

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 86/2

10284 HOUSE JUDICIARY

129

HB

271

22-T 50741VL
Ford
4/19/02

*Adopted
4-19-02*

CS FOR HOUSE BILL NO. 271()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to recovery of punitive damages resulting from an aviation accident;
2 and providing for an effective date."

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

4 * Section 1. AS 09.17.020(h) is amended to read:

5 (h) Notwithstanding any other provision of law, in an action against

6 (1) an employer to recover damages for an unlawful employment
7 practice prohibited by AS 18.80.220, the amount of punitive damages awarded by the
8 court or jury may not exceed

9 (A) [(1)] \$200,000 if the employer has fewer [LESS] than 100
10 employees in this state;

11 (B) [(2)] \$300,000 if the employer has 100 or more but fewer
12 [LESS] than 200 employees in this state;

13 (C) [(3)] \$400,000 if the employer has 200 or more but fewer
14 [LESS] than 500 employees in this state; and

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(D) [(4)] \$500,000 if the employer has 500 or more employees in this state; and

(2) an owner or operator of an aviation business to recover damages resulting from an aviation accident, the amount of punitive damages awarded by the court or jury may not exceed (A) \$300,000 if the aircraft has a passenger seat configuration of 20 or fewer seats, excluding each crewmember seat, or a maximum payload capacity of less than 6,000 pounds; (B) \$400,000 if the aircraft has a passenger seat configuration of more than 20 seats but fewer than 30 seats, excluding each crewmember seat, or a maximum payload capacity of 6,000 or more pounds but less than 7,500 pounds; and (C) \$500,000 if the aircraft has a passenger seat configuration of 30 or more seats, excluding each crewmember seat, or a maximum payload capacity of 7,500 or more pounds; in this paragraph, "aviation accident" means an accident occurring during the operation of an aircraft, and "maximum payload capacity" has the meaning given in 14 C.F.R. 119.3.

* Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to a cause of action that accrues on or after the effective date of this Act.

* Sec. 3. This Act takes effect on July 1, 2002.

Sponsor Statement

CS HB 271(L&C)

“An Act relating to recovery of punitive damages resulting from an aviation accident and providing for an effective date.”

In the past few years, aviation insurance has skyrocketed leaving some air carriers in the state without adequate or affordable insurance coverage. The industry's biggest problem regarding insurance relates to liability. In 1998, \$24.68 million was paid out by insurance companies to cover aviation accidents in Alaska, while the industry only netted \$14.74 million in premiums.

Recent court cases have added to an increasing gap between outgoing payments and incoming premiums. Unfortunately, insurance companies have had to raise rates dramatically, creating monetary ceilings, which limit aviation carrier operations by high-cost premiums. In order to limit liability payouts for air accidents, the Labor & Commerce Committee introduced House Bill 271.

HB 271 controls the high cost of premiums by lowering the insurance overhead for Alaska's air carriers. If premiums continue to climb, most air carriers will be forced to close their doors. A loss of commercial aviation operations in Alaska could severely and negatively impact rural communities.

In some situations renewal premiums have been increasing at 50 percent per year. Alaska Statute requires a minimum limit of \$150,000 per seat for bodily injury. Most air carriers have increased liability insurance to \$500,000 or more to limit bankruptcy award settlements. Affordable premiums or finding coverage is nearly impossible at those levels, hence the impetus for introducing HB 271.

HB 271 clearly limits in state statute award settlements for airplane disasters. By introducing tort reform for air carrier insurance, the Labor & Commerce Committee hopes to lower insurance premiums, thus stabilizing the air carrier industry and maintaining future air travel for all Alaskans.

Sectional Analysis

CS HB 271(L&C)

“An Act relating to recovery of punitive damages resulting from an aviation accident and providing for an effective date.”

***Section 1.** Amends the statute AS 09.17.020(h) by adding a new number (1) to renumber and letter current statutes limiting punitive damage awards.

Adds a new number to AS 09.17.020(h) that being number (2). A new limitation on punitive damages resulting from an aviation accident is added to current statute.

The limits on punitive damages that may be awarded are set forth into statute in (2) A-C.

***Section 2.** Amends the codified law relating to applicability. *Section (1) is only applicable if the cause or reason for invoking *Section (1) occurred on or after the effective date.

***Section 3.** States that the effective date will be July 1, 2002.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 271
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title An Act relating to recovery of punitive BRU Insurance (116)
damages resulting from an aviation accident Component Insurance Operations
 Sponsor House Labor & Commerce
 Requester House Labor & Commerce Component No. 354

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 GF Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on this component.

Prepared by: Robert A. Lohr, Director Phone 907-269-7900
 Division Insurance Date/Time 4/9/02 8:35 AM
 Approved by: Deborah B. Sedwick, Commissioner Date 4/9/2002
 Agency Department of Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 271
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to recovery of punitive BRU Risk Management
damages from an aviation accident Component Risk Management
 Sponsor House Labor and Commerce
 Requester House Labor and Commerce Component No. 71

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The state's insurance program for aviation liability exposures will not be affected by this bill.

Alaska statute 09.50.280 already exempts the state from punitive damages. The additional protections and limitations being provided in this legislation will have no effect on state agencies that own or operate aircraft or airports that might be interpreted by the courts as "owner or operator of an aviation business".

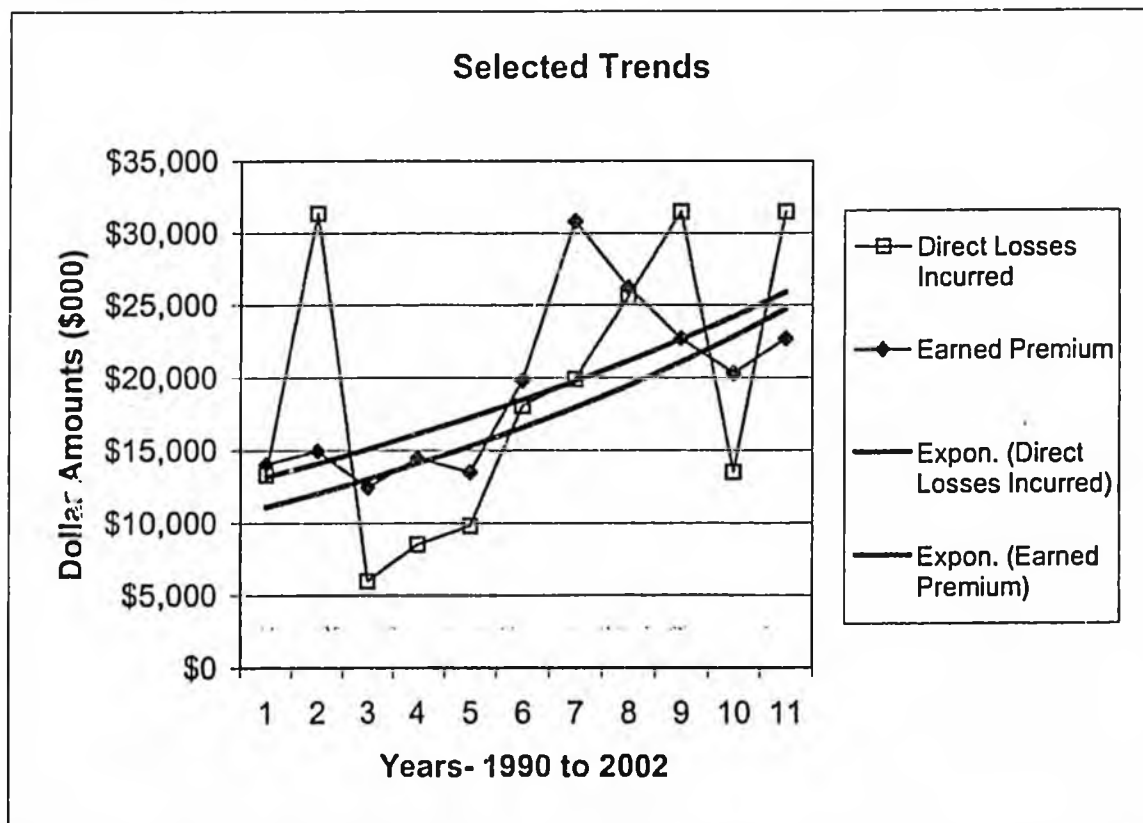
Therefore, there is no fiscal impact to the state.

Prepared by: J. Brad Thompson, Director Phone 465-5723
 Division Risk Management Date/Time 4/4/02 4:08 PM
 Approved by: Jim Duncan, Commissioner Date 4/4/2002
 Agency Department of Administration

Aircraft

Calander Year	Number of Companies	Direct Losses Incurred	Earned Premium
1990	47	\$13,304	\$14,034
1991	44	\$31,341	\$14,929
1992	42	\$5,976	\$12,433
1993	45	\$8,513	\$14,465
1994	45	\$9,797	\$13,488
1995	48	\$18,045	\$19,790
1996	47	\$19,868	\$30,799
1997	46	\$25,588	\$26,195
1998	39	\$31,455	\$22,681
1999	40	\$13,500	\$20,263
2000	40	\$31,455	\$22,669
2001	xxx	xxx	xxx
2002	xxx	xxx	xxx
Average Annual % Change	-1.20%	8.35%	6.99%
1990 to 2000 % change	-12.39%	141.67%	110.36%

*Dollar amounts are in (\$000)



Div. of Insurance

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Alaska Aviation Accident Data Summary
Alaska Interagency Aviation Safety Initiative
NICSH, Alaska Field Station
April 25, 2000

Prior to collation, these data were obtained from NTSB, FAA, Alaska Bureau of Vital Statistics, Alaska Office of the Medical Examiner, and the Alaska Department of Labor. All data for 1999 is preliminary.

- **Total aviation accidents in Alaska for the ten-year period of 1990-1999 = 1665, an average of one every other day**
- **Total aviation fatalities for 1990-1999 = 398, an average of one every 9 days**
 - There were 186 fatal crashes involving 194 aircraft during this time period with a total of 398 fatalities.
 - Of these 398 fatalities, 106 were occupational pilots, 86 were non-pilot occupational fatalities, and 206 were non-occupational fatalities.
 - The mean number of fatal crashes for this time period per year was 18.6, with an average of 2.1 fatalities per fatal crash, and an average of 39.8 fatalities per year.
 - 173 fatal crashes involved fixed wing aircraft, 14 involved helicopters (one crash involved both plane and helicopter, so adds to 187)
 - For 1990-1998, the most common first finding of the fatal crashes was loss of control in flight (28%), followed by in flight collision with terrain or water (28%), in flight encounter with weather (15%), and airframe/component/system failure/malfunction (5%). *(This section has not been updated for 1999 because data is not yet available.)*
- **Total serious injuries = 271(1/90 through 10/99, most recent available data)**
- **Total minor injuries = 448 (1/90 through 10/99, most recent available data)**
- **Average of 11 pilot fatalities per year out of a commercial pilot workforce of 2600 = an annual pilot fatality rate of 420 per 100,000 pilots (or 0.4%).**
 - This is equivalent to a 30-year career fatality risk of 12% for commercial pilots in Alaska.
 - Compared to the average U.S. worker (with a 30-year career risk of 0.12), Alaska commercial pilots have a 100-fold increased risk of fatality.
- **Total of direct and indirect costs, and lost future wages based on 11 pilot fatalities per year are over \$18 million**

- **Total of direct and indirect costs, and lost future wages based on average of 9 non-pilot occupational deaths per year = yearly cost of \$9,279,000:**
- **Total of direct and indirect costs, and lost future wages based on average of 21 non-occupational deaths per year = yearly cost of \$26,355,000:**
- **Total combined costs of pilots, non-pilot occupational, and non-occupational fatalities = a total yearly cost of over \$53 million or over \$1.3 million per death.**

Alaska Interagency Aviation Safety initiative:

- The 3-year interagency initiative involves the Federal Aviation Administration (FAA), the National Transportation Safety Board (NTSB), the National Weather Service (NWS), and the National Institute for Occupational Safety and Health (NIOSH). All four agencies share an interest in promoting aviation safety and preventing aircraft crashes. The initiative involves five elements:
 - Gather and analyze data
 - Bring together working groups
 - Work to develop communication and education tools
 - Evaluate effectiveness of and changes in flight safety practices
 - Evaluate progress and suggest additional improvements
- **Goal:** To reduce the number of occupational aviation-related fatalities in Alaska by 50 percent for the years 2000-2009 (compared to 1990-1999)
- **Objective:** To improve aviation data management and collaborative analysis capacity and optimize efforts by federal agencies (FAA, NTSB, NWS, NIOSH, and industry) to reduce aviation accidents in Alaska through partnerships.

Contact Information:

George A. Conway, MD, MPH; Jan C. Manwaring, MPH
Alaska Field Station
National Institute for Occupational Safety and Health (NIOSH)
4230 University Drive, Suite # 310
Anchorage, Alaska 99508
Phone: 907-271-2382, Fax: 907-271-2390

Chapter 09.16. CONTRIBUTION AMONG JOINT TORTFEASORS

[Repealed, 1987 Initiative Proposal No. 2, Sec. 2. For current law, see AS 09.17.080 (d)].

Chapter 09.17. CIVIL DAMAGES AND APPORTIONMENT OF FAULT

Sec. 09.17.010. Noneconomic damages.

(a) In an action to recover damages for personal injury or wrongful death, all damage claims for noneconomic losses shall be limited to compensation for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary damage.

(b) Except as provided under (c) of this section, the damages awarded by a court or a jury under (a) of this section for all claims, including a loss of consortium claim, arising out of a single injury or death may not exceed \$400,000 or the injured person's life expectancy in years multiplied by \$8,000, whichever is greater.

(c) In an action for personal injury, the damages awarded by a court or jury that are described under (b) of this section may not exceed \$1,000,000 or the person's life expectancy in years multiplied by \$25,000, whichever is greater, when the damages are awarded for severe permanent physical impairment or severe disfigurement.

(d) Multiple injuries sustained by one person as a result of a single incident shall be treated as a single injury for purposes of this section.

Sec. 09.17.020. Punitive damages.

(a) In an action in which a claim of punitive damages is presented to the fact finder, the fact finder shall determine, concurrently with all other issues presented, whether punitive damages shall be allowed by using the standards set out in (b) of this section. If punitive damages are allowed, a separate proceeding under (c) of this section shall be conducted before the same fact finder to determine the amount of punitive damages to be awarded.

(b) The fact finder may make an award of punitive damages only if the plaintiff proves by clear and convincing evidence that the defendant's conduct

- (1) was outrageous, including acts done with malice or bad motives; or
- (2) evidenced reckless indifference to the interest of another person.

(c) At the separate proceeding to determine the amount of punitive damages to be awarded, the fact finder may consider

- (1) the likelihood at the time of the conduct that serious harm would arise from the defendant's conduct;
- (2) the degree of the defendant's awareness of the likelihood described in (1) of this subsection;
- (3) the amount of financial gain the defendant gained or expected to gain as a result of the defendant's conduct;
- (4) the duration of the conduct and any intentional concealment of the conduct;

(5) the attitude and conduct of the defendant upon discovery of the conduct;

(6) the financial condition of the defendant; and

(7) the total deterrence of other damages and punishment imposed on the defendant as a result of the conduct, including compensatory and punitive damages awards to persons in situations similar to those of the plaintiff and the severity of the criminal penalties to which the defendant has been or may be subjected.

(d) At the conclusion of the separate proceeding under (c) of this section, the fact finder shall determine the amount of punitive damages to be awarded, and the court shall enter judgment for that amount.

(e) Unless that evidence is relevant to another issue in the case, discovery of evidence that is relevant to the amount of punitive damages to be determined under (c)(3) or (6) of this section may not be conducted until after the fact finder has determined that an award of punitive damages is allowed under (a) and (b) of this section. The court may issue orders as necessary, including directing the parties to have the information relevant to the amount of punitive damages to be determined under (c)(3) or (6) of this section available for production immediately at the close of the initial trial in order to minimize the delay between the initial trial and the separate proceeding to determine the amount of punitive damages.

(f) Except as provided in (g) and (h) of this section, an award of punitive damages may not exceed the greater of

(1) three times the amount of compensatory damages awarded to the plaintiff in the action; or

(2) the sum of \$500,000.

(g) Except as provided in (h) of this section, if the fact finder determines that the conduct proven under (b) of this section was motivated by financial gain and the adverse consequences of the conduct were actually known by the defendant or the person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greatest of

(1) four times the amount of compensatory damages awarded to the plaintiff in the action;

(2) four times the aggregate amount of financial gain that the defendant received as a result of the defendant's misconduct; or

(3) the sum of \$7,000,000.

Amend this section
(h) Notwithstanding any other provision of law, in an action against an employer to recover damages for an unlawful employment practice prohibited by AS 18.80.220, the amount of punitive damages awarded by the court or jury may not exceed

(1) \$200,000 if the employer has less than 100 employees in this state;

(2) \$300,000 if the employer has 100 or more but less than 200 employees in this state;

(3) \$400,000 if the employer has 200 or more but less than 500 employees in this state; and

(4) \$500,000 if the employer has 500 or more employees in this state.

(i) Subsection (h) of this section may not be construed to allow an award of punitive damages against the state or a person immune under another provision of law. In (h) of this section, "employees" means persons

Legislative Research Services

Alaska State Legislature
Legislative Affairs Agency
Division of Legal and Research Services

State Capitol
Juneau, AK 99801
Phone: 907-465-3991
Fax: 907-465-3908

April 9, 2002

Memorandum

TO: Representative Andrew Halcro
FROM: Cherie Nienhuis *W*
Legislative Analyst
RE: Punitive Damages in Aircraft Accidents in Alaska

You asked for information about aircraft accidents in Alaska. Specifically, you wished to know how many accidents have resulted in courts awarding punitive damages to victims (or their families) of those accidents. You also asked us to provide dollar amounts associated with such punitive damages.

