

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SL&C 12635

SJR

18

ALASKA STATE LEGISLATURE

Co-chair, Joint Armed Services
Committee

•
Senate Resources Committee

•
Senate Judiciary Committee

•
Senate Transportation Committee



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SENATOR BILL WIELECHOWSKI

SJR 18: Toxic Toys Sponsor Statement

Numerous recalls of children's toys and other products have filled the headlines in recent years. These recalls have also illuminated a weakness in consumer protection and child safety: the regulatory agency, the Consumer Product Safety Commission (CPSC) does not analyze toys or children's products for the presence of chemicals linked to harmful health and developmental impacts, like lead. SJR 18 requests the federal government to test of children's toys for these dangerous chemicals.

The CPSC conducts tests to determine if a toy presents a choking, aspiration or ingestion hazard but relies on toy and child product manufacturers to self-regulate the materials used (and thus toxicity levels) in their products.

Recalls are mostly voluntary and occur when a company alerts the agency of a problem. This past summer, millions of toys were recalled because of dangerous levels of lead paint. The only federal law applies only to lead in paint—it does not regulate it in other materials, making lead in vinyl (PVC) products (like teething rings and baby bibs) legal.

SJR 18 requests that the materials used in toys and other children's products be tested for toxicity and to make the results publicly available to protect children, the public, and workers who handle the products. Please join us in protecting our children's health.

**Testimony of Colleen Keane, Environmental Health Organizer, Alaska Community
Action on Toxics**

**For a Hearing of the Senate Labor and Commerce Committee
Concerning SJR 18—Child Product Safety**

March 25, 2008

I would like to begin by thanking Chairman Ellis and Members of the Committee for this opportunity to provide testimony on SJR 18. My name is Colleen Keane, Environmental Health Organizer with Alaska Community Action on Toxics (ACAT). ACAT is a statewide environmental health organization that conducts research and provides educational programs, technical assistance, and training. Alaska Community Action on Toxics urges your support of SJR 18, *"Requesting the President of the United States to direct the United States Consumer Product Safety Commission to test the materials used in children's toys and other children's products for toxicity and to make the results publicly available."* Alaska Community Action on Toxics supports this resolution.

SJR 18 is an important measure to protect the health of children. Recent research indicates that many toys and other children's products contain toxic chemicals such as lead and phthalates that have been shown to cause harm to children's health and the environment. Currently, the Centers for Disease Control and Prevention consider lead levels in the blood above 10 micrograms of lead per deciliter of blood to be a concern in children. However, Dr. Bruce P. Lanphear, Director of the Cincinnati Children's Environmental Health Center states: "Because there is no known safe level of lead exposure, exposure to lead below these existing standards should not be considered 'safe.'" Lead has been shown to impact brain development, causing the potential for learning and developmental problems including decreased IQ scores, shorter attention spans, and delayed learning. Levels of lead in children can also lead to hypertension, cognitive deficits, nerve problems and other problems in adults.

Phthalates are a group of industrial chemicals that are widely used to make plastics resilient and flexible, and are commonly found in children's products containing PVC plastic including teething rings, bibs, and other soft-plastic toys. In 2005, the CDC found that breakdown products of phthalates are extensively found in the U.S. population, with children ages 6 to 11 generally excreting higher levels of phthalate metabolites or breakdown products than any other age group. Exposure to phthalates has been linked altered male reproductive development in humans, altered reproductive hormone levels, lower sperm counts, reduced sperm motility, and damaged sperm. Studies have also shown concentrations of phthalates in house dust to be associated with asthma and rhinitis in children.

The staff, board, and members of Alaska Community Action on Toxics are concerned about the health effects associated with chemicals found in consumer products. We are especially concerned about exposures to children, as they are among the most susceptible groups in society. According to the Environmental Protection Agency, "Environmental contaminants can affect children quite differently than adults, both because children may

be more highly exposed to contaminants and because they may be more vulnerable to the toxic effects of contaminants." Recent research indicates that the developing child may suffer disproportionately from the health effects of contaminants due to: 1) heightened vulnerability during the growth and development processes; 2) greater exposure to toxics because children eat, drink, and breathe more in proportion to body weight than adults; 3) greater susceptibility to airborne health hazards than adults because children have higher activity levels and respiratory rates; and 4) frequent hand-to-mouth contact and close oral contact of products containing toxic chemicals.

Current regulation of toxic chemicals in children's toys and other products is inadequate. In order to protect children's health, it is vital to phase out potentially harmful chemicals in children's toys and other products intended for children. The federal Consumer Product Safety Commission does not have the legal authority to test children's products before sale to ensure that they are safe for children. Consumers have a right to know that the products they are purchasing are free of toxic chemicals, especially when safe and economical alternatives are available as is the current situation. To exemplify the issue of safe alternatives, I would like to highlight the case in Europe. In 1999, the European Union issued a temporary ban on the use of six phthalates in children's toys and products which was made permanent in 2005. Following the ban, the German chemical company BASF ended its European phthalate production which was formerly responsible for half of the phthalates produced in Europe and instead now produces an alternative plasticizer called DINCH. Though phthalates were banned from children's products at the time, European toy-industry sales grew by 5 percent between 2002 and 2004. Clearly, it is possible to make soft plastic toys without phthalates. Manufacturers also do not have to use toxic heavy metals such as lead, cadmium, and mercury which cause adverse health effects in children and adults at extremely low concentrations.

In summary, we urge you to pass SJR 18 in order to protect public health, particularly the health of one of the most vulnerable populations—children. Thank you.

NEWS from CPSC

U.S. Consumer Product Safety Commission

Office of Information and Public Affairs

Washington, DC 20207

FOR IMMEDIATE RELEASE
March 21, 2008
Release #08-229

Firm's Recall Hotline: (800) 326-7931
CPSC Recall Hotline: (800) 638-2772
CPSC Media Contact: (301) 504-7908

Hobby Lobby Stores Recalls Easter Egg Containers and Spinning Egg Tops Due to Violation of Lead Paint Standard

WASHINGTON, D.C. - The U.S. Consumer Product Safety Commission, in cooperation with the firm named below, today announced a voluntary recall of the following consumer product. Consumers should stop using recalled products immediately unless otherwise instructed.

Name of Product: Camouflage Eggs and Spinning Egg Top Toys

Units: About 13,000

Importer: Hobby Lobby Stores Inc., of Oklahoma City, Okla.

Hazard: The paint on the toys contains excessive levels of lead, violating the federal lead paint standard.

Incidents/Injuries: None reported.

Description:

The Camouflage Easter Egg Treat Containers have Item #1031 printed on the front of the packaging and are white, brown and green camouflage colors, sold in a package of eight eggs. "Made in China for Tony Development and Mfg Ltd; TST, Kin, HK" and UPC code number 43078 01031 are printed on the back of the packing.

The Easter Spinning Egg Tops have Item # 1054 printed on the front of the packaging and are multi-colored and come in packages of a single egg and a rip cord. "Made in China for Tony Development and Mfg Ltd. TST, Kin, HK" and UPC code number 43078 01054 are printed on the back of the packaging.

Sold at: Hobby Lobby Stores nationwide from January 2008 through March 2008. The camouflage egg sold for about \$2.50 and the Spinning Top sold for about \$2.

Manufactured in: China

Remedy: Consumers should immediately take the recalled Camouflage Eggs and the Spinning Egg Tops away from children and contact Hobby Lobby to receive a \$3 exchange card that can be used toward the purchase of any other products sold at Hobby Lobby stores.

Consumer Contact: For additional information, contact Hobby Lobby toll-free at (800) 326-7931 between 8 a.m. and 5 p.m. ET Monday through Friday or visit the firm's Web site at www.HobbyLobby.com



Send the link for this page to a friend! The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of serious injury or death from more than 15,000 types of consumer products under the agency's jurisdiction. Deaths, injuries and property damage from consumer product incidents cost the nation more than \$800 billion annually. The CPSC is committed to protecting consumers and families from products that pose a fire, electrical, chemical, or mechanical hazard. The CPSC's work to ensure the safety of consumer products - such as toys, cribs, power tools, cigarette lighters, and household chemicals - contributed significantly to the decline in the rate of deaths and injuries associated with consumer products over the past 30 years.

To report a dangerous product or a product-related injury, call CPSC's hotline at (800) 638-2772 or CPSC's teletypewriter at (800) 638-8270, or visit CPSC's web site at www.cpsc.gov/talk.html. To join a CPSC email subscription list, please go to <https://www.cpsc.gov/cpsclist.aspx>. Consumers can obtain this release and recall information at CPSC's Web site at www.cpsc.gov.

