

ALASKA STATE LEGISLATURE  
**SENATE LABOR & COMMERCE COMMITTEE**

May 1, 2001  
1:40 p.m.

**MEMBERS PRESENT**

Senator Randy Phillips, Chair  
Senator Alan Austerman  
Senator John Torgerson  
Senator Bettye Davis

**MEMBERS ABSENT**

Senator Loren Leman

**COMMITTEE CALENDAR**

CS FOR HOUSE BILL NO. 152(RLS)  
"An Act relating to brewpub licenses; and providing for an effective date."

HEARD AND HELD

CS FOR SENATE JOINT RESOLUTION NO. 28(HES)  
Urging dissemination of information about the costs of long-term care services and the availability of long-term care insurance for individuals.

MOVED CSSJR 28(HES) OUT OF COMMITTEE

SENATE BILL NO. 191  
"An Act relating to insurance pooling by members of an airline employers association."

MOVED CSSB 191(L&C) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

HB 152 - No previous action to record.

SJR 28 - See HESS minutes dated 4/27/01.

SB 191 - See Labor and Commerce minutes dated 4/17/01 and 4/24/01.

**WITNESS REGISTER**

Senator Gary Wilken  
State Capitol Bldg.  
Juneau AK 99811

**POSITION STATEMENT:** Sponsor of SJR 28.

Ms. Sarah MacNear-Grove  
Property Casualty Actuary  
Division of Insurance  
Department of Community and Economic Development  
PO Box 110805  
Juneau AK 99811

**POSITION STATEMENT:** Commented on SB 191.

Senator Robin Taylor  
State Capitol Bldg.  
Juneau AK 99811

**POSITION STATEMENT:** Sponsor of SB 191.

Ms. Glen Brady, President  
Brew Master of Silver Gulch Brewing  
PO Box 82125  
Fairbanks AK 99708

**POSITION STATEMENT:** Opposed HB 152.

Mr. Larry Hackenmiller, Chairman  
State Board of CHAR  
518 Farmer's Loop Rd.  
Fairbanks AK 99712

**POSITION STATEMENT:** Opposed HB 152.

Ms. Karen Berger, Owner  
Homer Brewing Co.  
PO Box 1319  
Homer AK 99603

**POSITION STATEMENT:** Opposed CSHB 152.

Mr. Chip Duggan, Owner  
Duggan's Pub  
120 W. Bunnell  
Homer AK 99603

**POSITION STATEMENT:** Opposed CSHB 152

Mr. Doug Griffin, Director  
Alcohol Beverage Control Board (ABC)  
550 W 7th #540  
Anchorage AK 900501

**POSITION STATEMENT:** Commented on HB 152.

Mr. Chris Anderson

Glacier Brew House  
737 W 5th  
Anchorage AK 99501  
**POSITION STATEMENT:** Supported HB 152.

Ms. Marika Heatwall  
Moose's Tooth Brewpub  
Anchorage AK  
**POSITION STATEMENT:** Commented on HB 132.

**ACTION NARRATIVE**

**TAPE 01-26, SIDE A**  
Number 001  
#HB152

**HB 152-BREW PUB LICENSES**

**CHAIRMAN RANDY PHILLIPS** called the Senate Labor & Commerce Committee meeting to order at 1:40 pm and said he would take testimony on HB 152 now and then move it to the end of the meeting when there would be a quorum present. There was no one who wanted to testify.

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#SJR28

**SJR 28-INFO ABOUT LONG-TERM CARE INSURANCE**

CHAIRMAN PHILLIPS announced SJR 28 to be up for consideration.

SENATOR GARY WILKEN, sponsor of SJR 28, explained that this bill grew out of the efforts of the Long-term Care Task Force. Recommendations #29 and 33 other recommendations had to do with getting information out to the general public about the availability and the need of long-term care insurance. He noted that there was a sponsor statement in their packets that he wouldn't read, but stated that the senior population is the fastest growing population in Alaska.