As you know, aircraft accidents that result in personal injury or death are not uncommon in Alaska. According to data provided by the National Transportation Safety Board (NTSB), 129 Alaska aviation-related accidents were reported in 2001 alone, of which nine resulted in one or more fatalities.¹

We attempted to obtain information about punitive damage awards arising from aircraft accidents from numerous sources.² None of the sources was able to provide the number of court cases associated with such accidents or the amounts paid in damages. Several of the sources informed us that many, if not most, of these types of claims are settled out of court. Further, awards for compensatory and other damages are negotiated and paid as a combined settlement. Even if we could obtain information on amounts of these settlements, we would most likely not be able to locate a payment specific to punitive damages.

Nevertheless, three sources have data germane to your request. First, the NTSB provides data on how many aircraft accidents are reported in Alaska over a period of time. Second, the Alaska Division of Insurance reports total aircraft property and casualty losses. Third, the Alaska Judicial Council reviews civil cases occurring in Alaska, and provides information about their disposition. We gathered the following information from these sources for the years 1999 and 2000.

According to the NTSB website, from January 1, 1999 to December 31, 2000, 293 aircraft accidents were reported in Alaska; of these, 28 accidents involved fatalities. During this same period, the Alaska Division of Insurance reports that insurance companies paid almost 46.5 million in direct losses attributable to aircraft

¹ National Transportation Safety Board (NTSB) database, available at http://www.ntsb.gov/ntsb/query.asp#query_start.

² We contacted the Alaska Department of Community and Economic Development, Division of Insurance; the National Union of Fire Insurance Company of Pittsburgh (the top insurer of aircraft property and casualty in Alaska); the National Air Transportation Association; the Alaska Air Carriers Association; the National Institute for Occupational Safety and Health (NIOSH); the Alaska Judicial Council; and the American Tort Reform Association. We also searched various databases available on the Internet, as well as legislative library materials.

property and casualty.³ An Alaska Judicial Council report prepared for the period of June 1, 1999 through December 1, 2000 shows that of the 2,354 civil cases with judgments of \$1 or more reviewed by the Council, only eight of the judgments included punitive amounts, although parties in 488 of the cases requested them. The Judicial Council notes that half of the eight awards for punitive damages were for amounts between \$15,000 and \$100,000. Four sets of punitive damage awards exceeded \$100,000; the highest three awards ranged from \$2.6 million to \$150 million.⁴

Insurance companies appear to be the only source for comprehensive information on the subject. Due to the highly proprietary nature of the information, insurance officials were unwilling or unable to provide it to us.⁵ Dr. George Conway, of the National Institute for Occupational Safety and Health (NIOSH) told us that his agency had once attempted to gather similar information, to no avail. Indeed, as several of our contacts indicated, such information is closely guarded by insurance companies. Links between specific tort reform measures and reduced awards or settlements in court cases are tenuous because of the lack of supporting systematic empirical data. The Alaska Judicial Council notes the following difficulties in assessing impacts of civil justice reform in their May 2001 report on civil cases:

The [Advisory] Task Force [on Civil Justice Reform] found itself seriously hampered in its work by the lack of information about most tort cases. Although it studied tort jury verdicts, the Task Force noted that most civil cases did not go to trial. Parties rarely agree to make settlement information public, leaving no way to gauge the effects of new legislation on litigation. The Task Force concluded that "further information is necessary for an informed public policy debate on tort reform."

We hope this information is useful. We also include, as Attachment A, a 1997 legislative research report on a related subject. If you have questions or need additional information, please do not hesitate to contact us.

³ Alaska Department of Community and Economic Development, Division of Insurance, *62nd Annual Report* (p. 187) and *63rd Annual Report*, (p. 185).

⁴ Alaska Judicial Council, *Alaska Civil Cases June 1999—December 2000*, May 2001, p. 20. Larry Chon of the Alaska Judicial Council said that he is sure that the highest award for punitive damages did not result from an air accident. He cannot say with certainty, but he does not believe many of the cases with punitive damages, if any, are from air accidents.

⁵ We contacted several representatives of the National Union Fire Insurance Company of Pittsburgh, a top competitor in the Alaska aviation insurance market, who told us that their database does not separate out the types of damages paid in such accidents.



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Anchorage Daily News

State air carriers feel insurance pinch

COSTS: Rates have risen at least 20 percent in the past year.

The Associated Press

(Published: February 27, 2002)

Anchorage -- Alaska air carriers are being squeezed by rising insurance premiums and a dwindling number of companies willing to write policies.

Now only a handful of companies offer policies in Alaska.

Air carriers and insurance officials blame high accident rates and repair costs, a slumping stock market and the cost of doing business after the Sept. 11 terrorist attacks.

The bottom line is that increased costs will likely be passed on to passengers.

Rates for Alaska air carriers have increased from 20 percent to more than triple in the past year, depending on the number of company claims, said Mike Salazar, a Ketchikan-based agent with Acordia Northwest, an insurance brokerage firm in Seattle.

"Most air carriers with a clean record had a 20 percent increase," said Salazar, adding that those who had claims are seeing rates go up as high as 200 percent or more.

Mike Vanard, vice president of Seattle-based U.S. Aviation Underwriters Inc., said insurance that his company offers has risen 18 to 30 percent in the last year.

"Insurance is cyclical, it has big, sweeping curves. Right now we're at the opposite (high) end of that curve," Vanard said.

Orin Seybert, president of Peninsula Airways Inc., has been in the commercial airline business since 1956. The longtime Alaska aviator agreed the rates are cyclical.

"I look at insurance like a pendulum, it goes in cycles, every four to six years it goes up," Seybert said. "It's been edging up there and it is absolutely the highest I've seen it."

Seybert said insurance accounts for about 10 percent of his company's overall costs.

Vanard's company is one of about five or six companies willing to offer insurance in Alaska. A few years ago that number was at least a dozen, according to air carriers and insurance officials.

Nationwide, there also has been a decrease in the number of companies willing to insure air carriers.

Aviation insurance companies, who write both general aviation and commercial policies, have paid out as much as \$1.25 for every dollar taken in, but the company would still make money in investments during a healthy economy, said Thomas Turner, an aviation author and former insurance broker based in Cleveland, Tenn.

"Until a few years ago underwriters could operate at a loss, turn around and take the money and invest it in the stock market and make a small fortune out of it," he said.

Air carriers see leap in insurance bills

By James MacPherson
Journal Reporter

Insurance premiums are skyrocketing for air carriers, and the number of companies willing to write policies in Alaska has dropped to just a handful in the past few years.

High accident rates and repair costs, a slumping stock market, lawsuits and the terrorists attacks of Sept. 11 are just some of the reasons for soaring insurance costs in Alaska and elsewhere, air carriers and insurance officials say.

The bottom line likely will be increased prices for airplane seats, as the costs will be

passed on to passengers.

Rates for Alaska air carriers have increased anywhere from 20 percent to more than triple in the past year, depending on the number of company claims, said Mike Salazar, a Ketchikan-based agent with Acordia Northwest, an insurance brokerage firm in Seattle.

"Most air carriers with a clean record had a 20 percent increase," said Salazar, adding that those who had claims are seeing rates go up as high as 200 percent or more.

Salazar is not unsympathetic to air carri-

ers. For nearly 30 years before selling aviation insurance, he owned Ketchikan Air Service Inc., a company he sold in 1998.

"Certainly my time in the industry helped me understand the problems on their side of the fence," Salazar said.

Mike Vanard, vice president of Seattle-based U.S. Aviation Underwriters Inc., said insurance his company offers generally has risen 18 to 30 percent in the last year.

"Insurance is cyclical, it has big, sweeping curves. Right now we're at the opposite (high) end of that curve," Vanard said.

Continued on Page 9

Economy helps push insurance rates up

Continued from Page 1

Orin Seybert, president of Peninsula Airways Inc., has been in the commercial airline business since 1956. The longtime Alaska aviator agreed the rates are cyclical.

"I look at insurance like a pendulum, it goes in cycles, every four to six years it goes up," Seybert said. "It's been edging up there and it is absolutely the highest I've seen it."

Seybert said insurance accounts for about 10 percent of his company's overall costs.

Vanard's company is one of about five or six companies willing to offer insurance in Alaska. A few years ago that number was at least a dozen, according to air carriers and insurance officials.

Nationwide, there also has been a decrease in the amount of companies willing to insure air carriers.

When selling insurance, companies, whether aviation or otherwise, bet that they will not have to pay out a claim; those buying an insurance policy are betting they may have a claim, said Thomas Turner, an aviation author and former insurance broker based in Cleveland, Tenn.

In the case of aviation, both sides are losing, Turner said, as accidents are up and so are claim amounts.

That also has prompted many insurance underwriters to get out of the aviation business, Turner said.

Key to understanding aviation insurance industry is what is called "loss ratio," the amount of money paid out in claims versus what is taken in by the insurer, Turner said.

Aviation insurance companies, who write both general aviation and commercial policies, have paid out as much as \$1.25 for every dollar taken in, but the company would still make money — 30 percent or more — in investments during a healthy economy, Turner said.

"Until a few years ago underwriters could operate at a loss, turn around and take the money and invest it in the stock market and make a small fortune out of it," Turner said.

Seybert, who has operated in Alaska for 46 years, said he believes the economy more than claims is what drives insurance costs.

"Rates are not determined by losses as much as on the economy in general," Seybert said.

Simply buying aviation insurance is not the problem, but the amount of coverage offered to many carriers may not be sufficient to cover lawsuits, air carrier and insurance representatives say.

Many air carriers in the state are operating at minimum liability coverage levels, but not by choice.

"Some operators are at a \$250,000 per person limit, and in this day and age, that is unrealistic. The carrier is exposed," Seybert said.

Most carriers in Alaska, according to Salazar of Acordia Northwest, carry insurance liability minimums of between \$500,000 and \$1 million per aircraft passenger seat.

"Most attorneys will almost always try to breach that," Salazar said.

The threat of lawsuits scares underwriters, Turner said, and most insurance companies know they'll lose a jury trial. Out-of-court settlements are typical, he said.

"From a legal standpoint, pilot negligence is easy to prove, because almost all accidents do have some sort of pilot error," Turner said.

Title: *Aviation* rates set to take off.

Subject(s): INSURANCE, Aviation -- Rates -- United States; AVIATION Insurance Association -- Congresses

Source: Business Insurance, 05/22/2000, Vol. 34 Issue 21, p2, 2p

Author(s): Lenckus, Dave

Abstract: Focuses on the anticipated rate hikes for *aviation insurance* in the United States according to discussions at the 2000 meeting of the *Aviation Insurance* Association in Washington, D.C. Factors attributed to threats to the market's survival; Challenges in expanding the *insurance* market.

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AVIATION RATES SET TO TAKE OFF

WASHINGTON -- Commercial airlines and air frame manufacturers should prepare for dramatic *insurance* rate hikes later this year, says a top executive for a U.S. *aviation* underwriting group.

A leading underwriting executive in the London market agrees that the airline and *aviation* market cannot survive if claims continue to far outpace premium volume, as has been the case for most of the last decade.

And as underwriters try to push up rates, they will have to address several other market problems, including how to expand the market and replenish a depleted talent pool, said the executives during a session at the *Aviation Insurance* Assn.'s 24th Annual Educational Conference. The AIA held the conference in Washington earlier this month.

Opinions vary on whether the airline and *aviation* market is hardening, observed Daniel M. Izard, president and chief executive officer of Short Hills, N.J.-based Associated *Aviation* Underwriters, a consortium of U.S. underwriters.

Mr. Izard said that he hears from brokers that the market is too overcapitalized to turn, but he quickly pointed out that they have noticed a greater underwriting discipline among insurers.

"Most people recognize the time is at hand" for a market turn, Mr. Izard said.

Rates have been rising for the past six months, though the increases have not been sufficient, Mr. Izard said. Indeed, underwriters "didn't get the job done during the fourth quarter," he said.

But during spring renewals -- a far less busy renewal season for underwriters than the peak fall renewal season -- rate hikes continued, Mr. Izard said.

Rates increased 15% to 20% for those few airlines that renewed their hull and liability *insurance* this spring, he said. Manufacturers' *insurance* rates rose by single digits up to 9%, he said.

"Underwriters appear to have drawn a line in the sand," Mr. Izard said.

For the remainder of the year, he said he expects to see rate hikes "on every class of business" that AAU writes, largely due to the higher reinsurance rates that underwriters are facing.

By the time fall renewals come along, "30% to 40% increases are not going to be uncommon," he predicted.

"We have some very definite changes in rates coming," Mr. Izard warned.

Mr. Izard and London market underwriting executive Graham A. Nichols said a hardened market is critical to maintain the market's viability after nearly a decade of underwriting losses.

For example, premium volume for the London airline and *aviation insurance* market during the 1990s exceeded claims in only two calendar years, noted Mr. Nichols, citing figures produced by the London Processing Centre. The LPC is the paper and electronic-processing unit of the International Underwriting Assn. of London.

And in both years, 1995 and 1996, premiums exceeded claims only marginally. But during the first four years of the decade and in 1998, claims exceeded premiums by between 25% and 75%.

"I don't understand how a market can trade on that set of figures for that length of time," said Mr. Nichols, chief executive and chief underwriter for Westminster *Insurance Agencies Ltd.*, which underwrites on behalf of two French companies in the London market.

"It's a pretty dire scene," he said.

Pointing to the U.S. airline and *aviation* market's 120% combined ratio in 1999, Mr. Izard described the market as "extremely volatile" for investors.

There are probably some emotional reasons to invest in the market right now "but not too many good business reasons," he observed. "Nobody can make money on investment income when we have a level of returns like that."

Mr. Nichols noted that the market does not have a capacity problem. "Whether we can deal with pricing is another question," he said.

"We have a huge responsibility" to the marketplace, Mr. Izard told airline and *aviation* underwriters. "The only way it is going to work is if we make money using other people's money."

Mr. Nichols said that the market does not want a rating correction that is forced on policyholders and underwriters because of a capacity shortfall resulting from investors abandoning the market.

"We don't want to see that happen to our customers," he said.

The consolidation of airlines and air frame manufacturers over the years has compounded the premium volume problem for underwriters, Mr. Nichols noted. Combined risks do not generate as much premium volume for underwriters.

In addition, bigger risks have much greater ability to retain losses or manage them differently using other financial markets, Mr. Nichols said. Such risk financing decisions could pull even more premium out of the market, he said.

"The fact that's not happening now might say something about the price of our product," Mr. Nichols observed.

But in addition to raising rates, airline and *aviation* insurers should take several other steps to improve their underwriting results and their investors' returns, Mr. Izard said.

U.S. underwriters in particular need to expand their market reach globally, he said. European insurers have been better about looking for growth beyond their borders because of the small size of their local markets, he said.

"We have to get aggressive or get left behind," Mr. Izard maintained.

Just as important, he said, is that "we have to provide more than the traditional *insurance* products."

With the convergence of financial services, "people are looking for non-traditional services for financial products," he said.

Outdated technology is another customer service problem for the market, according to Mr. Izard.

"The Internet has changed the world -- has changed how we perceive the world," Mr. Izard observed.

"We have to back away from the traditional way" of dealing with customers, he said. Insurers have to enhance their product, "and the Internet is a big part of that."

But to take advantage of that opportunity, a much bigger investment in technology by insurers will be required, he said.

Insurers need to catch up quickly" to the technology investments other industries already have made, he said.

At the same time, the airline and *aviation insurance* market faces some "severe problems" in attracting and keeping talent, Mr. Izard noted. "We need to find ways to lure people into the business."

For example, he said, the U.S. market lacks international expertise. "We're a very provincial country, but we need to think more globally."

