggers and drug dealers accessory to crimes committed by the people to whom they have sold liquor or illegal drugs to and confiscate property purchased by profits of the illegal sale of the drugs and alcohol.

C E R T I F I C A T I O N

I hereby certify that this resolution was duly passed by the Tanana Chiefs Conference, Inc. Board of Directors on March 16, 1995 at Fairbanks, Alaska and a quorum was duly established.



[Handwritten Signature]

Secretary-Treasurer

Koyukuk Tribal Council

TANANA CHIEFS CONFERENCE, INC.
BOARD OF DIRECTORS
Resolution No. 95-71

YOUTH DECLARATION OF WAR ON ALCOHOL AND DRUG ABUSE

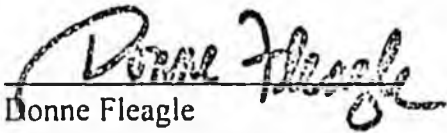
- WHEREAS,** alcohol and drug abuse causes many accidents and other tragedies; and
- WHEREAS,** alcohol contributes to problems of child abuse, sexual abuse and domestic violence; and
- WHEREAS,** alcohol and drug abuse contributes to low-self esteem; and
- WHEREAS,** alcohol and drug abuse contributes to high school drop out rates and loss of employment; and
- WHEREAS,** alcohol and drug abuse often causes families to break apart; and
- WHEREAS,** alcohol and drug abuse threatens the Alaskan Native cultures;

NOW THEREFORE BE IT RESOLVED that the youth declare a War on Alcohol and Drugs and that the Tanana Chiefs Conference, Inc. Board of Directors directs TCC staff to support in every way possible the Alaska Native Sobriety movement; and

BE IT FURTHER RESOLVED that the chain of passing alcohol and substance abuse between generations be broken.

CERTIFICATION

I hereby certify that this resolution was duly passed by the Tanana Chiefs Conference, Inc. Board of Directors on March 16, 1995 at Fairbanks, Alaska and a quorum was duly established.


Donne Fleagle
Secretary/Treasurer

Submitted by: Youth Delegates



TANANA CHIEFS CONFERENCE, INC.
Board of Directors

Resolution No. 87-1

Supporting Native Elders in Their Fight Against Alcohol and Drugs

WHEREAS, there are many problems which threaten our survival as a Native people, but none have such a devastating impact on our villages and families as does the problem of alcohol and drug abuse; and

WHEREAS, the use of alcohol and drugs offers nothing to our Native villages but broken spirits, broken families, pain, grief, suffering and death; and

WHEREAS, the use of alcohol and drugs never has been and never will be of any value to our Native culture and Native people; and

WHEREAS, since its introduction from other cultures, Native elders have warned their villages that alcohol and drugs are the greatest threat to health, life and cultural values; and

WHEREAS, as the keepers and teachers of Native culture, the elders of today speak stronger than ever against alcohol and drugs and have committed themselves to bring their message against alcohol and drugs to their villages; and

NOW THEREFORE BE IT RESOLVED that the Tanana Chiefs Conference Board of Directors request that Governor Steve Cowper and every Alaska State legislature and member of Alaska's delegation in Congress support the efforts of the Interior villages in their fight against alcohol and drug abuse; and

BE IT FURTHER RESOLVED that the Tanana Chiefs Conference Board of Directors direct TCC to pursue state, federal, local, and private sector funding to institute comprehensive region wide alcohol and drug prevention programs utilizing elders, concerned village volunteers, village councils and youth in each village and that these concerned village teams be afforded training and ongoing support; and

BE IT FURTHER RESOLVED that the Village Councils and village courts pass ordinances against alcohol and drugs and strictly enforce these ordinances through their village courts; and

BE IT FURTHER RESOLVED to protect our children and families, Village Councils and courts strongly consider the use of traditional Native justice mechanisms and banish bootleggers and drug pushers from our village; and

BE IT FURTHER RESOLVED each school in each village includes a comprehensive drug prevention to their curriculum and actively implement preventive education at every grade level; and

BE IT FURTHER RESOLVED as an example to our children and to each other, no alcohol to be served at any TCC function from this day forward; and

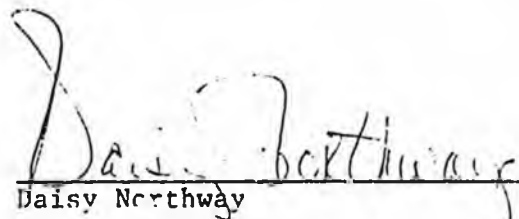
BE IT FURTHER RESOLVED any TCC employee determined to have a drug or alcohol problem be given the option to receive treatment or be immediately terminated from employment; and

BE IT FURTHER RESOLVED each Native person of strong body and mind lend their hand to help their elders and village leaders in this, their most serious tas ; and

BE IT FURTHER RESOLVED for the spiritual well being of our children and families and for the survival and strengthening of our villages, from this day forward, let it be known that the elders of the Athabascan Nation have declared war on all those who are associated with alcohol and drug abuse.

C E R T I F I C A T I O N

I hereby certify that this resolution was duly passed by the Tanana Chiefs Conference, Inc. Board of Directors on March 19, 1987 at Fairbanks, Alaska and a quorum was duly established.


Daisy Northway
Secretary-Treasurer
Tanana Chiefs Conference, Inc.

Submitted by: Elder Delegates

3.06 LEGAL CAUSE

I will now define "legal cause" for you. A legal cause of harm is an act or failure to act which is a substantial factor in bringing about the harm. An act or failure to act is a substantial factor in bringing about harm if it is more likely true than not true that:

1. the act or failure to act was so important in bringing about the harm that a reasonable person would regard it as a cause and attach responsibility to it; and

2. the harm would not have occurred but for the act or failure to act.

[There is, however, one exception to the requirement that the harm would not have occurred but for the act, or failure to act, or the defendant. If two forces operated to cause the harm, one because of the defendant and the other not, and each force by itself was sufficient to cause the harm, then the defendant's act or failure to act is a cause of the harm if it was so important in bringing about the harm that a reasonable person would regard it as a cause and attach responsibility to it.]

Use Note

This instruction should be used as the "proximate cause" instruction. The bracketed paragraph should be given in appropriate circumstances. See Comment to Instruction 3.07.

If concurring or superseding cause is an issue, the instruction for those doctrines should be given immediately following this instruction. See Instruction 3.07.

Comment

This instruction is derived from Restatement (Second) of Torts § 431 (1965). "Proximate" is a term that may be meaningful

to lawyers because of familiarity with the concept, but it is not so understood by jurors. All too often "proximate" confuses rather than enlightens the layperson trier of fact.

"Legal cause" language and the "substantial factor" rule have been used in Alaska. See Sharp v. Fairbanks North Star Borough, 569 P.2d 178, 181 (Alaska 1977); State v. Abbott, 498 P.2d 712, 727 (Alaska 1972).

The definitions of legal cause and substantial factor are consistent with the Restatement position. See Restatement (Second) of Torts § 430 and comment d, § 431 and comment a (1965), as cited in Sharp v. Fairbanks North Star Borough, 569 P.2d at 181, and in State v. Abbott, 498 P.2d at 727.

In City of Fairbanks v. Nesbett, 432 P.2d 607, 610-11 (Alaska 1967), the Supreme Court stated that it is not necessary for the actor's conduct to be "the" legal cause of an injury, it is only necessary that such conduct be "a" legal cause.

While several Alaska cases have endorsed the "substantial factor" test, the Alaska Supreme Court did question this test to a certain degree in McCarthy v. McCarthy, 153 P.2d 137, Op. No. 3285 (Alaska, April 1, 1988). The case involved an automobile accident in which both the plaintiff and defendant were negligent. Both parties' negligence was a "but for" cause of the accident. However, despite the fact that there were no attenuating causation facts, the jury concluded that the defendant's negligence was not a "substantial factor" in causing the accident. The supreme court reversed, holding that no reasonable jury could have found a lack of legal cause. Id. at 3.

The court in McCarthy first recognized that the "substantial factor" test has been criticized. Id. at 4-5 (quoting W. Keeton, D. Dobbs, R. Keeton & R. Owen, Prosser and Keeton on the Law of Torts, at 278 (5th Ed. 1984)). The court states that this criticism "seems valid", Id. at 5, but finds it unnecessary to make a definitive ruling on the test because the case presented none of the "unforeseeable or indirect consequences as those presented in the classic case of Palsgraff"

In conclusion, while the court questions the substantial factor test, it neither invalidates the test, overrules prior cases endorsing the test, nor suggests an alternate test.

3.07 MULTIPLE CAUSES/SUPERCEEDING CAUSE

There may be more than one legal cause of harm. A person's negligence may combine with another cause (either the acts of another person or some force of nature) to produce harm. If you find a person's negligence is a legal cause of harm, that person may not avoid legal responsibility merely because some other cause also caused or helped cause the harm.

[However, (defendant) (plaintiff) claims that (his) (her) (its) conduct was not a legal cause of (plaintiff's) (defendant's) harm and that another cause was the superceeding cause of the harm. In order for (defendant) (plaintiff) to prevail on this claim, you must decide that it is more likely true than not true that

1. the harmful effects of the other cause occurred after the (defendant's) (plaintiff's) negligence;
2. the other cause was not reasonably foreseeable; and
3. the other cause brought about harm different in kind than what could be reasonably expected from (defendant's) (plaintiff's) negligence.

If you find that any of these things are more likely true than not true, then you must find that the defendant's conduct was not the legal cause of the harm.]

Use Note

This instruction should be given immediately following instruction 3.06, if appropriate.

The section starting with the second paragraph should be included only in cases where the facts present an issue of an intervening cause which may be a superseding cause.

Comment

In City of Fairbanks v. Nesbett, 432 P.2d 607 (Alaska 1967), the Alaska Supreme Court held that it was proper to find a defendant's negligent conduct was the legal cause of plaintiff's injury if the negligent act was a substantial factor in bringing about the injury. 432 P.2d at 610. The court further stated that it is not necessary for the actor's conduct to be the only legal cause of an injury for liability to attach to the actor. 432 P.2d at 610-611. The court in State v. Abbott, 498 P.2d 712 at 726-727 (Alaska 1972), explains that this is consistent with the position taken by the Restatement (Second) of Torts § 430, comment d at 428 (1965).

The court, however, has recognized a significant exception where two forces are operating to cause the injury. If one force is the defendant's negligence and the other is not, and if each force itself is sufficient to cause the injury, then the defendant's negligence may be found to be a legal cause of the harm. See State v. Abbott, 498 P.2d 712 at 727 (Alaska 1972), citing Restatement (Second) of Torts § 432(2) (1965).

Furthermore, if the harm to the plaintiff would have occurred only with the concurrence of the negligence of the defendant and any other actor, but would not have occurred if either party had been exercising reasonable care, it is proper to impose liability on the defendant. State v. Abbott, 498 P.2d 712 at 727 (Alaska 1972).

Alaska, however, has recognized that there is a point at which an intervening act may become the superceding legal cause of the plaintiff's injuries. See City of Fairbanks v. Nesbett, 432 P.2d 607, 611 n. 7 (Alaska 1967); Sharp v. Fairbanks North Star Borough, 569 P.2d 178 at 182 (Alaska 1977) (adopting the Restatement (Second) of Torts definition of intervening force and superseding cause).

The Restatement (Second) of Torts § 442 (1965) formulation of six factors to be considered in determining whether an intervening cause is a superseding cause is quoted in Sharp v. Fairbanks North Star Borough, supra, 569 P.2d at 183. These factors should be considered in appropriate cases.

Only in exceptional circumstances is the duty to prevent harm to another threatened by an actor's negligent conduct shifted to a third person, so as to make that third person's conduct a superseding cause of the harm. Osborne v. Russell, 609 P.2d 550 (Alaska 1983).

If there is a basis for diversity of opinion among reasonable persons as to whether a third party's actions constituted a superseding or intervening cause which would relieve the defendant of liability, the jury may decide the issue. City of Fairbanks v. Nesbett, 432 P.2d 607, 610 (Alaska 1967).

Position Paper

Tanana Chiefs Conference, Inc.

Subject: Civil liability for illegal sale of alcohol
 Date: January 22, 1996
 Bill Number: House Bill 22
 Sponsor: Representative Ivan
 Status: (H) Jud (single committee referral)

Issue: According the sponsor's statement, current law seemingly exempts those who sell liquor without a license (bootleggers) from any civil liability for the damages that may be caused by their illegal acts. The basis of House Bill 22 is to remove that exemption and make bootleggers strictly liable for their actions.

TCC Position: In the spirit of the War on Alcohol led by the Elders and multiple convention resolutions calling for the crackdown on bootlegging, Tanana Chiefs Conference supports HB 22.

Post-it® Fax Note	7671	Date	1/24/97	# of pages	6
To	Rep. GREEN	From	Lisa Jaeger		
Co./Dept.	HOUSE JUDICIARY	Co	TCC		
Phone #		Phone #			
Fax #		Fax #			

crosses to State
 [799 P2 1318]
 Gonzalez v State
 608 P2 23 (AK'80)
 (Restitution to State)
 12.55.100

punitive damages
 see
 exclusio rule
 Sprague
 590 P2 410 (AK'79)
 Haybarger
 606 P2 385 (AK'80)

HJC rec'd 1/28/97

Alaska State House of Representatives House District 39

Session
Alaska State Capital
Juneau, Alaska 99801-1182
Phone: (907) 465-4942



Interim
P.O. Box 137
Akiak, Alaska 99552
Phone: (907) 765-7526

Representative Ivan M. Ivan

CHANGES IN CSHB 22 (), DRAFT 0-LS0148\K, DATED 1/12/97

There have been a number of changes in CSHB 22, Draft LS0148\K, from the original bill. The changes adopted in the committee substitute were recommendations from House Judiciary Committee members, the Department of Law and House Judiciary staff.

SECTION 1

Language was added to explicitly express the intent of the original bill.