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**HTS - 9503: TOYS, INCLUDING RIDING TOYS OTHER THAN BICYCLES;
DOLLS, PUZZLES; REDUCED SCALE MODELS; PARTS AND
ACCESSORIES THEREOF
U.S. Imports For Consumption**

Country	2005	2006	2007	Percent Change 2006 - 2007
	<i>In 1,000 Dollars</i>			
China	7,298,871	7,328,765	9,239,273	26.1%
Mexico	126,436	113,137	263,215	132.7%
Denmark	113,690	129,009	162,470	25.9%
Taiwan	125,986	124,893	159,828	28.0%
Hong Kong	100,459	115,650	99,729	-13.8%
Indonesia	24,648	20,224	91,681	353.3%
Canada	81,640	66,456	66,812	0.5%
Thailand	68,692	86,744	64,853	-25.2%
Germany	48,107	45,758	53,575	17.1%
Malaysia	48,892	47,539	49,915	5.0%
Japan	43,162	39,089	43,745	11.9%
Vietnam	23,560	25,564	37,127	45.2%
Italy	24,448	19,116	35,836	87.7%
Czech Republic	14,825	16,628	20,125	21.0%
Korea	25,504	18,335	18,395	0.3%
Subtotal :	8,168,921	8,196,908	10,406,629	27.0%
All Other:	100,982	99,787	94,988	-4.8%
Total	8,269,902	8,296,695	10,501,617	26.6%

Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.

	2007 Recalls	
AAFES	Lead Paint	"Soldier Bear"
Dollar Tree Stores	Lead Paint	Children's Toys
Jo-Ann Fabric and Craft Stores	Lead Paint	Children's Water Globes
Far East Brokers	Lead Paint	Fishing Games Sold at Grocery Stores
Bell Racing	Lead Paint	Collectible Mini Racing Helmets
Marvel Toys	Risk of Lead Exposure	Curious George Plush Dolls
Schylling Associates	Lead Paint	Collectable Toy Robot
Schylling Associates	Lead Paint	Dizzy Ducks Music Box
Schylling Associates	Lead Paint	Spinning Top
Schylling Associates	Lead Paint	Duck Family Collectable Toy
Dollar General	Lead Paint	Toy Cars
International Sourcing Ltd.	Lead Paint	Toy Dragster and Funny Car
Henry Gordy International	Lead Paint	Toy Figures
Toys "R" Us	Lead Paint	Elite Operations Toys
SimplyFun	Risk of Lead Exposure	Rabbit Board Games
Jo-Ann Stores	Lead Paint	Children's Toy Garden Tools
Fisher Price	Lead Paint	Go Diego Go Boat Toys
J.C. Penney	Lead Paint	Disney™ Winnie-the-Pooh Play Sets
Kipp Brothers	Excessive Lead	Bendable Dinosaur Toys
Toys "R" Us	Lead Paint	Children's Decorating Sets
Eveready Battery Co.	Lead Paint	Toy Flashlights
Kids II	Lead Paint	Baby Einstein Color Blocks
KB Toys	Lead Paint	Wooden Toys
Guidecraft Inc.	Lead Paint	Children's Puppet Theaters
Jo-Ann Fabric and Craft Stores	Lead Paint	Children's Toy Rakes
RC2	Lead Paint	Knights of the Sword Toys
Target	Lead Paint	Chairs
RC2 Corp.	Lead Paint	Additional Thomas & Friends™ Wooden Railway Toys
Fisher-Price	Lead Paint	Bongo Band Toys
Fisher-Price	Lead Paint	Geo Trax Locomotive Toys
Mattel	Lead Paint	Barbie® Accessory Toys
Schylling Associates	Lead Paint	Thomas and Friends, Curious George and Other Spinning Tops and Tin Pails
Hampton Direct	Lead Exposure Risk	Magnetic Toy Train
Mattel	Violation of Lead Safety	"Sarge" Die Cast Toy Cars
Fisher-Price	Lead Poisoning Hazard	Licensed Character Toys
AAFES	Lead Poisoning Hazard	"Soldier Bear" Toy Sets
RC2 Corp.	Lead Poisoning Hazard	Various Thomas & Friends™ Wooden Railway Toys
Gemmy Industries Corp.	Chemical Hazard	Flashing Eyeball Toys
The Boyds Collection Ltd.	Lead Poisoning Hazard	Toy Drums
AAFES	Lead Poisoning Hazard	"Soldier Bear" Toy Sets
Target	Lead Poisoning Hazard	Anima Bamboo Collection Games
Regent Products Corp.	Lead Hazard	Stuffed Ball Toys
Toys "R" Us	Lead and Laceration Hazards	"Elite Operations" Toy Sets

Protect Children from Toxic Toys

Senate Joint Resolution Number 18

SJR 18 requests that the U.S. President requires that materials used in toys and other children's products be tested for toxicity and to make the results publicly available to protect children, the public, and workers who handle the products.

THE PROBLEM

Current federal safety regulations for children's toys and other products inadequately addresses the presence of chemicals linked to harmful health and developmental impacts of children. This past summer, millions of toys were recalled because of dangerous levels of lead paint, but lead has also been found in children's jewelry, vinyl baby bibs, and lunch boxes.

While many of the recalled toys were manufactured in China, the problem of toxic toys is not just lead from China. Many children's products such as toys, baby bottles, car safety seats, baby shampoos, and clothing contain toxic chemicals linked to health impacts such as reproductive problems, learning disabilities, hormone problem, and cancer.

BEYOND LEAD: THE CHEMICALS IN TOYS

While many chemicals compounds in toys may lead to health and environmental problems, here are the most common ones found in a December 2007 project:

Lead

- Lead is a heavy metal used in a variety of children's products.
- Scientists have found that there is no safe level of lead for children; even the smallest amount affects children's ability to learn.
- Lead impacts brain development, causing the potential for learning and developmental problems, including decreased IQ scores, shorter attention spans, and delayed learning.

Phthalates

- Phthalates are used in many plastics, especially PVC (vinyl) to make the plastic flexible.
- Exposure to phthalates is linked to birth defects of the genitals and altered levels of reproductive hormones in baby boys.

Cadmium

- Cadmium is a heavy metal that is found in a variety of children's products.
- Cadmium is associated with developmental effects, including possible decreases in birth weight, delayed sensory-motor development, hormonal effects, and altered behavior.

CURRENT LAWS ARE LACKING

The federal government rarely regulated commonly used synthetic chemicals in consumer products, even those intended for children, despite current scientific evidence of the hazards of many of these chemicals. For example:

- The only federal law on lead in toys is thirty years old and only applies to lead in paint—it does not regulate lead in other materials, making lead in vinyl (PVC) products (like teething rings and baby bibs), plastics, or jewelry legal—even though safer alternatives exist.
- The federal government doesn't require companies to tell consumers what is in their products or to label them so consumers can make their own decisions.
- The federal Consumer Product Safety Commission (CPSC) does not have the authority to ensure that toys are safe. The CPSC has no legal authority to test children's products before sale. Recalls are mostly voluntary and rarely happen unless a company alerts the agency of a problem.

WE CANNOT WAIT TO ACT

While there are thousands of toxic chemicals on the market and many are in products our children sleep on, put in their mouths, play with, and wear every day, there is no system to ensure that these products are safe. The same chemicals in these products end up as a waste problem in landfills and incinerators and a contamination problem throughout Alaska. We also know that some of these chemicals are building up in the food chain and in our own bodies. Alaska must urge the federal government to strengthen regulation of toys and products intended for children to protect public health.



Alaska Conservation Alliance

Uniting for Alaska's Future

March 14, 2008

The Honorable Senator Wielechowski
State Capitol
Juneau, Alaska 99801

Re: SJR 18 – Child Product Safety

Dear Senator Wielechowski,

On behalf of the Alaska Conservation Alliance (ACA), a consortium of 40 Alaska-based conservation groups, I would like to express our support for SJR 18, a resolution that would encourage the President of the United States and the Consumer Products Safety Commission (CPSC) to better test toys and products intended for use by children and make that information public.

Recent headlines have brought attention to the problem of lead and other chemicals present in common toys. On Wednesday of this week the CPSC issued a recall of X Force Commander Toy Airplanes and Super Famous Toy Cars and Motorcycles for containing excessive levels of lead in paint. Last year over half of the toy recalls were due to lead and chemical contamination. Children are particularly vulnerable to exposure to lead and other chemicals because their brain, central nervous system and other vital organs are still forming. For example, even low level exposure to lead can result in lower IQ, learning disabilities, behavioral problems, slowed growth and hearing problems.

Additionally, scientific research continues to point to increased contaminant levels in Alaska due to ocean currents and deposition patterns. Subsequently, Alaskan children are not only exposed to chemicals in their toys and products but also chemicals in their environmental surroundings.

This resolution urges greater research into the toys we give our children and dissemination of that information. This will allow Alaskan parents to make better-informed decisions about which products to give their children. SJR 18 is an important first step towards raising awareness about the chemicals present in our children's toys and giving all parents the information needed to make decisions about the health and safety of their children. ACA strongly encourages the Alaska Legislature to pass SJR 18.