Mr. Izard said that all of the issues the market faces have important implications. Unless those matters are addressed, airline and *aviation* insurers face becoming takeover targets or having a tough time raising capital, he said.

~~~~~  
By Dave Lenckus

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Title: Cost of Plane *Insurance* Skyrockets

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Author(s): N.A.

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## Cost of Plane *Insurance* Skyrockets

LONDON, Sep 28, 2001 (AP Online via COMTEX) -- Airlines are being hit with huge increases to insure their planes after the terrorist attacks in the United States, a major *aviation insurance* company said Friday.

Goshawk *Insurance* Holdings, which insures aircraft around the world, said rates had soared as much as 10-fold since the Sept. 11 terror attacks when four airliners were destroyed in the United States.

Goshawk finance director Chris Fagan said the cost of insuring planes against war, terrorism and political risks was increasing before the American attacks. *Insurance* companies have begun reviewing *aviation insurance* policies to reduce their risk after the American incidents, Fagan said.

The company denied the *insurance* industry was trying to profit from the recent attacks.

"Rates had started to go up anyway. We are reacting to the market," Fagan said.

Airlines around the world have cut services and dismissed staff as their business has plunged in the wake of the crisis. They are also struggling with increased security costs.

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Item Number: CX2001271U6358

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# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

Rep. Andrew Halcro, Chair  
Rep. Pete Kott  
Rep. Joe Hayes



State Capitol, Room  
#414  
Juneau, Alaska  
99801-1182  
(907) 465-4939  
Fax (907) 465-2418

Rep. Lisa Murkowski, Chair  
Labor & Commerce

## Labor & Commerce Sub-Committee

### Aviation Insurance

#### Punitive Damage Statutory Limit

An integral part of dealing with the dilemma of unobtainable aviation insurance was addressing the issue of exorbitant court awards.

So Rep. Halcro went to the source: spoke with representatives of the insurance companies:

- the issues of pooling and industry enhancements in the way of safety initiatives are fine in their own right, but.....
- the only viable solution that would have a direct effect on insurance rates would need to involve some sort of tort reform.

Consensus of recent AK Air Carriers Conference that some sort of Tort Reform is the real solution.

In this regard, Work Draft #22-LS0741A Limits the amount of punitive damages that can be awarded in the event of an aviation accident.

The amounts shown are purely a starting point, being reflective of what is currently in statute under other limits:

A plausible solutions is limits not to exceed:  
\$500K for with < 100 employees  
\$1M for companies with > 100 employees

**Intention:** To provide a tangible limit to the liability incurred when writing policies in Alaska.

**Factors:**

- Jury awards have been steadily increasing in the past decade
- The liability assumed by insurers has been expanded by recent court decisions, which had an immediate, direct affect of increases for policy premiums

# Alaska State Legislature

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## REPRESENTATIVE ANDREW HALCRO District 12

FOR IMMEDIATE RELEASE: Jan. 31, 2001

Contact: Rep. Andrew Halcro (907) 465-4939  
Rep. Lisa Murkowski (907) 465-3783

### Airline Insurance to Get Closer Look Subcommittee Seeks Options to Lower Costs, Preserve Air Service

(JUNEAU) - With soaring insurance costs threatening to choke off in-state passenger air service, Rep. Andrew Halcro (R-Anchorage) will lead a House Labor and Commerce subcommittee to study ways to resolve the issue and maintain passenger service throughout Alaska.

"A multitude of factors, including some tragic accidents, have forced the companies insuring Alaska's smaller air carriers to raise their rates substantially in the last few years," said Halcro. "We need to see if there's some way we can relieve this burden on airlines, while making sure the flying public is properly protected."

As the insurance industry demands more liability coverage for airlines offering passenger service and the cost for that coverage soars, some carriers are abandoning passengers to focus on less lucrative but more affordable freight service, Halcro said. That means higher prices and fewer flights for rural Alaskans, who depend on smaller carriers for access to jobs, friends, families and emergency services.

"It's been clear for some time that there is a lack of affordable insurance for Alaska's smaller flying operations," said Halcro. "Air service is a lifeline for many residents, and if we don't address this insurance problem it could mean significant hardships for a lot of people -- not only airline customers, but their employees, as well."

Halcro's district includes the state's largest commercial airfield, Ted Stevens Anchorage International Airport, and he has been working on the issue for some time. Labor and Commerce Committee Chair Rep. Lisa Murkowski (R-Anchorage) created the subcommittee last week, and named Reps. Pete Kott (R-Eagle River), Joe Hayes (D-Fairbanks) and Halcro as members.

"We'll sit down with the Division of Insurance to see what role, if any, the state can play in resolving this situation," said Halcro. "We'll also talk to those in the private sector who are writing or have written insurance coverage for air carriers in Alaska, to identify the exact problems." Following its initial investigation, the subcommittee is due to issue a preliminary report to the full committee Feb. 7.

"Do we need tort reform for aircraft liability?" he asked. "Should the state work to facilitate insurance pooling? We're not sure, but we'll turn over every stone to find solutions."

###

Broadcasters note: Comments are available on the Majority Actuality Line 1-800-478-6540

E-Mail: Representative\_Andrew\_Halcro@legis.state.ak.us

Tony Knowles, Governor

*Alaska* Department of Community  
and Economic Development

Division of Insurance

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Email: Insurance@dced.state.ak.us • Website: www.dced.state.ak.us/insurance/

February 2, 2001

The Honorable Andrew Halcro  
House of Representatives  
State Capitol, Room 414  
Juneau, AK 99801-1182

Dear Representative Halcro:

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Re: Aviation Insurance

Legislators, the Division of Insurance (Division) and the news media have all heard from Alaskan air carriers about the difficulty of obtaining affordable liability insurance for their operations. The loss of commercial aviation operations would have a significant negative impact on Alaska, both for the air carriers as well as the rural Alaskans who depend on them for transportation.

The Division has identified options that may improve the availability and affordability of this insurance coverage. The issues of availability and affordability are related yet distinct. Availability refers to the ability of a consumer to obtain insurance coverage. Affordability refers to the price of the coverage.

From discussions the Division has had with consumers and insurance producers, coverage continues to become less affordable. These discussions indicate that renewal premiums may be increasing at amounts up to 50 percent and in a few instances even higher. Some of this increase is due to poor loss experience. Some of it is due to a hardening of the soft insurance market.

Another factor related to the availability and affordability issues is the per seat limit of coverage that air carriers need or want to purchase. Alaska Statute 02.40.010 requires a minimum limit of \$150,000 per seat for bodily injury. Air carriers desiring to purchase higher limits may find availability and affordability problems in obtaining the desired coverage.

#### SAFETY

Aviation insurers have pointed to the need for more stringent safety in the aviation industry. On June 30, 1999, The National Institute for Occupation Safety and Health issued a report that states the occupation of air taxi pilot in rural Alaska is

more hazardous than that of lumberjack or crab fisherman. However, unlike the air taxi pilot, neither the lumberjack nor crab fisherman routinely places the lives of trusting passengers at risk in the performance of his job.

The aviation insurance availability and affordability problems are directly related to safety. Insurance premiums are driven by the cost of issuing a policy and paying any covered claims. Reducing the frequency or severity of claims has the greatest impact on reducing policy premiums.

Safety programs are an essential factor in reducing claims and, therefore, premiums. Air carriers who implement a comprehensive safety plan and are consistent in carrying out the safety plan should expect to see credits on their insurance policies as a result of these efforts. Use of flight simulator training, which is available in Anchorage, could be part of a safety plan. The air carriers association would be a possible source for additional information on safety programs.

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If not adopted on a voluntary basis, safety plans could become a mandatory requirement for air carriers operating in Alaska. This would probably require legislation to implement and set up a statewide safety plan. Difficulties in implementing a mandatory plan include costs to monitor compliance with the plan, development of a safety plan that meets the variety of situations faced by air carriers in Alaska, and possible conflicts with FAA regulation. A mandatory plan could also be an additional burden for those air carriers which currently have an effective safety plan in place.

#### MARKETS CURRENTLY AVAILABLE IN ALASKA

Based on discussions with consumers and producers, the Division is aware of the following markets that are available in Alaska. Detailed information on these entities should be obtained from the producers or insurers themselves. However, they are listed here to show the various options that may be available now. The players in the market are always subject to change.

United States Aircraft Insurance Group (USAIG) is a group, or pool, of insurers that collectively provide aviation insurance on a worldwide basis. On its website at [www.usau.com](http://www.usau.com), USAIG states that its primary goal is "to provide a stable, reliable aviation insurance market by (1) insuring individuals and organizations whose safety standards and loss histories satisfy our underwriting requirements; and (2) charging premiums which are sufficient to support expected losses."

Associated Aviation Underwriters (AAU), the U.S. branch of British Aviation Insurance, is another pool of insurers writing limited business in Alaska, mainly corporate jets with commercial pilots, not owner flown.

London Aviation Underwriters and Houston Casualty Company write air taxi operations as well as other types of aviation risks.

AIG Aviation is non-renewing its book of business.

W Brown & Associates is not writing new business but is renewing its existing book of business.

ACE USA writes in Alaska on a limited basis.

AirSure Ltd. writes mainly large fleets.

Lloyds of London also write portions of some risks.

#### OPTIONS CURRENTLY AVAILABLE BUT NOT USED IN ALASKA

Pooling may be seen to be a solution to the availability and affordability issues. However, pooling does not necessarily improve the loss experience of the members of the pool. If members of a pooling arrangement have poor loss experience, the costs of insurance coverage may not become more affordable. The following four options are ways that air carriers could join together to purchase insurance coverage. They are listed in the order from easiest to most difficult to implement.

##### 1. Risk Purchasing Group

A risk purchasing group is authorized under the federal Liability Risk Retention Act, 15 USC 3901-3906. Members of a risk purchasing group may be able to obtain better rates and customized forms because of the buying power available to a group that is not available to an individual purchaser. The risk purchasing group can also provide loss control services (e.g. safety programs) for its members. As mentioned above, this is an important feature needed to negotiate better rates. Purchasing groups have been used elsewhere by small airlines to lower costs by avoiding minimum premium charges.

The purpose of a risk purchasing group is to purchase liability insurance on a group basis for its members. The group members must have similar business activities and their risk exposure must be similar or related to one another. A group consisting of air carriers would appear to meet this test.

A risk purchasing group may be domiciled in any state. If it is not domiciled in Alaska, then it must register with the state under AS 21.89.090. Purchasing groups are subject to regulation under Title 21.

Guaranty association coverage is available if the purchasing group obtains coverage from an admitted insurer. Guaranty association coverage provides protection to policyholders if the insurer becomes insolvent and cannot pay outstanding claims.

A purchasing group may only provide liability coverage to its members, therefore hull coverage must still be procured individually.

## 2. State Based Joint Underwriting Association or Joint Reinsurance

A joint underwriting association (JUA) and joint reinsurance are combinations of insurers joining together to provide the capacity to write a specific type of risk. A JUA and joint reinsurance are distinguished by the way in which the insurers share the risk among themselves. The national pools mentioned above are organizations of this type. The difference between the national pools and a state pool is that only insurers writing in Alaska would combine together and only Alaska air carriers would be able to obtain coverage from the state pool. The premium would be based upon the experience of the JUA or the reinsurance pool.

JUA's and joint reinsurance are subject to rate regulation under AS 21.39.110. Since aviation insurance is exempt from AS 21.39, a JUA or joint reinsurance writing only aviation insurance would be exempt from AS 21.39.110. However, other section of Title 21 would apply to these pools.

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The disadvantage to a state based JUA is that there are few risks over which the exposure can be shared. The law of large numbers is difficult to achieve in the Alaska market. Guaranty association coverage would not be available for non-admitted insurers participating in a JUA or joint reinsurance.

## 3. Reciprocal Insurer

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A reciprocal insurer is an unincorporated aggregation of subscribers operating individually and collectively through an attorney-in-fact to provide insurance among themselves. Ten or more persons may join together to form a reciprocal. The liability of each subscriber is individual, several and proportionate liability, not joint. Reciprocal insurers are authorized under AS 21.75.

A reciprocal insurer controls all aspects of the insurance coverage such as underwriting, rating, and claims handling. A reciprocal insurer is subject to regulation under Title 21. Guaranty association coverage is available to subscribers of a reciprocal.

The main disadvantage of a reciprocal is the start-up costs for establishing the reciprocal. The minimum capital and surplus requirements for an Alaska domestic reciprocal writing liability insurance are \$1,500,000. There is also a relatively small base from which potential members can be drawn.

Alaska Timber Insurance Exchange in Ketchikan is authorized as a reciprocal insurer under AS 21.75. They would be a good source of additional information on the operations of a reciprocal.

## 4. Risk Retention Group (RRG)

A risk retention group is a corporation or limited liability association formed under the federal Risk Retention Act, 15 USC 3901-3906. An RRG operates like an insurance company to provide liability insurance for the group. The primary

purpose and activity is to assume, or spread among the members, any or all of the liability exposure of the members. The group must consist of members whose business or activity exposure is similar or related to one another.

An RRG must be licensed or chartered and authorized as a liability insurance company in a state. If the RRG is licensed in another state, it must register with Alaska under AS 21.89.090. RRG's are subject to regulation under Title 21.

As with a reciprocal, the primary disadvantage of a risk retention group is the start-up costs. A domestic Alaskan RRG has minimum capital and surplus requirements of \$2,000,000. Other disadvantages are that an RRG may only provide liability coverage to its members, so hull coverage would need to be obtained individually. Also, guaranty association coverage is not available to an RRG.

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#### ~~OPTIONS REQUIRING NEW STATUTORY PROVISIONS~~

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##### 1. Assigned Risk Plans

An assigned risk plan is one method used to provide coverage in the residual market. (The residual market consists of persons or organizations who cannot get the insurance coverage they need from private insurance companies.) Alaska currently has two assigned risk plans, one for automobile insurance, the other for workers compensation insurance. ~~An assigned risk plan for aviation insurance~~ could be modeled after these plans as in AS 21.39.155. The auto assigned risk plan is also mentioned in AS 28.20.580.

Assigned risk plans are managed by an administrator representing insurers licensed in the state and writing the kind of insurance offered by the plan. Participation in the plan is mandatory with policies assigned to insurers based on their voluntary market share. The plan may use servicing carriers who handle claims and other policy related services. Some plans pool the losses among all participating insurers, other plans require the individual insurer to accept the profit or loss from its share of the assigned risk market.

Implementing an assigned risk plan could cause insurers to withdraw from the state since they may be required to bear additional assessments if the plan operates at a loss. If these assessments are larger than an insurer can bear, the cost can be passed on to their own policyholders, thereby increasing costs for the voluntary market.