- A person who sells or barter alcohol illegally is strictly liable (1) to the recipient or another person for civil damages and (2) the cost to the state or political subdivision of the state to criminally prosecute the person receiving the illegal alcohol.
- The person who receives the illegal alcohol must be under the influence and the alcohol must substantially contribute to the civil damages.
- A definition of civil damages under subsection (b) includes damages for personal injury, death or injury to a person's property to include the state or political subdivision.
- A person who illegally sells or barter alcohol cannot use as a defense that the recipient voluntarily consumed or was voluntarily under the influence.

SECTION 2

This new section parallels section 1 of the draft committee substitute and addresses civil liability of a person who sell or barter a controlled substance as defined under AS 11.71.900.

1/15/97

Bootlegging

per Tom Wright

Ct. of App

96 Kinney v S

93 S v McHayntin

91 Harlow

Chokwak v Whorl

Op. No. 4323

3/96

912 P2d 1248

the State to assume custody over "any who had needs the child's parents could meet." Opinion at 1241. As noted above, I agree that such a reading would be too broad. That does not mean, however, that this court's reading is correct.

The court argues that the better way to interpret subsection (A) is "in accordance with its plain intent..." Opinion at 1241. I agree. I read subsection (A), however, to express a different intent.

Because the court misinterprets subsection (A), it erroneously concludes that inability is irrelevant to a CINA adjudication under that subsection. To repeat, the inability to care is relevant to both conditions which have to be met under subsection (A) in a case like this. There must first be no parent or other eligible caregiver who is in fact "caring" at present for the child, i.e., there must be a present failure of care. Second, there must be no other parent or caregiver "willing to provide care" if the child's custody were to be changed to some other eligible caregiver. The court erroneously reads "caring" and "willing to provide care" to be two separate alternatives. It reads willingness as a substitute for ability. Its reading fails to distinguish between the status quo and the future. Assuming the current caregiver is presently failing to provide the necessary care, a CINA adjudication is nonetheless inappropriate if some other eligible caregiver is able to provide care in the future. Willingness alone is no substitute for an ability to perform. The court looks at willingness in isolation, and fails to give appropriate weight to the clause "to provide care."

For these reasons, this court should not overrule its prior opinions in which it found inability to provide care to be relevant to a subsection (A) inquiry. See *A.M. v. State*, 891 P.2d 815, 824 (Alaska 1995); *In re T.W.R.*, 887 P.2d 911, 915 (Alaska 1994); *In re J.L.F.*, 828 P.2d 160, 170 (Alaska 1992). I would consequently disavow the language in *F.T.*, 862 P.2d at 860, by which the court rejected an argument that inability to care could support a finding that a child was

CINA under subsection (A). I would not overrule the explicit holding in *F.T.*

In the case now before us, the record does not warrant a finding that S.A. and D.A. are CINA under AS 47.10.010(a)(2)(A), because the facts do not justify a conclusion that N.A. was, at the time of the trial, unable or unwilling to provide the kind of care contemplated under subsection (A). I consequently agree that the termination of N.A.'s parental rights should be reversed.



Phillip CHORWAK, Appellant,

v.

Les WORLEY and Ron
Worley, Appellees.

No. S-6353.

Supreme Court of Alaska.

March 8, 1996.

Minor who was injured in automobile accident after he consumed alcohol at party brought personal injury action against hosts. The Superior Court, Third Judicial District, Anchorage, Dana Fabe, J., granted summary judgment for hosts, and minor appealed. The Supreme Court, Matthews, J., held that: (1) statute granting immunity to "a person who provides alcoholic beverages" is not limited to licensees and grants civil immunity to social hosts who provide liquor to minors; (2) in light of such statute, cause of action for civil damages could not be implied under criminal statute dealing with furnishing alco-

hol to minors; and (3) rational basis existed for conferring immunity on social hosts.

Affirmed.

1. Intoxicating Liquors \S 299

Statute conferring upon "a person who provides alcoholic beverages" to another civil immunity from liability for injuries resulting from intoxication of that person encompasses social hosts who provide liquor to minors, notwithstanding contention that legislative history of statute indicated that it was aimed only at licensees and that applying it to licensees who unlawfully furnished liquor to minors reached absurd result. AS 04.21.020.

See publication *Words and Phrases* for other judicial constructions and definitions.

2. Statutes \S 18(1)

In interpreting statute, objective is to determine intent of legislature, with due regard for meaning that language employed in statute conveys to others.

3. Statutes \S 217.4

The plain language of the statute, the more convincing contrary legislative history must be.

4. Action \S 5

Private cause of action for civil damages against social host who illegally provides alcohol to minor could not be implied from criminal prohibition on furnishing alcohol to minors in light of subsequent legislation reflecting apparent legislative intent to grant broad immunity from civil liability to those who provide alcohol to minors. AS 04.16.051(a), 04.21.020.

5. Action \S 5

Cause of action "implied" from criminal statute generally cannot be harmonized with later statute expressly abrogating civil liability.

6. Constitutional Law \S 215(1), 301(1)

In context of equal protection and due process challenges, rational basis existed for

statute granting civil immunity to nonlicensees, e.g., social hosts, who furnished alcohol to minors, such immunity could rationally be based on view that it is undeniably preferable with normal hospitality to require social hosts to monitor guests' alcohol consumption, and primary actor responsible for harm caused by drunken person is drunken person. Const. Art. 1, \S 1, 7; AS 04.21.020.

7. Constitutional Law \S 251.3

If any conceivable legitimate public policy for enactment is either apparent or inferred, enactment will survive due process scrutiny under Alaska Constitution so long as factual basis for justification is not disproved. Const. Art. 1, \S 7.

8. Constitutional Law \S 211.4(2)

Under relaxed scrutiny test for determining whether enactment violates equal protection provision of Alaska Constitution, court inquires as to whether questioned classification has legitimate governmental purpose and whether there is fair and substantial relationship between the act and the reason. Const. Art. 1, \S 1.

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Dana Fabe, Judge.

Michael W. Flaogon, Walter & Flaogon, Anchorage, for Appellant.

Paul W. Waggoner, Law Offices of Paul Waggoner, Anchorage, for Appellees.

Before MOORE, C.J., and RABINOWITZ, MATTHEWS, COMPTON and EASTAUGH, JJ.

OPINION

MATTHEWS, Justice.

I. FACTS AND PROCEEDINGS

Phillip Chokwak, a minor, became intoxicated at a party hosted by Les and Ron

Worley. The Worleys, ages 15 and 17, had furnished a keg of beer and a punch drink mixed with grain alcohol for their classmates at Wasilla High School. Approximately seventy-five to a hundred people attended the party. The Worleys did not limit the availability of alcohol to any of their underage guests, and did not restrain their intoxicated guests from driving. While driving from the party Chokwak was in an automobile accident in which he suffered permanent paralyzing injuries. He sued the Worleys for providing intoxicating liquor to him. The Worleys moved for summary judgment, claiming statutory immunity from civil liability under AS 04.21.020. Their motion was granted and judgment was entered in their favor.

Chokwak appeals. Two arguments are presented: first, that AS 04.21.020 does not grant civil immunity to social hosts who unlawfully provide liquor to minors; and second, that if the statute does grant civil immunity to hosts who unlawfully furnish liquor to minors, the statute so completely lacks rationality that it is unconstitutional.

II. DISCUSSION

A. Does AS 04.21.020 Grant Civil Immunity to Social Hosts Who Provide Liquor to Minors?

[1] We turn first to the statutory question. AS 04.21.020 provides:

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, liquor 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 04.16.030.

Although the phrase "a person who provides alcoholic beverages" is not limited to those who are licensed to provide alcoholic beverages, Chokwak argues that it should be construed to be so limited. He contends that the legislative history of section .020 indicates that it was aimed only at licensees. Further, he argues that reading the statute to apply to nonlicensees who unlawfully furnish liquor to minors reaches an absurd result which could not have been intended by the legislature because it lacks any rational basis and is against public policy. In reply, the Worleys argue that section .020 should be read literally and as so read it precludes a civil action against a nonlicensee for furnishing liquor to minors; that this court has in a number of cases indicated that section .020 immunizes social hosts from civil liability; and that social host immunity is a permissible legislative objective.

Chokwak's argument that the legislature intended section .020 to apply only to licensees is supported by some of the legislative history of the statute. Section .020 was enacted in 1980 as part of an act which comprehensively revised the Alaska Statutes pertaining to alcoholic beverages. Ch. 131, SLA1980. Section .020 was a new provision. See § 5, ch. 131, SLA1980. The section-by-section analysis of the act prepared by the Senate Judiciary Committee states the legislative intent of section .020 as follows:

It is the intent of this section that a licensee, his agent, or employee who lawfully furnishes an alcoholic beverage to a person who is 19 years of age or older, or a person who is not drunken, may not be held civilly liable for injuries resulting from the consumption of said alcoholic beverage by the above described persons or a third party.

Senate Journal Supp. No. 23 at 20
Senate Journal 613.

[2,3] In interpreting a statute the objective is to determine the intent of the legisla-

ture, with due regard for the meaning that the language employed in the statute conveys to others. *Marlow v. Municipality of Anchorage*, 889 P.2d 599, 602 (Alaska 1995). In the process of interpretation we have "rejected a mechanical application of the plain meaning rule in favor of a sliding scale approach." *Peninsula Marketing Ass'n v. State*, 817 P.2d 917, 922 (Alaska 1991). Under the approach we use, the plainer the language of the statute, the more convincing contrary legislative history must be. *Marlow*, 829 P.2d at 602.¹

The phrase "a person who provides alcoholic beverages" employed in section .020 is certainly broad enough to cover social hosts and other nonlicensee providers as well as licensees. On the other hand, the section-by-section analysis specifically limits, as a matter of legislative intent, the coverage of section .020 to licensees, indeed to licensees who "lawfully furnish alcohol to others." If the section-by-section analysis were the only legislative history available a close question would be presented as to whether it is sufficiently convincing to require that section .020 be interpreted to apply only to licensees. However, there is other legislative history which points to the conclusion that the legislature intended section .020 to apply to nonlicensees and thus weakens the impact of the section-by-section analysis.

1. Our discussion in *State v. Alex*, 646 P.2d 703, 209 n. 4 (Alaska 1982), provides a fuller explanation for the method we have adopted.

The true issue in interpreting enacted law is the conflict between the meaning the enacting body intended and the meaning conveyed to others. 2A Sutherland, Statutory Construction § 48.02, at 18-5 (4th ed. 1973). The conflict is between what the sender meant and what the receiver understands. *Id.* § 45.08, at 22. The "plain meaning" rule has its basis in this conflict. Obviously, there are elements of unfairness where legislative intent is used to vary the apparent meaning of statutory words. *Id.* § 48.02, at 185-86. This has led some members of the judiciary to reject completely the consideration of legislative intent. Justice Holmes once remarked that "we do not inquire what the legislature meant; we ask only what the statute means." *Id.* § 45.07, at 20. On the other hand, most decisions speak in terms of legislative intent as if nothing else mattered in interpretation. *Id.*

Neither extreme expressed above provides a realistic and workable approach to the recon-

struction of the meaning that the act containing section .020 also passed another act which was in substance identical to section .020. This act, House Committee Substitute for Committee Substitute for Senate Bill (HCS CSSB) 115 (Rules) (SB 115), would have added a new section, AS 09.65.097, to the Alaska Statutes, part (a) of which provided:

(a) A person who provides intoxicating liquor to an individual may not be held civilly liable for injuries resulting from the intoxication of that individual unless

(1) that person holds a license authorized under AS 04.10.020-04.10.146, or is an agent or employee of such a licensee; and

(2) the intoxicating liquor is provided to an individual under the age of 19 years in violation of AS 04.15.020(a), 04.15.060(b) or 04.15.080, unless the licensee, employee, or agent secures in good faith from the individual a signed statement, liquor identification card, or driver's license, meeting the requirements of AS 04.15.060(c), AS 18.65.310(a), or AS 04.15.065, respectively, and indicating that the individual is 19 years of age or older; or

(3) provides intoxicating liquor to an intoxicated person in violation of AS 04.15.020(a).

elation of the intent and meaning approaches to the interpretation of enacted law. Part of the problem stems from ambiguity being a relative concept. Words have no intrinsic meaning; what is clear to one person is ambiguous and obscure to another. *Id.* § 45.02, at 4-5. As one court stated, "We think the statute is plain on its face, but since words are necessarily inexact and ambiguity is a relative concept, we may turn to the legislative history, mindful that the plainer the language, the more convincing contrary legislative history must be." *United States v. United States Steel Corp.*, 482 F.2d 449, 444 (7th Cir.), cert. denied 414 U.S. 909, 90 S.Ct. 229, 38 L.Ed.2d 147 (1973). In our recent decision of *State v. City of Haines*, 627 P.2d 1047, 1049 n. 6 (Alaska 1981), we interpreted *North Slope Borough v. Salina Petroleum Corp.*, 585 P.2d 534, 540 n. 7 (Alaska 1978) as having adopted just such a sliding scale approach as articulated in *United States Steel*.

HCS CSSB 115 (Rules), 11th Leg. 2nd Sess. (May 15, 1980).

On June 20, 1980, the Governor vetoed this act. His veto message is significant. It states:

I have vetoed HCS CSSB 115 (Rules) (relating to the civil liability of providers of intoxicating liquor) inasmuch as the Department of Law has advised me that among other undesirable features it will significantly reduce the liability of those illegally dispensing alcohol as well as those dispensing it legally.

1980 Senate Journal 1744. Ten days later the Governor signed FC CSSB 239 which became chapter 131 SLA 1980. See 1980 Senate Journal 1753. Section 5 of this act became AS 04.21.020, which, as noted, contained language identical in substance to that of the vetoed HCS CSSB 115 (Rules).²

The Governor's veto message shows that in the view of the Governor and the Department of Law, SB 115 applied to nonlicensees. SB 115 did not reduce the liability of licensees dispensing alcohol illegally. However, if applied to nonlicensees it did reduce their liability, for no longer would they be civilly liable for giving liquor to an intoxicated per-

2. Section 13 of FC CSSB 239 repealed AS 09.65.097, added by HCS CSSB 115 (Rules), contingent upon the later taking effect. § 17, FC CSSB 239. As 115 did not take effect because of the Governor's veto, neither did section 13. The legislative journals do not indicate the Governor's reasons for signing a bill into law with language nearly identical to that so recently vetoed. We will not speculate on his reasons for doing so.