Sincerely,

Kate Troll
Executive Director

CC: Senator Davis Senator Thomas Senator Cowdery
 Senator Elton Senator Dyson

Testimony of Colleen Keane, Environmental Health Organizer, Alaska Community Action on Toxics

**For a Hearing of the Senate Labor and Commerce Committee
Concerning SJR 18—Child Product Safety**

March 25, 2008

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be more highly exposed to contaminants and because they may be more vulnerable to the toxic effects of contaminants." Recent research indicates that the developing child may suffer disproportionately from the health effects of contaminants due to: 1) heightened vulnerability during the growth and development processes; 2) greater exposure to toxics because children eat, drink, and breathe more in proportion to body weight than adults; 3) greater susceptibility to airborne health hazards than adults because children have higher activity levels and respiratory rates; and 4) frequent hand-to-mouth contact and closure oral contact of products containing toxic chemicals.

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In summary, we urge you to pass SJR 18 in order to protect public health, particularly the health of one of the most vulnerable populations—children. Thank you.

HB

14

Alaska State Legislature
House of Representatives

Alaska State Capitol
Juneau, Alaska 99801-1182
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Representative Harry Crawford
District 21

SPONSOR STATEMENT: HOUSE BILL 14

Alaska has a problem with alcohol. Though we have some of the most punitive drunken driving laws in the nation, Alaskans continue to die in tragic accidents fueled by alcohol. In order to prevent these accidents from occurring, we need a new approach that keeps alcohol out of the hands of repeat offenders.

Repeat drunk drivers are often ordered not to consume alcohol as part of a sentence or as a condition of probation or parole. Currently there is no method by which a vendor of alcoholic beverages may determine whether an individual is under such restriction. House Bill 14 will require that the driver's license or state ID card of an individual court ordered not to drink be marked so that restaurants, bars and liquor stores are aware the individual is prohibited from consuming alcohol.

The bill does not require vendors to check the identification of every individual attempting to purchase alcohol; however, if a vendor catches a person with a marked license attempting to purchase alcohol, the vendor may pursue a \$1000 civil penalty. The civil penalty provides a hefty financial incentive for vendors to check for marked licenses and ensure customers are legally permitted to purchase alcohol.

This new approach will stop repeat offenders who are court ordered not to drink from purchasing alcohol and will save lives. In passing House Bill 14, we will keep Alaskan families safe by preventing tragic accidents from happening. I respectfully ask for your support.

LEGAL SERVICES

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

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


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 31, 2007

SUBJECT: Criminal Liability for ABC Licensees and HB 14
(Work Order No. 25-LS0095\E)

TO: Representative Harry Crawford

FROM: Gerald P. Luckhaupt
Legislative Counsel 

You have asked if HB 14 provides for criminal liability for a licensee, or their agents or employees, for selling alcohol to a person whose privilege to purchase alcohol is restricted under HB 14. The answer is no, unless the licensee, agent, or employee knows the person is unable to purchase alcohol and sells the alcohol to the person anyway. In that situation the licensee, agent, or employee could be liable as a principle under AS 11.61.110.

In considering what HB 14 does, you can compare these persons who have their privilege to purchase alcohol restricted to persons under 21 years of age who have no privilege to purchase alcohol. Those under 21 may not access licensed premises,¹ may not possess, control, or consume alcohol,² may not be furnished alcohol by other persons,³ and may not be furnished alcohol by licensees, agents, or employees.⁴ HB 14 provides one section, proposed AS 04.16.047, that states that a person whose privilege to purchase alcohol is restricted may not access licensed premises to obtain or consume alcohol. Nothing similar to AS 04.16.052 is provided and so, generally, there would be no liability for a licensee, agent, or employee that sells or serves a person whose privilege to purchase alcohol is restricted. As I previously noted though, a licensee, agent, or employee who has knowledge that a particular person has had their privilege to purchase alcohol restricted who assists that person in obtaining alcohol could be liable as a

¹ AS 04.16.049.

² AS 04.16.050.

³ AS 04.16.051 makes the other person criminally liable for furnishing or delivering to a minor.

⁴ AS 04.16.052 makes the licensee, agent, or employee criminally liable.

principle under the accomplice liability law in AS 11.16.110.⁵

GPL:ljw
07-040.ljw

⁵ Sec. 11.16.110. Legal accountability based upon the conduct of another. **A person is legally accountable for the conduct of another constituting an offense if**

(1) the person is made legally accountable by a provision of law defining the offense;

(2) **with intent to promote or facilitate the commission of the offense, the person**

(A) solicits the other to commit the offense; or

(B) **aids or abets the other in planning or committing the offense; or**

(3) acting with the culpable mental state that is sufficient for the commission of the offense, the person causes an innocent person or a person who lacks criminal responsibility to engage in the proscribed conduct.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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(907) 465-3867 or 465-2450
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Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 22, 2007

SUBJECT: HB 14 and Civil Liability of Licensees

TO: Representative Harry Crawford

FROM: Gerald P. Luckhaupt
Legislative Counsel 

You have asked if HB 14 imposes new liabilities for civil damages on alcoholic beverage licensees in the following areas:

1. The licensee fails to check the ID of a person whose privilege to purchase alcohol is restricted under AS 04.16.160;
2. The licensee checks the ID, discovers that the person is not eligible to purchase alcohol, but consciously chooses to sell the alcohol to the person anyway;
3. The licensee does not serve the person with the restricted privilege but another person supplies drinks to the person while on the licensed premises.

I do not see where there is any greater civil liability of a licensee to a person whose privilege to purchase alcohol is restricted under the bill or to a third person who might be injured by the actions of the person restricted under any of these scenarios.¹ AS 04.21.020 specifies the civil liability of a licensee or other person for providing alcohol to another person. Subsection (a) of that section provides that:

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

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

¹ Under the second scenario listed above, the conscious choice of a licensee to serve a person who is not eligible to purchase alcoholic beverages could subject the licensee to criminal liability as explained in my memorandum of January 31, 2007, and could potentially result in suspension or revocation of the license under AS 04.11.370.

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.

This provision does not waive the immunity traditionally provided to a server of alcohol under the scenarios you have provided. Two other exceptions are also provided in AS 04.21.020(b)² and (d)³ neither of which would apply here.

GPL:med
07-119.med

² (b) 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, while 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.

³ (d) A person who knowingly furnishes or delivers an alcoholic beverage to a person under 21 years of age in violation of AS 04.16.051 is civilly liable to the recipient or another person for civil damages if, while 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.

SUPPORTING MATERIAL

**Mark 'em and stop 'em
Bill targets repeat drunken drivers**

(Published: May 2, 2007)

House Bill 14 is making progress. By late this week, the full House may vote to approve the measure that would help keep the worst alcohol offenders from easy access to the bottle.

One strong point of Anchorage Rep. Harry Crawford's bill says liquor sellers could pursue civil penalties of up to \$1,000 against any person who tries to buy alcohol when a court order or parole restriction bans such purchases. An even stronger point of the bill, however, would require offenders to plunk down \$50 for a new driver's license or state ID card identifying them as someone banned from purchasing alcoholic beverages.

If a store clerk or bartender checks the no-alcohol ID, it's one less drink for someone with a history of one too many.

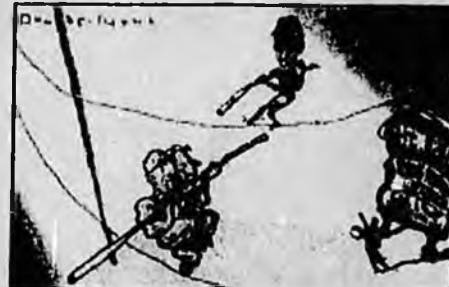
Yes, a better measure would be to require ID checks of everyone who comes into a store or bar to buy, never missing a marked drinker. This bill provides that authority to merchants, but does not require them to card every customer. There just isn't the political will at this time to make carding mandatory under state law -- though liquor stores and bars would be wise to play it smart and safe and just card everyone who asks for a drink.

Still, the bill is an improvement over current law. Repeat alcohol abusers will find it tougher to buy the fuel for drunken driving, domestic violence, assaults, rape and other violations. The bill fortifies enforcement by putting merchants more firmly on the side of the law and makes offenders responsible for the costs.

The House last year voted 33-5 in favor of a similar bill, but it died in the Senate. This year, the House is expected to once again vote overwhelmingly in favor of the measure, but again its Senate fate is uncertain.

Lawmakers have complex, far-reaching issues to settle: the governor's gas line bill, public employee retirement funding, ethics standards. With only 14 days to go, this legislation could get lost in the shuffle. That shouldn't happen. Alcohol abuse is one of Alaska's biggest issues, a curse that ruins lives and often takes them. House Bill 14 takes action against that abuse. The bill should become law.

BOTTOM LINE: House Bill 14 should pass to help protect Alaskans from the worst alcohol offenders.



(Peter Dunlap-Shohl)

Bonnie Craig

Problem drinkers

Legislature should pass law to block sales to repeat offenders

(Published: April 7, 2007)

A bill to mark the driver's licenses or state identification cards of repeat drunken-driving offenders is scheduled for a legislative hearing next Wednesday. House Judiciary Committee members should listen, give the bill a swift "do pass" and send it on to the Finance Committee.