##### 2. Risk-Sharing Plans

Arkansas and New Hampshire both have statutes allowing the director to intervene in markets when a kind of insurance is not readily available. The director may direct insurers to prepare a plan to provide the necessary insurance coverage. If the plan submitted by the insurers is not acceptable, the director may develop his or her own plan.

A copy of the Arkansas statute may be found in the Arkansas Code sections 23-95-101 through 23-95-108. This statute may be accessed via the state website at [www.state.ar.us](http://www.state.ar.us).

The New Hampshire statute may be found under NHRSA 404-C. This statute may be accessed via the NH state website at <http://sudoc.nhsl.lib.nh.us/rsa>.

### 3. Market Assistance Plan

Maine has a statute that allows the director to establish a market assistance plan when a particular type of insurance is unavailable or unaffordable. The market assistance plan is a voluntary agreement between the division and the insurers that the insurers will write the insurance at an agreed upon rate for those persons that are unable to obtain the coverage.

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The Maine statute is found in section 2325-A. Internet access is available at [http://janus.state.me.us/legis/statutes/24\\_A/title24-Asec2325\\_A.html](http://janus.state.me.us/legis/statutes/24_A/title24-Asec2325_A.html).

This program was successfully used a couple of years ago when day care liability was difficult to obtain. Additional information on the operation of this program would be available from Maine.

---

### 4. Joint Insurance Arrangement

A joint insurance arrangement (JIA) allows members of the JIA to pool contributions to either assume risks from losses to the participants on a group basis or purchase coverage for the participants on a group basis. JIA's are authorized under AS 21.76. JIA's are not subject to regulation by the Division, except for review of the cooperative agreement.

Formation of an aviation JIA would require a statute change since only municipalities, city and borough school districts and regional educational attendance areas may enter cooperative agreements. Guaranty association coverage is not available to members of a JIA.

## ALTERNATIVE MARKETS

There are at least two sources of information for hard-to-place coverage. The National Underwriter publishes a supplement called "Agent/Broker Buyers Guide to Insurance Coverages." Rough Notes Company, Inc. publishes "The Insurance Marketplace." Both of these guides list markets by type of risk and each of these guides includes an aviation or aircraft section. However, most of these markets may be through wholesalers not licensed in Alaska or with nonadmitted unlisted insurers.

February 2, 2001

tax credit would overcome the underwriting judgement of the riskiness of the market.

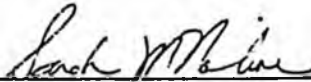
### 3. Subsidization

Many of the options described are likely to have more effect on availability of coverage rather than affordability. Even in a pooling arrangement, if claim costs are high, the insurance premiums will be high. If claim costs are high, some type of subsidization may be the only way to lower insurance premiums.

### CONCLUSION

For any of the options outlined above to improve availability and affordability of aviation liability insurance, the aviation community will need to address safety issues and find ways to reduce the frequency and severity of losses. We have tried to identify various options that may assist air carriers to obtain the coverage they need. If you need additional information, or if you would like to discuss particular options further, we would be happy to discuss these with you.

Sincerely,



For Robert A. Lohr  
Director

APR 30 1999

FILED

APR 29 1999

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

By RR Deputy

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

AIG AVIATION SERVICES, INC., )

Plaintiff, )

vs. )

LORENE YOUNG, as Personal )  
Representative of the Estate of Eugene )  
Young; MARGARET AENGASUK, as )  
Personal Representative of the Estate of )  
Emma Kippi; JACOB ADAMS, as )  
Personal Representative of the Estate of )  
Francis Hopson; and HAGELAND )  
AVIATION SERVICES, INC., )

Defendants. )

Case No. A98-137 CV (JWS)

ORDER FROM CHAMBERS

[Re: Motion for Summary Judgment -  
Docket 83;  
Cross-Motion for Summary  
Judgment - Docket 89;  
Motion to Supplemental  
Briefing - Docket 97]

I. MOTIONS PRESENTED

At docket 83, plaintiff AIG Aviation, Inc. ("AIG") moves for summary judgment. The motion is opposed at docket 89 by defendants Lorene Young, *et al.* (collectively referred to as "Young" or the "Estates"), who cross-move for summary judgment. At docket 97, AIG seeks leave to file supplemental briefing. Oral argument was held on April 28, 1999.

EXHIBIT 17  
Page 1 of 18

THE  
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## II. BACKGROUND

On April 10, 1997, a Hageland Aviation Services, Inc. ("Hageland") flight bound for Barrow from Wainwright crashed. Eugene Young, Emma Kippi, and Frances Hopson were killed in the crash. Their respective estates and survivors are defendants in this case, as is Hageland. AIG insured Hageland. As will be described in greater detail further below, the policy sets a "per person" or "per seat"<sup>1</sup> \$500,000 liability limit and a per occurrence (accident) \$10,000,000 liability limit.

On April 29, 1998, AIG filed this declaratory judgment action against Hageland and Young seeking a declaration that the "per seat" or "per person" \$500,000 policy limit applied to all claims arising out of each passenger-decedent's death. Neither AIG's complaint nor AIG's instant motion specifies what claims being made by defendants are concerned. AIG's complaint is broadly phrased and requests "declaratory relief adjudging that only Five Hundred Dollars [sic] (\$500,000) limit provided by the Policy . . . is available for the claims because of decedent's [sic] accident, including the claims, if any, of the decedent's [sic] survivors."<sup>2</sup> AIG's motion is also broad in scope and "seeks a ruling that only one Five Hundred Thousand Dollar policy limit is contractually available to its insured, Hageland . . ., to respond to all claims flowing from the death of each of the three passengers . . ."<sup>3</sup> AIG's memorandum further contends that "this [\$500,000] per seat limit applies to all claims resulting from the death of a passenger, regardless of who brings the claim or the nature of the cause of action."<sup>4</sup>

Young has a pending action in the Superior Court for the State of Alaska, Second Judicial District at Barrow, Case No. 2BA-92-73 Civil. The state case includes claims by the decedents' survivors and the Estates for negligent infliction of emotional distress, loss of consortium, loss of

<sup>1</sup>The parties have used the phrases "per person," "per passenger," and "per seat" interchangeably. See, e.g., AIG Memorandum, at 7, 12.

<sup>2</sup>First Amended Complaint, filed May 19, 1998, docket 3 at 5. The use of a singular apostrophe appears to be simply a typographical error.

<sup>3</sup>AIG's Motion for Summary Judgment, filed March 9, 1998, docket 83 at 1.

<sup>4</sup>AIG's Memorandum, at 2.

financial services, loss of property, and punitive damages. Young concedes that statutory survivorship claims for pre-death pain and suffering and medical expenses are subject to the \$500,000 limit.<sup>5</sup> However, Young argues that the survivors' claims for emotional distress, loss of consortium, and loss of services are not subject to the \$500,000 "per person" limit. Young also contends that the policy does not limit claims for property damage, claims for punitive damages, or potential liability for costs and fees.

### III. STANDARD OF REVIEW

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment should be granted if there is no genuine dispute as to material facts and if the moving party is entitled to judgment as a matter of law. The moving party has the burden of showing that there is no genuine dispute as to material fact.<sup>6</sup> The moving party need not present evidence; it need only point out the lack of any genuine dispute as to material fact.<sup>7</sup> Once the moving party has met this burden, the nonmoving party must set forth evidence of specific facts showing the existence of a genuine issue for trial.<sup>8</sup> All evidence presented by the nonmovant must be believed for purposes of summary judgment and all justifiable inferences must be drawn in favor of the nonmovant.<sup>9</sup> However, the nonmoving party may not rest upon mere allegations or denials, but must show that there is sufficient evidence supporting the claimed factual dispute to require a fact-finder to resolve the parties' differing versions of the truth at trial.<sup>10</sup>

<sup>5</sup>Young's Opposition, docket 88, at 7 n.4.

<sup>6</sup>*Celotex Corp. v. Carratt*, 477 U.S. 317, 323 (1986).

<sup>7</sup>*Id.* at 323-325.

<sup>8</sup>*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-9 (1986).

<sup>9</sup>*Id.* at 255.

<sup>10</sup>*Id.* at 248-9.

#### IV. DISCUSSION

An insurer's obligations are determined by reference to the policy's terms and the parties' reasonable expectations.<sup>11</sup> To determine the parties' reasonable expectations, the court analyzes (1) language from the disputed policy provision; (2) language from other provisions in the policy; (3) relevant extrinsic evidence; and (4) case law interpreting similar provisions.<sup>12</sup> Under Alaska contract law, the court may examine relevant extrinsic evidence even if the contract is unambiguous.<sup>13</sup> Relevant extrinsic evidence includes any evidence other than the contract's language which bears on the parties' intention,<sup>14</sup> and may include the parties' subsequent conduct.<sup>15</sup> If a contract is unambiguous, its meaning presents a question of law for the court to resolve.<sup>16</sup> However, if the parties present extrinsic evidence to clarify an ambiguous contract, the contract's meaning should be determined by the trier of fact.<sup>17</sup> A contract is ambiguous when it supports two different, but reasonable, interpretations.<sup>18</sup>

##### A. Language of The Disputed Provision

Hageland purchased Coverage D. The declarations page establishes a \$500,000 limit for each person and a \$10,000,000 limit for each occurrence (accident).<sup>19</sup> The liability coverage that

<sup>11</sup>*State of Alaska v. Underwriters of Lloyds*, 755 P.2d 396, 400 (Alaska 1988).

<sup>12</sup>*Maynard v. State Farm Mut. Life Ins. Co.*, 902 P.2d 1328, 1330 (Alaska 1995).

<sup>13</sup>*Fairbanks North Star Borough v. Tundra Tours, Inc.*, 719 P.2d 1020, 1024 n.6 (Alaska 1986).

<sup>14</sup>*Wright v. Vickaryous*, 598 P.2d 490, 497 (Alaska 1979).

<sup>15</sup>*Fairbanks North Star Borough v. Tundra Tours, Inc.*, 719 P.2d 1020, 1024 (Alaska 1986).

<sup>16</sup>*Johnson v. Schaub*, 867 P.2d 812, 818 n.12 (Alaska 1994).

<sup>17</sup>*Little Switna Const. Co. v. Soil Processing, Inc.*, 944 P.2d 20, 23 (Alaska 1997).

<sup>18</sup>*McMillan v. Anchorage Community Hosp.*, 646 P.2d 857, 862-63 (Alaska 1982).

<sup>19</sup>Docket 3, First Amended Complaint, filed May 19, 1998, Exh. A at 1 (emphasis in original).

Hageland purchased provides:

**Coverage D - Single Limit Bodily Injury and Property Damage Liability**

To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of bodily injury sustained by any person (excluding any passenger unless the words "including passengers" appear in Item 3 of the Declarations) and property damage caused by an occurrence and arising out of the ownership, maintenance or use of the aircraft; or, only with respect to Coverages A, B, and D, caused by an occurrence and arising out of the maintenance or use of the premises in or upon which the aircraft is stored.<sup>20</sup>

Hageland's policy has the words "including passengers" in Item 3 of the Declarations.<sup>21</sup> AIG is therefore obligated to pay "all sums" which Hageland becomes "legally obligated to pay as damages because of bodily injury sustained by any person . . . and property damage caused by an occurrence . . . ." The policy limits liability for damages as follows:

**Coverage D.** The total liability of the Company for all damages, including damages for care and loss of services, because of bodily injury or property damage sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the limit of liability stated in the Declarations as applicable to "each occurrence."

And further provided that if the Declarations are completed to show "passenger Liability limited internally to", the total liability of the Company for all damages, including damages for care and loss of service because of bodily injury to passengers shall not exceed:

(a) as respect to any one passenger, the amount stated in the Declarations as applicable to "each person".

(b) as respect two or more passengers, subject to the above provisions respecting any one passenger, the amount stated in the Declarations as applicable to "each person" multiplied by the number of passenger seats as

<sup>20</sup>Docket 3, First Amended Complaint, filed May 19, 1998, Exh. B at 1 (emphasis in original).

<sup>21</sup>Docket 3, First Amended Complaint, filed May 19, 1998, Exh. A at 1.

stated in Item 4 for the aircraft involved, but in no event shall the Company's Liability for all bodily injury (including passenger bodily injury) and property damage exceed the limits stated in the Declarations as applicable to "each occurrence".<sup>23</sup>

The policy defines "bodily injury" as "bodily injury, sickness, disease or mental anguish sustained by any person which occurs during the policy period, including death at any time resulting therefrom."<sup>24</sup>

AIG contends that these provisions establish that all damages because of bodily injury to passengers shall not exceed \$500,000 per passenger and that Young's claims all arise because of bodily injury to a passenger.<sup>24</sup> Consequently, AIG argues that all of Young's claims are subject to the \$500,000 liability limit. Young responds by arguing that because the policy only refers to "damages for care and loss of service," the "per person" limit cannot apply to other claims such as loss of consortium, loss of personal property, loss of financial support, negligent infliction of emotional distress, and punitive damages. Young also contends that policy limits cannot apply to liability for costs and attorneys' fees. AIG does not contest this point, for the policy states that the liability limits do not apply to costs taxed against the insured.<sup>25</sup>

The policy provides coverage for "all sums which the Insured shall become legally obligated to pay because of bodily injury sustained by any person . . . and property damage."<sup>26</sup> The liability limit provides that the "total liability . . . for all damages . . . because of property damage sustained by one or more persons. . . shall not exceed the limit of liability . . . as

<sup>23</sup>Docket 3, First Amended Complaint, filed May 19, 1998, Exh. B at 4 (emphasis in original).

<sup>24</sup>Docket 3, First Amended Complaint, filed May 19, 1998, Exh. B at 5 (emphasis in original).

<sup>25</sup>Docket 83 at 9.

<sup>26</sup>Docket 3, First Amended Complaint, filed May 19, 1998, Exh. B at 1 (Section IV. (a)).

<sup>27</sup>Docket 3, First Amended Complaint, filed May 19, 1998, Exh. B at 1 (emphasis added).

applicable to 'each occurrence'.<sup>27</sup> Consequently, the "per person" limit does not apply to any potential claims for property damage. The "per person" limit would not apply to claims for punitive damages if these were based on bodily injury to a non-passenger. This is because the liability limit AIG is relying upon is based upon "damages . . . because of bodily injury to passengers."<sup>28</sup> If the punitive damages were based on a claim for bodily injury to a passenger, the liability limit would apply.

The remaining disputed issues are whether the "per person" limit applies to claims for loss of consortium, loss of services, and negligent infliction of emotional distress. The remainder of this order will address those issues.

#### B. Language of Other Provisions

AIG argues that the policy as a whole must support its position because otherwise a non-passenger with a derivative or independent claim could recover up to the \$10,000,000 per occurrence limit while a passenger, "no matter the gravity of the injury, could recover no more than \$500,000."<sup>29</sup> The argument that such a result is patently unreasonable is based on a false premise that passengers are necessarily more at risk than non-passengers. In an airplane crash, the lives of persons on the ground or in other aircraft may also be at risk. Moreover, AIG's argument ignores express provisions in the policy which distinguish between passengers and non-passengers. The liability limit provision states that "if the Declarations are completed to show 'passenger Liability limited internally to', the total liability . . . for all damages . . . because of bodily injury to passengers shall not exceed (a) as respect to any one passenger, the amount stated in the Declarations as applicable to 'each person' ".<sup>30</sup> Other provisions in the policy neither support nor detract from either party's respective arguments.

#### C. Relevant Extrinsic Evidence

<sup>27</sup>Docket 3, First Amended Complaint, filed May 19, 1998, Exh. B at 4 (emphasis added).

<sup>28</sup>Docket 3, First Amended Complaint, filed May 3, 1998, Exh. B at 4.

<sup>29</sup>AIG's Memorandum, at 10.

<sup>30</sup>Docket 3, First Amended Complaint, filed May 19, 1998, Exh. B at 4 (emphasis in original).

Co-defendant Hageland has filed papers in court expressing its understanding of the relevant policy language. Hageland's understanding was that "the insurance coverage it purchased was limited to \$500,000 per passenger (including derivative claims)."<sup>31</sup> Hageland's insurance broker has filed an affidavit attesting to the same understanding.<sup>32</sup> AIG's underwriter who was responsible for underwriting Hageland's policy has also filed an affidavit attesting that it was his understanding that liability coverage "was limited to \$500,000 for all claims because of, related to, or flowing from the injury to or death of a passenger, regardless of who brings the claim or the nature of the particular claim."<sup>33</sup>