In 18 years it will represent about 12 percent of Alaskans. The need for long-term care is obvious and the need to get the information out to families and people that are planning their lives at the age of teens or 20 or 30 is the key to long-term care. It doesn't do much good to buy long-term care at 60 years old. It's very expensive.

Page 2, lines 10 - 19 encourages others, officials and agencies, to disseminate information.

SENATOR AUSTERMAN moved to pass SJR 28 out of committee with individual recommendations. There were no objections and it was so ordered.

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#SB191

**SB 191-JOINT AVIATION INSURANCE ARRANGEMENTS**

CHAIRMAN PHILLIPS announced SB 191 to be up for consideration.

SENATOR TAYLOR, sponsor, said he has a committee substitute that would provide for some of the concerns that were raised during the first hearing. "In essence, the authority would fall within the regulatory authority of the Division of Insurance and would require various reporting requirements and reserves requirements."

MS. SARAH MACNEAR GROVE, Property Casualty Actuary, Division of Insurance, said they worked with Senator Taylor and prepared some changes. She pointed out that safety issues are very important and any entity that deals with such a high-risk business needs to address safety. The other thing was that the CS forms a joint insurance arrangement.

AS 21.77.020 talks about regulations by the Division of Insurance in an annual report. It says, "A joint aviation insurance arrangement may not be considered insurance for the purpose of any other law of the state and is not subject to regulations adopted by the Director."

She explained that statement takes it outside of anything that would happen in Title 21. "Because this is a risky business, we would prefer to see some of the protections in Title 21 apply to such an entity."

CHAIRMAN PHILLIPS asked if she had a problem with the bill as drafted.

MS. GROVE answered:

It does say that this is not subject to regulations adopted by the director and it is not to be considered insurance, which means that it would not be subject to Title 21. Because of the nature of this type of insurance, we think some of the protections in Title 21 are important.

SENATOR TORGERSO asked on page 3, line 26, "How do you have and maintain a surplus no less than the amount equal to the total of the capital of one half of the surplus?"

MS. GROVE answered, "I believe the capital and surplus requirements for domestic stock insure they have to have \$1 million in capital and \$1 million in surplus. So, this would say you have \$1 million in capital and \$500,000 in surplus."

SENATOR TORGERSON asked if that was somewhere else in Title 21.

MS. GROVE answered, "Yes, a reciprocal insurer has the same requirement."

SENATOR TAYLOR said that was the reason he put that in - to make certain that they had to meet that same standard. He said, "If you look back to the other provisions, we have both agreed that even though I don't want regulation by the department, that there will probably be a significant amount of regulation..."

CHAIRMAN PHILLIPS asked Ms. Grove if they would come up with a position on this bill.

MS. GROVE indicated they would look at it closer.

Number 700

SENATOR TORGERSON moved to pass SB 191 out of committee with individual recommendations.

CHAIRMAN PHILLIPS noted that they had to adopt the committee substitute first.

SENATOR TORGERSON removed his motion to move the bill and moved that the committee adopt LS 0590F/Ford 4/28/01. There were no objections and it was so ordered.

SENATOR TORGERSON moved to pass CSSB 191(L&C) out of committee with individual recommendations. There were no objections and it was so ordered.

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#HB152

**HB 152-BREW PUB LICENSES**

CHAIRMAN PHILLIPS announced HB 152 to be back up for consideration.

REPRESENTATIVE ANDREW HALCRO, sponsor of HB 152, said:

HB 152 addresses the amount of beer that a person operating under a brewpub license can brew in a given year. Years ago, brewpubs were created in the mid '90s

and the licensees became grandfathered in. There's only a handful.

But over the last couple of years these brewpubs have lived with very stringent conditions that have been placed upon them that have limited their growth. But even with such conditions they have still continued to grow and the problem exists today that they operate under a 75,000 gallon per year cap. They cannot brew and sell no more than 75,000 gallons in a year.