(Peter Dunlap-Shohl)

Here's what House Bill 14, sponsored by Rep. Harry Crawford, would do:

- Require repeat drunken drivers to buy a driver's license or state ID card that would carry a mark and electronic tag telling sellers of alcoholic beverages that the bearer has lost the right to buy alcohol. Such licenses would be required only of those convicted offenders with court orders against the purchase or consumption of alcohol.
- Allow merchants to pursue civil damages up to \$1,000 from any person who tries to buy alcohol in violation of a court order.

The effect would be threefold.

First, the marked cards would send a strong, statewide message against drunken driving -- and against any alcohol abuse that fuels a range of crimes from shoplifting to sexual assault.

Second, offenders on probation or parole would carry a constant reminder of a condition of their freedom: If you cross the court or try to shrug off your debt to society, your parole or probation may be revoked.

Third, retailers would have more incentive to card buyers and keep alcohol out of the hands of those who have lost the privilege of purchase.

A better, more foolproof system would be to require mandatory carding of all buyers, but that is politically impossible in Alaska. Until that attitude changes, HB 14 would at least put retailers more squarely on the side of law enforcement and public safety, providing an extra incentive to say, "Not on my premises you don't."

The goal is to keep repeat offenders, those who have proven themselves too irresponsible to drink, from doing more damage. To keep them from killing people in car accidents, from battering partners, from endangering themselves and others.

Lawmakers already have plenty of work and less than six weeks left in the session, but this bill shouldn't require that much time. A similar measure passed the full House in 2006 -- by an overwhelming 33-5 majority -- before dying in the Senate. This year, lawmakers should finish the job and make Alaska a little safer.

BOTTOM LINE: Make it tougher for repeat offenders to buy the bottle and ruin lives.

As printed in the Anchorage Daily News February 22, 2007

Card mark

Weapon against alcohol abuse

Rep. Harry Crawford has a simple bill in the works to enforce court-ordered alcohol abstinence. House Bill 14 would require convicted offenders to pay for a special driver's license or state ID that would carry an identifying mark so that alcohol retailers would know the customer had lost what state law calls the "privilege to purchase."

The law also would allow sellers to seek \$1,000 in civil damages, in addition to attorney fees from cardholders who illegally try to buy alcohol on their premises. That would give bar and liquor store owners and managers the financial incentive to go after violators and help enforce the law.

There shouldn't be much heartburn about this.

Nanny-state fears are groundless. The bill takes aim at those offenders deemed by a court of law, after full due process, to be too irresponsible to consume alcohol, at least during their sentence or while on probation or parole. Reasons for such restrictions are all too familiar -- driving under the influence, domestic violence, public drunkenness.

Sellers wouldn't be required to card every person who walks through the door, but would have an incentive to card more often and to card anyone who raises suspicions. For their part, offenders would carry a reminder of their sentence and the need to stay on the straight and narrow.

The bill does not increase a liquor store or bar owner's liability beyond what the law already provides. The burdens of cost and accountability would fall squarely on offenders, where they belong.

Don't want to carry the offending card? Then don't offend. Don't drink and drive, or drink and assault, or drink and pass out in the middle of the street. As Rep. Crawford says, despite some of the toughest drunken-driving laws in the country, Alaska still has a serious alcohol problem. The Anchorage Democrat's bill is part of the solution. The Anchorage Cabaret, Hotel, Restaurant and Retailer's Association is part of the answer too -- the group backs the legislation. It is possible that shutting out problem drinkers could help business owners' insurance rates.

HB 14 will get its first hearing Friday in the House Labor and Commerce Committee, the first of three House committees with jurisdiction. Members should give it a close look, improve it as needed, then start it on its way to passage.

BOTTOM LINE: A marked card for alcohol abusers will take away their purchasing privileges and prevent more abuse.

Alcohol can be kept from offenders

COMPASS: POINTS OF VIEW FROM THE COMMUNITY

By REP. HARRY CRAWFORD AND BERNADETTE BRADLEY

(Published: February 9, 2007)

In the past decade, the Alaska Legislature has taken an aggressive approach to combat drunken driving by increasing fines and sentences. Despite some of the toughest laws in the nation, Alaskans continue to be injured or killed in accidents fueled by alcohol.

Many convicted of drunken driving go on to commit the crime again. Statistics show that a third of the people arrested for drunken driving are repeat offenders.

These repeat offenders are 40 percent more likely to be involved in a fatal crash. Alaska has increased punishment for repeat offenders, but those penalties only kick in after the crime has been committed and someone has possibly been injured or killed.

Repeat offenders are often ordered not to consume alcohol as part of a sentence or as a condition of probation or parole. Yet there is currently no way for restaurants, nightclubs, bars and liquor stores to know if an individual has been court-ordered not to drink. There is nothing to stop him from going to the store and buying alcohol.

HB 14 would change that. If a convicted drunken driver were court-ordered not to drink for a period of time, a mark would be placed on his or her driver's license or state ID card for the duration of the order. That mark would alert businesses that sell alcohol that the individual was prohibited from drinking. If a business caught a person with a marked license attempting to illegally purchase alcohol, then the business could pursue a \$1,000 penalty, similar to the penalty awarded if a minor is caught attempting to purchase illegally.

Some people confuse HB 14 with other, more controversial approaches. It isn't a mandatory ID law. The laws regarding which customers are required to show ID are not changed by this legislation. It doesn't mean your grandmother would have to start showing ID in order to buy a bottle of wine for Sunday dinner. Checking ID remains voluntary, but there is a \$1,000 incentive through the civil penalty for liquor licensees to make sure their customers aren't under court order not to drink.

HB 14 also doesn't require bars, restaurants or liquor stores to buy any special equipment, like electronic scanners for IDs. Some stores have started using scanning technology, but most have not. The mark on the license will be a physical display visible to the naked eye. The information will also be on the card electronically for those businesses that utilize scanning technology. But there won't be any added cost for doing business in Alaska.

This legislation is supported by the Anchorage Cabaret, Hotel and Restaurant Retailer association. Anchorage CHARR is a trade organization that represents local restaurants, hotels, bars, liquor stores and other hospitality-related businesses.

The 2007 strategic plan of Anchorage CHARR includes efforts to continue to reduce drunken-driving statistics. In May of 2005, Anchorage CHARR initiated the successful "Off the Road" program, which

provides customers with a free, safe way of getting home if they have had too much to drink. Anchorage CHARR encourages its members to help customers make the right choice, to drink responsibly and drive responsibly. HB 14 is a step in the right direction to deter future repeat offenders.

Too many Alaskan lives have been destroyed by drunken driving. It's a crime that affects the whole community. By trying new ways to stop problem drinkers from buying alcohol, we can prevent drunken-driving deaths and injuries from happening. Working together, we can lead the way to protecting Alaska families.

Rep. Harry Crawford is the sponsor of HB 14 and represents East Anchorage in the Alaska State Legislature. Bernadette Bradley is the owner of the Bradley House in Anchorage and the president of Anchorage CHARR.



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*Alaska Cabaret, Hotel,
Restaurant & Retailers Association*



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Toll Free In Alaska: (800) 478-2427

The Honorable Harry Crawford
Alaska State Legislature
House of Representatives
State Capitol, Room 400
Juneau, AK 99801-1182

January 23, 2007

Dear Representative Crawford,

I am writing you today on behalf of the Alaska Cabaret, Hotel, Restaurant and Retailer's Association, a non-profit member-based trade organization for Alaska's hospitality industry.

Alaska CHARR would like to share our support of House Bill 14, an Act relating to the purchase of alcoholic beverages and to access to licensed premises; relating to the civil liability for certain persons accessing licensed premises; requiring driver's licenses and identification cards to be marked if a person is restricted from consuming alcoholic beverages as a result of a conviction or condition of probation or parole and relating to fees for the marked license; and requiring the surrender and cancellation of driver's licenses under certain circumstances.

Alaska CHARR supports the intent of this bill, as a voluntary option for licensed premises to civilly prosecute those subject to the conditions of this bill.

We appreciate your commitment to understanding our industry's concerns, and the time you spend working with our industry to create a piece of legislation that can be effectively used to combat abuse of alcohol in Alaska.

Sincerely,

Dale Fox
President & CEO, Alaska CHARR

STATE OF ALASKA

Sarah Palin, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

*Advisory Board on Alcoholism and Drug Abuse
Alaska Mental Health Board*

*P.O. BOX 110608
JUNEAU, AK 99811-0608
PHONE: (907) 465-8920
FAX: 465-4410*

February 26, 2007

Testimony to House Labor & Commerce Committee

Re: HB 14

The Advisory Board on Alcoholism and Drug Abuse and the Alaska Mental Health Board strongly support HB 14.

HB 14 uses an **environmental strategy** of prevention that has been proven to reduce alcohol abuse and related problems.

An environmental strategy is one that uses public policy and community-level interventions to affect whole populations. While traditional prevention strategies are aimed at helping the individual resist the temptation to use alcohol through information and skill training, environmental strategies work by changing the overall community system that informs its members what society tolerates, and of what it disapproves.