Young argues that Hageland, in fact, believed it was purchasing coverage which would not be limited to \$500,000 per passenger. According to Young, the \$500,000 limit was not applied to damages suffered by non-passenger dependents in a prior settlement. This settlement was not executed until January 8, 1998, after the April 10, 1997, accident in this case occurred. But settlement negotiations for the other case preceded the April 10, 1997, accident.<sup>34</sup> However, the settlement correspondence and related settlement do not create a genuine issue of material fact. To begin with, evidence of settlement offers and corresponding settlement agreements are not admissible "to prove liability for or invalidity of the claim or its amount."<sup>35</sup> But even assuming admissibility, the settlement correspondence was authored by counsel for the plaintiffs in the other case. The terms of a settlement eventually reached based upon negotiations in another lawsuit simply do not shed light on Hageland's reasonable expectations at the time it purchased the insurance. Parties discuss settlement and settle cases for any number of reasons.

Young also points to a March 25, 1997, letter from AIG to Hageland confirming that coverage would be bound effective April 1, 1997. In that letter to Hageland, AIG described the

<sup>31</sup>Docket 61, Opposition to Motion to Compel, filed November 25, 1998, at 3.

<sup>32</sup>Docket 83, Exh. A, Affidavit of Michael E. Kardatzke, ¶¶ 5-9 at 2-3.

<sup>33</sup>Docket 83, Exh. B, Affidavit of Chris Spencer, ¶ 8 at 2.

<sup>34</sup>Docket 88, The Estates' Opposition, Exh. C.

<sup>35</sup>Fed. R. Evid. 408.

that derivative claims are customarily "regarded as injuries to one person, so that the lower policy limits applicable to injuries sustained by any one person . . . govern."<sup>40</sup> The controlling question, however, is whether the claims for loss of consortium, loss of services, and negligent infliction of emotional distress are derivative or independent.

Only one case in this district has been found addressing the issue. In *Government Employees Insurance Co. v. Encelowski*,<sup>41</sup> Government Employees Insurance Company ("GEICO") issued an automobile insurance policy with "per person" liability limits of \$100,000 and "per occurrence" limits of \$300,000. Encelowski's son was killed in an accident. His father filed suit seeking damages as both a personal representative and in his personal capacity. These claims settled. GEICO then sought a declaratory judgment that there was no coverage under the policy for the mother's claims for negligent infliction of emotional distress and loss of consortium. GEICO's policy provided that liability limits "as applicable to 'each person' is the limit of our liability for all damages, including damages for care and loss of services, because of bodily injury sustained by one person as the result of one occurrence."

In an opinion by Judge Holland, the court held "per person" limits did not apply to a claim for negligent infliction of emotional distress. GEICO argued that Encelowski's negligent infliction of emotional distress claim was derivative of her son's bodily injury because she did not actually see the accident. Judge Holland rejected this construction. Analyzing existing Alaska law, the court noted:

In a negligent infliction of emotional distress case, the duty allegedly breached is owed to the witness/relative. It does not matter whether the relative saw the accident at the moment it happened. Under Alaska law, a duty is owed even when the relative does not witness the accident as long as the [relevant legal] test is met. A breach of this separate duty which leads to a separate bodily injury is actionable. There is no suggestion in Alaska law that a claim for negligent infliction of emotional distress is

693-94 (1990); *United Serv. Auto. Ass'n v. Warner*, 64 Cal. App. 3d 957, 961, 135 Cal. Rptr. 34, 36 (1976); *Gonzales v. Allstate Ins. Co.*, 122 N.M. 137, 921 P.2d 944, 946 (1996).

<sup>40</sup>Docket 83 at 13 (Appleman, *supra*, § 4893 at 60.).

<sup>41</sup>A94-211 Civil, 1995 WL 25427 (D. Alaska 1995). Pursuant to Local Rule 7.1(c), "unpublished decisions on the same issue by judges of this district . . . may be cited . . ."

liability limitations as "500,000 for each declared passenger seat and each person outside the aircraft."<sup>34</sup> Young argues that this proves Hageland understood the liability limit was not limited to \$500,00 for each passenger. However, this sentence is ambiguous. It could be interpreted as declaring a \$500,000 limit for each passenger and a \$500,000 limit for each person outside the aircraft or it could be interpreted as declaring an inclusive \$500,000 limit; that is a \$500,000 limit for all claims relating to any one passenger. Accordingly, the March 25, 1997, letter is of little help.

However, notwithstanding the preceding, the relevant extrinsic evidence relied upon by AIG—that is, the affidavits submitted by Hageland's insurance broker and AIG's underwriter—are not entitled to controlling weight under the circumstances of this case for three reasons. First, Young's lawsuit against Hageland in State Superior Court is still pending. Liability has not been determined. Subjective declarations of intent in the midst of ongoing litigation are rarely probative.<sup>37</sup> Second, a person's mistaken understanding of legal principles or relevant law does not and cannot alter the law's scope and effect. For example, assuming AIG believed negligent infliction of emotional distress was a derivative claim under Alaska law and communicated this belief to Hageland, the parties' understanding would not and could not change the actual scope and effect of Alaska law. Third, the reasonable expectations of the insured with which the court must concern itself are objectively reasonable expectations, not subjective expectations.<sup>31</sup>

#### D. Case Law Interpreting Similar Provisions

No controlling Alaska case law has been found. Cases from other jurisdictions offer conflicting guidance. AIG observes that courts generally hold "per person" liability limits apply to all claims arising out of one person's bodily injury.<sup>39</sup> Citing one leading treatise, AIG contends

<sup>34</sup>Docket 88, The Estates' Opposition, Exh. D at I.

<sup>37</sup>*Peterson v. Wirum*, 625 P.2d 866, 870 (Alaska 1981); *Day v. A & G Const. Co., Inc.*, 528 P.2d 440, 444-45 (Alaska 1974).

<sup>38</sup>See, e.g., *Peterson v. Wirum*, 625 P.2d 866, 870 (Alaska 1981); *Day v. A & G Const. Co., Inc.*, 528 P.2d 440, 444 (Alaska 1974).

<sup>39</sup>See, e.g., *Safeco Ins. Co. of America v. Simmonds*, 642 F. Supp. 305, 308 (N.D. Cal. 1986); *United Serv. Auto. Ass'n v. Lilly*, 217 Cal. App. 3d 1396, 1401-02, 266 Cal. Rptr. 691,

derivative of the breach of a duty to another person such as Mrs. Encelewski's son.<sup>42</sup>

Judge Holland's analysis is persuasive and applies with equal force to the circumstances of this case. Judge Holland's analysis also accords with existing case law in other jurisdictions.<sup>43</sup> At oral argument, AIG conceded that the policy provided coverage for non-passengers who might be injured in an accident. The policy expressly covers "damages because of bodily injury sustained by any person . . . ." The "per person" liability limit only applies to "damages . . . because of bodily injury to passengers . . . ." Given the state of Alaska law as correctly summarized by Judge Holland, any claims for negligent infliction of emotional distress that Young may have in the pending state court action are not subject to the policy's "per person" limits.

The remaining question is whether claims for loss of consortium and services are subject to the "per person" limit. In *Geico*, Judge Holland did not address whether "per person" limits applied to the loss of consortium claim because the court determined such claims did not constitute a "bodily injury," and, thus, were not covered under the policy. Here, however, AIG concedes that loss of consortium is covered. But coverage does not mean that a claim for loss of consortium is not subject to the "per person" limit. Most courts analyzing policy language essentially identical to the language in this case have held that claims for loss of consortium are subject to "per person" limits where, as here, the liability limits define all damages as including damages for loss of care and services.<sup>44</sup> One leading treatise states the majority rule as follows:

<sup>42</sup>*Encelewski*, 1995 WL 25427 at \*4.

<sup>43</sup>*Treichel v. State Farm Mut. Auto. Ins. Co.*, 280 Mont. 443, 448-49, 930 P.2d 661, 664-65 (1997); *Auto Club Ins. Ass'n v. Hardiman*, 228 Mich. App. 470, 476-77, 579 N.W.2d 115, 118 (1997) (citing authority); *Bernard v. Cordle*, 116 Ohio App. 3d 116, 121-23, 687 N.E.2d 3, 6-7 (1996); *Employers Cas. Ins. Co. v. Foust*, 29 Cal. App. 3d 382, 387-88, 105 Cal. Rptr. 505, 508-09 (1972).

<sup>44</sup>Docket 3, First Amended Complaint, filed May 19, 1998, Exh. B at 1.

<sup>45</sup>Docket 3, First Amended Complaint, filed May 19, 1998, Exh. B at 4.

<sup>46</sup>*Safeco Ins. Co. of America v. Simmons*, 642 F. Supp. 305, 308-09 (N.D. Cal. 1986); *Montgomery v. Farmers Ins. Group*, 585 F. Supp. 618, 619 (S. D. Ind. 1984); *United Serv. Auto.*

Where a minor child sustains injuries in an automobile accident and dies, the child's estate and the parent entitled to sue under the wrongful death of a minor statute are not each entitled to collect the maximum limit of liability as two separate entities, the policy intending only one maximum payment for bodily injury to the person injured. Stated otherwise, where a minor is injured by an insured, the minor's parent's claim for recovery of loss of the minor's service and the minor's medical expenses under the terms of an automobile liability policy do not make the parent a separate "person" for purposes of recovering more than the policy limits of liability for "bodily injury" to "each person."<sup>47</sup>

The authority relied upon by Young, *Abellon v. Hartford Ins. Co.*,<sup>48</sup> is distinguishable because the policy language in that case did not specifically include damages for care and loss of services.<sup>49</sup> The *Abellon* court recognized that if damages for loss of care and services were included in a provision limiting liability, loss of consortium claims would be subject to "per person" limits.<sup>50</sup>

Young attempts to avoid this conclusion by arguing that a claim for loss of care and services is not the same as a claim for loss of consortium. Young notes that "loss of care and services" is not defined in the policy, and that the absence of a controlling definition renders the phrase ambiguous.<sup>51</sup> Young argues that if AIG had wanted to include loss of consortium claims, it should have expressly addressed those claims in the policy. Its failure to do so, Young suggests, should be construed against AIG. According to Young, "absent a specific reference to loss of consortium damages, the limit is inapplicable to such claims."<sup>52</sup> Young bases her

*Ass'n v. Warner*, 64 Cal. App. 3d 957, 961-62, 135 Cal. Rptr. 34, 36-37 (1976). See also *Appleman*, *supra*, § 4893 at 60 n.22 & 1998 Supp. at 12-13 n.22 (citing authority holding that loss of consortium claims subject to "per person" limits).

<sup>47</sup>12 Lee R. Russ and Thomas F. Segalla, *Couch on Insurance 3d*, § 170:8 at 170-17 (1998) ("Couch").

<sup>48</sup>167 Cal. App. 3d 21, 212 Cal. Rptr. 852 (1985).

<sup>49</sup>*Abellon*, 167 Cal. App. 3d at 30, 212 Cal. Rptr. at 858.

<sup>50</sup>*Id.*

<sup>51</sup>Docket 88 at 4.

<sup>52</sup>Docket 88 at 16.

argument that claims for loss of care and services are different from claims for loss of consortium on language from *Schreiner v. Fruit*,<sup>55</sup> in which the Alaska Supreme Court stated:

A claim for relief for loss of consortium provides a means of recovery for an injury not otherwise compensable. It should be recognized as "compensating the injured party's spouse for interference with the continuance of a healthy and happy marital life." The interest to be protected is personal to the wife, for she suffers a loss of her own when the care, comfort, companionship, and solace of her spouse is denied her. The basis for recovery is no longer the loss of services, but rather the injury to the conjugal relation.<sup>56</sup>

At first impression, this argument seems unduly strained, particularly in light of objectively reasonable expectations. The average lay person may or may not apprehend technical phrases such as "loss of consortium." However, most would readily grasp the meaning of "loss of care and services" and ascribe to that phrase the meaning ordinarily attached to "loss of consortium."

But notwithstanding the preceding, there is some support for Young's argument. Alaska law distinguishes between wrongful death damages for loss of assistance or services and wrongful death damages for loss of consortium.<sup>57</sup> The Alaska Pattern Civil Jury Instructions provide different instructions for loss of assistance or services and loss of consortium.<sup>58</sup> Loss of services is not an element or even referred to in the jury instruction for loss of consortium.<sup>59</sup> Based on

<sup>55</sup>519 P.2d 462 (Alaska 1974).

<sup>56</sup>*Fruit*, 519 P.2d at 465-66 (emphasis added).

<sup>57</sup>AS 09.55.580(c) (providing damages in wrongful death action for loss of assistance or services); AS 09.55.580(d) (providing damages in wrongful death action for loss of consortium).

<sup>58</sup>Alaska Pattern Civil Jury Instruction § 4.07 (setting forth elements for damages for loss of assistance or services); Alaska Pattern Civil Jury Instruction § 4.08 (setting forth elements for damages for loss of consortium).

<sup>59</sup>Alaska Pattern Civil Jury Instruction § 4.08, addressing damages for loss of consortium, provides:

The item of claimed loss is the fair value of society, comfort, care, protection, affection and companionship that the deceased reasonably could have expected to provide to (the) (each) beneficiary if the deceased had continued to live.

these distinctions. one could construct an argument that loss of services is wholly distinguishable from loss of consortium.

However, where this issue has arisen, courts—and even litigants—seem to accept the fact that a claim for loss of consortium is the same as a claim for loss of services.<sup>58</sup> In *United Services Automobile Association v. Warner*,<sup>59</sup> the California Court of Appeals observed:

Clearly the words "all damages" includes the loss of consortium which loss necessarily arises out of the bodily injury sustained by one person, the injured spouse. It is true that the policy specifically mentions only damages for care and loss of services. However, in this context it is apparent that the phrase is inclusive rather than exclusive. Loss of consortium is not only similar in kind to damage for loss of services in that it arises out of the bodily injury sustained by the injured spouse, but actually includes loss of services as one of its elements. It would seem obvious that if loss of consortium includes loss of services, then they must have the same source, i.e., the same injured person.<sup>60</sup>

Keeping in mind it is this court's responsibility to ascertain the parties' reasonable expectations, and not hypertechnical interpretations constructed during the midst of litigation, the Warner court's conclusion seems sound.

Finally, Young argues that because AIG's policy defines "bodily injury" to include mental anguish, loss of consortium claims constitute an independent claim not subject to the policy's "per person" limit. However, this argument overlooks the policy's unambiguous liability limit which applies to "all damages, including damages for care and loss of service because of bodily injury to

In fixing this amount for each individual beneficiary, you may consider, along with other evidence, the closeness and harmony of the relationship between the deceased and (the) (each) beneficiary and the willingness of the deceased to participate in activities with (the) (each) beneficiary.

<sup>58</sup>See, e.g., *Allstate Ins. Co. v. Handgard*, 70 Or. App. 262, 265, 688 P.2d 1387, 1388 (1984) (insurance company concedes that a claim for loss of consortium is a claim for loss of services); *United Serv. Auto. Ass'n v. Warner*, 64 Cal. App. 3d 957, 962, 135 Cal. Rptr. 34, 36-37 (1976).

<sup>59</sup>64 Cal. App. 3d 957, 135 Cal. Rptr. 34 (1976).

<sup>60</sup>*Warner*, 64 Cal. App. 3d at 962, 135 Cal. Rptr. at 36-37.

passengers . . . ."<sup>61</sup> A loss of consortium claim arises "because of bodily injury to passengers." In *Tommy's Elbow Room, Inc. v. Kavorkian*,<sup>62</sup> the Alaska Supreme Court discussed the distinctions between claims for negligent and intentional infliction of emotional distress and claims for grief arising under the wrongful death statute. The court noted that "the mental distress for which recovery can be sought under the wrongful death statute is limited to mental anguish, sorrow, or grief resulting from the death itself."<sup>63</sup> Young's reliance on the term "mental anguish" within the definition of bodily injury is misplaced. The claim for Young's mental anguish not arising because of the death itself is her claim for the negligent infliction of emotional distress.

Although as Judge Holland observed in *Geico*, a "painful study" of the policy might support Young's arguments, this court's obligation is to give effect to the parties' reasonable expectations.<sup>64</sup> Doing so, this court concludes that the "per person" limit applies to Young's claims for loss of consortium and loss of services.

E. Whether Additional Discovery is Necessary under Rule 56(f)

Young argues that, failing all else, the defendants should be afforded the opportunity to conduct additional discovery before the court enters summary judgment. Young advises that there are pending discovery motions.<sup>65</sup> Young also implies, without expressly stating, that the defendants need time to depose Spencer, whom Young observes was only first identified on February 2, 1999.<sup>66</sup> However, Young has not submitted an affidavit explaining what additional discovery is necessary to oppose AIG's motion. Under Rule 56(f), the burden is on the party requesting a continuance to set forth the particular facts expected to be discovered.<sup>67</sup> The party

<sup>61</sup>Docket 3, First Amended Complaint, filed May 19, 1998, Exh. B at 4.

<sup>62</sup>727 P.2d 1038 (Alaska 1986).

<sup>63</sup>*Id.* at 1043 n.13.

<sup>64</sup>*Encelswski, supra*, 1995 WL 25427 at \*4.

<sup>65</sup>Docket 88 at 7.

<sup>66</sup>Docket 88 at 6.

<sup>67</sup>*Brae Transp., Inc. v. Coopers & Lybrand*, 790 F.2d 1439, 1443 (9<sup>th</sup> Cir. 1986).