The problem is that some of these operators have opened second locations and they have twice as many tables and obviously, twice as many customers, which means that come September or October, they are going to hit the 75,000 gallon cap. Once they hit that 75,000 cap, they have two options. One, they can cease production of their own beer and just sell others' beer or they can pay a competitor to brew their beer and then resell it in their restaurant and in some cases, brew that beer out of state, which means there would be some job loss with regards to individual breweries.

This is a kind of compromise within the brewer's guild industry. It provides them with a one-year grace period, sunsetting June 30, 2002. It allows them to regroup and take a look at some non-legislative options as well as possibly coming to some kind of an agreement with the members of CHAR and ARB and some of the others to address maybe a legislative fix. But this is just a band-aid, Mr. Chairman and it is an eleventh hour compromise.

SENATOR AUSTERMAN said he understood that it was a compromise coming out of the House.

REPRESENTATIVE HALCRO said he was right. The original version of HB 152 was far more expansive and dealt with some larger issues. Certain smaller breweries felt that they needed to have their problems addressed, too, to create this even playing field in the market place. That had a tremendous amount of political opposition, mostly from outside of the Capitol Building. They decided to put something in place for a year; so, during the interim so they could get all of the affected people to the table and negotiate some kind of an agreement. This may include non-legislative fixes. So, they might not be back next year.

SENATOR AUSTERMAN asked if the "fix" takes them to 150,000 gallons.

REPRESENTATIVE HALCRO replied yes and that basically right now the cap is at 75,000 gallons.

They can wholesale all of it; they can sell all of it in their restaurants. There's no limitation as far as what they can't. The concern is that some competitors don't believe that they should have the ability to wholesale as well as sell their beer in their restaurants. So what we've done is we've doubled the cap, but we've limited the amount they can wholesale. Currently, there is no limit they can wholesale. There's only that 75,000 gallons. So, this does take into consideration some of the anti-competitive arguments that are out there. These folks should be able to do both. We're limiting the wholesale output through this one-year sunset bill. Are there questions?

MR. GLEN BRADY, President and Brew Master, Silver Gulch Brewing, opposed HB 152. He said:

I can't support this as a temporary band-aid. There's a lot of essentially ill will in-house and folks are tired of looking at this. We're dealing with one group of people, so this ends up being special interest legislation to give them essentially what they want.

To say that limiting their wholesaling to 75,000 gallons per year, we're one of the larger breweries in the state, up here in Fairbanks, and 75,000 gallons per year is more than we sold in the entire state of Alaska last year. So, it's essentially no cap; it's no protection against them flooding the market under a marketing tool for their retail establishments. So, for those reasons I'm against this. I think they should probably be able to get by with what they have on the books right now.

I do believe that we as a group, brewers, industry members and the legislature certainly need to take a look at brewpub legislation. I think there is room for both breweries and brewpubs, but I don't know if this band aid is such a good idea in light of many of the other things that are going on.

SENATOR AUSTERMAN asked if he was a brewer who sold wholesale and asked if it was correct that he didn't want to see the brewpubs competing against him.

MR. BRADY answered that was correct.

I don't want to see a brewpub competing with me in the wholesale marketplace where I am prohibited by law from competing with them in the retail marketplace. That's been kind of the crux of the breweries' issues all along.

We do believe generally speaking that the brewpubs should have their production cap lifted. They should not be penalized for being successful and certainly Moose's Tooth has been very successful. My hat's off to them. However, the issue we have with the production cap is the wholesale portion that goes out into the market place. That's to them a marketing tool. It's a very small part of their business. For us that is our only source of revenue. That's our bread and butter. So, it's a difficult situation for small brewers.

CHAIRMAN PHILLIPS asked who else opposed this bill.

MR. BRADY replied that he is speaking for himself, he is on the Board of Directors of CHAR, and this is something they as a group have discussed. The Board is also against this, however he could not speak for them.

CHAIRMAN PHILLIPS asked if the board had voted on it.