Three common methods of environmental change that have worked with alcohol abuse are:

1. **Restrictions on retail sales or sellers:** restrictions on the number, location, or density of retail outlets or on the days and hours of sales;
2. **Price controls:** sales taxes, or bans on drink discounts such as "happy hour";
3. **Controls on advertising and promotion;**
4. **Purchase laws:** minimum legal drinking age for purchasing alcohol.

HB 14 would add a new prevention method in the area of purchase laws by making it more difficult for people legally barred from buying or consuming alcohol to purchase it.

The advantages of environmental strategies such as that provided by HB 14 include:

- **Broader reach.** The bill has the potential to generate larger effects than prevention aimed at individuals. The bill would produce widespread small changes in behavior that result in substantial net benefits to society in terms of reduced problems;
- **More substantial effects.** While individually focused prevention efforts such as education and skill-building produce some effects on knowledge and attitudes, many environmental strategies have been shown to substantially reduce consumption and use-related problems including traffic crashes, unintentional injuries, suicide and assaultive offenses;
- **More enduring effects.** Environmental approaches result in the creation of substantially changed system that offers few opportunities and inducements to use alcohol for both current and future generations;
- **Ease of maintenance and cost-effectiveness.** Environmental approaches have the benefits of being comparatively easy to maintain, and less costly than strategies directed at individuals.

We urge the committee pass HB 14 as an effective and responsible means to reduce alcohol abuse and its cost to the State of Alaska.

Heather Beaty

From: Tom McGrath [tommcgrath@gci.net]
Sent: Sunday, February 04, 2007 8:44 AM
To: Sen. Hollis French; Sen. Johnny Ellis; Rep. Kevin Meyer; Rep. Berta Gardner; Rep. Mike Doogan
Cc: Governor Sarah Palin; Rep. Harry Crawford
Subject: HB 14

Ladies and Gentlemen:

I encourage you to work very hard to pass HB14 this year. Continually we are faced with the consequences of Alcohol Abuse. Just last week a man in the Mat-Su Valley was apprehended operating a motor vehicle, intoxicated, with 6 prior D.U.I.'s. This bill will not solve all the problems but it will highlight the problem and make every one who consumes alcohol face the problem.

I feel there is nothing wrong with the responsible consumption of alcohol but we pay a very heavy price dealing with the misuse of alcohol. Law enforcement people will tell you that eighty per cent of the people in prison in Alaska are there with alcohol as a contributing factor. What is truly tragic is that thirty seven percent of prisoners in jail in Alaska are Alaska Natives while they only represent eight per cent of the population. Almost all are in jail with alcohol as a contributing factor.

O.C. Madden from Brown Jug first suggested this measure 6 years ago. Under his guidance, Brown Jug does a good job of trying not to sell to people who should not buy. With this law there would be a systematic approach to preventing abusers from buying alcohol in all Alcohol outlets in the State of Alaska. I don't think the problem will end here but it is one small step in the right direction.

I am a conservative person and I generally don't think Government should interfere with our lives. However, when the rights of one person causes significant harm to another the Government needs to step in. This is one of those times.

I encourage you to make HB14 a priority this year.

Tom McGrath
907-250-4302 Cell
907-562-8730 Office
907-563-0836 Fax
tommcgrath@gci.net

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No virus found in this outgoing message.

Checked by AVG Free Edition.

Version: 7.5.432 / Virus Database: 268.17.22/666 - Release Date: 2/3/2007 3:31 PM

2/5/2007

Heather Beaty

From: bonniel.jack [bonniel.jack@alaska.net]
Sent: Thursday, February 15, 2007 2:05 PM
To: Rep. Carl Gatto; Representative_Bob_Buch@legis.state.us; Rep. Kurt Olson; Rep. Berta Gardner; Representative_Jay@legis.state.ak.us; Rep. Mark Neuman; Rep. Gabrielle LeDoux
Cc: Rep. Harry Crawford
Subject: Support HB 14, Restrict Access to Alcohol

Members of Alaska State House, Labor & Commerce Committee --

I support the passage of House Bill 14, Restrict Access to Alcohol.

We all know that Alaska has a major alcohol and drunk problem. I drink so I have nothing against drinking if done in moderation. I believe the lack of moderation is what is wrong with the world in general.

I've heard the arguments against this bill based on the privacy of the individual but I believe that the purchase of alcohol is not a right but a privilege. If you are a "repeat drunk driver" then I believe you lost the privilege of purchasing alcohol and that right to privacy.

I'm a mother of two grown children and the grandmother of a 12 year old granddaughter and 8 year old grandson. When they misbehave they are punished. If they repeat the behavior, the punishment increases. Sometimes they do not get to go somewhere or do something that involves them having to tell their friends. Repeat drunk drivers should get no less. My grandchildren, even in their youth, do not make the same mistake very often, if at all. Hopefully, this bill will cause the one time drunk driver to not repeat his/her crime.

It really seems very simple to me.

B/

Jane Pierson

From: Emily Stancliff on behalf of Rep. Jay Ramras
Sent: Thursday, April 12, 2007 1:51 PM
To: Jane Pierson
Subject: FW: HB 14

-----Original Message-----

From: Larry Schrader [mailto:larry_schrader@ghscorp.org]
Sent: Thursday, April 12, 2007 1:24 PM
To: Rep. Jay Ramras
Subject: HB 14

Larry Schrader
5597 Aisek Street
Juneau, AK 99801-9522

April 12, 2007

The Honorable Jay Ramras
Alaska House of Representatives
State Capitol
Juneau, AK 99801-1182

Dear Representative Ramras:

I would like to offer my opinion on this topic as a professional who deals with individuals on a daily basis who are ordered by the court to abstain from alcohol. I'm currently the Field Case Manager for the Serious & Violent Offender Re-Entry Initiative (SVORI) at Gastineau Human Services Corporation (GHS) in Juneau, Alaska. Of the 22 members in the program that fall under my guidance, a vast majority of them committed their crimes while under the influence of alcohol and/or drugs. This bill would give concerned citizens one more way to monitor individuals who have no business drinking. The biggest problem I deal with on a daily basis is the lack of supervision for the offender. Our system has left our parole and probation officers over worked and under manned. More often than not, an offender can drink as long as they're not seen by a probation officer and have police contact. The new ID would give the general public that is unaware of the conditions of the individuals release a way to help keep the streets a little safer for everyone. I would like to leave the committee with one last stat. As an Alaska Department Of Corrections Victim Impact Class instructor I have come across many disturbing stats but one that truly sticks out is this one. Alcohol was a primary or contributing factor in 80 percent to 95 percent of all criminal offenses committed. This stat was published in May 2000 in the Final Report of the Alaska Criminal Justice Assessment Commission. Thank you for taking the time to read my thoughts on this matter.

Sincerely,

Larry D. Schrader
907-780-3028

This message has been verified by CapwizXC as authentic and sent by this individual.
Authentication ID: [jvngPKZ1]

Brenda Moore

2200 E 56th Avenue ♦ Anchorage, Ak 99507 ♦ 907-563-7576

February 22, 2007

To: House Labor & Commerce Committee
Re: HB 14

Representative Harry Crawford has introduced HB 14 "An Act relating to the purchase of alcoholic beverages and to requiring identification to buy alcoholic beverages; requiring driver's licenses and identification cards to be marked if a person is restricted from consuming alcoholic beverages as a result of a conviction or condition of probation or parole."

This is written in favor of HB 14. A number of years ago the daughter of a close friend was struck while driving her children to an activity. She was killed and one of her children was injured.

The driver of the car that struck and killed my friend's daughter was driving with a revoked license, while under the influence of alcohol. He had several previous convictions of driving while under the influence, which resulted in his license being revoked.

I feel my friend's daughter might be alive today if the driver that killed her had been required to prove his privilege to purchase alcohol.

I am a member of the Mental Health Board and which is also in support of HB 14. I ask that you support the passage of HB 14 as a measure to preserve lives.

Sincerely,

Brenda Moore
Christian Health Associates
Alaska Mental Health Board
Statewide Suicide Prevention Council

From: Anna Sappah [annasappah@hotmail.com]
Sent: Wednesday, April 11, 2007 9:53 PM
To: Rep. Jay Ramras
Subject: HB 14 will save lives

Anna Sappah
1711 Logan Street
Anchorage, AK 99508-3239

April 12, 2007

The Honorable Jay Ramras
Alaska House of Representatives
State Capitol
Juneau, AK 99801-1182

Dear Representative Ramras:

HB 14 will prevent repeat drunk driving accidents, injuries and fatalities, and will save the state of Alaska millions of dollars health care and criminal justice costs. It will also save business millions in lost productivity and insurance costs.

HB 14 will save lives. Please pass the bill and keep alcohol out of the hands of those who present a danger to the community.