3. Although this court had not ruled as of 1980 that one who provided liquor unlawfully could be civilly liable for injuries so caused, the United States District Court for the District of Alaska had so ruled, applying Alaska law. *Vance v. United States*, 355 F.Supp. 756 (D.Alaska 1973), and the Alaska Attorney General correctly opined that this court would so rule. Op. Att'y Gen., 4/2/79, 1-66-569-79. We did so in *Nazareno v. Urie*, 638 P.2d 671 (Alaska 1981).

4. Senate Bill 115 as introduced by Senator Ziegler on February 7, 1979, provided:

For an Act entitled: "An Act relating to the civil liability of gratuitous servers of alcoholic beverages."

son or minor.³ Thus the veto message statement that SB 115 would significantly reduce the liability of those dispensing alcohol illegally only has meaning if the act applied to nonlicensees.

There is evidence that the legislature believed that SB 115 applied to nonlicensees. As originally introduced by Senator Ziegler, immunity for social hosts was its sole purpose.⁴ The bill went through various metamorphoses. When it arrived at the House Rules Committee it provided in relevant part:

*Sec. 2. AS 09.65 is amended by adding a new section to read:

Sec. 09.65.097. LIMITATIONS ON THE CIVIL LIABILITY OF LAWFUL BEVERAGES PROVIDERS. (a) A person who provides an intoxicating liquor to an individual may not be held civilly liable for injuries resulting from the intoxication of that individual unless the intoxicating liquor is furnished to that individual in violation of a law prohibiting furnishing intoxicating liquor to a minor or an intoxicated person.

HCS CSSB 115 (Finance), 11th Leg., 1st Sess. (Apr. 29, 1979).

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

*Section 1. The legislature declares that the gratuitous social furnishing of alcoholic beverages to an individual may not be held to be the proximate cause of injuries sustained by that individual or inflicted by that individual on a third party.

*Sec. 2. AS 09.65 is amended by adding a new section to read:

Sec. 09.65.097. LIMITATIONS ON THE CIVIL LIABILITY OF GRATUITOUS BEVERAGE SERVERS. (a) A person who gratuitously furnishes an alcoholic beverage to an individual may not be held civilly liable for injuries resulting from the intoxication of that individual.

(b) The protections of this section do not apply to a person licensed under the provisions of AS 04, or to an employee or agent of a person licensed under the provisions of AS 04, who gratuitously furnishes an alcoholic beverage on a premises licensed under AS 04.

SB 115, 11th Leg. 1st Sess. (Feb. 7, 1979).

Representative Cotten of the House Rules Committee wrote a memo soliciting comments on a proposed substitute bill which would clearly be limited only to licensees.⁵ Senator Ziegler responded, voicing no objection to the proposal, but stating a preference for social host immunity:

What you propose to do to good old SB 115 meets with my approbation.

I only wish you could carry it one step further and provide protection for noncommercial purveyors like you and me when we pour in our homes.

However, protecting the owner/operator is a step in the right direction.

Letter from Senator Robert H. Ziegler, Sr., to Representative Samuel R. Cotten (March 10, 1980) (available in Senate Judiciary Committee files). Subsequently, the proposed substitute bill which applied solely to licensees referred to by Rep. Cotten was not adopted. Instead, the final version of SB 115 as passed by the legislature applied to "a person who provides."

This history tends to indicate that SB 115 as passed by the legislature was not meant to be limited to licensees. As section 5 (which became § .020) of SB 239 is nearly identical to SB 115, it is logical to believe that the legislature acted with a similar intent regarding that section.

The legislative history described above provides some evidence that the statement of legislative intent concerning section .020 in the section-by-section analysis is not fully

5. The memo stated:

The Rules Committee is considering a committee substitute for HCS CSSB 115. I would appreciate your comments on it. The following is the proposed change:

Sec. LIMITATION ON CIVIL LIABILITY. A licensee, or the employee or agent of a licensee, who furnishes an alcoholic beverage to an individual on premises licensed under this title may not be held civilly liable for injuries resulting from the intoxication of that individual unless the furnishing of alcoholic beverages occurred in violation of AS 04.15.020(a) and (d), 04.15.060(c), or 04.15.080.

inclusive. Because of this we do not find the section-by-section analysis to be sufficiently strong legislative history to require that the literal language of section .020 be narrowed by interpretation to apply only to licensees.

[4] Chokwak's second statutory argument is, in essence, a harmonization argument. Relying primarily on *Haukanson v. Wakefield Seafoods, Inc.*, 600 P.2d 1087 (Alaska 1979), he argues that when a statute that bars a cause of action conflicts with the intent of another statute, the two should be read together in a way that preserves the intent of the second statute. In *Haukanson*, this court applied Alaska's general tolling statute for minors to an unmodified two year limit on filing wrongful death claims in order to preserve the public policy that favors safeguarding the interests of minors. *Id.* at 1090. Chokwak argues that the court should similarly read AS 04.21.020 in light of the criminal prohibition on furnishing alcohol to minors in AS 04.16.051(a).⁶ Thus, in order to preserve the public policy of protecting minors from the deleterious effects of alcohol, we should construe AS 04.21.020(a) not to apply to nonlicensees who furnish liquor to minors.

[5] Chokwak's argument assumes that AS 04.16.051(a) provides by implication a private cause of action for civil damages against a social host who illegally provides alcohol to minors. It may fairly be argued that a line of cases dealing with the statutory predecessors to the 1980 revisions so held.⁷ Chokwak's argument fails because a

Memo from Representative Samuel R. Cotten to Representative Donald Holt, et al. (March 6, 1980) (available in Senate Judiciary Committee files).

6. AS 04.16.051(a) provides: "A person may not furnish or deliver an alcoholic beverage to a person under the age of 21 years." AS 04.16.180(a) makes violation a class A misdemeanor.

7. See *Alaska v. Urie*, 634 P.2d 1387 (Alaska 1980) (allowing private right of action against liquor licensee for statutory violations, noting that "[i]n light of Alaska's crime and physical injury to persons can be traced to alcohol abuse"; *Nazareno v. Urie*, 638 P.2d 671, 674-75 (Alaska

cause of action "implied" from a criminal statute generally cannot be harmonized with a later statute expressly abrogating civil liability. Civil remedies based on criminal statutes are not "implied" in the usual sense of that word. The legislature may not in fact have intended a civil action to flow from a given criminal statute, yet the civil action is permitted because the courts believe that it is consistent with the statute and furthers the policy which underlies the statute.⁸ Where, as here, there is express language and an apparent legislative intent to grant broad immunity from civil liability to those who provide alcohol to others, judicially construing a criminal statute to carry with it a civil remedy in conflict with the rule of immunity would be inappropriate.

Chokwak contends a literal reading of section .020 may immunize outrageous conduct in ways that render the statute without any rational basis. He hypothesizes scenarios in which the statute might abide, for example, illegal unlicensed vendors, fraternities which haze initiates, and hosts of high school drinking parties. By reading AS 04.21.020 to apply only to the civil liability of licensees, he argues, the court could avoid such "absurd" results.

As difficult as it is to defend a policy specifically immunizing those who unlawfully furnish liquor to minors from civil liability,

1981) (recognizing general common law duty of care for vendors, holding that violation of statute prohibiting provision of alcohol to minor or intoxicated person constituted negligence per se for vendor); *Morris v. Farley Enterprises, Inc.*, 661 P.2d 167 (Alaska 1983) (applying negligence per se doctrine to vendor who sold alcohol to minor in violation of statute).

8. See W. Page Keeton, et al., *Prosser and Keeton on the Law of Torts* § 36, at 220-22 (5th ed. 1984) (footnotes omitted).

Many courts have, however, purported to "find" in the statute a supposed "implied," "constructive," or "presumed" intent to provide for tort liability. . . . In the ordinary case inquires into legislative intent are pure fiction, concocted for the purpose. The obvious conclusion must usually be that when the legislators said nothing about it, they either did not have the civil suit in mind at all, or deliberately omitted to provide for it.

we agree with the Worleys that a policy immunizing social hosts in general from liability for injuries caused by intoxicated persons to whom they have served liquor is not indefensible. The legislature could regard a rule requiring a host to closely monitor his or her guests as placing an unwarranted pall on ordinary social hospitality. The legislature could also wish to encourage individuals to assume responsibility for their own actions when consuming alcohol. The "absurdities" that Chokwak suggests result not from construing AS 04.21.020 to apply to social hosts, but from failing to carve out an exception for furnishing liquor to minors. Given the plain language of the statute and the absence of convincing contrary legislative history, we cannot by statutory interpretation construe section .020 to be inapplicable to nonlicensees who illegally furnish liquor to minors.

B. Is AS 04.21.020 Unconstitutional?

[6] Chokwak makes both equal protection⁹ and due process¹⁰ arguments in support of his claim that AS 04.21.020 is unconstitutional insofar as it immunizes nonlicensees who furnish alcohol to minors. Both arguments depend on whether the rule of immunity is lacking in rationality.

[7,8] This court has observed that the due process clause of the state constitution

Perhaps the most satisfactory explanation is that the courts are seeking, by something in the nature of judicial legislation, to further the ultimate policy for the protection of individuals which they find underlying the statute, and which they believe the legislature must have had in mind. The statutory standard of conduct is simply adopted voluntarily, out of deference and respect for the legislature.

9. Article I, section 1 of the Alaska Constitution dedicates the constitution to the principles that "all persons are equal and entitled to equal rights, opportunities, and protection under the law, and that all persons have corresponding obligations to the people and to the State."

10. The first sentence of article I, section 7 of the Alaska Constitution provides: "No person shall be deprived of life, liberty, or property, without due process of law."

requires that legislation be "at least minimally rational." *Gonzales v. Safeway Stores, Inc.*, 882 P.2d 389, 397 (Alaska 1994). "If any conceivable legitimate public policy for the enactment is either apparent or offered," the enactment will survive due process scrutiny so long as the factual basis for the justification is not disproved. *Id.* at 397-398 (quoting *Keyes v. Humana Hospital Alaska, Inc.*, 750 P.2d 343, 351-52 (Alaska 1988)). Similarly, this court's equal protection analysis under the Alaska Constitution for cases such as the present, which receive review under the "relaxed scrutiny test," involves an inquiry as to whether a questioned classification has a legitimate governmental purpose and whether there is a fair and "substantial relationship" between the act and the reason. *Id.* at 396 (citing *State, Dept. of Revenue v. Cosin*, 858 P.2d 621, 629 (Alaska 1993)).

It is our view that section .020 is not so completely lacking in rationality or legitimacy of purpose as to be unconstitutional. As noted, immunizing social hosts from liability caused by their guests' conduct can rationally be based on a view that it is an undesirable interference with normal hospitality to require a social host to monitor guests' alcohol consumption. Further, the primary actor responsible for harm caused by a drunken person is the drunken person. This was the basis for the "historic common law immunity" of those who furnish liquor to others. *Gonzales*, 882 P.2d at 397. That common law immunity has been replaced in some circumstances through dram shop legislation shifting partial responsibility to the licensed server of alcohol. Retaining this immunity in any case where liquor is unlawfully furnished to minors is questionable and difficult to defend. Still, the legislative desire not to turn social hosts into the policemen of their guests and a recognition of the ultimate personal responsibility of all those who consume alcoholic beverages, including minors, suffice, in our view, to afford the requisite level of minimal rationality and legitimacy of purpose to section .020.

III. CONCLUSION

For the above reasons, we conclude that AS 04.21.020 grants civil immunity to social

hosts who unlawfully provide liquor to minors and that this grant of immunity is not unconstitutional. The judgment is therefore AFFIRMED.



In the Matter of J.L.F. and K.W.F.,
Minors Under the Age of
Eighteen (18) Years.

K.F., Mother of the Above Named
Minors, Appellant and Cross-
Appellee.

STATE of Alaska, DEPARTMENT OF
HEALTH & SOCIAL SERVICES,
Appellee and Cross-Appellant.

Nos. S-6230, S-6240.

Supreme Court of Alaska.

March 15, 1996.

Following remand in child welfare proceeding, 828 P.2d 166, the Superior Court, Third Judicial District, Anchorage, Peter A. Michalski and John Reese, JJ., concluded that children were children in need of aid and terminated mother's parental rights. Mother appealed and guardian and state cross-appealed. The Supreme Court, Matthews, J., held that: (1) relatives' ability to provide care for children was not component of statutory "willing to provide care" standard; (2) even if ability was component, evidence did not support finding that children's aunt and her husband lacked such ability; (3) where

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Kinney v. State (11/29/96) ap-1501

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IN THE COURT OF APPEALS OF THE STATE OF ALASKA

DEAN C. KINNEY,)	
)	Court of Appeals No. A-5812
Appellant,)	Trial Court No. 4BE-94-634 Cr
)	
v.)	O P I N I O N
)	
STATE OF ALASKA,)	
)	
Appellee.)	[No. 1501 - November 29, 1996]

Appeal from the Superior Court, Fourth Judicial District, Bethel, Mark I. Wood, Judge, pro tem.

Appearances: Scott Jay Sidell, Anchorage, for Appellant. Eric A. Johnson, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Bruce M. Botelho, Attorney General, Juneau, for Appellee.

Before: Bryner, Chief Judge, and Coats and Mannheimer, Judges.

MANNHEIMER, Judge.

Dean C. Kinney was convicted of arranging a sale of liquor in a local-option community fl a community where, by local vote, the sale of liquor was banned. AS 4.16.200(b). Kinney argues that his conviction is invalid because the jury never determined whether Kinney knew that he was breaking the law when he arranged the sale of the liquor. We hold that the State was not required to prove that Kinney knew he was breaking the law.

Kinney also argues he was entitled to an acquittal because he obtained no monetary profit from the sale of the liquor. The legislature has enacted a "no personal profit" defense for people charged with distributing liquor without a license, but this defense is not available to people charged with distributing liquor in local-option communities. Kinney argues that the legislature violated the due process clause of the Alaska Constitution when it made the "no personal profit" defense inapplicable to sales in local-option communities. We hold that the legislature had a rational basis for drawing this distinction.