MR. BRADY replied that the board voted to support the original language doubling the production cap of a brewpub with the exception that above 75,000 gallons per year, they would give up their option to wholesale.

MR. LARRY HACKENMILLER, Chairman of the Board of State CHAR, said he also is a bar owner in Fairbanks and opposed the bill as written.

The CHAR Board voted, I think it was unanimous, to support the bill on the 150,000 gallons provided the wholesale item was added. Personally, I've done this for the last eight years - come before a legislative body and fought this issue, because competition with brewpubs has been around for years. They started off as a brewpub, not a brewery and that's specifically to sell their own type of beer. Each year they come back asking for more and more and more.

One of the things we haven't gotten away from with regards to brewpubs is that by law, they can give away

free samples on the premises; they can sell growlers on the premises. We try to keep that separate. If you have an off premises package store, you're not allowed to give away free samples on the premises or sell them by the drink. Brewpubs could do that. I can't sell off premises; but brewpubs can do that. So, there's kind of a disparity there. Every year they keep coming back for more. Last year when they brought this up, they wanted a 150,000 cap instead of the 75,000. They indicated why 150 at all? Why don't we just have open?

Well, then, to cover breweries and follow the rules there, a brewery person cannot sell alcohol, open container or sell by the drink, on premises. So, everybody's got restrictions except brewpubs and they want more. I think that the compromise that the brewery people came up with, the original one, regarding the issue of the 150,000 gallons and the wholesale cap was a good cap. It still allows them to be competitive.

In the House they even had it set up so that the brewers could get licensed premises. You're just taking away the whole three-tier system, which involves number one, the manufacturers, number two the wholesalers and distributors and we, the retailers. We kept that separate for a reason, so you wouldn't have monopolies.

I don't agree with the sunset clause especially because one year from now all they're going to do is come back and ask for more. They're not going to go back to what they had originally. You can't expect someone to get an open cap like this and come back and determine that you're going to take away this business from them. That's almost idiotic.

Also, I would like a study to be done before this bill goes any further with regards to just what the gallonage is for each location. But be careful, because what they'll tell is that they use 65,000 gallons of their 75,000 gallon cap, so therefore they need more. Yet, how much are they wholesaling off premises? If they are taking 20,000 gallons of that and selling it off premise or in a different location means that if they stopped that, they would still have that 20,000 to sell on their premises. Again, the CHAR Board will not support this bill and voted only to support what we came up with originally - the 150,000 gallon with a 75,000 gallon wholesale cap.

MS. KAREN BERGER, Owner, Homer Brewing Co., said she agreed with Mr. Brady in Fairbanks 100 percent. "His comments stand true for the beliefs here in Homer."

SENATOR AUSTERMAN said he was confused, because the CS does go to 150,000 and caps at 75,000 gallons also.

MR. BRADY asked him to rephrase his question.

SENATOR AUSTERMAN reiterated that this bill says that they may not do more than 150,000 gallons of beer in a calendar year, sell not more than 75,000 gallons manufactured on the premises as a wholesaler. He said he thought that's what he heard Mr. Brady say he wanted and he thought that's what the bill does.

MR. BRADY responded that the original language that the State CHAR organization and the Brewer's Guild of Alaska supported was 150,000 gallon per year cap with the language saying if a brewpub goes above 75,000 gallons per year, they give up all their options to wholesale, not 50 percent of it, essentially.

Right now the way the bill is written, they can produce 75,000 gallons for sale through a wholesaler and they can sell an additional 75,000 gallons on the premises. That's the difficulty we have, because basically in a market place as small as Alaska, 75,000 gallons of wholesaling would be comparable to having no production cap. If this were California, that would not be the case, but we're limited geographically and population wise.

SENATOR AUSTERMAN said they were only limited if they stay in Alaska and sell it in Alaska.

MR. BRADY replied that the production cap doesn't apply outside the state. "It's only instate."