Sincerely,

Anna Sappah
(907) 277-8796

This message has been verified by CapwizXC as authentic and sent by this individual. Authentication ID: [sgamDHR5]

From: Daniel Ungier [housing@unitedwayseak.org]
Sent: Wednesday, April 11, 2007 4:52 PM
To: Rep. Jay Ramras
Subject: Support HB 14

Daniel Ungier
PO Box 20249
Juneau, AK 99802-0249

April 11, 2007

The Honorable Jay Ramras
Alaska House of Representatives
State Capitol
Juneau, AK 99801-1182

Dear Representative Ramras:

Members of Juneau Homeless Coalition strongly support HB 14 for public safety reasons, for financial reasons, and because we believe it is also an effective strategy for long-term impact. The Coalition advocates for bills that make a lasting impact to the problem of substance abuse because we recognize that substance abuse is often a direct contributing factor to homelessness.

Furthermore, the cost of providing emergency services to homeless individuals who suffer from substance dependency is much higher to the public than the cost of services to address the problem directly. These emergency services cannot begin to make the same impact on breaking the cycle of poverty, substance abuse, and homelessness as much as direct efforts to address the problem. HB 14 will save the state millions of dollars in health care and criminal justice costs.

HB 14 is a successful strategy to help break the cycle of substance abuse rather than resorting to providing emergency services – and, in worst case but not uncommon scenarios, providing for homeless individuals with chronic alcohol problems. HB 14 helps keep alcohol out of the possession of those who are ordered not to drink. It cannot solve this problem, but it will make a major impact.

Finally, HB 14 will save lives. It will benefit not only potential offenders, but also the public safety of all Alaskans.

I urge your support for all of the reasons above.

Sincerely,

Daniel Ungier, Chair, Juneau Homeless Coalition 463-5530

This message has been verified by CapwizXC as authentic and sent by this individual. Authentication ID: [i2138XWJ]

**SECTIONAL ANALYSIS/
VERSION COMPARISONS**

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House of Representatives

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Representative Harry T. Crawford, Jr.

East Anchorage District 21

E-mail: [Representative Harry Crawford@legis.state.ak.us](mailto:Representative_Harry_Crawford@legis.state.ak.us)

Website www.akdemocrats.org

Changes in CS for HB 14 (JUD) version "V"

Section 4

Page 4, Lines 14-15

Fee for issuing a marked identification card

At the request of the DMV, the fee for issuing a marked identification card is set in statute at \$50.

Section 7

Add "identification card"

Adds "identification card" to the statutes requiring the courts and parole board to require a person ordered not to consume alcohol to surrender his or her driver's license.

Section 8

Page 6, Lines 7-9

Fee for issuing a marked driver's license

At the request of the DMV, the fee for issuing a marked identification card is set in statute at \$50.

Title amended accordingly to reflect the above described changes.

Alaska State Legislature
House of Representatives

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Representative Harry T. Crawford, Jr.
East Anchorage District 21
E-mail: Representative_Harry_Crawford@legis.state.ak.us
Website www.akdemocrats.org

Changes in C for HB 14 (L&C)

Section 1

Page 2, Lines 6-8: Insert 04.16.047 (c)

New subsection clarifies that liquor licensees are not required to physically check the identification of every person entering their premises.

Section 2 and Conforming Amendments

Remove "privilege to purchase"

Language establishing the purchase of alcohol as a privilege removed and replaced with "restriction on purchasing alcoholic beverages."

Section 3

Page 3, Lines 11-12: Following "may" inserted "but has no duty or obligation to"

Clarifies that checking the identification of every person to see if it is marked is not mandatory.

Page 3, Line 16: Following "shall" inserted "be"

Correction to typographical error.

New Section 9 and Conforming Title Amendment:

Creates effective date of January 1, 2008. This provides sufficient time for the court system to develop a standardized form for reporting court orders to the DMV.

LEGAL SERVICES

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

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MEMORANDUM

January 17, 2007

SUBJECT: Sectional Summary - HB 14 (Work Order No. 25-LS0095E)

TO: Representative Harry Crawford

FROM: Gerald P. Luckhaupt
Legislative Counsel 

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 amends AS 04 by adding a new section that provides that a person who is not privileged to purchase alcohol may not enter or remain on licensed premises; provides a civil remedy for licensees against persons who violate this section.

Section 2 amends AS 04 by adding a new section that provides that the purchasing of alcoholic beverages by a person of legal age is a privilege that can be revoked for conviction of certain crimes or as a condition of probation or parole.

Section 3 provides an amendment to conform AS 04.21.050 to the change made in section 2.

Section 4 amends AS 18.65.310, relating to identification cards, to require that identification cards be marked if a person's privilege to purchase alcohol is restricted.

Section 5 amends AS 28.15.11(a) by requiring that drivers' licenses be designed to allow the license to be electronically read so as to display whether a person is privileged to purchase alcoholic beverages under AS 04.16.160.

Section 6 amends AS 28.15.161(a) to require the department of administration to cancel a driver's license when the licensee's privilege to purchase alcohol is restricted.

Section 7 amends AS 28.15.191 by requiring courts and the board of parole to notify the department of administration when a person's privilege to purchase alcohol is restricted.

Section 8 authorizes the department of administration to charge a fee for issuance of a new driver's license to a person when the privilege to purchase alcohol is restricted.

GPL:ljw
07-017.ljw

HB

34

ALASKA STATE LEGISLATURE



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Representative Gabrielle LeDoux

Sponsor Statement for House Bill No. 34 "An Act relating to sales of wine by a winery licensee."

Wine production in Alaska has only begun to develop. Wineries in Alaska are "mom and pop" businesses. Under current state law, none of these wineries can sell or ship a bottle of wine to a customer within the state unless the customer is on the premises. Currently, out-of-state wineries can ship their product into the state of Alaska. This bill evens the playing field for small wineries in Alaska by enabling them to participate in direct sales to a niche market.

This bill will allow the holder of a winery license to ship less than five gallons of wine to an individual provided that the shipping address is not located in an area that has not prohibited or limited the importation or possession of alcoholic beverages. According to the Alaska Department of Revenue, in FY 2005 there were six wineries that produced approximately 1,900 gallons of wine and contributed approximately \$4,750 in taxes.

Alaskan wine is a value-added premium product, which is well suited to internet and phone sales. The intent is for small, local winery operations to take advantage of a very specialized market.

Legislative Research Report

LEGISLATIVE RESEARCH REPORT

MARCH 8, 2007



REPORT NUMBER 07.151

WINE PRODUCTION IN ALASKA

PREPARED FOR REPRESENTATIVE GABRIELLE LEDOUX

BY ROGER WITHINGTON, LEGISLATIVE ANALYST

You asked for information regarding wineries in Alaska. Specifically, you wished to know the number of wineries operating in Alaska, and an estimate of the number of gallons produced and sold by each business.

According to Johanna Bales, Revenue Audit Supervisor with the Tax Division of the Alaska Department of Revenue, eight wineries produced approximately 4,633.2 gallons of wine in Alaska during FY 2006.¹ Table 1 provides a list of these wineries.

Based on the Alcoholic Beverage Tax set forth in AS 43.60, Alaska wineries contributed approximately \$11,583 in taxes in FY2006. Alaska Statute 43.05.230, Disclosure of Tax Returns and Reports, prevents Ms. Bales from providing us with production and sales figures specific to each producer.

¹ Johanna Bales, Revenue Audit Supervisor with the Alaska Department of Revenue, Tax Division, can be reached at 907-269-6628.

Table 1: Alaska Wineries, FY2006	
Operation Name	Location
Denali Winery – U-Brew Wineries Inc	Anchorage
Turnagain Vines, LLC	Anchorage
Kodiak Island Winery	Chiniak
Great Land Wines Ltd	Haines
Alaska Meads, LLC	Homer
Bear Creek Winery, LLC	Homer
Alaska Wilderness Wines	Kodiak
Valley Winery LLC	Wasilla
Notes:	The businesses listed above were licensed with the Alaska Department of Revenue (DOR) during FY2006. Business are not required to be licensed with the DOR until they actually produce and sell alcohol. As a result, there may be more, or fewer, wineries operating today.
Source:	Johanna Bales, Revenue Audit Supervisor with the Alaska Department of Revenue, Tax Division, 907-269-6628.

Attached, please find an excerpt from the Alaska Department of Revenue, Tax Division's *FY 2006 Annual Report* that provides summary information on Alaska's Alcoholic Beverage Tax.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

**Alcoholic Beverages Tax
AS 43.60**

50¢ per gallon. At the same time, the rate for wine increased to 15¢ per gallon.

Description

Alaska levies a tax on alcoholic beverages sold in Alaska. The tax is collected primarily from wholesalers and distributors of alcoholic beverages.

Since 1937, the legislature has made minor changes to the alcoholic beverage tax statutes. In addition, between 1937 and 1983, the legislature increased Alaska's tax rates to correspond with rate changes made by other states.

Rates

Product	Rate Per Gallon
Liquor (more than 21% alcohol)	\$12.80
Wine (21% alcohol or less)	\$2.50
Beer (Malt Beverages and Cider)	\$1.07
Beer (Small Breweries)	\$0.35

2002 – The legislature significantly increased the tax rates on all three alcoholic beverages effective October 1, 2002. However, this legislation allows breweries meeting the qualifications of 26 U.S.C. 5051(a)(2) (small breweries) to pay tax at the lower rate of 35 cents per gallon on the first 60,000 barrels of beer (malt beverages) sold in Alaska. At the same time, the legislature created the Alcohol and Other Drug Abuse Treatment and Prevention Fund and directed that 50 percent of the alcoholic beverage tax be deposited into this fund for alcohol and drug abuse treatment programs.