must submit affidavits setting forth particular facts which additional discovery will develop, establish why the additional discovery would preclude summary judgment, and explain why the party cannot immediately provide the necessary information to preclude summary judgment.<sup>68</sup> The failure to comply with Rule 56(f)'s requirements is sufficient grounds to deny a request for a continuance.<sup>69</sup> Furthermore, Young previously moved for a Rule 56(f) continuance.<sup>70</sup> The parties eventually agreed to extend discovery until January 30, 1999. This court subsequently extended this deadline further until February 20, 1999.<sup>71</sup> Moreover, as AIG observes, Young has cross-moved for summary judgment on the premise that there are no genuine issues of material fact. Under these circumstances, further continuance to explore undefined discovery subjects is not warranted.

#### F. Certification to the Alaska Supreme Court

Young also argues that the present issue should be certified to the Alaska Supreme Court. Based on recent experience, certification is unlikely to accomplish anything but delay. One example illustrates the court's concerns. On August 4, 1998, this court certified a significant issue concerning whether Alaska law would recognize a claim for "loss of chance" in a medical malpractice action.<sup>72</sup> The "loss of chance" doctrine represents a fairly recent development in the law which has provoked sharply divided decisions from lower courts. Alaska state superior courts are divided on whether Alaska law recognizes a claim for "loss of chance," and courts from other jurisdictions are also split. Opinions from other states' supreme courts have often been closely decided and issued over vigorous dissent. Notwithstanding the circumstances, which

<sup>68</sup>*Maljack Prod., Inc. v. Goodtimes Home Video Corp.*, 81 F.3d 881, 888 (9<sup>th</sup> Cir. 1996); *United States v. One*, 917 F.2d 415, 418 (9<sup>th</sup> Cir. 1990); *Mackey v. Pioneer Nat'l Bank*, 867 F.2d 520, 523-24 (9<sup>th</sup> Cir. 1989); *Hancock v. Montgomery Ward Long Term Disability Trust*, 787 F.2d 1302, 1306 n.1 (9<sup>th</sup> Cir. 1986).

<sup>69</sup>*Brae*, 790 F.2d at 1443 (holding that "[f]ailure to comply with the requirements of Rule 56(f) is a proper ground for denying discovery and proceeding to summary judgment).

<sup>70</sup>Docket 28, September 17, 1998.

<sup>71</sup>Docket 74.

<sup>72</sup>*Crosby v. United States*, A95-359 CV, Certification, docket 89.

would ordinarily suggest that certification was both appropriate and necessary to resolve an important issue of first impression, the Alaska Supreme Court did not act on the certification question for three months. The Alaska Supreme Court finally declined certification on November 5, 1998, with no explanation.<sup>73</sup> This case presents what is, in effect, a simple contract dispute over language in an insurance contract. Given that the Alaska Supreme Court declined certification without comment after a three-month delay of a clearly important issue with far-ranging consequences, there is little reason for this court to conclude that a certification request in this case would achieve anything of value.

G. Whether Supplemental Briefing is Warranted

Finally, AIG seeks leave at docket 97 to file supplemental briefing to strike portions of Young's reply at docket 95. In Young's reply at docket 95, Young raised issues which do not appear to have been previously briefed. Local Rule 7.1 (b) prohibits parties from raising issues for the first time in a reply. The arguments Young raised in the reply at docket 95 primarily involve Young's contention that AIG's interpretation of the policy violates state and federal law because AIG's interpretation makes less than \$300,000 available. This argument lacks merit. AIG interprets the policy as providing \$500,000 for damages because of bodily injury to each passenger. Moreover, the state and federal statutes Young cites and relies upon for this new argument do not address what kind of claims should be included in the "per seat" or "per person" limit.<sup>74</sup>

## V. CONCLUSION

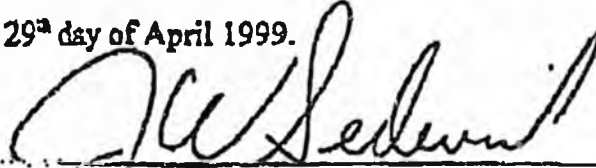
For the foregoing reasons, AIG's motion at docket 97 is DENIED as moot, AIG's motion for summary judgment at docket 83 is GRANTED in part and DENIED in part, and Young's cross-motion for summary judgment at docket 89 is GRANTED in part and DENIED in part.

<sup>73</sup>*Crosby v. United States*, A95-359 CV, Order, docket 91.

<sup>74</sup>See 14 C.F.R. § 205.5(b)(2) (requiring commercial air carriers to provide insurance "for bodily injury to or death of aircraft passengers, with minimum limits of \$300,000 for any one passenger); AS 02.40.010 (requiring commercial air carriers to provide insurance for "\$150,000 per seat for bodily injury or death in a single occurrence . . .").

Claims for loss of consortium and loss of services are subject to the "per person" policy limits. Claims for negligent infliction of emotional distress are not subject to the "per person" policy limits. Claims for punitive damages are not subject to the "per person" policy limits to the extent such claims arise out of bodily injury to a non-passenger. Any fees and costs to which Young may be entitled are also not subject to the "per person" policy limits.

DATED at Anchorage, Alaska, this 29<sup>th</sup> day of April 1999.



JOHN W. SEDWICK  
UNITED STATES DISTRICT JUDGE

199-0137--CY (JWS)

- I. RESLES (GROW)
- K. JURE
- L. LONGAGRE

**Chapter 17. Civil Damages and Apportionment of Fault.**

**Section**

- 10. Noneconomic damages
- 20. Punitive damages
- 40. Award of damages; periodic payments
- 60. Effect of contributory fault

**Section**

- 70. Collateral benefits
- 80. Apportionment of damages
- 900. Definition

**Cross references.** — For provisions related to malpractice actions, see AS 09.55.530 — 09.55.560; for provisions related to damages for wrongful death, see AS 09.55.080; for provisions related to duties and immunities, see AS 09.65.

**Application of chapter.** — Section 9, ch. 139, SLA 1986 provides that this chapter applies “to all causes of action accruing after June 11, 1986.”

**Collateral references.** — Roscoe N. Gray, *Attorneys' Textbook of Medicine* (Matthew Bender).

*Attorneys' Textbook of Medicine: Manual of Traumatic Injuries* (Matthew Bender).

J.E. Schmidt, *Attorneys' Dictionary of Medicine* (Matthew Bender).

Harold L. Hirsch, *Trauma: Personal Injury, Medicine and Surgery* (Matthew Bender).

Frumer and Friedman, *Personal Injury C Actions, Defenses, Damages* (Matthew Bender).

Houts and Marmor, *Proving Medical Diagnosis and Prognosis* (Matthew Bender).

Marshall Houts, *Lawyer's Guide to Medical Proof* (Matthew Bender).

Conason, Deutsch, and Raffa, *Damages in Tort Actions* (Matthew Bender).

Menachem F. Stein, *Common Diagnostic Procedures: Orthopedics and Neurology* (Matthew Bender).

*Comparative Negligence* (Matthew Bender).

Houts, Baselt, and Cravey, *Courtroom Toxicology* (Matthew Bender).

Cyril H. Wecht, *Forensic Sciences* (Matthew Bender).

Gordon Ohlsson, *Personal Injury Newsletter* (Matthew Bender).

Mark A. Dombroff, *Personal Injury Defense Techniques* (Matthew Bender).

*Personal Injury Defense Reporter* (Matthew Bender).

Keith Miller, *Automobile Accident Law and Practice* (Matthew Bender).

Barzelay and Lacy, *Scientific Automobile Accident Reconstruction* (Matthew Bender).

Kalisch and Williams, *Courtroom Medicine: Shoulder and Elbow* (Matthew Bender).

Wolfstone, Liebman, etc., *Courtroom Medicine: The Neck* (Matthew Bender).

Kalisch and Williams, *Courtroom Medicine: The Knee and Its Related Structures* (Matthew Bender).

Chapman and Evans, *Courtroom Medicine: Head and Brain* (Matthew Bender).

Kalisch and Williams, *Courtroom Medicine: Chest, Heart, and Lungs* (Matthew Bender).

Gelfand, Magana, and Merliss, *Courtroom Medicine: The Low Back* (Matthew Bender).

Houts and Haut, *Courtroom Medicine: Death* (Matthew Bender).

Kalisch and Williams, *Courtroom Medicine: Abdominal Injuries* (Matthew Bender).

Kalisch and Williams, *Courtroom Medicine: Hip and Thigh* (Matthew Bender).

Loring F. Chapman, *Courtroom Medicine: Pain and Suffering* (Matthew Bender).

Lewis and Sadoff, *Courtroom Medicine: Psychic Injuries* (Matthew Bender).

Arthur Frank, *Courtroom Medicine: Cancer* (Matthew Bender).

Chapman and Dunlap, *Courtroom Medicine: The Eye* (Matthew Bender).

**Sec. 09.17.010. Noneconomic damages.** (a) In an action to recover damages for personal injury or wrongful death, all damage claims for noneconomic losses shall be limited to compensation for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary damages.

(b) Except as provided under (c) of this section, the damages awarded by a court or a jury under (a) of this section for all claims, including a loss of consortium claim, arising out of a single injury or death may not exceed \$400,000 or the injured person's life expectancy in years multiplied by \$8,000, whichever is greater.

(c) In an action for personal injury, the damages awarded by a court or jury that are described under (b) of this section may not exceed \$1,000,000 or the person's life expectancy in years multiplied by \$25,000, whichever is greater, when the damages are awarded for severe permanent physical impairment or severe disfigurement.

(d) Multiple injuries sustained by one person as a result of a single incident shall be treated as a single injury for purposes of this section. (§ 1 ch 139 SLA 1986; am § 9 ch 26 SLA 1997)

Cross referent relating to sec § 1, ch. 2 Special Acts. 26, SLA 1997 Temporary au

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## Apportionment of Fault.

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to recover damages for economic losses shall be for physical impairment, disfigurement, pecuniary damage. awarded by a court or a tort claim, arising from an injured person's life

by a court or jury that are for the person's life when the damages are determined.

For a single incident shall be SLA 1986; am § 9 ch

**Cross references.** — For a statement of legislative intent relating to the provisions of ch. 26, SLA 1997, see § 1, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For severability of the provisions of ch. 26, SLA 1997, see § 56, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts.

**Effect of amendments.** — The 1997 amendment, effective August 7, 1997, rewrote this section.

**Editor's notes.** — Section 55, ch. 26, SLA 1997 provides that the provisions of ch. 26, SLA 1997 apply "to all causes of action accruing on or after August 7, 1997."

### NOTES TO DECISIONS

**Non-economic cap did not apply.** — Because the plaintiff's permanent loss of the normal use of a body system necessary for day-to-day life constitutes severe physical impairment, and the former section imposed a \$100,000 cap on non-economic damages unless the

victim has suffered "severe physical impairment," the superior court properly removed this issue from the jury's consideration. *State v. Johnson*, 2 P.3d 56 (Alaska 2000).

**Sec. 09.17.020. Punitive damages.** (a) In an action in which a claim of punitive damages is presented to the fact finder, the fact finder shall determine, concurrently with all other issues presented, whether punitive damages shall be allowed by using the standards set out in (b) of this section. If punitive damages are allowed, a separate proceeding under (c) of this section shall be conducted before the same fact finder to determine the amount of punitive damages to be awarded.

(b) The fact finder may make an award of punitive damages only if the plaintiff proves by clear and convincing evidence that the defendant's conduct

(1) was outrageous, including acts done with malice or bad motives; or

(2) evidenced reckless indifference to the interest of another person.

(c) At the separate proceeding to determine the amount of punitive damages to be awarded, the fact finder may consider

(1) the likelihood at the time of the conduct that serious harm would arise from the defendant's conduct;

(2) the degree of the defendant's awareness of the likelihood described in (1) of this subsection;

(3) the amount of financial gain the defendant gained or expected to gain as a result of the defendant's conduct;

(4) the duration of the conduct and any intentional concealment of the conduct;

(5) the attitude and conduct of the defendant upon discovery of the conduct;

(6) the financial condition of the defendant; and

(7) the total deterrence of other damages and punishment imposed on the defendant as a result of the conduct, including compensatory and punitive damages awards to persons in situations similar to those of the plaintiff and the severity of the criminal penalties to which the defendant has been or may be subjected.

(d) At the conclusion of the separate proceeding under (c) of this section, the fact finder shall determine the amount of punitive damages to be awarded, and the court shall enter judgment for that amount.

(e) Unless that evidence is relevant to another issue in the case, discovery of evidence that is relevant to the amount of punitive damages to be determined under (c)(3) or (6) of this section may not be conducted until after the fact finder has determined that an award of punitive damages is allowed under (a) and (b) of this section. The court may issue orders as necessary, including directing the parties to have the information relevant to the amount of punitive damages to be determined under (c)(3) or (6) of this section available for production immediately at the close of the initial trial in order to minimize the delay between the initial trial and the separate proceeding to determine the amount of punitive damages.

(f) Except as provided in (g) and (h) of this section, an award of punitive damages may not exceed the greater of

(1) three times the amount of compensatory damages awarded to the plaintiff in the action; or

(2) the sum of \$500,000.

(g) Except as provided in (h) of this section, if the fact finder determines that the conduct proven under (b) of this section was motivated by financial gain and the adverse consequences of the conduct were actually known by the defendant or the person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greatest of

(1) four times the amount of compensatory damages awarded to the plaintiff in the action;

(2) four times the aggregate amount of financial gain that the defendant received as a result of the defendant's misconduct; or

(3) the sum of \$7,000,000.

(h) Notwithstanding any other provision of law, in an action against an employer to recover damages for an unlawful employment practice prohibited by AS 18.80.220, the amount of punitive damages awarded by the court or jury may not exceed

(1) \$200,000 if the employer has less than 100 employees in this state;

(2) \$300,000 if the employer has 100 or more but less than 200 employees in this state;

(3) \$400,000 if the employer has 200 or more but less than 500 employees in this state; and

(4) \$500,000 if the employer has 500 or more employees in this state.

(i) Subsection (h) of this section may not be construed to allow an award of punitive damages against the state or a person immune under another provision of law. In (h) of this section, "employees" means persons employed in each of 20 or more calendar weeks in the current or preceding calendar year.

(j) If a person receives an award of punitive damages, the court shall require that 50 percent of the award be deposited into the general fund of the state. This subsection does not grant the state the right to file or join a civil action to recover punitive damages. (§ 1 ch 139 SLA 1986; am § 10 ch 26 SLA 1997)

**Cross references.** — For prohibition on recovery of punitive damages against the state, see AS 09.50.280.

For provisions relating to the effect of 1997 addition of subsections (e) and (j) on Rules 26 and 58, Alaska Rules of Civil Procedure, respectively, see §§ 48 and 49, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts.

For a statement of legislative intent relating to the provisions of ch. 26, SLA 1997, see § 1, ch. 26, SLA

1997 in the 1997 Temporary and Special Acts. For severability of the provisions of ch. 26, SLA 1997, see § 56, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts.

**Effect of amendments.** — The 1997 amendment, effective August 7, 1997, rewrote this section.

**Editor's notes.** — Section 55, ch. 26, SLA 1997 provides that the provisions of ch. 26, SLA 1997 apply "to all causes of action accruing on or after August 7, 1997."

**NOTES TO DECISIONS**

**Applicability of section.** — This section applies to all cases accruing after its effective date, August 7, 1997, and cannot be applied to cases accruing before that date, because of express legislative intent to the contrary. *Norcon, Inc. v. Kotowski*, 971 P.2d 158 (Alaska 1999).

**Burden of proof.** — In an instruction on punitive damages, failure to instruct the jury on the clear and convincing evidence burden of proof was plain error. *Alaska Marine Pilots v. Hendsch*, 950 P.2d 98 (Alaska 1997).

**Clear and convincing evidence.** — While peaceful picketing is a protected form of speech, threats of bodily harm, personal assaults, and property destruc-

tion on a picket line are not constitutionally protected, and such actions provided ample evidence of conduct which justified a punitive damage award under the clear and convincing standard. *International Bhd. of Elec. Workers, Local 1547 v. Alaska Util. Constr.*, 976 P.2d 852 (Alaska 1999).

Quoted in *State Farm Mut. Auto. Ins. Co. v. Weiford*, 831 P.2d 1264 (Alaska 1992); *Ace v. Aetna Life Ins. Co.*, 139 F.3d 1241 (9th Cir. 1998), cert. denied, 525 U.S. 930, 119 S. Ct. 338, 142 L. Ed. 2d 277 (1998).

Cited in *Johnson & Higgins of Alaska, Inc. v. Blomfield*, 907 P.2d 1371 (Alaska 1995).

*Sec. 09.17.030. [Renumbered as AS 09.65.210.]*

**Sec. 09.17.040.** — damages for personal itemized between ei

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**Revisor's notes.** — In substituted for "655" to subsection (c). In 1988, section" was substituted correct a manifest error i

**Legislative intent.** - guage of subsection (b) d

**Sec. 09.17.040. Award of damages; periodic payments.** (a) In every case where damages for personal injury are awarded by the court or jury, the verdict shall be itemized between economic loss and noneconomic loss, if any, as follows:

- (1) past economic loss;
- (2) past noneconomic loss;
- (3) future economic loss;
- (4) future noneconomic loss; and
- (5) punitive damages.

(b) The fact finder shall reduce future economic damages to present value. In computing the portion of a lump-sum award that is attributable to future economic loss, the fact finder shall determine the present amount that, if invested at long-term future interest rates in the best and safest investments, will produce over the life expectancy of the injured party the amount necessary to compensate the injured party for

(1) the amount of wages the injured party could have been expected to earn during future years, taking into account future anticipated inflation and reasonably anticipated increases in the injured party's earnings; and