Facts of the Case

During January and February of 1994, the state troopers conducted an investigation of bootlegging in Bethel. One of their undercover informants was Rick Wilson. Wilson had arranged to purchase liquor from A.A., a suspected bootlegger, on February 1st, but when Wilson arrived for the transaction, A.A. demurred. Instead, A.A. offered to introduce Wilson to another bootlegger. He then took Wilson to the Hammer Manor Apartments, where he introduced him to the manager, Dean Kinney. Kinney offered to sell liquor to Wilson, but Wilson declined. (EN1)

The next day, Wilson returned to the Hammer Manor Apartments and attempted to purchase alcohol from Kinney. This time, Kinney told Wilson that he would have to make a telephone call first. Kinney made the call and, soon thereafter, someone knocked at Kinney's door. Kinney went out to speak to the person at his door; when Kinney came back in, he was carrying a bottle of vodka. Kinney gave the bottle to Wilson, and Wilson gave Kinney \$50.00 in pre-recorded buy money. Upon leaving Kinney's apartment, Wilson took the bottle to his trooper supervisor and reported this transaction. Based on this sale, the troopers obtained a warrant to record ensuing transactions between Wilson and Kinney.

On February 4th, Wilson returned to Kinney's apartment and asked if he could buy another bottle of liquor. This second transaction occurred in much the same way as the first: Kinney made a telephone call, a bottle was delivered outside Kinney's apartment, and Kinney sold the bottle to Wilson for \$50.00. During the negotiation of this sale, Wilson asked Kinney if he could "give [him] a break on the price". Kinney replied that he was only making a profit of \$5.00 on each sale and he therefore could not lower the price.

On February 18th, Wilson made a third purchase from Kinney. Wilson went to Kinney's apartment and told Kinney that he wanted to make a purchase. This time, Kinney asked Wilson how many bottles he wished to purchase; Wilson replied that he wanted just one. Again, Wilson offered Kinney \$50.00, but this time Kinney told Wilson to return one hour later. Both men left Kinney's apartment. Approximately one hour later, Kinney returned to the apartment, and Wilson arrived soon thereafter. Kinney had a bottle of liquor for Wilson upon his return. During this third transaction, Wilson again asked Kinney to give him a break on the price, but Kinney again refused, adding that he "wasn't making anything".

Kinney was ultimately indicted on three counts of felony bootlegging under AS 4.11.010(a) and AS 4.16.200(b). Following a jury trial in the Bethel superior court, Kinney was convicted for the second and third sales (the ones that had been recorded).

In a prosecution for bootlegging, must the government prove that the defendant knew his conduct was illegal?

At trial, Kinney asked the judge to instruct the jury that Kinney could not be convicted unless the government proved that he was "aware that his conduct was of an illegal nature". The trial judge declined to give this instruction. On appeal, Kinney argues that his proposed instruction was constitutionally required.

Kinney's argument hinges on language taken from *Hentzner v. State*, 613 P.2d 821 (Alaska 1980), a case in which the supreme court interpreted the culpable mental state required for the crime of selling unregistered securities. Hentzner was prosecuted under AS 45.55.210(a) [now AS 45.55.925(a)], which provides criminal penalties for anyone who "wilfully" violates the Securities Act. The supreme court had to decide what "wilfully" meant. Hentzner, 613 P.2d at 825.

To interpret this statute, the supreme court relied on the principle that a person may not be convicted of a crime (with the exception of minor violations and public welfare offenses) unless the government proves that the defendant acted with "criminal intent", in the broad sense of "a culpable mental state". See *Speidel v. State*, 460 P.2d 77, 78 (Alaska 1969); AS 11.81.600(a). (EN2) Referring to this basic requirement of criminal intent, the court said:

Where the crime involved may be said to be *malum in se*, that is, one which reasoning members of society regard as condemnable, awareness of the commission of the act necessarily carries with it an awareness of wrongdoing. In such a case[,] the requirement of criminal intent is met upon proof of conscious action, and it would be entirely acceptable to define the word "wilfully" to mean no more than consciousness of the conduct in question. See *Alex v. State*, 484 P.2d 677, 680-82 (Alaska 1971) [holding that, in a prosecution for escape, the government need not show that the defendant knew that he was breaking the law]. However, where the conduct charged is *malum prohibitum*[,] there is no broad societal concurrence that it is inherently bad. Consciousness on the part of the actor that he is doing the act does not carry with it an implication that he is aware that what he is doing is wrong. In such cases, more than mere conscious action is required to satisfy the criminal intent requirement. ...

The crime of offering to sell or selling unregistered securities is *malum prohibitum*, not *malum in se*. Thus, criminal intent in the sense of consciousness of wrongdoing should be regarded as a separate element of the offense[.]

Hentzner, 613 P.2d at 826.

Kinney contends that the crime of bootlegging, like the crime of selling unregistered securities, is *malum prohibitum*. He therefore argues that, like the defendant in Hentzner, he too could not be convicted unless the State proved that he acted with "consciousness of wrongdoing". According to Kinney, this means proving that he understood that his conduct violated the law.

The distinction between crimes that are "*mala prohibita*" and those that are "*mala in se*" has not only shaped but, to a

certain extent, also bedeviled the law. Basically, a crime is termed "malum prohibitum" if it is "not inherently evil [but is] wrong only because prohibited by the legislature". A crime is "malum in se" if it is "wrong in [itself], inherently evil". Wayne R. LaFave and Austin W. Scott, Jr., *Substantive Criminal Law* (1986), sec. 1.6(b), Vol. 1, p. 45.

However, as LaFave and Scott point out, this terminology has never been precise. *Id.* at 45-48. Generally, common-law crimes are called "mala in se" and statutory crimes are called "mala prohibita", but courts also say that a crime is "malum in se" if it involves "moral turpitude". These criteria sometimes point in different directions. For instance, the offenses of embezzlement and obtaining money by false pretenses are statutory expansions of the common-law crime of larceny, see LaFave and Scott, sec. 8.6(a) and sec. 8.7(a), Vol. 2, pp. 368 and 383, yet few would dispute their classification as crimes of moral turpitude.

A third criterion is stated in Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* (3rd edition 1982), p. 896: If a statute proscribes conduct that is "intolerably below the level of proper moral behavior", then the offense is malum in se. If, on the other hand, the defined conduct is not "morally culpable" (Perkins gives the example of overtime parking), then the offense is malum prohibitum.

The Hentzner decision itself suggests yet a fourth criterion. In the above-quoted passage, the supreme court refers to mala in se crimes as those offenses "which reasoning members of society regard as condemnable", while mala prohibita crimes are those proscribing conduct as to which "there is no broad societal concurrence that it is inherently bad". Hentzner, 613 P.2d at 826.

Given criteria like these, there is little wonder that courts reach differing answers when asked to classify the same offense. For instance, the crimes of driving while intoxicated and possession of drugs have been classified by some courts as mala in se, while other courts have found them to be mala prohibita. LaFave & Scott, sec. 1.6(b), Vol. 1, p. 46. LaFave and Scott conclude that "[t]he difficulty of classifying particular crimes as mala in se or mala prohibita suggests ... that the classification should be abandoned[.]" *Id.* at 48.

As an intermediate appellate court, we are loath to abandon a classification that our supreme court has expressly relied on. Rather, our task should be to interpret how that classification applies to the case before us.

Hentzner declares that a crime is malum prohibitum if "there is no broad societal concurrence that [the proscribed conduct] is inherently bad". One could argue that even though unlicensed sale of liquor is normally malum prohibitum, sale in a local-option community is malum in se. If a person sells liquor in a community where sale is legal but restricted to certain license-holders, then the crime is simply a violation of laws regulating commercial transactions. But if a community has seen the need to prohibit all sales of alcohol, then there may be "broad societal concurrence" that the act of selling alcohol is condemnable.

Despite this potential argument, we will assume for purposes of deciding Kinney's appeal that all laws prohibiting the sale or distribution of alcohol create mala prohibita crimes. Nevertheless, we reject Kinney's assertion that, under Hentzner, the State had to prove that Kinney understood the law and knew that he was breaking it.

As noted above, Hentzner involved a prosecution for the crime of offering securities that had not been registered with the Department of Commerce and Economic Development. The defendant, who was attempting to raise money for a gold-mining venture, offered to sell his to-be-mined gold for the price of \$80.00 an ounce (substantially below market value) to anyone who would pay the purchase price immediately. That is, Hentzner was asking people to

give him money in exchange for his promise that, in several months, they would be repaid in gold at the extremely favorable rate of one ounce for every \$80.00 they advanced him. Hentzner, 613 P.2d at 822.

The State alleged that Hentzner's fund-raising effort constituted the offering of a "security" (more specifically, an "investment contract") under AS 45.55.130(12) [now, AS 45.55.-990(12)]. The State's theory was that, by offering to sell gold that had not yet been mined, Hentzner was in effect asking people to invest money upon the promise that they would share in future gold-mining profits to be derived from Hentzner's entrepreneurial or managerial efforts. Hentzner, 613 P.2d at 823-24.

Hentzner represented a collision between the practice of "grubstaking" (EN3), a traditional way for western miners to raise capital, and Alaska's securities act in particular, the labyrinth of definitions and exemptions codified in AS 45.55.900 and AS 45.55.980-990. Under Alaska's securities laws, the request for a grubstake is the offer of a "security", and a miner who wishes to ask for a grubstake must register this offering.

The definition of a security and the rules governing registration are not matters of common knowledge. Thus, the supreme court faced a situation in which a miner who pursued a traditional capital-raising practice, who engaged in no misrepresentation, and who (at least arguably) acted reasonably in failing to discover the need to register his fund-raising effort, could nevertheless face felony conviction for his failure to register the grubstake offer with the Department of Commerce and Economic Development. Given this context, it is hardly surprising that the supreme court ruled that "wilfully" failing to register the grubstake offer required proof of something more than mere failure to register.

Kinney interprets Hentzner as saying that this "something more" must be proof that the defendant understood that his conduct violated the law. This is how the State of Alaska interpreted Hentzner when it filed its petition for rehearing. In its petition, the State argued that the supreme court was "breaking new ground in requiring the [government] to prove [the defendant's] knowledge of the law". [Petition for Rehearing in Hentzner v. State, File No. 3649, p. 2] The State asked the court to amend its opinion to clarify that "the prosecution, to prove Hentzner guilty, must prove that he acted with intent to do wrong, but that this ... does not include knowledge of the penal law". [Petition, p. 3]

In a tersely worded order, the supreme court rejected the State's petition and the State's interpretation of Hentzner:

On consideration of the petition for rehearing filed June 27, 1980,

The opinion cannot reasonably be read to require that the prosecution prove the defendant had knowledge of the law and knew that he was breaking it; that meaning of the word "wilfully" is specifically rejected. [Slip Op. p. 12].

The Petition for Rehearing is therefore denied.

Order dated July 23, 1980 in Hentzner v. State, File No. 3649.

The supreme court's denial of the State's petition for rehearing cites page 12 of its slip opinion (Opinion No. 2103). On that page, the court stated:

The issue before us is the meaning of the word "wilfully" as used in AS 45.55.210(a). There are several possibilities. One is that the defendant must act intentionally in the sense that he is aware of what he is doing;

another is that the defendant must be aware that what he is doing is illegal; and a third is that the defendant must know that what he is doing is wrong. It is in this last sense that we think "wilfully" should be interpreted as it is used in Section 210.

Hentzner, 613 P.2d at 825 (footnote omitted). This language from Hentzner indicates that the supreme court did not think it had imposed the mens rea requirement that Kinney argues for in the present appeal if the purported requirement that the government prove that the defendant acted with "knowledge of the law" and awareness "that he was breaking it".

With respect to securities prosecutions, this court has interpreted Hentzner's "awareness of wrongdoing" requirement to mean that the State must prove that the defendant "recklessly disregarded" the fact that he was unlawfully selling unregistered securities if that the defendant consciously disregarded a substantial and unjustifiable risk that his conduct would result in a violation of the law. Wheeler v. State, 659 P.2d 1241, 1251-52 (Alaska App. 1983). Wheeler remains the controlling authority on this point.

More relevant to Kinney's appeal, both Wheeler and Steve v. State, 875 P.2d 110, 122-23 (Alaska 1994), interpret Hentzner as a case in which the supreme court's "primary concern was to avoid application of strict liability in cases where the accused could be subjected to severe criminal penalties". Wheeler, 659 P.2d at 1251. Hentzner was charged with a felony, not for offering his investment scheme, but for failing to register it. Thus, Hentzner's crime was one of omission. "The gist of [Hentzner's] crime was ... the defendant's failure to perform an act required by law if registering the securities before offering them to the public." Steve, 875 P.2d at 122.

As this court noted in Steve, when a crime is defined in terms of a failure to act, "the prevailing view is that one may not be held liable if one does not know the facts indicating a duty to act". Id. (quoting LaFave and Scott, sec. 3.3(b), Vol. 1, p. 289). Thus, Steve interprets Hentzner as saying that if a person reasonably fails to perceive that his business activities fall within the securities laws, so that his failure to register is an act of reasonable inadvertence, then that person should not be guilty of a felony for failing to register.

Kinney's case is substantially different. Kinney was charged with selling alcohol; his crime was one of commission, not omission. Kinney's sales of alcohol did not arise through inadvertence or neglect. Moreover, it is common knowledge in our society that one is not permitted to sell alcohol without a license, and it is common knowledge in Alaska that various localities have voted themselves dry. Under these circumstances, [w]hat is essential is not an awareness that a given conduct is a "wrongdoing" in the sense that it is proscribed by law, but rather, an awareness that one is committing the specific acts which are defined by law as a "wrongdoing". It is ... no defense that one was not aware his acts were wrong in the sense that they were proscribed by law. So long as one acts intentionally, with cognizance of his behavior, he acts with the requisite awareness of wrongdoing. In the words of Justice Holmes:

If a man intentionally adopts certain conduct in certain circumstances known to him, and that conduct is forbidden by the law under those

circumstances, he intentionally breaks the law in the only sense in which the law ever considers intent.