Returns

Taxpayers file returns and pay tax monthly. The returns and payment are due by the last day of the month following the month of sale.

Between 1937 and 2002, alcoholic beverage tax rates have changed as follows.

Exemptions

Sales to facilities operated by one of the uniformed services of the United States are exempt.

Disposition of Revenue

The division deposits all alcoholic beverage tax revenue into the General Fund. The Department of Administration separately accounts for 50 percent of the tax collected and deposits it into the Alcohol and Other Drug Abuse Treatment and Prevention Fund.

Liquor	Per Gallon
1937	\$.50
1941	\$ 1.00
1945	\$ 1.60
1946	\$ 2.00
1947	\$ 3.00
1957	\$ 3.50
1961	\$ 4.00
1983	\$ 5.60
2002	\$ 12.80

History

The alcoholic beverage tax dates back to 1933 when the Legislature enacted a tax on beer and wine at a rate of 5¢ per gallon. Taxpayers filed alcoholic beverage tax returns monthly.

In 1937, the territorial legislature enacted a tax on liquor at a rate of

Fifty percent of taxes on alcoholic beverages is available to fund alcohol and drug abuse treatment programs.

Wine	Per Gallon	Beer (Malt Beverages)	Per Gallon
1933	\$.05	1933	\$.05
1937	\$.15	1947	\$.10
1947	\$.25	1957	\$.25
1957	\$.50	1983	\$.35
1961	\$.60	2002	\$ 1.07
1983	\$.85		
2002	\$ 2.50		
		Beer (Small Breweries)	Per Gallon
		2002	\$.35

FY 2006 Statistics

Product	Gallons	Tax Collected
Liquor	1,300,178	\$16,642,283
Beer, Malt Beverage & Cider	12,294,881	13,155,523
Wine	1,846,617	4,616,542
Beer, Small Brewery	2,314,514	810,080
Penalties, Interest and Refunds		<u>648</u>
Total Tax Collected		\$35,255,076
Transferred to Alcohol and Other Drug Abuse Treatment and Prevention Fund		<u>(17,612,538)</u>
Total Tax Collections – General Fund		<u>\$17,612,538</u>
Number of Returns		333
Number of Taxpayers		32
Program Cost		\$135,519
Staffing (full-time equivalent)		3.0

Federal Trade Commission

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580



Office of Policy Planning
Bureau of Competition
Bureau of Consumer Protection
Bureau of Economics
Northeast Regional Office

March 29, 2004

William Magee
Chairman, Assembly Agriculture Committee
Legislative Office Bldg, Room 641
Albany, NY 12248

John R. Kuhl, Jr.
Chairman, Senate Committee on Transportation
Legislative Office Bldg, Room 310
Albany, NY 12247

Dean G. Skelos
Deputy Majority Leader, Senate
503 State Capitol Bldg
Albany, NY 12247

Re: Assembly bill 9560-A, Senate bills 6060-A and 1192

Dear Chairmen Magee and Kuhl, and Deputy Majority Leader Skelos:

The staffs of the Federal Trade Commission's Office of Policy Planning, Bureau of Competition, Bureau of Consumer Protection, Bureau of Economics, and Northeast Regional Office are pleased to respond to your requests for comments on New York Assembly bill 9560-A, and Senate bills 6060-A and 1192. These bills would allow out-of-state vendors to ship wine directly to New York consumers if the vendors comply with certain regulatory requirements, such as labeling delivery packages and reporting sales to state authorities. In letters dated February 10 and 25, 2004, you asked us to examine the bills, and specifically to discuss the information regarding "the opponents' arguments related to sales to minors and harm to the three-tier system, as well as the proponents' arguments regarding the positive impact for consumers and state revenues."¹ You also referenced pending litigation.²

¹ This letter expresses the views of the FTC's Office of Policy Planning, Bureau of Competition, Bureau of Consumer Protection, Bureau of Economics, and Northeast Regional Office. The letter does not necessarily represent the views of the Commission or of any individual Commissioner. The Commission has, however, voted to authorize us to submit these comments.

² See *Swedenburg v. Kelly*, 358 F.3d 223 (2d Cir. 2004) (upholding New York's direct shipping regulations).

We believe that, if enacted, all three bills would enhance consumer welfare and allow New York to meet its other public policy goals. By allowing interstate direct shipping, the bills could allow New York residents to purchase a greater variety of wines at lower prices. Senate bill 1192 would provide the greatest benefits by allowing both out-of-state wineries and retailers to obtain out-of-state shipper's licenses. In addition, by requiring vendors and common carriers to comply with various regulatory requirements, similar to those adopted in other states, all three bills would allow New York to limit shipments to minors and to collect taxes on out-of-state shipments. Finally, the bills would remove one of the largest barriers to greater e-commerce in the wine industry. We base our analysis on a recent FTC staff report that extensively analyzed the direct shipping issue, and on the Commission's testimony at a recent congressional hearing (copies of both attached). A summary of our analysis is below:

- **Variety.** Direct shipping allows consumers to purchase many wines that are not available in nearby bricks-and-mortar stores. An FTC staff study found that 15% of a sample of popular wines available online were not available from retail wine stores within ten miles of McLean, Virginia. Direct shipping also gives consumers easier access to thousands of labels from smaller wineries.
- **Prices.** Depending on the wine's price, the quantity purchased, and the method of delivery, consumers can save money by having wine shipped directly to them. Because shipping costs do not vary with the wine's price, consumers can save more money on more expensive wines, while less expensive wines may be cheaper in bricks-and-mortar stores. The FTC staff study suggests that, if consumers use the least expensive shipping method, they could save an average of 8-13% on wines costing more than \$20 per bottle, and an average of 20-21% on wines costing more than \$40 per bottle.
- **Sales to minors.** The states that permit interstate direct shipping generally report few or no problems with shipments to minors. These states have generally adopted less restrictive means of regulating interstate direct shipments, such as requiring that package delivery companies obtain an adult signature at the time of delivery. The pending bills contain these same types of safeguards.
- **Taxes.** Several states collect taxes on interstate direct shipments. States such as New Hampshire have sought to achieve voluntary compliance through less restrictive means, such as by requiring out-of-state suppliers to obtain permits. Most of these states report few or no problems with tax collection.
- **E-commerce.** State bans on interstate direct shipping represent the single largest regulatory barrier to expanded e-commerce in wine. Approximately half the states prohibit or severely restrict out-of-state suppliers from shipping wine directly to consumers. Many of these same states, however, allow intrastate direct shipping, such as from in-state wineries and retailers.

For these reasons, we believe that, if enacted, the bills would enhance consumer welfare and allow New York to meet its other public policy goals.

Interest and Experience of the Federal Trade Commission

The FTC is charged by statute with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.³ Under this statutory mandate, the Commission seeks to identify business practices and regulations that impede competition without offering countervailing benefits to consumers. In particular, Commission staff have often assessed the competitive impact of regulations involving alcohol distribution. For example, the staff has analyzed franchise laws that grant wholesalers preferential contract rights. In Illinois, the staff examined a bill that would have prevented suppliers from terminating contracts with wholesalers except for good cause, and suggested that the bill would harm consumers by limiting suppliers' flexibility in changing distributors.⁴ In North Carolina, the staff noted that a bill that would have tightened exclusive territorial arrangements between wineries and wholesalers would likely diminish consumer welfare.⁵ Another type of state regulation deters wholesalers from cutting prices. In Massachusetts, FTC staff discussed the consumer benefits of a proposal that would have repealed regulations requiring wholesalers to post prices on a monthly basis and to adhere to those posted prices for an entire month.⁶

FTC staff have also studied the direct shipping issue. In October 2002, the Commission held a workshop to evaluate possible anticompetitive barriers to e-commerce in wine and many other industries.⁷ At the workshop, FTC staff heard testimony from all sides of the wine issue, including wineries, wholesalers, and state regulators. The staff also gathered evidence from package delivery companies, the Alcohol and Tobacco Tax and Trade Bureau ("TTB"), and regulators in states that allow direct shipping. Finally, FTC staff conducted the first empirical study of a wine market in a state that banned interstate direct shipping. The study examined the wine market in McLean, Virginia ("McLean study"), and compared the prices and choices that consumers could find in area stores to those available online. The authors chose McLean as a relevant retail area because the socio-economic status of many residents in McLean (and northern Virginia, generally) made it likely that several local bricks-and-mortar outlets would

³ Federal Trade Commission Act, 15 U.S.C. § 45.

⁴ FTC Staff Letter to Illinois Sen. Dan Cronin (Mar. 31, 1999), at <http://www.ftc.gov/be/v990005.htm>.

⁵ FTC Staff Letter to North Carolina Sen. Horton and Rep. Miller (Mar. 22, 1999), at <http://www.ftc.gov/be/v990003.htm>.