REPRESENTATIVE HALCRO commented:

We need to keep in focus what we're talking about. The beer that's brewed by brewpubs in Mr. Brady's company represents four percent of the total beer sold in this state. It's a fraction. But more importantly, comments made by both Mr. Brady and Mr. Hackenmiller - and I understand them - but the assertion that we've come back year after year needs to be clarified a little bit.

I introduced this bill two years ago. It never got out of Labor and Commerce, but more importantly every year for the last number of years, these brewpubs, every year it seems that they have been put under increasing pressure and increasing regulations. For instance, they have been living with this 75,000 gallon cap. Two years ago they accepted a provision that said if they want to expand and open a second location, they had to go out and buy a beverage dispensary license, which allows you to serve hard alcohol. Even though one of these organizations had no desire to serve hard alcohol, they had to go out and spend \$150,000 on a beverage dispensary license so they could open up a second location. That was one of the requirements that was pushed by the members of CHAR as they felt it would even the playing field to make sure brewpubs and some of these more established bars and eating and drinking places were on the same level and had the same kind of investment. So, the assertion that these people come back to the table every year and want a bite of the apple is completely untrue. To date they haven't been given anything. They've simply lived with some of the requirements and the conditions that have been placed on them by others.

MR. CHIP DUGGAN, Owner, Duggan's Pub, said he agreed with Mr. Brady and Ms. Berger, that the CS doesn't limit the brewpubs to anything.

It gives them 75,000 gallons to wholesale and 75,000 gallons to retail. And that's a very unfair competition against the breweries in the State of Alaska. I'd like to state that I'm in favor of, if they do go over the 75,000 gallons, that they do not sell any more wholesale product after that.

MR. DOUG GRIFFIN, Director, Alcohol Beverage Control Board, said he would answer questions the committee may have about existing state law. He said that Representative Halcro had done a very good job of giving some of the history and his comments are accurate. He did not have a position on this legislation other than that the whole area of brewpubs has been in the state of evolution for the last five years.

MR. CHRIS ANDERSON, Glacier Brew House, supported HB 152. He said:

The bill, as it raises the amount of production for brewpubs, there's really only one of us that is really

involved in that type of business right now that it affects. As a brew house, this bill will not directly affect me, although for my competitor, the Moose's Tooth, it will, for which it is a great thing. I really think this is a good thing for them and overall very good for the industry..

MR. ANDERSON said he was also tired of this issue coming up. He said if there was any change to the bill, he would like it to be a permanent change, not just temporary.

SENATOR TORGERSON asked how much beer he sells wholesale.

MR. ANDERSON replied about 800 barrels per year or about 42,000 gallons.

SENATOR TORGERSON asked if he would have to buy a brewery license if he wanted to exceed that.

MR. ANDERSON replied that he cannot own a brewery license. "A brewery together with a beverage dispensary license is currently illegal in the state. We bought a beverage dispensary license so that we could go a different route, which was required several years ago."

SENATOR TORGERSON said, "Maybe we're fixing the wrong thing."

MR. ANDERSON said:

If we look at the breweries in the state, for those of you who look at this type of thing, the Moose's Tooth, the Glacier Brew House, Midnight Sun, SJ Kline's place, Homer, Fairbanks altogether, if we put all of our beer together, we may do maybe 8,000 or 9,000 barrels of beer total. That's less than one percent of the total beer coming into the state. The rest of the beer, as Jeff Larson does an excellent job in Alaska and he sells 83,000 barrels of beer, but he's the only true brewery in the State of Alaska. The rest are just very small operations of less than 2,000 barrels.

MS. MARIKA HEATWALL, Moose's Tooth Brewpub, said she wanted to answer two questions and wanted also to impress upon them the importance of raising the 75,000 gallon wholesale cap.