Ellis v. United States, 206 U.S. 246, 257, 27 S.Ct. 600, 602, 51 L.Ed. 1047, 1053 (1907).

Alex v. State, 484 P.2d at 681-82 (citations omitted).

It was not necessary for the State to prove that Kinney was aware of the bootlegging law and knew that his conduct violated that law. We therefore uphold the trial judge's refusal to give Kinney's proposed jury instruction.

Did the legislature violate the constitution by not allowing a "no personal profit" defense when a defendant is charged with bootlegging in a dry community?

Under AS 4.11.010(a), no person may "manufacture, sell, offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage" unless they have the proper license or permit. Under AS 4.16.200(a)-(b), a person who violates this licensing law is guilty of a class A misdemeanor unless the violation occurs in a local-option community, in which case the crime is a class C felony.

In AS 4.16.200(c), the legislature has provided a limited exception to the licensing requirement: a person charged with unlicensed trafficking in liquor may defend by proving that "no profit was involved in the solicitation or receipt of [the] order for the delivery of [the] alcoholic beverage". There are two instances in which this "no personal profit" defense does not apply: when the defendant is charged with selling or offering to sell alcoholic beverages to a minor, and when the defendant is charged with liquor trafficking in a local-option community.

Kinney asserts that the legislature had no valid reason for restricting the "no personal profit" defense in this fashion. He argues that, because there is no rational basis for restricting the scope of the defense, the due process clause of the constitution requires that the defense be available to anyone accused of unlicensed sale of liquor, even if the offense occurred in a local-option community.

We disagree. The two limitations on the "no personal profit" defense appear to be based on the same rationale: lack of profit is no defense to unlicensed sale of liquor when it would be illegal for anyone to sell liquor under the same circumstances. Thus, the defense is not available to someone who sells liquor to a minor, nor is it available to someone who sells liquor in a community that has voted to ban liquor sales. In these situations, unlicensed sale of liquor is not just a violation of statutes that regulate alcohol sales and restrict the number of alcohol sellers; rather, the unlicensed sale violates society's determination that no one should sell alcohol under such circumstances. Because there is a rational basis for the legislature's decision to restrict the scope of the "no personal profit" defense, Kinney's due process attack fails. *Concerned Citizens of South Kenai Peninsula v. Kenai Peninsula Borough*, 527 P.2d 447, 452 (Alaska 1974); *Harrelson v. State*, 687 P.2d 332, 343-44 (Alaska App. 1984).

Conclusion

The judgement of the superior court is AFFIRMED.

1. Wilson was wearing electronic monitoring equipment, and he was afraid that, if he monitored Kinney, this would violate the terms of the warrant authorizing the monitoring; the warrant mentioned only Wilson's anticipated conversations with A.A..

2. AS 11.81.600, which is entitled, "General Requirements of Culpability" provides:

(a) The minimal requirement for criminal culpability is the performance [of] ... a voluntary act or the omission to perform an act that the person is capable of performing.

(b) [With the limited exceptions listed below,] [a] person is not guilty of an offense unless the person acts with a culpable mental state[.]

3. A "grubstake" is "[m]oney or supplies advanced to a prospector in return for a share in any findings". Webster's New World Dictionary of American English (3rd College Edition, 1988), p. 597.

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State v. Mclaughlin (10/8/93) ap-1316

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THE COURT OF APPEALS OF THE STATE OF ALASKA

STATE OF ALASKA,)	
)	Court of Appeals No. A-4590
Petitioner,)	Trial Court No. 4FA-S92-980CR
)	
v.)	
)	O P
DAVID L. MCLAUGHLIN,)	
)	
Respondent.)	[No. 1316 - October 8, 1993]

Petition for Review from the Superior Court,
 Fourth Judicial District, Fairbanks, Jay
 Hodges, Judge.

Appearances: William H. Hawley, Assistant
 Attorney General, Office of Special Prosecu-
 tions and Appeals, Anchorage, and Charles E.
 Cole, Attorney General, Juneau, for Petition
 er. Arthur Lyle Robson, Robson Law Office,
 Fairbanks, for Respondent. Marcia E.
 Holland, Assistant Public Defender,
 Fairbanks, and John B. Jalemi, Public
 Defender, Anchorage, as amicus curiae.

Before: Bryner, Chief Judge, Coats and
Mannheimer, Judges.

BRYNER, Chief Judge.
COATS, Judge, dissenting.

INTRODUCTION

David L. McLaughlin was charged by the state with misconduct involving weapons in the first degree in violation of former AS 11.61.200(a)(1)1 -- possession of a concealable firearm by a previously convicted felon. McLaughlin's case was scheduled for a jury trial before Superior Court Judge Jay Hodges. At the outset of trial, McLaughlin indicated his willingness to concede that he had previously been convicted of a felony.

Since McLaughlin conceded the existence of a prior conviction, Judge Hodges found no need for the jury to consider whether McLaughlin was a previously convicted felon and ruled that the jury would decide only whether McLaughlin knowingly possessed a concealable firearm. Because McLaughlin's criminal history appeared to have no bearing on any issue remaining in dispute, the judge further concluded that evidence of McLaughlin's prior convictions would be inadmissible unless it became relevant to specific issues arising during the course of trial. Over the state's objection, the judge ordered the prosecution to refrain from mentioning or attempting to prove McLaughlin's prior convictions unless the court first determined them to be relevant to a specific disputed issue.

The state petitioned this court to review the superior court's order; we granted the state's petition and directed the parties to submit briefs on the merits.²

DISCUSSION

1. Issue Presented

Both in Alaska and elsewhere, courts have recognized that evidence concerning the number and nature of a defendant's

prior convictions can pose a serious risk of prejudice when introduced in a case in which a prior conviction is an element of the offense charged. For this reason, appellate courts have generally agreed that the trial court has broad discretion to limit the amount of evidence allowed on the issue and to regulate the form in which it is presented, particularly when the defendant does not dispute the prior conviction's existence.³

The precise issue presented for review in this case is somewhat different, however: whether the trial court in a felon-in-possession prosecution may, in reliance on the defendant's willingness to concede the existence of a prior felony conviction, bar proof of the prior-conviction element entirely and withdraw the issue from the jury.

On review, the state argues that the trial court lacked authority to force the prosecution to accept McLaughlin's concession of a prior conviction and to bar proof on this issue. Although the state acknowledges that the disputed evidence was not relevant on any issue other than the issue McLaughlin was prepared to concede -- that McLaughlin had previously been convicted of a felony -- the state contends that the court had no discretion to rule as it did.

2. Standard of Review

As presented by the state, this claim involves a pure question of law, which is subject to the de novo standard of review. *Landon v. Champion*, 745 P.2d 1371, 1372 n.2 (Alaska 1987).

3. Analysis

No Alaska case has squarely decided the issue presented in this case.⁴ Courts in other jurisdictions are not entirely unanimous, but a vast majority, espousing the traditional view that the government need not accept the accused's proposed

concession to an element of an offense,⁵ holds that a trial judge cannot altogether bar the prosecution from introducing evidence to prove a necessary element of its case, even when the element is undisputed.⁶

The state urges us to follow the majority view and to reverse the trial court's ruling in McLaughlin's case. The state argues that the court had no authority to preclude the state from proving a necessary element of the offense, that the court's ruling amounted to an improper judicial amendment of the first-degree weapons misconduct statute, and that it deprived the state of its right to a jury trial. We need consider only the first of these arguments.

The state maintains that it is improper to preclude the prosecution from proving an element of an offense and asserts that, in the present case, "excluding all evidence that [McLaughlin] has a prior conviction is unfair." In support of this contention the state cites Wigmore for the proposition that it should not be required to stipulate to a "colorless admission" of an element of the offense, since such a stipulation would unjustifiably deprive it "of the legitimate moral force of [its] evidence." IX John H. Wigmore, Evidence 2591 (Chadbourn rev. 1981).

In our view, however, the crucial issue is not whether the state has the right to present the "legitimate moral force of its evidence" -- an unassailable proposition in the abstract -- but rather whether any "moral force" gained by proving McLaughlin's prior convictions retains legitimacy given McLaughlin's willingness to concede the point. This issue is a close one; its resolution depends largely on whether it is viewed as a narrow question of evidentiary relevance or a broader question involving policies that are not strictly evidentiary.

From the narrow standpoint of evidentiary relevance -- the standpoint argued by McLaughlin here -- a strong case can be

made that the evidence of McLaughlin's prior convictions should properly be excluded. The specific circumstances of some felon-in-possession cases might give the state legitimate reasons to introduce evidence of prior convictions even though the defendant is willing to concede the prior-conviction element. In most cases, however, once the defendant concedes the prior-conviction element, evidence of prior convictions would have no evidentiary relevance except to establish the defendant's general propensity to commit crimes -- an impermissible, and therefore illegitimate, purpose under Alaska Rule of Evidence 404(b)(1).

The present case provides a good illustration. McLaughlin fully and unequivocally conceded that his prior felony conviction precluded him from possessing a concealable firearm. Given McLaughlin's concession, the trial court would be able to inform the jury that McLaughlin has agreed that he was forbidden by law from carrying a concealable firearm. The state did not argue below and does not contend here that McLaughlin's prior criminal record has any evidentiary relevance except as proof of the element McLaughlin is prepared to concede. Moreover, the trial court has expressly left the door open to reconsideration should McLaughlin's prior convictions become relevant to any disputed issue that might arise during the course of trial.

Under these circumstances, McLaughlin's prior crimes are wholly superfluous from a purely evidentiary standpoint: their only evidentiary relevance is on an issue that has been conceded and therefore requires no further proof. Because of the obvious danger of prejudice this evidence would create as otherwise inadmissible proof of McLaughlin's general criminal propensity, see Alaska Rule of Evidence 404(b)(1), the legitimacy of its "moral force" may be properly questioned:

[W]hen the defense offers the prosecution a full, unequivocal stipulation of an ultimate, historical fact, there is an "utter absence of a legitimate state interest" justifying

the rejection of the offer. The introduction of evidence is a means to the end. The only legitimate purpose for introducing evidence is to prove the ultimate, historical propositions disputed between the parties. In a given case, a prosecutor may hope that the admission of an item of prejudicial evidence will affect the jury's determination of factual issues in addition to the issue the judge admits the evidence to prove. However, if that hope is realized, the jury will be misusing the evidence and perhaps returning a wrongful verdict.⁷

The state's "legitimate moral force" argument nevertheless looks beyond the narrow issue of evidentiary relevance. The state raises a valid -- and, we think, ultimately persuasive -- concern: it points out that McLaughlin's jury has a legitimate right to be informed of all of the elements of the crime charged and of the proof bearing on those elements so that jurors will not be misled to think they are being asked to convict McLaughlin for mere possession of a firearm.

The state argues that if the jury is left with the inaccurate impression that McLaughlin is being prosecuted for conduct that most jurors surely know to be permissible, the jury may be tempted to nullify the law by returning a not guilty verdict, even though convinced that McLaughlin possessed a concealable firearm. As the state correctly points out, many courts have cited this danger as justifying the rejection of defense concessions in felon-in-possession cases.⁸

The prospect of nullification is certainly a legitimate concern. Two courts have nonetheless concluded that the danger of nullification can be avoided by appropriate jury instructions. The California Supreme Court found the nullification argument unpersuasive in *People v. Hall*, 616 P.2d 826 (Cal. 1980) (en banc):

Instructions can be framed in such a manner that the potentially prejudicial prior conviction is not mentioned to the jury yet the jury can be informed that possession of a concealable firearm is not criminal under all

circumstances.

Id. at 832 (footnote omitted).

Similarly, in *State v. Davidson*, 351 N.W.2d 8, 12 (Minn. 1984), the Minnesota Supreme Court stated:

In this case we believe that the potential for unfair prejudice clearly outweighed the relevance, if any, that the evidence had to other issues. The court should have granted the defendant's motion and should have instructed the jury to the effect that defendant had stipulated that under Minnesota law he was not entitled to possess a pistol and that therefore the jury should direct its attention to the issue of whether or not the state had established beyond a reasonable doubt that he possessed the pistol, either actually or constructively.

In our view, however, jury instructions cannot cure the problem, and, in fact, might exacerbate it. As a purely practical matter, we think it highly questionable whether any useful purpose can be served by precluding proof of a prior conviction and instructing the jury that the defendant was prohibited by law, for some reason that cannot be disclosed, from possessing a firearm.

For many jurors -- those with a modicum of awareness -- such an instruction would simply be tantamount to being told that the defendant has previously been convicted of a felony.⁹ For other jurors -- those with less awareness but a modicum of imagination -- the instruction could be far worse, for it would amount to little more than an open invitation for speculation. The demons of imagination could hardly be lulled by bland admonishments to refrain from speculating on the issue; once awakened, those demons would be free to roam a landscape of boundless dimension. Apart from distracting the jury from the facts at issue, speculation of this sort would pose the far more pernicious risk that jurors might decide guilt based on inaccurate assumptions about the reasons behind the prohibition against the defendant's possession of a firearm.

Compared to the inevitable prospect of uncontrolled jury speculation, the alternative of informing the jury of the true elements of the charged crime and of the ba

HB

30

FISCAL NOTE

No. 2
 Bill Version: CSHB 30(L&C)
 (H) Publish Date: 1/31/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

BILL NO.