⁶ FTC Staff Statement to the Commonwealth of Massachusetts Alcoholic Beverages Control Commission (June 26, 1996), at <http://www.ftc.gov/be/v960012.htm>.

⁷ Public Workshop: Possible Anticompetitive Efforts to Restrict Competition on the Internet, 67 Fed. Reg. 48,472 (2002). The workshop's homepage is at <http://www.ftc.gov/opp/e-commerce/anticompetitive/index.htm>, its transcript is at <http://www.ftc.gov/opp/e-commerce/anticompetitive/021008antitrans.pdf>, and all of the panelists' written statements are at <http://www.ftc.gov/opp/e-commerce/anticompetitive/agenda.htm>.

cater to sophisticated wine drinkers.⁸ In July 2003 FTC staff issued a comprehensive report on the direct shipping issue ("Wine Report"),⁹ and in October 2003, the Commission testified at a related congressional hearing.¹⁰

Analysis of Pending Bills

All three bills would allow out-of-state vendors to ship wine directly to New York residents if those vendors satisfy certain regulatory requirements. Under Senate bill 1192, both out-of-state manufacturers and retailers could obtain an out-of-state shipper's license if those vendors hold a license to sell or manufacture wine in another state, and if that other state affords New York's vendors reciprocal treatment. To obtain an out-of-state shipper's license, vendors must pay an annual fee of \$125 and present New York's state liquor authority with a copy of a current license from the other state. A license allows vendors to ship wine directly to New York residents who are 21 years or older.

Senate bill 1192 imposes several requirements on out-of-state shippers. In sending the wine, the shipper must ensure that the delivery package has a conspicuous label noting that the package contains alcohol and requires an adult signature for delivery, and the shipper must require common carriers to obtain an adult signature at the time of delivery. In addition, the shipper must provide the state liquor authority with annual reports that include, among other information, the total volume of shipments into New York and the purchaser's name and birth date. The shipper must pay all state and local sales and excise taxes, keep records for three years, and consent to New York's jurisdiction for enforcement purposes. Finally, the bill gives the state liquor authority the power to suspend or revoke an out-of-state shipper's license.

Assembly bill 9560-A and Senate bill 6060-A have similar provisions, with a few important exceptions. These bills would allow only out-of-state wineries, not retailers, to obtain out-of-state shipper's licenses, and in addition to a license, an out-of-state winery would have to obtain a "certificate of authority" and a "registration as a distributor." The bills also cap wine shipments at two cases per month to any New York resident. Finally, the bills directly require common carriers to verify the age of recipients.

⁸ See Wine Report at 18 n.81. It is likely that, in larger markets, bricks-and-mortar retailers may offer somewhat more choices, and that in smaller markets, bricks-and-mortar retailers may offer somewhat fewer choices.

⁹ FTC Staff Report, *Possible Anticompetitive Barriers to E-Commerce: Wine* (July 2003), at <http://www.ftc.gov/os/2003/07/winereport2.pdf>.

¹⁰ See Prepared Statement of the FTC Concerning "E-Commerce: The Case of Online Wine Sales and Direct Shipment," Before the Subcommittee on Commerce, Trade, and Consumer Protection of the Committee on Energy and Commerce, United States House of Representatives (October 30, 2003), at <http://www.ftc.gov/os/2003/10/031030ecommercewine.htm>.

I. The Bills Would Allow Consumers to Purchase a Greater Variety of Wines

The bills would substantially increase the variety of wines available to consumers. Through direct shipping, and particularly through the Internet, consumers can conveniently purchase many wines that are not available in nearby bricks-and-mortar stores. The Internet effectively expands the geographic market by allowing online vendors to compete nationally. An individual online store may feature more products than many bricks-and-mortar retail locations. More importantly, the total number of varieties available online may surpass the total number available in bricks-and-mortar stores that are within a reasonable distance of a particular consumer. As a result, direct shipping can give consumers convenient access to many more wines, including popular labels. Using the *Wine and Spirits* list of the top 50 most popular wines in America, the McLean study found that 15% of the wines available online were not available from retail wine stores within ten miles of McLean. For the bottles that were unavailable in the McLean vicinity, 8 out of 15 came from among the 20 most popular bottles.¹¹ In addition to popular wines, direct shipping also gives consumers access to thousands of smaller labels from around the country.

Bricks-and-mortar retailers may not have the demand or shelf-space to justify keeping a large variety of wines in stock. According to a trade association, domestic wineries produce approximately 25,000 wine labels, and even in a large market like Illinois, only slightly more than 500 of these labels are available through the three-tier system.¹² Moreover, smaller wineries may be unable to distribute their wines through the three-tier system. One court found that Florida's interstate direct shipping ban "has the practical effect of preventing many small wineries from selling their wine in Florida. This result occurs because it is not cost-effective for the smaller out-of-state wineries to acquire a Florida wholesaler."¹³ Another court found that the three-tier system "may lock most [out-of-state producers] out of any access to Texas markets, even if they are willing to take on the additional costs. Such discrimination is especially felt by small, family-run wineries with limited production."¹⁴

Consumers are likely to value having a variety of wines from which to choose. One wine magazine, for example, reviews over 10,000 different wines annually. Similarly, an economist

¹¹ See Wine Report, App. A. The FTC's Bureau of Economics contributed to the Wine Report, and the McLean study, which is attached to the report, has been published as Alan E. Wiseman and Jerry Ellig, *How Many Bottles Make a Case Against Prohibition?* (Bureau of Economics, Federal Trade Commission, Working Paper No. 258, March 2003).

¹² See Wine Report at 24.

¹³ *Bainbridge v. Bush*, 148 F.Supp.2d 1306, 1311 n.7 (M.D. Fla. 2001), *vacated on other grounds*, *Bainbridge v. Turner*, 311 F.3d 1104 (11th Cir. 2002).

¹⁴ *Dickerson v. Bailey*, 212 F.Supp.2d 673, 694-95 (S.D. Tex. 2002), *aff'd*, 336 F.3d 388 (5th Cir. 2003).

testified that "the value to consumers of direct wine shipments com[es] primarily from access to wines that are not available in their communities."¹⁵

II. The Bills Could Allow Consumers to Purchase Wine at Lower Prices

Depending on the wine's price, the quantity purchased, and the method of delivery, consumers can save money by purchasing wine online. Because shipping costs do not vary with the wine's price, consumers can save more money on more expensive wines, while less expensive wines may be cheaper in bricks-and-mortar stores. The McLean study suggests that, if consumers use the least expensive shipping method, they could save an average of 8-13% on wines costing more than \$20 per bottle and an average of 20-21% on wines costing more than \$40 per bottle. In addition, direct shipping lets consumers avoid the "cost" of spending time to travel to a bricks-and-mortar store.¹⁶

Moreover, even if consumers choose to buy wine from a bricks-and-mortar retailer, direct shipping still encourages price competition between online and offline sources. In states that allow direct shipping, the Internet allows wineries and other merchants across the nation to compete with local bricks-and-mortar retailers. The Internet helps consumers comparison shop and lets suppliers compete in geographic markets that otherwise may be closed to them, perhaps due to the three-tier system or franchise laws.¹⁷ This competition likely forces down prices. One court found that the ban on interstate direct shipping constituted "economic protectionism, negatively impacting Texas consumers because of more limited wine selection and higher prices."¹⁸ Likewise, a Nobel laureate in economics has explained how direct shipping benefits consumers:

consumers benefit from free markets operated with the minimum government regulation required for consumer protection. . . . The restrictions on direct

¹⁵ See Daniel L. McFadden, Written Statement 2, at <http://www.ftc.gov/opp/e-commerce/anticompetitive/panel/mcfadden.pdf>. On the importance of variety, see Thomas B. Leary, *The Significance of Variety in Antitrust Analysis*, 68 ANTITRUST L.J. 1007 (2001). Some, however, have determined that consumers already have enough choices. See Statement of Juanita D. Duggan Concerning "E-Commerce: The Case of Online Wine Sales and Direct Shipment" 18, Before the Subcommittee on Commerce, Trade, and Consumer Protection of the Committee on Energy and Commerce, United States House of Representatives (October 30, 2003) ("The average retail store in most States carries between 300 and 500 different wine brands at any given moment. Can you imagine selecting from that many toothpastes or contact lenses or cars?").

¹⁶ See generally Clifford Winston, *Conceptual Developments in the Economics of Transportation: An Interpretive Survey*, 23 J. ECON. LIT. 57, 77 (Mar. 1985) (discussing costs of travel time).

¹⁷ See, e.g., Public Comments, American Bar Association, Section of Antitrust Law at 10, at <http://www.ftc.gov/opp/e-commerce/anticompetitive/comments/aba.pdf>.

¹⁸ *Dickerson v. Bailey*, 212 F.Supp.2d 673 (S.D. Tex. 2002), incorporating *Dickerson v. Bailey*, 87 F.Supp.2d 691, 709-10 (S.D. Tex. 2000), *aff'd*, 336 F.3d 388 (5th Cir. 2003).