(2) the amount of money necessary during future years to provide for all additional economic losses related to the injury, taking into account future anticipated inflation.

(c) Subsection (b) of this section does not apply to future economic damages if the parties agree that the award of future damages may be computed under the rule adopted in the case of *Beaulieu v. Elliott*, 434 P.2d 665 (Alaska 1967).

(d) In an action to recover damages, the court shall, at the request of an injured party, enter judgment ordering that amounts awarded a judgment creditor for future damages be paid to the maximum extent feasible by periodic payments rather than by a lump-sum payment.

(e) The court may require security be posted, in order to ensure that funds are available as periodic payments become due. The court may not require security to be posted if an authorized insurer, as defined in AS 21.90.900, acknowledges to the court its obligation to discharge the judgment.

(f) A judgment ordering payment of future damages by periodic payment shall specify the recipient, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Payments may be modified only in the event of the death of the judgment creditor, in which case payments may not be reduced or terminated, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death. In the event the judgment creditor owed no duty of support to dependents at the time of the judgment creditor's death, the money remaining shall be distributed in accordance with a will of the deceased judgment creditor accepted into probate or under the intestate laws of the state if the deceased had no will.

(g) If the court finds that the judgment debtor has exhibited a continuing pattern of failing to make payments required under (d) of this section, the court shall, in addition to the required periodic payments, order the judgment debtor to pay the judgment creditor any damages caused by the failure to make periodic payments, including costs and attorney fees. (§ 1 ch 139 SLA 1986)

**Revisor's notes.** — In 1986, the number "665" was substituted for "655" to correct a manifest error in subsection (c). In 1988, a reference to "(d) of this section" was substituted for "(c) of this section" to correct a manifest error in subsection (g).

**Cross references.** — For effect of this section on Alaska Rules of Civil Procedure 49 and 58, see §§ 5 and 7, respectively, ch. 139, SLA 1986, in the Temporary and Special Acts.

**NOTES TO DECISIONS**

**Legislative intent.** — Although the plain language of subsection (b) does not specifically designate the categories of damages that must be reduced to present value, the legislative intent appears to have

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# Alaska State Legislature

Please enter into the record my testimony to the House JUDICIARY  
Committee name  
Committee on HB 271, dated 4-19-02  
Bill/Subject

*Small step in the correct direction.  
For aviation, a workers comp style of  
award schedule should be adopted*

Signed: *Patrick O'Hare* PATRICK O'HARE  
Testifier  
O'HARE AVIATION  
Representing (Optional)  
3150 ESCONDIDO AVE WASILLA  
Address  
(H) 373-~~5414~~ 5414 (W) 688-4359  
Phone number

**HB**

**281**



22-LS1001C  
Ford  
2/20/02

*Adopted  
2-22-02*

**CS FOR HOUSE BILL NO. 281(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES MEYER, Dyson**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to civil liability for providing alcoholic beverages to a person under 21**  
2 **years of age; and providing for an effective date."**

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

4 **\* Section 1. AS 04.21.020 is amended to read:**

5 **Sec. 04.21.020. Civil liability of persons providing alcoholic beverages. (a)**  
6 **Except as provided under (b) and (d) of this section. a [A] person who provides**  
7 **alcoholic beverages to another person may not be held civilly liable for injuries**  
8 **resulting from the intoxication of that person unless the person who provides the**  
9 **alcoholic beverages holds a license authorized under AS 04.11.080 - 04.11.220 [,] or**  
10 **is an agent or employee of such a licensee and**

11 **(1) the alcoholic beverages are provided to a person under the age of**  
12 **21 years in violation of AS 04.16.051, unless the licensee, agent, or employee secures**  
13 **in good faith from the person a signed statement, liquor identification card, or driver's**  
14 **license meeting the requirements of AS 04.21.050(a) and (b), that indicates that the**

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1 person is 21 years of age or older; or

2 (2) the alcoholic beverages are provided to a drunken person in  
3 violation of AS 04.16.030.

4 (b) A [NOTWITHSTANDING (a) OF THIS SECTION, A] person who sells  
5 or barter an alcoholic beverage to another person in violation of AS 04.11.010 is  
6 strictly liable (1) to the recipient or another person for civil damages if, while under  
7 the influence of the alcoholic beverage, the person receiving the alcoholic beverage  
8 engages in conduct that results in civil damages and the recipient's being under the  
9 influence of the alcoholic beverage substantially contributes to the civil damages; and  
10 (2) for the cost to the state or a political subdivision of the state to criminally prosecute  
11 a person who receives an alcoholic beverage from a person who violates AS 04.11.010  
12 if the prosecution results from the violation of AS 04.11.010 described in this  
13 subsection. [IN THIS SUBSECTION, "CIVIL DAMAGES" INCLUDES  
14 DAMAGES FOR PERSONAL INJURY, DEATH, OR INJURY TO PROPERTY OF  
15 A PERSON, INCLUDING THE STATE OR A POLITICAL SUBDIVISION OF  
16 THE STATE.]

17 (c) In an action under (b) or (d) of this section, it is not a defense that the  
18 person receiving the alcoholic beverage voluntarily consumed the alcoholic beverage  
19 or that the person receiving the alcoholic beverage was voluntarily under the influence  
20 of the alcoholic beverage.

21 \* Sec. 2. AS 04.21.020 is amended by adding new subsections to read:

22 (d) A person who knowingly furnishes or delivers an alcoholic beverage to a  
23 person under 21 years of age in violation of AS 04.16.051 is civilly liable to the  
24 recipient or another person for civil damages if, while under the influence of the  
25 alcoholic beverage, the person receiving the alcoholic beverage engages in conduct  
26 that results in civil damages and the recipient's being under the influence of the  
27 alcoholic beverage substantially contributes to the civil damages.

28 (e) In this section, "civil damages" includes damages for personal injury,  
29 death, or injury to property of a person, including the state or a political subdivision of  
30 the state.

31 \* Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

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

4       \* Sec. 4. This Act takes effect July 1, 2002.



# REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 19

## Sponsor Statement

HB 281

**“An Act relating to civil liability for providing alcoholic beverages to a person under 21 years of age; and providing for an effective date.”**

Under House Bill 281, an adult who knowingly furnishes alcohol to a person under the age of 21 can be held civilly liable for the resulting damages.

Recent tragedies have highlighted the problem of underage drinking and the consequences of adults providing alcohol to minors. Civil liability laws alone will not eliminate underage access to alcohol. However, they do take a step in the right direction. Adults who provide alcohol to minors should be accountable in civil court as well as criminal court.

In Alaska, as well as across the nation, underage drinking is a significant problem. Minor consumption is a factor in nearly half of all teen automobile crashes. Alaskan teens are 4 times more likely to cause fatal crashes when driving under the influence. It also contributes to suicides, homicides and fatal injuries, and is a factor in sexual assaults. Alcohol is readily available to minors because of irresponsible adults that knowingly serve, sell, and supply alcohol to minors.

Whether it is a parent, neighbor, or older sibling, adults must be held accountable when they provide alcohol to minors. Liability laws, such as HB 281, will hopefully assist in deterring adults from furnishing alcohol to minors.

02/11/02

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: HB 281  
(H) Publish Date: 2/13/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title Civil Liability for Providing Alcohol BRU \_\_\_\_\_  
Sponsor Representative Meyer Component \_\_\_\_\_  
Requester \_\_\_\_\_ Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003    | FY 2004    | FY 2005    | FY 2006    | FY 2007    | FY 2008    |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services      |            |            |            |            |            |            |
| Travel                 |            |            |            |            |            |            |
| Contractual            |            |            |            |            |            |            |
| Supplies               |            |            |            |            |            |            |
| Equipment              |            |            |            |            |            |            |
| Land & Structures      |            |            |            |            |            |            |
| Grants & Claims        |            |            |            |            |            |            |
| Miscellaneous          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

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**FUND SOURCE** (Thousands of Dollars)

|                                         |            |            |            |            |            |            |
|-----------------------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts                   |            |            |            |            |            |            |
| 1003 GF Match                           |            |            |            |            |            |            |
| 1004 GF                                 |            |            |            |            |            |            |
| 1005 GF/Program Receipts                |            |            |            |            |            |            |
| 1037 GF/Mental Health                   |            |            |            |            |            |            |
| Other (Specify Type--Do not abbreviate) |            |            |            |            |            |            |
| <b>TOTAL</b>                            | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2002) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Amy Erickson, Committee Aide Phone 465-4954  
Division H. L&C Date/Time 2/11/02 12:00 AM  
Approved by: Representative Murkowski Date 2/12/02  
Agency \_\_\_\_\_

## HB 281 Civil Liability for Providing Alcohol

### Title and Description of Effected Statutes

AS 04.11.010 License or permit required to manufacture, sell, and possess for sale alcohol.

AS 04.11.080 Types of licenses or permits required to manufacture, sell, and possess for sale alcohol

AS 04.11.090-04.11.220 Description of each license and permit required to manufacture, sell, and possess for sale alcohol

AS 04.16.030 Prohibited conduct relating to drunken persons

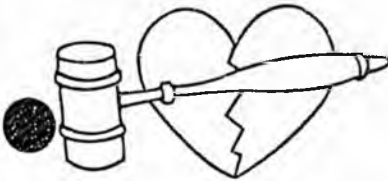
AS 04.21.050 Proof of age required

AS 04.16.051 Furnishing or delivery of alcoholic beverages to persons under 21

\*AS 04.21.020 Civil liability of persons providing alcohol to persons under 21

- (a) 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 license 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.
- (b) Notwithstanding (a) of this section, a person who sells or barter an alcoholic beverage to another person in violation of AS 04.11.010 is strictly liable (1) to the recipient or another person for civil damages if, under the influence of the alcoholic beverage, the person receiving the alcoholic beverage engages in conduct that results in civil damages and the recipient's being under the influence of the alcoholic beverage substantially contributes to the civil damages; and (2) for the cost to the state or a political subdivision of the state to criminally prosecute a person who receives an alcoholic beverage from a person who violates AS 04.11.010 if the prosecution results from the violation of AS 04.11.010 described in this subsection. In this subsection, "civil damages" includes damages for personal injury, death, or injury to property of a person, including the state or a political subdivision of the state.
- (c) In the action under (b) of this section, it is not a defense that the person receiving the alcoholic beverage voluntarily consumed the alcoholic beverage or that the person receiving the alcoholic beverage was voluntarily under the influence of the alcoholic beverage.

VICTIMS



*For Justice, Inc. 1057 W. Fireweed Lane, Suite 101 • Anchorage, AK 99503  
(907) 278-0977 • Fax: (907) 258-0740 • e-mail: vjf@alaskalife.net*

FEB 06 2002

January 30, 2002

Representative Kevin Meyer  
Session: State Capital  
Juneau, Alaska 99801-1182

Dear Representative Meyer:

I am generating this letter in support of HB 281. Victims for Justice often deals with victims and co-victims who have suffered as a result of youth under the influence of alcohol. Rarely is there a consequence for the person or persons who provide youth with alcohol. Because of the incident last summer involving Officer Justin Wollam and four youth (three of whom are now dead) many people (co-victims) are still suffering and will continue to suffer. Maybe after these people who provide our youth with alcohol are held to a higher standard of accountability the general public will think twice before contributing to a minor.

Sincerely,

A handwritten signature in cursive script that reads "Donna S. Garner".

Donna Garner  
Executive Director



**Mothers Against Drunk Driving**

**Anchorage Chapter**

3600 Arctic Boulevard Box 3 • Anchorage, AK 99503 • (907) 562-6890/Fax (907) 562-6896

• Email: [mgreeson@maddalaska.com](mailto:mgreeson@maddalaska.com)

January 24, 2002

FEB 06 2002

Representative Kevin Meyer  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, AK 99801-1182

Dear Representative Meyer,

On behalf of the membership, board of directors and staff of the Anchorage Chapter of MADD, I am writing in support of HB 281, "An Act relating to civil liability for providing alcoholic beverages to a person under 21 years of age."

Adults are frequently involved in purchasing or providing alcohol to underage persons and must be held to a high standard. Individuals under the age of 21 are in developmental stages of their lives and learning to make appropriate choices. When faced with the temptation and opportunity to participate in what they perceive as adult behaviors, their choices may be inappropriate. Adults must take responsibility for maintaining healthy standards and examples for young people learning good decision-making skills.

Adults who knowingly and intentionally entice young people to pursue dangerous behaviors must be held accountable. Civil liability will hold adults to a legal and ethical standard regarding the growth and safety of our youth.

Sincerely,

Marti Greeson  
Executive Director

**Drunk Driving is Breaking Alaska's**





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**Mothers Against Drunk Driving • Juneau Chapter**  
211 Fourth St. Suite 102 • Juneau, AK 99801

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January 24, 2002

House Bill Number 281,  
Sponsor: Representative Meyer

After discussion and agreement, the Alaska Chapters of Mothers Against Drunk Driving (MADD) endorses House Bill 281 which will impact those without a proper license who sell to minors. By making this action a civil crime victims from underage drinking may take action and receive due compensation from the illegal sale of alcohol.

MADD's mission includes the prevention of underage drinking and this bill will assist in lowering the rate of sales to minors. Underage drinking is a "gateway drug"(leading to other addictive substances) besides being the most popular one in Alaska.

Respectfully,

Cindy Cashen  
MADD Juneau Chapter  
MADD Anchorage Chapter  
MADD Homer Chapter

# Alcohol & Anchorage

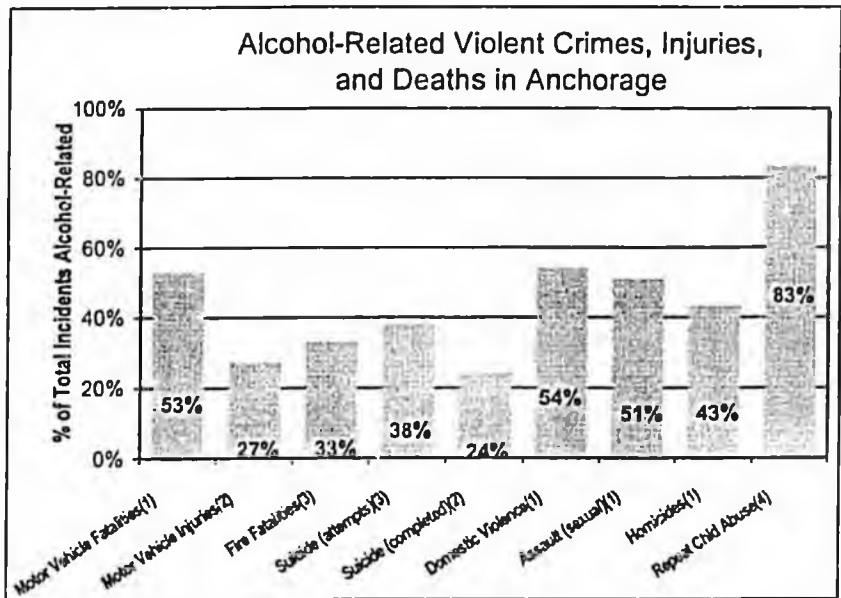
## Community Problems Related to Alcohol

### Why Should We Care about Alcohol?

#### The second hand effects of alcohol

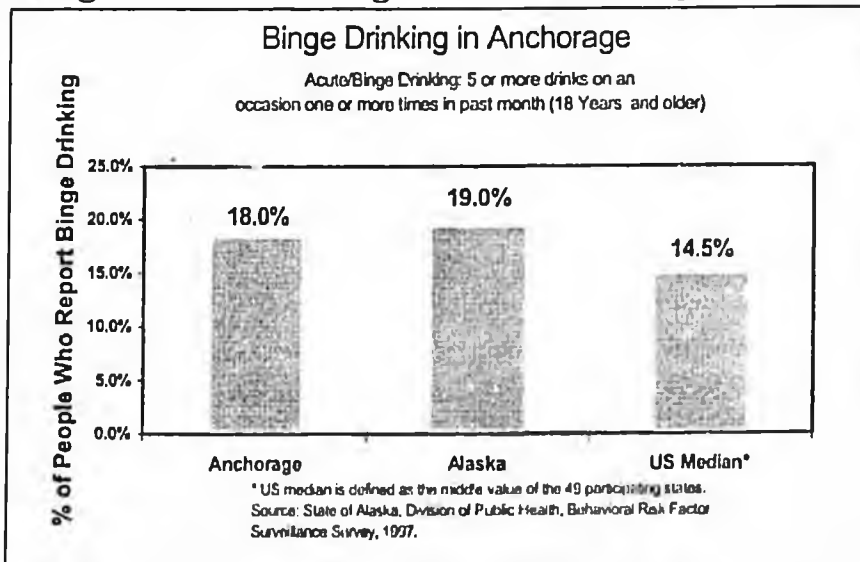
Alcohol is a common thread in the most serious problems facing Anchorage residents, including violence at home, injuries at work and injuries outdoors. Public funds from property taxes pay for government services, about 1/3 of it responding to alcohol-related emergency needs for fire, police, health and law. As city budgets are squeezed, funds for popular programs like libraries, recreation centers, pools, snowplowing, ski trails and classroom size are sacrificed to assure resources for alcohol related public protections.

The second hand effects of alcohol threaten public safety & enrichment.



(1)-Anchorage Police Dept. Report, Crime Analysis, 1999; (2)-SOA, DPH, Alaska Trauma Registry, 1994-1998; (3)-Alaska Fire Marshall Office, 1999; (4)-SOA, DFYS, Special audit of repeat child abuse cases, 1997

### High Risk Drinking and Community Problems

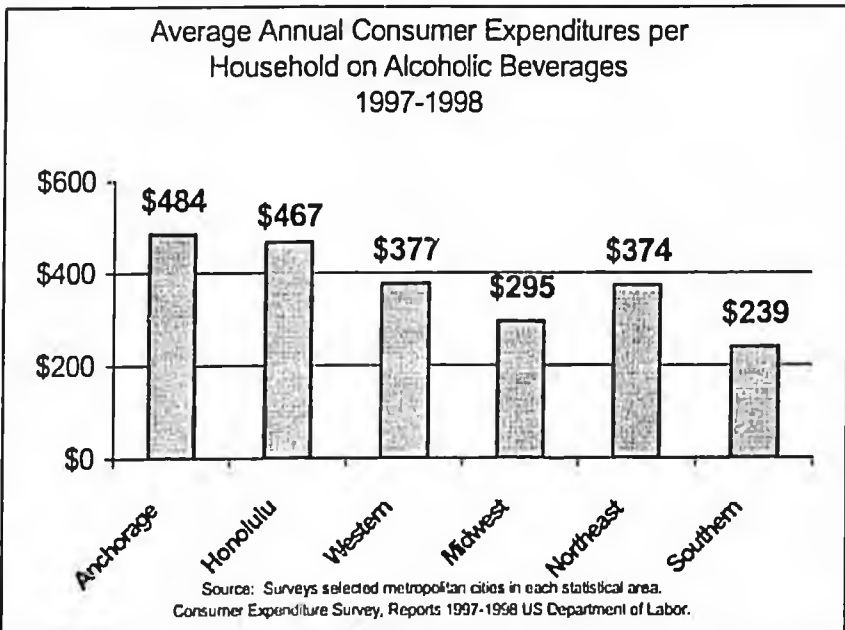


Shrinking the pool of high risk drinkers improves public safety.

We must shrink the pool of high risk drinkers. High risk binge drinking is part of a larger picture. Serious injuries from car crashes and family violence are associated with binge drinking. (1) Bingeing is when someone consumes 5 or more drinks on 1 occasion. (2) In an Anchorage, 10 year study of domestic violence, alcohol was identified in 48% of the cases and the injuries were severe when alcohol was a factor. (3)

## Household consumption influences underage drinking

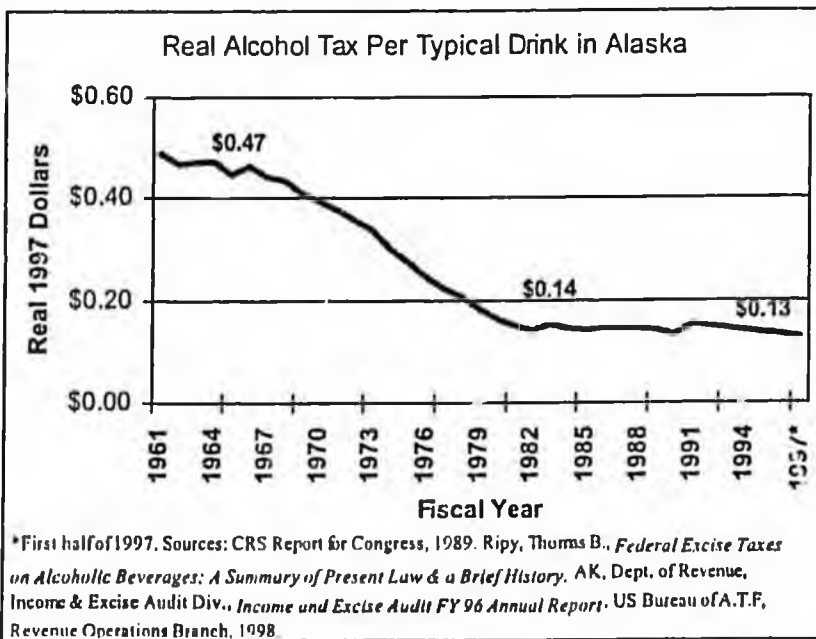
Anchorage residents consume more alcohol than the US average in terms of per household expenditure. About 1/2 of all Americans report that one or more of their close relatives have a drinking problem. (4) Alcohol dependence is hereditary and associated with early onset, <15 yrs., of drinking. The earlier a person begins drinking, the more likely they are to be injured while under the influence. (5) According to the Youth Risk Behavior Survey (YRBS), 1995, 51% of high school youth self-report as current users of alcohol and 1/3 are drinking to get drunk. The Alaska Department of Motor Vehicles (DMV) assessment of minor drivers,



Repeat juvenile drinking violations precede adult criminal behavior.