Title: CIVIL LIABILITY FOR
SKATEBOARDING
 Sponsor: REP. MULDER
 Requestor: L & C

Dept. Affected NONE
 BRU: _____
 Components: _____
 Serial #: _____

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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	0.0	0.0	0.0	0.0	0.0	0.0
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	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

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0.0	0.0	0.0	0.0	0.0	0.0
Federal Fund	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

See attached analysis

Prepared by:

Tina Sullivan Staff Rep. Mulder
John Mulder 27 JAN 97
LEGISLATURE

Date: 27 JAN 97

Phone: 465-2647

Phone: 465-2647

HOUSE COMMITTEE REPORT

(7) Date Referred to Committee: January 31, 1997 FURTHER REFERRALS: Finance

Date of Committee Action: 2/14/97

The JUDICIARY Committee considered: HB 30

HOUSE BILL NO. 30 CIVIL LIABILITY FOR SKATEBOARDING

"An Act relating to civil liability for skateboarding; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 30 (JUD) the same title
 a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): <small>(Dept)</small>	APPROVES PREVIOUS: <small>(Dept/Date)</small>
<input type="checkbox"/> fiscal note(s) _____	<input type="checkbox"/> fiscal note(s) _____
<input type="checkbox"/> zero fiscal note(s) _____	<input checked="" type="checkbox"/> zero fiscal note(s) <u>COURTS</u>

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i> BROFT	-			
<i>[Signature]</i> PORTER	✓			
<i>[Signature]</i> GREEN	✓			
<i>[Signature]</i> BERKOWITZ			✓	

CHAIR'S SIGNATURE *[Signature]*

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 30

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Civil liability for skateboarding BRU: Trial Courts
 Component: _____
 Sponsor: Rep. Mulder
 Requestor: House Labor & Commerce COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES (
----------------------	--	--	--	--	--	--

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CSC*
 Agency: Alaska Court System
 Approved by: Arthur H. Snowden, II, Administrative Director *AS*
 Agency: Alaska Court System

Phone: 264-8228
 Date: 01/28/97
 Date: 01/28/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 30

Title: CIVIL LIABILITY FOR
SKATEBOARDING

Sponsor: REP. MULDER

Requestor: L & C

Dept. Affected NONE

BRU: _____

Components: _____

Serial #: _____

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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	0.0	0.0	0.0	0.0	0.0	0.0
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	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
----------------	------------	------------	------------	------------	------------	------------

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0.0	0.0	0.0	0.0	0.0	0.0
Federal Fund	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

see attached analysis

Prepared by: Tim Sullivan Staff Rep. Mulder

APPROVED BY: [Signature] 2.7 JAN 97

AGENCY: LEGISLATURE

Date: 27 JAN 97

Phone: 465-2647

Phone: 465-2647

SPONSOR STATEMENT HOUSE BILL 30

by
Representative Eldon Mulder

HB 30 was introduced at the request of the Municipality of Anchorage.

The municipality would like to create a skateboard park so skateboarders will have a place to ride, rather than using other areas designed for pedestrians. Anchorage and Fairbanks are willing to develop areas suitable for skateboard riding if they can be insulated from liability for claims arising from hazards inherent in skateboarding.

The intent of House Bill 30 is to encourage the municipalities to proceed with development of areas for outdoor recreation without increasing their liability unnecessarily. The bill applies only to municipal skateboard parks.

This bill is patterned after the legislation passed providing this limited protection to ski areas. The protection from liability relates to inherent dangers and risks of skateboarding. The municipality is required to post signs warning that there are inherent risks and the liability rests with the skateboarder. It was amended in the Judiciary Committee to make it certain that the parks are not required to have on-site supervision provided by the municipality.

CS FOR HOUSE BILL NO. 30(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE MULDER

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for skateboarding; and providing for an effective
2 date."

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

4 * Section 1. AS 05 is amended by adding a new chapter to read:

5 Chapter 50. Skateboard Liability and Responsibility.

6 Sec. 05.50.010. Limitation on actions arising from skateboarding.
7 Notwithstanding any other provision of law, a person may not bring an action against
8 a municipality for an injury occurring at a municipal skateboard facility if the injury
9 results from an inherent danger and risk of skateboarding.

10 Sec. 05.50.020. Effect of violations. (a) A municipality or person who
11 violates a requirement of this chapter is negligent and civilly liable to the extent the
12 violation causes injury to a person or damage to property.

13 (b) Notwithstanding the provisions of AS 09.17.080,
14 (1) the limitation of liability described under AS 05.50.010 is a

1 complete defense in an action against a municipality for an injury if an inherent danger
 2 or risk of skateboarding is determined to be a contributory factor in the resulting
 3 injury, unless the municipality has violated a requirement of this chapter;

4 (2) a violation of the person's duties imposed under AS 05.50.030 is
 5 a complete defense in an action against a municipality if the violation is determined
 6 to be a contributory factor in the resulting injury, unless the municipality has violated
 7 a requirement of this chapter.

8 (c) If the municipality is determined to have violated a requirement of this
 9 chapter, the provisions of AS 09.17.080 apply in an action against a municipality for
 10 an injury resulting from the violation.

11 **Sec. 05.50.030. Duties of municipal skateboard facility users.** (a) A person
 12 may not use a municipal skateboard facility if the person

13 (1) does not have sufficient physical dexterity or ability and knowledge
 14 to negotiate or use the facility safely; in the case of a minor who uses a municipal
 15 skateboard facility, the minor's parent or legal guardian is responsible for determining
 16 whether the minor satisfies the requirements of this paragraph;

17 (2) is not wearing knee pads, elbow pads, shoes, and a helmet at all
 18 times.

19 (b) A person using a municipal skateboard facility may not

20 (1) enter or leave a municipal skateboard facility except at a designated
 21 area unless reasonably necessary to prevent injury to the person or others;

22 (2) intentionally throw or expel an object onto the facility;

23 (3) take food, drink, or glass containers on the facility;

24 (4) act while using the facility in a manner that may interfere with
 25 proper or safe condition of the facility;

26 (5) engage in conduct that may contribute or cause injury to a person;

27 (6) enter the facility when the facility is marked as closed;

28 (7) disobey instructions posted in accordance with this chapter or any
 29 other instructions required by local laws consistent with this chapter;

30 (8) use other items including but not limited to bicycles, unicycles,
 31 coasters, roller skates, or roller blades at the facility unless otherwise allowed by the

1 municipality.

2 **Sec. 05.50.040. Duties of municipalities.** (a) In a municipal skateboard
3 facility, a municipality shall maintain a sign system with concise, simple, and pertinent
4 information for the protection and instruction of skateboarders. Signs shall be
5 prominently placed at each facility.

6 (b) At least one sign posted at each facility must contain language substantially
7 similar to the following warning notice:

8 **WARNING**

9 Under Alaska law, the risk of an injury to person or property
10 resulting from any of the inherent dangers of skateboarding rests
11 with the skateboarder. Inherent dangers and risks of
12 skateboarding include collisions with man-made objects,
13 collisions with other skateboarders, variations in slope, falling,
14 and the failure of skateboarders to skate within their own
15 abilities.

16 (c) A municipality shall clearly delineate the boundaries of a municipal
17 skateboard facility with fencing or another type of enclosing or surrounding structure.

18 (d) A municipality may not construct or maintain a municipal skateboard
19 facility in a negligent manner.

20 **Sec. 05.50.050. Duties and responsibilities of skateboarders.** A skateboarder
21 who uses a municipal skateboard facility

22 (1) is responsible for knowing the range of the person's own ability to
23 negotiate a skateboard facility and to skateboard within the limits of a skateboarder's
24 ability; in the case of a skateboarder who is a minor, the minor's parent or legal
25 guardian is responsible for determining whether the minor satisfies the requirements
26 of this paragraph;

27 (2) is responsible for an injury to a person or property resulting from
28 an inherent danger and risk of skateboarding, except that a skateboarder is not
29 precluded under this chapter from suing another skateboarder for an injury to person
30 or property resulting from the other skateboarder's acts or omissions; notwithstanding
31 any other provision of law, the risk of collision with another skateboarder is not an

1 inherent danger or risk of skateboarding in an action by one skateboarder against
2 another;

3 (3) has the duty to

4 (A) maintain control of the skateboarder's speed and course at
5 all times when skateboarding and to maintain a proper lookout so as to be able
6 to avoid other skateboarders, objects, and debris; however, a person
7 skateboarding on a downhill slope has a primary duty to avoid collision with
8 a person or object below the skateboarder;

9 (B) perform a visual inspection of the facility before each use;

10 (C) ensure that all areas of the facility the skateboarder intends
11 to use are free and clear of natural or manmade debris that would interfere with
12 the skateboarder's use of the facility;

13 (D) heed all posted information and other warnings and to
14 refrain from acting in a manner that may cause or contribute to the injury of
15 the skateboarder; evidence that signs as required by AS 05.50.040 or as
16 required by consistent local laws were present, visible, and readable at the
17 beginning of a given day creates the presumption that skateboarders using the
18 skateboard facility on that day have seen and understood the sign; and

19 (4) may not

20 (A) skateboard in a facility or a portion of a facility that has
21 been posted as "closed"; or

22 (B) use a skateboard facility while the skateboarder's ability is
23 impaired by the influence of alcohol or a controlled substance as defined in
24 AS 11.71.900 or other drugs.

25 **Sec. 05.50.060. Competition: immunity for municipality operating a**
26 **skateboard facility.** (a) A municipality shall, before beginning skateboard
27 competition at a municipal skateboard facility, allow an athlete who will skateboard
28 in the competition a reasonable visual inspection of the course or area where the
29 competition is to be held.

30 (b) A person skateboarding in competition assumes the risk of all course or
31 area conditions, course construction or layout, and obstacles that a visual inspection

1 would have revealed. A municipality is not liable for injury to a person who
2 skateboarded in competition at a skateboard facility operated by the municipality and
3 who is injured as a result of a risk described in this subsection.

4 **Sec. 05.50.100. Definitions.** In this chapter,

5 (1) "inherent danger and risk of skateboarding" means a danger or
6 condition that is an integral part of the sport of skateboarding, including collisions with
7 man-made objects; impact with ramps, signs, posts, fences, or enclosures, or other
8 man-made structures and their components; variations in slope and steepness; collisions
9 with other skateboarders; and the failure of skateboarders to skateboard within their
10 own abilities; the term "inherent danger and risk of skateboarding" does not include
11 the negligence of a municipality that is responsible for a municipal skateboarding
12 facility;

13 (2) "injury" means property damage, personal injury, or death.

14 * **Sec. 2. APPLICABILITY.** This Act applies to a civil action that accrues on or after the
15 effective date of this Act.

16 * **Sec. 3.** This Act takes effect July 1, 1997.

FISCAL NOTE

No. 1
 Bill Version: CSHB 30 (L&C)
 (H) Publish Date: 1/31/97

**STATE OF ALASKA
 1997 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Civil liability for skateboarding BRU: Trial Courts
 Component: _____
 Sponsor: Rep. Mulder
 Requestor: House Labor & Commerce COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
 Agency: Alaska Court System Date: 01/28/97

Approved by: Arthur H. Snowden, II, Administrative Director Date: 01/28/97
 Agency: Alaska Court System

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

COMMITTEE COPY

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 19, 1997

SUBJECT: Civil liability for skateboarding - (CSHB 30(JUD))

TO: Representative Joe Green
Attn: Lisa

FRGM: Michael F. Ford *M.F.F.*
Legislative Counsel

In preparing the Judiciary CS for HB 30 I made two changes to the language requested by the committee. Both changes are style changes required by the drafting manual, not substantive changes. The language adopted by the committee was "A municipality shall not construct or maintain a skateboard facility in a negligent manner." I changed the "shall not" to "may not" and added "municipal" before "skateboard" to be consistent with other provisions of the bill.

Please contact me if you have further questions.

MFF:glc
97-104.glc

~~Enclosure~~

page 3 - line 17

~~Section~~ # 2

(d) THE MUNICIPALITY SHALL MAINTAIN
~~AND OPERATE~~ THE SKATEBOARD FACILITY
IN A ~~NON~~ NEGLIGENT MANNER. NOT CONSTRUCT ~~OR~~ JV

per Mike Ford
"shall" only
in const.
provisions

"municipal"
consistent
@ bill

LTN1100-R01
02/14/97

LEGISLATIVE TELECONFERENCE NETWORK

PAGE 01
12:24:43

TCN: 70265 DATE & TIME: 02/14/97 13:00 TO 15:00 STATUS:3 ANNOUNCED

**** ORDER SUMMARY ****

SPONSOR: HJUD HOUSE JUDICIARY CHAIRS: GREEN
PURPOSE: PUB PUBLIC HEARING LEGISLATIVE
CONTACT: LISA KIRSCH TEL#: (907)465-4990
CHAIRING SITE: JUNEAU CAPITOL CAP120
TOLL FREE: DIAL-UP: LIO: (800)478-9908

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED 3 MINUTE LIMIT
TESTIMONY WILL BE TAKEN WITH A 3 MINUTE LIMIT.
SEE COMMITTEE SCHEDULE IN BASIS

SPONSOR REMARKS(LIO): BACKUP MATERIAL:Y MEETING IN PROGRESS:N MAX. SITES:10
WE WILL HEAR BILLS FROM PREVIOUS CALENDARS. THIS MAY INCLUDE HB69, HB30 AND P
RHAPS HB22. *** SEE NOTES ON PAGE 6 *** BACKUP FAXED 2/14.
TCN REQUESTED ON 02/14/97 AND HAS 4 UPDATES

**** AGENDA ****

- 1 HB 30 CIVIL LIABILITY FOR SKATEBOARDING
- 2 REAPPOINTMENT OF SHIRLEY MCCOY

**** PARTICIPATING LIOS ****

ANC ANCHORAGE	716 W 4TH, #200	LOCATION STAFF
FBX FAIRBANKS	119 N CUSHMAN ST	LOCATION STAFF
JNU JUNEAU	CAPITOL CAP120	LOCATION STAFF
KOD KODIAK	112 MILL BAY RD.	LOCATION STAFF
VAL VALDEZ	STATE BLDG. #13	LOCATION STAFF

**** SCHEDULING NOTES ****

NO JNU MOD. AVAILABLE SO NO NEED TO SEND PARTS. LISTS. ERIC WILL STOP BY TO
SHOW HER HOW TO CONNECT AND DISCONNECT. BH

**** UPDATES ****

01	02/12/97	11:00:10	ANNOUNCING TELECONFERENCE	
02	02/13/97	13:38:54	VALDEZ	ADDED ON
03	02/14/97	08:55:60	DROPPED HB 69	
04	02/14/97	11:02:50	KODIAK	ADDED ON

→ Called Fairbanks to check
NO ONE to TESTIFY

Rep. Rokkeberg

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 30(L&C)

*originally
proposed
in L&C*

1 Page 1, line 1:

2 Delete "civil liability for"

3 Page 2, following line 10:

4 Insert new material to read:

5 "Sec. 05.50.025. Prohibition of skateboarding in undesignated places. (a)

6 A person may not skateboard on public or private property without the written
7 permission of the property owner unless the property is posted with signs that clearly
8 indicate that the property is available for skateboarding.