Moose's Tooth currently at their established rate of production will hit 75,000 gallons of brew production late this summer or early this fall. At that point in time, without this sunset, they will be forced to stop brewing out of their \$1 million manufacturing facility

in Ship Creek. Holding that kind of a facility idle is very expensive. They would also at that time lose their contract relationships; they have taps in several restaurants (they have about a dozen in the Anchorage area). The reason the language has been crafted the way it has is to allow them in this one-year sunset to continue their existing operations.

Senator Torgerson, through the chair, mentioned that maybe this bill is fixing the wrong thing and I couldn't agree more. There have been numerous conversations among the Brewer's Guild and there need to many many more about what the final outcome needs to be. I simply hope to clarify that without the language the way it's written before you now, one company in Anchorage will have to cease their operations this summer. We hope that this body sees it's unnecessary to put somebody out of business. This is complicated; there are many many regulations affected and lots of interested parties. We ask simply that we have a year to work with all the interested parties to resolve the issue without putting someone unnecessarily out of business or requiring them to lose contract relationships with some of the restaurants that they currently serve.

SENATOR DAVIS asked if she supported the sunset.

MS. HEATWALL answered that she does support it only in that, "This would allow everyone to stay in business for the year and to come back to this body with hopefully an appropriate solution to every bodies' concerns."

SENATOR TORGERSON asked Mr. Griffin, "Why don't we license these places as breweries?"

MR. GRIFFIN replied:

That is really where we started this whole thing about six years ago. We did allow breweries to own restaurant eating place licenses, which is commonly referred to as the beer and wine licenses. That's how these handful of what are now brewpubs started out. That was seen as being an attack on the three-tier system and some people taking advantage of a loophole. So, the legislature prohibited that, made it a prohibited financial interest that you couldn't have a beer and wine license and a brewery license together. That's what forced the hand of the Moose's Tooth folks and the

Brew House and Snow Goose to go out and buy a beverage dispensary license and convert from a brewery to a brewpub. That was in response to the beverage dispensary licenses.

It felt that these folks were unfairly competing with them, because the brewpub or the brewery restaurant combination had more of a flavor even though their sales of food still qualified them as being restaurants. They still felt that because the beer was such a high lighter of their establishment that they were unfairly competing with them and so they got the law changed. Now, unfortunately, the Moose's Tooth folks and some others are felt to be unfairly competing with the breweries. So, they're kind of caught between the beverage dispensary licensees and the brewery licensees; and they fit somewhere in the middle there. They've got it from one side and now they're getting it from the other.

There is a legitimate concern on the part of the breweries in that their whole means of staying in business is finding taps and shelf space in package stores, if they're putting their product in a bottle and that's what they've got to do. These places that are brewpub licenses and are also wholesaling have the cash flow from the restaurant, the theatre operations, in the case of the Bear Tooth. But the one thing that does need to be taken into consideration is that all these guys have had to go out and buy beverage dispensary licenses, which in the Anchorage market was about \$150,000, plus or minus \$25,000 for what a beverage dispensary license costs. So, they've made substantial investments in their brewing equipment and they've had to make investments in licenses. So, they've gotten some pretty tall orders in terms of things they had to do to try to stay in compliance with the law. Now, unfortunately for the Moose's Tooth, they're sort of a victim of their own success in that they've been so successful in finding taps for beer as wholesaler and also selling beer through their restaurants, that they're up against this cap.

You can attach this problem from the other side and that might bring us full circle to where we started.

SENATOR TORGERSON said he didn't have the original bill in his packet so he didn't know where it started.

CHAIRMAN PHILLIPS said he was inclined to hold the bill for one day.

SENATOR TORGERSON remarked that he didn't have to do it for him since he probably wouldn't support it, because he didn't think it was the right way to fix it.

CHAIRMAN PHILLIPS said that was why he was going to hold the bill.

SENATOR AUSTERMAN said he didn't feel it was the right way to attack it either, but at this point in time in the legislative session, it might be the only way we could address the issue without placing them into a box.

CHAIRMAN PHILLIPS said he would hold the bill one day and adjourned the meeting at 2:24 p.m.