(April-July, 2000) reported an average blood alcohol content (BAC) of .157-percent, representing 1.5 times the adult legal limit to drink and drive, (.10 BAC). Alaska law requires zero-tolerance (.00 alcohol) for minor drivers yet Alaskan teens are 4 times more likely to cause fatal crashes when driving under the influence. When minor consuming goes unchecked, it often becomes drinking and driving as an adult. (DMV, 2000)

## Price influences community problems



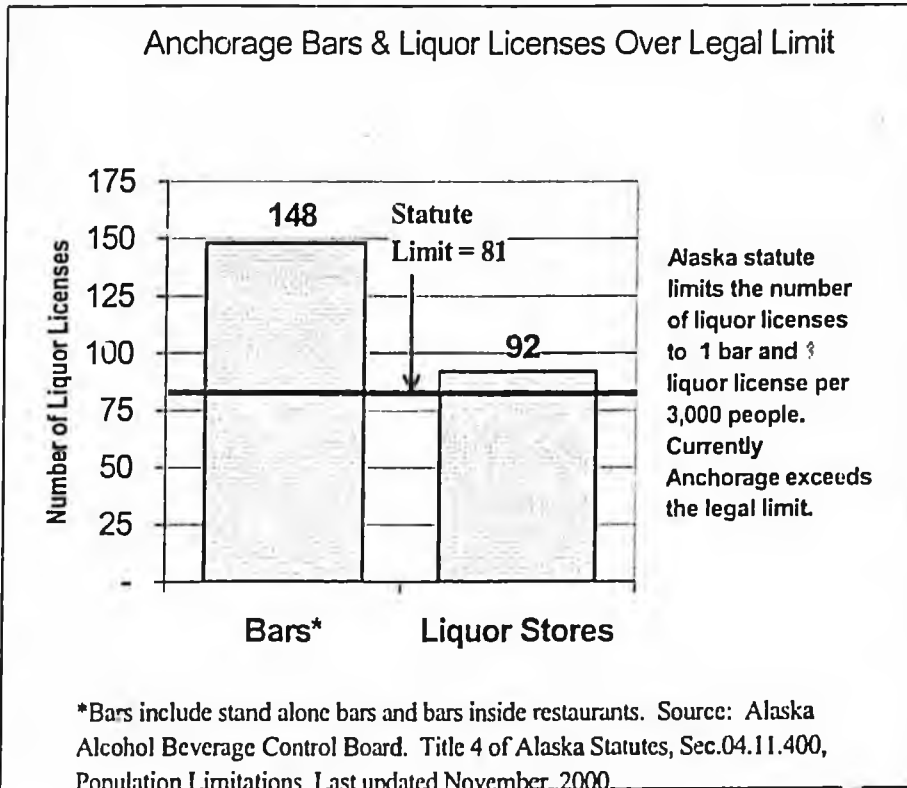
The real price of alcohol in Alaska has eroded 50-74% since 1968. (6) The legislature has not increased the excise tax in 18 years and the tax has never been adjusted for inflation. Alaskans who drink pay about 3 cents of state tax on a bottle of beer. As a result, taxes pay only 5% of the state costs for alcohol related services. In a local survey, 2/01 by Moore, 68% of people surveyed supported increased alcohol taxes. It has been reported that states with higher alcohol taxes have lower associated community problems. (8)

Alcohol does not pay its fair share of the cost for alcohol related problems.

## Number of liquor licenses influences public safety

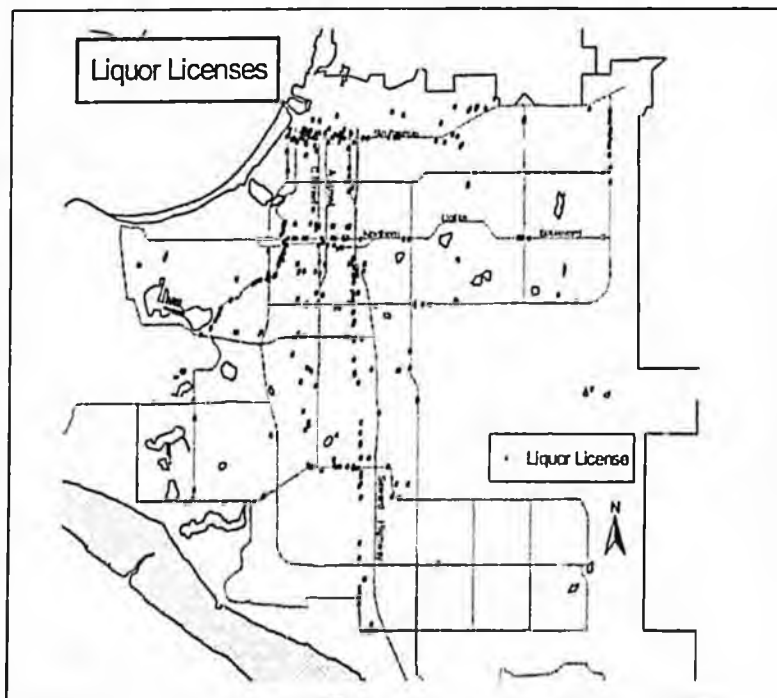
Controlling the availability of alcohol promotes public safety. Alaska law controls the number and

type of liquor licenses, restricts the hours of sale, sets licensing fees and controls the sale of alcohol through transfer and revocation of liquor licenses. State law limits the number of liquor license by population. Anchorage exceeds the legal limit by about 67 bars and 11 liquor stores licenses. These excess licenses have "grandfather rights" and are only eliminated when they are revoked for violations (selling to minors/intoxicated people) or voluntarily returned to the state of Alaska by the owner.



## Location of bars/liquor stores influences public safety

Anchorage land use laws control how, when and where alcohol is distributed. A Conditional Use Permit (CUP) is required to sell alcohol. The process considers the number of liquor outlets (density) in one area. Controlling for density protects against alcohol-related problems. (9) The Municipal Assembly has the power to approve, deny or revoke a CUP depending on whether the location for liquor sales is *compatible with surrounding uses; including proximity to childcare centers, recreation centers, schools, churches.* Other land use controls include regulating the hours of sale, prohibiting happy hours and limiting multiple drink sales to the same individual.



The number and location of alcohol outlets effect neighborhood safety.

## Recommendations for Alcohol Controls that Enhance Anchorage Health and Welfare

To provide public safety for community health, prevention strategies regarding alcohol control must be comprehensive and population-wide so that protections apply to everyone in the community and do not single out any one individual. Successful strategies include, but are not limited to:

- Pricing on alcohol (excise taxes, inflation-proofing, taxes based on percent of alcohol content)
- Strategies to reduce sales of alcohol to minors and alcohol-impaired people
- Reduce the % of blood alcohol to legally drive a motor vehicle from .10 to .08 BAC.

### Model Laws/Ordinances

To reduce the supply of alcohol to youth under age 21 years

- Limit on alcohol advertising and promotion that targets people under 21 years
- Restrict alcohol sales on public property (parks)
- Post warning signs at alcohol establishments: "Supplying alcohol to people under age 21 is a crime"
- License individuals who serve or sell alcohol

Source: University of Minnesota, Alcohol Epidemiology Program, 2000

### Alcohol Control Policy Timeline

1900: Alaska liquor license is created and required to sell alcohol, \$1,000 permit fee established.

1979: Alaska Local Option law; communities can prohibit the sale and importation of alcohol, restrict the types of licenses available, and restrict alcohol sales to community-owned liquor stores.

1983: Anchorage restricts hours of sale of alcohol from 20 hours per day to 16.

1983 (AK), 1991 (US): Small increases in alcohol excise taxes for beer, wine and spirits.

1984: Anchorage Municipal ordinance prohibits happy hours and limits multiple drink sales to the same individual.

1985: Alaska state law reduces the number of liquor licenses by population (from 1/1500 pop. to 1/3000 pop. for bar/liquor store licenses).

1985-87: (US) The Minimum Legal Drinking Age (MLDA) is raised nationwide from 18 to 21 years of age.

1986: Alaska state law is amended to allow communities to prohibit possession by the local option election.

### References

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2. State of Alaska, DHSS, Division of Public Health, Behavioral Risk Factor Survey, Anchorage Region data, 1998
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4. Alcoholism: Getting the Facts, NIH Publication, No. 96-4153, 12pp, 1996
5. Journal of American Medical Association, Vol. 284, No. 12, 9/27/2000, "Age of Drinking Onset & Unintentional Injury involving drinking"
6. Alcohol Epidemiology Program, University of Minnesota, 2000
7. 1999 Annual Report, State of Alaska, Advisory Board on Alcoholism & Drug Abuse, Alaska Dept. of Revenue, Fall, 2000
8. US Dept. of Health & Human Services, NIH NIAAA, 1997, 9th Special Report to the US Congress on Alcohol and Drug Abuse
9. University of Southern California Chronicle, 1995, "More Bars and Liquor Stores Equals More Violent Crime, Research Shows, Vol 14, No 29, April 24, 1995

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MOA/DHHS  
Community Health Promotion



# ADULTS DON'T GIVE TEENS ALCOHOL.... GET IT????

By Barbara Cooke © Chicago Tribune 2000

Mike and Molly throw the best keg parties in town. The beer flows as burly varsity football players collect car keys at the door. Teens mill around, shouting over the pounding music, hugging and "high-fiving" the couple. Mike and Molly are so popular they could have been voted Prom King and Queen.

The problem is Mike and Molly graduated high school 25 years ago, and this is their son's graduation party. And the family is planning a few more beer bashes during the summer.

"Some parents see drinking as a sign of an adulthood. 'Now that you're graduating, you're an adult.' But they're STILL under 21," stressed Richard Yoast, director of the American Medical Association's office of Alcohol and Other Drug Abuse. "Some parents seek the approval of their teens and want to be looked up to. It astounds me that they think that as long as they are serving the alcohol, they can control their kids and other kids' actions."

*"These parents think they should be nominated for 'Parents of the Year'. They regard themselves as enlightened crusaders for their teens. They walk the walk and talk the talk," explains Carleton Kendrick, Family Education Network family therapist. "They're so desperate to be considered cool by their kids that they believe the law doesn't apply to them. They think they're wiser and better than the parents who won't provide alcohol."*

When you add drinking to natural teenage curiosity and pleasure seeking, the results can range from lowered self esteem of a girl who had sex with several guys at a party, throwing up all over someone's carpet and saying something regrettable, to tragedies like diving into a shallow pond, fighting and injuring or killing someone, Kendrick notes. "These parents know that kids are going to drink but they've decided to be the responsible ones and supervise their drinking. Why not pass out condoms and foam and say, 'You're going to do this anyway so why not here? Go have some safe sex and have fun'."

Interestingly, the mixed messages that parents send when they "bargain" with teens and allow them to drink at home may be to blame for excessive teen drinking. A 1993 study of 15,000 students by the Minnesota-based Johnson Institute, which fights alcohol use at school and work, showed that permissiveness at home affects adolescent choices more than peer pressure. Many times this sends the message that fun revolves around a can of beer. The University of Michigan's Monitoring the Future most recent study reveals that 82 percent of 12<sup>th</sup> graders admitted drinking during the past year. But it comes as a shock to many parents that some parents feel they can be "buddies" with their teens if they let them drink.

George Lesmes, an Evanston resident and father of four teenagers, was amazed to discover that some parents serve kids. "Alcohol for teens is zero tolerance in our house. It's totally inappropriate. And our kids all know that they do not have our permission to drink at anyone's house."

His oldest son Tony, 19, a sophomore at University of Illinois, said, "I think parents who serve alcohol to their kids' friends have a real problem. Why would they want to have a bunch of drunk kids in their house? And what parent in their right mind would put their kids and other kids in the position to get into trouble?"

"It's pretty pathetic if parents rely on their teen's definition of fun. Of COURSE I liked to drink in high school and thought it was really cool when certain parents let us drink at their house," recounted Leslie Cornis, a data base account manager from Chicago. But now, at

age 28, an older wiser Cornis says, "I knew back then it was wrong. When I have kids I won't appreciate it when other parents serve alcohol."

Your teen may whine, "You're the ONLY parent who won't let their kids drink when they're seniors." But the Princeton, New Jersey-based Robert Wood Johnson Foundation commissioned a study in 1998 and found that 96 percent of Americans view underage drinking as a significant problem and support measures that would reduce teen drinking. The study also showed that 83 percent of respondents favored punishment of adult providers. "Underage drinking is a factor in nearly half of all teen automobile crashes. It also contributes to suicides, homicides and fatal injuries, and is a factor in sexual assaults and date rapes," Robert Wood Johnson vice president Nancy Kaufman stated.

The University of Minnesota's School of Public Health found that teens whose parents or friends' parents provided alcohol for parties were more likely to drink, get into traffic crashes, get involved in violence and participate in thefts. Mothers Against Drunk Driving surveys estimate that when parents "bargain" with their kids and let them drink as long as they promise not to drive, teens are more likely to drive after drinking or be in a car with someone who is drinking.

"Parent-sponsored drunkfests make it harder for the kids who don't drink and parents who won't let their kids drink. It's almost an inherent challenge that these parents lay down by saying, 'I'm sponsoring this because I think your teen is mature enough to drink responsibly.'" Kendrick asserted. "A teen who doesn't drink or whose parents say it's wrong thinks, 'What's wrong with me? Am I the only one who feels this way?'" But there is a huge difference between kids experimenting with alcohol and kids drinking with adult approval."

Debby Hutter, a Wilmette mother of four adolescents, agreed with Kendrick's assessment. "I feel like I would be ostracized if I said my daughters couldn't go to a prom or graduation party because there was drinking going on. My daughters say to me, 'Mom. You just don't get it.' But I don't get how parents—even if they take away the car keys—can justify serving 16, 17 and 18 year olds beer. Kids make bad choices, but what can you do when parents facilitate those choices? It's totally disgusting to watch these kids get drunk!"

"Some kids don't want to drink. They want an out and their parents provide a good excuse. If kids say 'Want some?' and they say, 'No, my parents will kill me,'" most kids say, "Ok, that's cool, there's more for me!" said Courtney Michna, 18, a New Trier High School senior. "But if parents are saying 'Go ahead, it's perfectly fine to drink,' then what out do they have?"

National Family Partnership spokesperson Milton Creagh reminds parents that too many drinks ingested either accidentally or intentionally can result in alcohol poisoning...which can result in death.

"Alcohol is a drug that numbs the brain. If too much is used, it paralyzes the nerve center in the brain and puts the brain to sleep. When the brain slows down, so does the respiratory system," said Creagh. "When the lungs and heart stop sending oxygen to the brain, breathing stops. Are you going to monitor every teen at your party to make sure there's no binge drinking going on?"

In fact, the Centers for Disease Control reports that 32 percent of high schoolers are binge-drinkers. Yet a poll conducted by the group Drug Strategies showed that only three percent of parents thought their teens had indulged in binge-drinking in the past month.

In 1997 a 16-year-old Orland Park girl won an \$80 bet by chugging a quart of 107-proof alcohol at a party. The Sandburg High School sophomore had been drinking with her best friend for six hours before they returned to her friend's house at 2 AM and fell asleep on the bed. They found her dead the next day. Her blood alcohol level was .381.

Louis Kraus, division head of child and adolescent psychiatry at Evanston Hospital, recalled parents defending their actions with, "They're going to college in a few months and they'll do what they want and I can't stop them, so why should I try now?" They forget

that 70 to 80 percent of first time sexual encounters occur when kids are under the influence. They're also less likely to use a condom, because their decision making is totally impaired. Just one night and they can carry away an infection that lasts a lifetime."

"Adolescent males get a few drinks in them and soon they drop every barrier to civilized behavior. The more drinks they consume, the quicker they degenerate into base instincts," asserted Jerry Elsnor, executive director of the Illinois State Crime Commission. "When you provide the beer, and those hormones are running wild, you have only yourself to blame!"

"Making it 'safe' for kids to drink is a complete contradiction of terms!" maintained Shepherd Smith, president of the Washington, DC-based Institute for Youth Development. "We have laws regulating use by age because of the lack of physical maturity and psychological maturity. We've learned that people under the age of 21 have dramatically impaired judgement."

Smith urged parents to rethink just what 'responsible drinking' is for someone under the age of 18. "Parents think THEY did it, so their kids can do it too. After all, parents don't want to say what they did as teens was all wrong."

What to do if you find out that your teen is going to a party where parents are serving alcohol? "You can say, 'You can't go', or you can call the parents and remind them in a non-confrontational way that neighbors often call the police and it's embarrassing and legally costly to parents when they are arrested. When police come to break up a party, everyone is arrested, even those who are not drinking," suggested Smith. "Some parents even call the police and ask them to call the parents and remind them what the consequences could be."

Creagh recounted a party two years ago where parents let their teenager have a drinking party. They collected the car keys and went upstairs. But there was a fight and one of the boys was stabbed to death. The fingerprints of another guest were on a knife and he was charged with murder, yet he never remembered stabbing the boy because he was so drunk.

"Adults who serve alcohol are playing economic Russian Roulette," Creagh maintained. "I say to them, 'If you can't dig deep and find the moral backbone to refuse to serve alcohol to your teenagers and their friends, then at least look at the legal ramifications that could cost you all your money. Maybe that will pound some sense into your head.'"

***"Parents are supposed to have arrived at maturity, while kids are supposed to be passing through adolescence on the way to adulthood. You can empathize, but you don't have to join your teen," Kendrick asserted. "They need you to point them in the right direction and keep them safe. You're supposed to give them wisdom, not a keg party in the basement."***

## It's The Law

What is the state of the law in the state of Illinois right now? Paul Froehlich, coordinator of the Operation Straight ID Program for the Illinois Secretary of State's office, explained that the Illinois Liquor Control Act of 1997 makes it illegal to sell or provide alcohol to anyone under the age of 21. Any person who does so is guilty of a Class A misdemeanor, which includes a fine of not less than \$500. Any city or town with home rule provisions can add to, but not lessen, the penalty. Many times this punishment is viewed as a slap on the wrist.

Parents must understand that, "if you host a party and provide alcohol, you're contributing to the delinquency of a minor. Unless the child is 21 years old, you can't authorize or allow him to drink," said Froehlich. "Any of your child's friends who drink at your house are your responsibility." A parent can be criminally prosecuted for providing alcohol to a minor. In other words, if an underage drinker breaks into someone's house, vandalizes property, rapes or kills someone, parents are criminally responsible if they provided them alcohol.

Illinois State Representative Tom Dart and State Senator Patrick J. O'Malley will cosponsor a Child Safety Act bill next session that allows civil suits against adults who serve alcohol illegally to adolescents younger than 18 year old. This "social ho liability" legislation is aimed at preventing teen drinking that results in death and serious bodily injury.

"Illinois law addresses penalties for taverns or liquor stores who sell alcohol to minors," O'Malley said. "Now we're telling adults who provide alcohol to kids under the age of 18 that they could face civil penalties and lawsuits if someone is in an accident or killed as a result of these kids drinking alcohol. It's contributing to the delinquency of a minor."

Richard Mallen, a Chicago attorney, said that civil cases were thrown out several years ago because there were no laws in the state of Illinois that held adults responsible for serving alcohol to a minor, so courts "invited legislators to make a change. The wording is 'knowingly'. Thirty states have civil liability laws now," Mallen explained. "Kids are kids. They think they can handle it, but they can't it. They are not mature enough. It's up to adults to guide them. It's lucky that more kids are not killed or hurt."

Carleton Kendrick, a Boston area family therapist, agreed that change rests in the lap of adults. "Legislation can not enforce the morality that is not present in a parent."