9 (b) In addition to being subject to civil liability under AS 05.50.020, a person
10 who violates this section is guilty of a violation and, upon conviction, the court may
11 impose a fine of not more than \$50."

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

02/14/97

12:24:43

TCN: 70265

DATE & TIME: 02/14/97 13:00 TO 15:00

STATUS:3

ANNOUNCED

**** ORDER SUMMARY ****

SPONSOR: HJUD HOUSE JUDICIARY

CHAIRS: GREEN

PURPOSE: PUB PUBLIC HEARING

LEGISLATIVE

CONTACT: LISA KIRSCH

TEL#: (907)465-4990

CHAIRING SITE: JUNEAU

CAPITOL

CAP120

TOLL FREE:

DIAL-UP:

LIO: (800)478-9908

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED

3 MINUTE LIMIT

TESTIMONY WILL BE TAKEN WITH A 3 MINUTE LIMIT.

SEE COMMITTEE SCHEDULE IN BASIS

SPONSOR REMARKS(LIO): BACKUP MATERIAL:Y MEETING IN PROGRESS:N MAX. SITES:10
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KOD KODIAK	112 MILL BAY RD.	LOCATION STAFF
VAL VALDEZ	STATE BLDG. #13	LOCATION STAFF

**** SCHEDULING NOTES ****

NO JNU MOD. AVAILABLE SO NO NEED TO SEND PARTS. LISTS. ERIC WILL STOP BY TO SHOW HER HOW TO CONNECT AND DISCONNECT. BH

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- 02 02/13/97 13:38:54 VALDEZ ADDED ON
- 03 02/14/97 08:55:60 DROPPED HB 69
- 04 02/14/97 11:02:50 KODIAK ADDED ON

→ Called Fairbanks to check
NO ONE TO TESTIFY

1) PHL 800 478 9908 - you will get music & a recorded message.

wait for term to answer.

2) identify yourself - HUD - DEM WILL TELL YOU THAT SHE WILL CONNECT YOU.

3) GIVE IT ABOUT 3 SECONDS - PRESS CONNECT BUTTON - WAIT FOR BEEP OUT OF CEILING SPEAKERS THEN HANG PHONE UP.

PRESS PRIVACY BUTTON TO MUTE OUT

AM WANTED CHATER.

4) AT START OF MEETING PRESS RED PRIVACY BUTTON SO THAT THE RED LIGHT STOPS SHINING.

5) TEL. COM NOW IN PROGRESS.

6) AT MEETINGS END HIT CONNECT BUTTON TO END TC CONNECTION.

7) IF "ATTENSE" IS CALLED MUTE OUT WITH RED PRIVACY BUTTON.

4) OBSERVERS

5) TESTIFIERS

3/94

Rep. Rikeberg

AMENDMENT

OFFERED IN THE HOUSE
TO: CSHB 30(L&C)

*originally
proposed
in L&C*

- 1 Page 1, line 1:
- 2 Delete "civil liability for"

- 3 Page 2, following line 10:
- 4 Insert new material to read:
- 5 "Sec. 05.50.025. Prohibition of skateboarding in undesignated places. (a)
- 6 A person may not skateboard on public or private property without the written
- 7 permission of the property owner unless the property is posted with signs that clearly
- 8 indicate that the property is available for skateboarding.
- 9 (b) In addition to being subject to civil liability under AS 05.50.020, a person
- 10 who violates this section is guilty of a violation and, upon conviction, the court may
- 11 impose a fine of not more than \$50."



REPRESENTATIVE ELDON MULDER
DISTRICT 23 MULDOON-Ft. RICHARDSON



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

MEMORANDUM

DATE: January 30, 1997
TO: Representative Joe Green, Chair
House Judiciary Committee
FROM: Representative Eldon Mulder
RE: CSHB 30 (L&C)

CSHB 30 has been referred to the House Judiciary Committee for consideration. The bill will provide limited protections from the risks inherent to skateboarding for municipalities. This is similar to the limitation on liability that we granted to ski areas.

Please schedule CSHB 30 for hearing as early as possible. It is important it receives early consideration so that the Municipality of Anchorage, Fairbanks North Star Borough and City of Borough of Juneau can proceed with the development of skateboard parks this Spring.

Included are copies of CSHB 30, sponsor statement, bill sectional, zero fiscal note, and letters of support.



REPRESENTATIVE ELDON MULDER
DISTRICT 23 MULDOON-Ft. RICHARDSON



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

SPONSOR STATEMENT
CSHB 30 (L&C)
by
Representative Eldon Mulder

CSHB 30 was introduced at the request of the Municipality of Anchorage.

The Municipality of Anchorage and City and Borough of Juneau would like to create skateboard parks so skateboarders will have a place to ride, rather than using other areas designed for pedestrians. The municipalities are willing to develop areas suitable for skateboard riding if they can be insulated from liability for claims arising from hazards inherent in skateboarding.

The intent of CSHB 30 is to encourage the municipalities to proceed with development of areas for outdoor recreation without increasing their liability unnecessarily. The bill applies only to municipal skateboard parks.

This bill is patterned after the legislation passed providing this limited protection to ski areas. The protection from liability relates to inherent dangers and risks of skateboarding. The municipality is required to post signs warning that there are inherent risks and the liability rests with the skateboarder. CSHB 30 was amended in the House Labor and Commerce Committee to make a minor's parent or legal guardian responsible to determine the minor's ability to skateboard and require municipalities to delineate the boundaries of a skateboard facility with fencing or another type of enclosing or surrounding structure.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

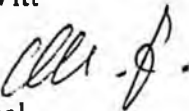
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 23, 1997

SUBJECT: Sectional Summary of HB 30

TO: Representative Eldon Mulder
Attn: Dennis DeWitt

FROM: Michael F. Ford 
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1

Sec. 05.50.010. - Prohibits a person from bringing a lawsuit against a municipality, for an injury resulting from an inherent danger and risk of skateboarding at a municipal skateboarding facility.

Sec. 05.50.020. - Describes the effect of a violation of AS 05.50. A municipality or other person who violates AS 05.50 is negligent and civilly liable to the extent the violation causes injury or property damage. Provides that if an injury occurs and an inherent danger and risk of skateboarding was a contributory factor or the injured person violated a provision of AS 05.50, that a municipality is not liable unless the municipality also violated a provision of AS 05.50.

Sec. 05.50.030. - Sets out the duties of a person who uses a municipal skateboarding facility.

Sec. 05.50.040. - Requires that municipalities maintain a sign system for protection and instruction of skateboarders.

Sec. 05.50.050. - Sets out the duties and responsibilities of a skateboarder who uses a municipal skateboarding facility.

Representative Eldon Mulder

January 23, 1997

Page 2

Sec. 05.50.060. - Requires that a municipality must allow a person participating in a skateboard competition to visually inspect the course or area. Provides that a person participating in a skateboard competition assumes certain risks and cannot hold the municipality liable for the assumed risks.

Sec. 05.50.100. - Definitions.

Section 2. Applicability section.

Section 3. Effective date.

MFF:jdr
97-042.jdr

O-LS0192VA.1
Lauterbach
1/29/97

A
AMENDMENT # 1

**OFFERED IN THE HOUSE
TO: HB 30**

- 1 Page 2, line 14, following "safely":
- 2 Insert "; in the case of a minor who uses a municipal skateboard facility, the minor's
- 3 parent or legal guardian is responsible for determining whether the minor satisfies the
- 4 requirements of this paragraph"

- 5 Page 3, line 18, following "ability":
- 6 Insert "; in the case of a skateboarder who is a minor, the minor's parent or legal
- 7 guardian is responsible for determining whether the minor satisfies the requirements of this
- 8 paragraph"

0-LS0192A.3
Lauterbach
1/29/97

AMENDMENT #2

OFFERED IN THE HOUSE

TO: HB 30

- 1 Page 3, following line 13:
- 2 Insert a new subsection to read:
- 3 "(c) A municipality shall clearly delineate the boundaries of a municipal
- 4 skateboard facility with fencing or another type of enclosing or surrounding structure."

TO: JUNEAU LIO
@ 465-2864
FROM: HOUSE JUD.
@ 465-4316
RE: TODAY-70265

0-LS0192\E.1 /
Ford
2/11/97

Rep. Rokeberg

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 30(L&C)

- 1 Page 1, line 1:
- 2 Delete "civil liability for"

- 3 Page 2, following line 10:
- 4 Insert new material to read:
- 5 "Sec. 05.50.025. Prohibition of skateboarding in undesignated places. (a)
- 6 A person may not skateboard on public or private property without the written
- 7 permission of the property owner unless the property is posted with signs that clearly
- 8 indicate that the property is available for skateboarding.
- 9 (b) In addition to being subject to civil liability under AS 05.50.020, a person
- 10 who violates this section is guilty of a violation and, upon conviction, the court may
- 11 impose a fine of not more than \$50."

**Municipality
of
Anchorage**



P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4431
Fax: (907) 343-4499
<http://www.ci.anchorage.ak.us>

Rick Mystrom, Mayor

OFFICE OF THE MAYOR

January 23, 1997

Representative Eldon Mulder
Alaska State Legislature
Juneau, Alaska 99801-1182

Re: House Bill No. 30. "An Act relating to civil liability for skateboarding"

Dear Eldon:


There is significant community interest in a municipal skateboard park and our 1997 Capital Improvement Budget includes plans for construction of one.

Like alpine skiing, skateboarding is an active sport that includes numerous inherent risks of injury. Before construction of a municipal skateboard park, the Municipality of Anchorage desires adoption of a statute that would insulate it from claims arising from the hazards inherent in skateboarding.

House Bill 30 helps fulfill that need and will eliminate a roadblock to the completion of this long awaited facility.

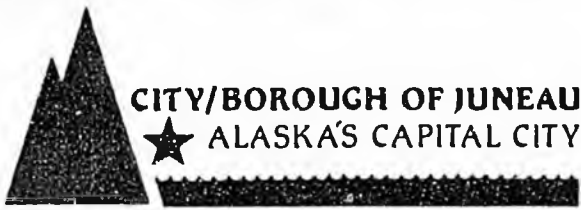
Thank you for your assistance with this legislation.

Sincerely,



Rick Mystrom
Mayor

"City of Lights and Flowers"

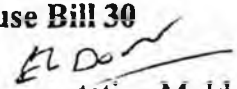


OFFICE OF THE MAYOR

January 27, 1997

The Honorable Eldon Mulder
Representative
Alaska State Legislature
Alaska State Capital, Rm 501
Juneau, Alaska 99801-1182

RE: House Bill 30


Dear Representative Mulder:

On behalf of the City & Borough of Juneau Assembly, I am writing to express our support for House Bill 30, pending legislation limiting municipal liability for skate park operation. The introduction of this bill is timely for Juneau's youth; a group of students from Juneau Douglas High School has undertaken a class project to construct a skate facility on borough land. Of concern to the Borough Assembly is liability for skate park operation.

In their proposal for the skate park, the youth included a summary of survey data substantiating the need for the facility. From the data they gathered at three schools, we learned that over 80% of our youth roller skate, in-line skate, skate board or BMX bike. We suspect that recreation patterns in Juneau are similar to those in other Alaskan communities. Like other municipalities, we have no facility to accommodate these activities. An Alaska law limiting a municipality's exposure to liability for park operation will go a long way towards enabling us to accommodate our youth without breaking the budget.

Please contact me if I can provide additional information regarding our efforts to provide a venue for skating in Juneau. Thank you for your effort on behalf of Alaskan skaters.

Sincerely,



Dennis Egan
Mayor



January 29, 1997

Representative Eldon Mulder
State Capital
Juneau, AK 99801

Dear Representative Mulder:

Thank you for introducing HB 30, relating to civil liability for skateboarding. This issue is becoming increasingly important for municipalities around the state and we support its passage.

As stated in the 1997 AML Policy Statement, which was adopted unanimously by AML members at their November conference:

C. Liability Issues


1. Liability for Injury in Recreational Activities: The League supports legislation that would limit the liability of a government, organization, volunteer, or private property owner providing recreational activities, facilities, and trail easements.

There is increasing pressure on local governments to provide additional recreational areas for young people, but they are reluctant to do so because of the unacceptable risk to their taxpayers. With passage of HB 30, those municipalities would be able to provide a safe place for skateboarders without putting the rest of the population at financial risk.

This issue is also a part of our 1997 Legislative Platform (attached). We believe providing recreational opportunities for youth will give communities more tools to help reduce youth crime.

Thanks again for your continued support.

Sincerely,



Kevin C. Ritchie
Executive Director

Attachment

c:\jk\leg97\hb30ltr.doc



**Alaska Municipal League &
Alaska Conference of Mayors
1997 Legislative Platform**

1. Approval of the "Safe Communities" bill and maintain current funding for municipal revenue sharing to avoid further state generated local property tax increases. The "four legs" of the Safe Communities bill are:
 - Directs the funds to be used primarily for public safety and health services
 - Establishes a minimum sharing of \$40,000 for small municipalities
 - Removes the "hold harmless" to allow equal treatment to all municipalities
 - Distributes municipal funds on July 31 each year
2. Provide for the long term construction, operation, and maintenance of state and municipal airports, roads, and harbors, including revenue sharing programs for maintenance. Bring state harbors up to an adequate maintenance level through a statewide bond issue, or other funds, to prepare them for possible negotiated transfer to municipalities.
3. Approval of a Long Range Financial Plan that prohibits unfunded mandates and unfunded service responsibilities, adequately funds schools and maintenance of public infrastructure, reasonably reduces state expenses, protects the Permanent Fund, and phases in new tax revenue sources.
4. Actively encourage the construction of a natural gas pipeline with an emphasis on jobs for Alaskans.
5. Restore funding for Municipal Capital Matching Grant Program to \$20 million because local communities can most efficiently determine and meet local capital needs.
6. Create a permanent State/Local Government Partnership Council to negotiate methods to most efficiently provide public services at the lowest possible cost to taxpayers.
7. Provide long term funding of public safety and health services through the equitable sharing of increased statewide alcohol and tobacco taxes, and removing the current prohibition against municipalities voting for local special taxes on the sale or use of alcohol.
8. Reduce the state unfunded mandate for the Senior Citizen Property Tax exemption.
9. Adequately fund a program to construct efficient sanitation systems throughout Alaska.
10. Give communities more tools to reduce youth crime by limiting confidentiality of youth crime information to protect the community, allow municipalities the option of assuming greater jurisdiction over juvenile justice, and limit liability for providing recreational opportunities for youth, such as skateboard parks.

02/14/97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1401
10:17:17 N CONFERENCE DISPLAY PAGE 01 - ORDER SUMMARY L357
TCN 70265 T/C DATE: 02/14/97 TIME: 13:00 to 15:00 STATUS: 3 ANNOUNCED

SPONSOR: HJUD HOUSE JUDICIARY CHAIRS: GREEN
PURPOSE: PUB PUBLIC-HEARING LEGISLATIVE
1ST ITEM: HB 30 CIVIL LIABILITY FOR SKATEBOARDING 2 ITEMS ON AGENDA
CONTACT: LISA KIRSCH TEL: (907)465-4990 MODERATOR: ZZZ
LOCATION STAFF
CHAIRING SITE: JUNEAU CAPITOL ROOM: CAP120 PRINTER: L900
PARTICIPATING LIOS: 4 VOLUNTEER SITES: 0 OFFNETS: 0

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REQUESTED ON: 02/12/97 ON: 02/12/97 ON: 02/14/97

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NO MODERATOR AVAILABLE

HB 30

Wits.

Kevin Rielue - Municipal League

Tim Allen - Parks & Rec
≈ 5 people in person.



REPRESENTATIVE ELDON MULDER
DISTRICT 23 MULDOON-Ft. RICHARDSON



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

MEMORANDUM

DATE: January 23, 1997

TO: Representative Norm Rokeberg, Chair
House Labor & Commerce Committee

FROM: Representative Eldon Mulder

RE: House Bill 30



House Bill 30 has been referred to the Labor & Commerce Committee for consideration. The bill will provide limited protections from the risks inherent to skateboarding for municipalities. This is similar to the limitation on liability that we granted to ski areas.

Please schedule HB 30 for hearing as early as possible. It is important it receives early consideration so that the Municipality of Anchorage and the Fairbanks North Star Borough can proceed with the development of skateboard parks this Spring.

Included are copies of HB 30, sponsor statement, and bill sectional.

SPONSOR STATEMENT HOUSE BILL 30

by
Representative Eldon Mulder

HB 30 was introduced at the request of the Municipality of Anchorage.

The municipality would like to create a skateboard park so skateboarders will have a place to ride, rather than using other areas designed for pedestrians. Anchorage and Fairbanks are willing to develop areas suitable for skateboard riding if they can be insulated from liability for claims arising from hazards inherent in skateboarding.

The intent of House Bill 30 is to encourage the municipalities to proceed with development of areas for outdoor recreation without increasing their liability unnecessarily. The bill applies only to municipal skateboard parks.

This bill is patterned after the legislation passed providing this limited protection to ski areas. The protection from liability relates to inherent dangers and risks of skateboarding. The municipality is required to post signs warning that there are inherent risks and the liability rests with the skateboarder. It was amended in the Judiciary Committee to make it certain that the parks are not required to have on-site supervision provided by the municipality.

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

Mary Pagenkopf

House Judiciary Standing Committee, 4/26/95, 1:17pm.

HB

31

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 31

Revision Date: _____ Dept. Affected: Department of Law
 Title: "...relating to civil liability...; amending Rule 13(e) and 82(b), Alaska Rules of Civil Procedure..." BRU: Criminal Division, Civil Division
 Sponsor: Representative Mulder Component: Criminal Division, General Legal Services
 Requester: House Labor & Commerce Committee COMPONENT SERIAL NO. 2085/2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	322.5	322.5	322.5	322.5	322.5	322.5
TRAVEL	19.2	19.2	19.2	19.2	19.2	19.2
CONTRACTUAL	123.0	123.0	123.0	123.0	123.0	123.0
SUPPLIES	6.3	6.3	6.3	6.3	6.3	6.3
EQUIPMENT	32.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	503.5	471.0	471.0	471.0	471.0	471.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	243.6	227.4	227.4	227.4	227.4	227.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other - Interagency Receipts	259.9	243.6	243.6	243.6	243.6	243.6
TOTAL	503.5	471.0	471.0	471.0	471.0	471.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME	3.0	3.0	3.0	3.0	3.0	3.0
PART-TIME	2.0	2.0	2.0	2.0	2.0	2.0
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill creates several new causes of action similar to but broader than common-law abuse of process, and makes some such causes of action compulsory claims and counterclaims in the underlying lawsuit. Claims against the opposing attorney would be filed in a separate, parallel suit. As drafted, this bill would have substantial fiscal impacts on the Department of Law, not because it would authorize claims against the state that would have merit, but rather by encouraging a large number of unfounded claims that would increase litigation costs.

The department handles a disproportionate volume of pro se litigation, much of it initiated by prisoners. We anticipate that many pro se litigants would assert that state filings and defenses violated this provision, would assert new claims on this basis in the main action, and would also file parallel suits against the state attorneys. This would complicate and increase the cost of handling litigation, and in some instances would force the state to hire private counsel to defend the state attorneys in the spin-off litigation. While the state could counterclaim on its own behalf under the provisions of HB 31, many of these litigants are judgment proof.

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370
 Division: Administrative Services Division Date: 1/31/97
 Approved by Commissioner: Bruce M. Betelho, Attorney General *Bruce M. Betelho* Date: 1/31/97
 Agency: Department of Law

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ANALYSIS CONTINUATION:

HB 31 would also complicate other litigation and increase state expenses. For example, we anticipate that the federal government would attempt to use these new causes of action as a defensive tool in suits the state has filed or will file against the United States or federal officials, and would seek to have the spin-off claims adjudicated by sympathetic federal judges. At a minimum, the state's legal costs would increase. (The increased defensive burden would fall solely on the state, since the United States is immune to liability under this provision, not having waived its sovereign immunity). Another potential source of expense would be suits by private citizens against troopers or other state employees. The Department of Law currently defends these suits under provisions of the collective bargaining agreements, but does not provide free representation for countersuits; these are left to the employee to bring through private counsel after the case is over. By making some such suits compulsory counterclaims in the main action, this bill could force the state to assert some claims of this type on the employee's behalf or, alternatively, lead the employee to hire private counsel to participate in the main action. Either eventuality would add complication and expense.

Overall, the department estimates that HB 31 would increase the cost of litigation by about four percent in the civil division, and increase the cost of prisoners' rights litigation in the criminal division by about 12.5 percent. Based on the current number of equivalent positions handling civil litigation, this will result in an increase of two and one-half attorney positions in the civil division, and one-half of an attorney position in the criminal division.

The department's weighted cost for an attorney position is \$127,000 per year, plus \$6,500 for one-time new position equipment. The weighted cost includes clerical support, communications, space, supplies, data processing, and all other normal overhead expenses. It does not include direct, out-of-pocket case costs such as experts, court reporters, and case travel. Thus, the department's in house staff cost would be \$317,500 for the civil division (37.5% GF and 62.5% IAR) and \$70,000 in general funds for the criminal division. Additionally, due to conflicts, \$60,000 in outside counsel costs will probably be incurred by the civil division (37.5% GF and 62.5% IAR), and \$15,000 in outside counsel GF costs will be incurred by the criminal division. Likewise, \$12,500 will be needed by the civil division for case travel (37.5% GF and 62.5% IAR), and \$2,500 GF will be needed for case travel costs in the criminal division.

Finally, new positions include two PFT Attorney IV's, one PPT Attorney IV, and one PFT legal secretary in the civil division, and one PPT Attorney IV in the criminal division. Please also note that although no clerical support position is being added in the criminal division, proportionate support position funding is included in the standard attorney cost schedule to reduce clerical support vacancy so that the new part-time attorney's clerical burden can be handled. One-time equipment costs are added for the civil division secretary position as such costs are not included in the standard attorney cost schedule.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 31

Revision Date:

Dept. Affected: Alaska Court System

Title: Civil liability for improper litigation

BRU: Trial Courts

Component:

Sponsor: Rep. Mulder

Requestor: House Labor & Commerce

COMPONENT SERIAL NO. 768

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	25.0	25.0	25.0	25.0	25.0	25.0
TRAVEL						
CONTRACTUAL	12.5	12.5	12.5	12.5	12.5	12.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	37.5	37.5	37.5	37.5	37.5	37.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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Fund Source

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	37.5	37.5	37.5	37.5	37.5	37.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	37.5	37.5	37.5	37.5	37.5	37.5

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel
Agency: Alaska Court System

Phone: 264-8228
Date: 01/30/97

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Date: 01/30/97

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Alaska Court System
Fiscal Analysis
HB 31

HB 31 creates civil liability for actions which it describes as false claims and improper practice in civil cases. It does this by adding AS 09.65.190(a) - (g) to the Code of Civil Procedure.

Proposed AS 09.65.190(a), (b), (c), and (e) essentially codify Civil Rule 11, with two primary differences. First, CR 11 gives a judge the discretion to impose monetary or non-monetary sanctions for improper practice on motion by the aggrieved party. HB 31, on the other hand, allows an aggrieved party to file an action for compensatory damages. The action must be part of the same action in which the injury arose if the action is the result of an act or omission by a party. However, the action must be asserted as a separate action if the injury is the result of an act or omission by a nonparty (such as an attorney). Handling the issue of frivolous practice as a separate claim in a civil suit, or as a separate civil suit entirely, is more time consuming (and thus more expensive) than handling it as a motion.

Second, by allowing a civil action for improper practice, HB 31 essentially makes financial sanctions (in the form of compensatory and punitive damages) for such behavior mandatory. This differs from CR 11, which gives the judge discretion in imposing sanctions (these might include financial sanctions, exclusion or admission of disputed evidence, extension or limitation of discovery, etc.). The federal courts began requiring mandatory sanctions for improper practice in 1983. This rule generated a dramatic increase in claims, and as a result, the federal courts repealed the requirement in 1993. Federal sanctions are once again discretionary.

Proposed AS 09.65.190(d) and (f) codify the common law cause of action for malicious prosecution. It modifies the common law by allowing the civil action if the defendant acted without probable cause on a claim or defense, or acted primarily for an improper purpose. Under the current standard, the defendant must have acted without probable cause on a claim or defense, and acted primarily for an improper purpose. By making it easier to prove malicious prosecution, more prevailing litigants can be expected to file such claims.

Those proposing these changes believe that they will reduce frivolous litigation, and they may be correct. However, the legal standard for proving frivolous conduct is very high, and thus the actual percentage of claims which are frivolous as a matter of law is very small, notwithstanding the average defendant's view to the contrary. Most commonly such cases are filed by prisoners or other pro se litigants. Those

Alaska Court System
Fiscal Analysis
HB 31

categories of plaintiff are generally unaware of the details of the Code of Civil Procedure, and are judgment-proof if they do violate its provisions.

While potentially beneficial for certain litigants in specific cases, we believe that this legislation will result in a net increase in the number of cases before the court system, as well as a lengthening of some existing cases. At the present time, approximately 95 percent of civil cases settle without trial, and the discovery phase of a lawsuit is spent attempting to convince the opposing party that it would be more financially advantageous to settle than to continue. Accordingly, litigants can be expected to use HB 31 as a new tool to pressure the opposing party into settling a case. In FY 95, there were 16,306 civil cases filed in superior court, and 8,005 civil cases (not counting small claims) filed in district court. If only one percent of those cases resulted in a civil action for frivolous practice (either by the defendant alleging frivolous prosecution, or the plaintiff alleging frivolous defense, or both), there would be 243 new cases or new claims in existing cases. This fiscal note assumes additional judicial time, clerical costs and jury fees.

HB 31


"Pleading" how construed
depo transcript used as exhibit
narrowly - complaint, answer
motion? Not affidavit

targets - attys & pro se litigant

Something in HB 58?
Signing

§ 44 Sen Rules version

→ Rule 95 Chy
(C) Perry PI prop darged
enter, sent agst party
Verbatim

PHONE MESSAGE		DATE 2/6	TIME 4:30 A.M. P.M.
FOR	Lisa		
M	Denny DeWitt		
OF			
PHONE () 2647	EXT.	
<input type="checkbox"/> FAX	<input type="checkbox"/> MOBILE	<input type="checkbox"/> PAGER ()
MESSAGE	Re: Scheduling HB 31		
		SIGNED <u>KT</u>	

- URGENT
- PHONED
- RETURNED YOUR CALL
- PLEASE CALL BACK
- WILL CALL AGAIN
- WAS IN
- WANTS TO SEE YOU

HB 31


Susan Cox
a(2) applic.

factual off - my support
lay person - existing law etc
how do you apply

Bail Voigtlander

Thurs. 1pm
Susan Cox 4169
CS
Bail 269-5100

exception for prisoners
- incarceration
Not by people re:

PHONE MESSAGE		DATE 4/25	TIME 12:10	A.M. P.M.
FOR	LDA			
WI	Jessica Miller			
OF	North Carolina			
PHONE (1 (888) 536-0126 EXT.			
<input type="checkbox"/> FAX	<input type="checkbox"/> MOBILE	<input type="checkbox"/> PAGER (1	
MESSAGE	Re: HB 31 - Status			
<i>Amelia</i> <i>4/25</i> <i>JMF</i>				
			SIGNED <i>KT</i>	

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- WAS IN
- WANTS TO SEE YOU

2/5/97
Cox

HB 31 left L&C yesterday

Frivolous - vio of Rule 11
Attys personally liable
out of House Labor & Commerce

— exempted state last year
Gail V.

Bob Mintz case
|| "slap suits" - environmental
suits considered frivolous
Public Int. group immunity no good
bec sue atty.

Court Sys 37K Fiscal note
Chris thought State exempted so now note
coming

L & C Rokelberg Chair

[task force increased fee under
Rule 11