

ALASKA STATE LEGISLATURE
SENATE LABOR & COMMERCE COMMITTEE

May 2, 2001
3:40 pm

MEMBERS PRESENT

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

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

SENATE BILL NO. 208

"An Act relating to the labeling of, the advertising of, and the disclosure of certain information about halibut, salmon, halibut products, and salmon products."

MOVED CSSB 208(L&C) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 152(RLS)

"An Act relating to brewpub licenses; and providing for an effective date."

MOVED CSHB 152(RLS) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 181(JUD)

"An Act relating to the obligations of spouses, to insurance policies of spouses, to the nonprobate transfer of property on death to a community property trust, to the division of the community property of spouses at death, and to the Alaska Community Property Act; amending Rule 301, Alaska Rules of Evidence; and providing for an effective date."

MOVED CSHB 181(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

SB 208 - No previous action to consider.

HB 152 - See Labor and Commerce minutes dated 5/1/01.

HB 181 - No previous action to consider.

WITNESS REGISTER

Ms. Loretta Brown, Staff
Senator Jerry Ward
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Commented on SB 208.

Mr. Kevin Hand, Staff
Representative Andrew Halcro
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Commented on HB 152.

Ms. Amy Erickson, Staff
Representative Lisa Murkowski
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Supported HB 181.

Mr. Dave Shaftel
Estate Planning Attorney
No address provided

POSITION STATEMENT: Supported HB 181.

Representative Lisa Murkowski
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Sponsor of HB 181.

ACTION NARRATIVE

TAPE 01-27, SIDE A

Number 001
#SB208

SB 208-FARMED SALMON DISCLOSURES

CHAIRMAN RANDY PHILLIPS called the Senate Labor & Commerce Committee meeting to order at 3:40 pm and announced SB 208 to be up for consideration.

MS. LORETTA BROWN, Staff to Senator Ward, read the sponsor statement as follows:

SB 208 adds a new section relating to the labeling and advertisement of halibut and salmon products. This section will allow a person to sell or advertise halibut or salmon products as "wild," "antibiotic-free," "hormone free," and dye-free" if the product is harvested from a river or an ocean and has not been raised in captivity.

We have all seen the beautiful displays of farmed salmon at fish counters or restaurants without realizing that the varying shades of pink are artificially created. Almost 100% of all farmed salmon is artificially colored with either canthaxanthin or astaxanthin, a process sometimes called "color finishing" to give farmed salmon the attractive red color associated with wild salmon and salmon products that consumers expect.

Federal regulations call for declaration of the use of canthaxanthin or astaxanthin at the retail level, but that information is rarely passed on to the consumer. Additionally, it is common practice to add antibiotics and other supplements to farmed finfish diets.

This legislation will allow a clear distinction to the consumer informing them of the natural benefits of "wild salmon" and "wild halibut."

CHAIRMAN PHILLIPS asked for a current fiscal note.

MS. BROWN responded that it wasn't ready yet.

SENATOR LEMAN noted on page 3, line 24 talks about how a person can label and advertise halibut and salmon. It says, "...may indicate that the product or the halibut or salmon in the product is free from colors and additives, if the product is harvested from a river or ocean and has not been raised in captivity or under control for its entire life." and it should say, "if the product is free from colors and additives". We don't want the condition to be saying you can advertise that it's free from colors and additives just because it was raised in the wild. "What if someone takes pink or chum salmon, which is light and wants to add artificial colors to it? We shouldn't allow them to advertise that as being additive-free."

MS. BROWN agreed.

SENATOR LEMAN moved a conceptual amendment saying that it may indicate the product or salmon in the product is free from colors

and additives, if it is free. There were no objections and it was so ordered.

SENATOR LEMAN moved to pass CSSB 208(L&C) out of committee with individual recommendations. There were no objections and it was so ordered.

#

#HB152

HB 152-BREW PUB LICENSES

CHAIRMAN PHILLIPS announced HB 152 to be up for consideration.

MR. KEVIN HAND, Staff to Representative Halcro, thanked them for bringing this legislation up again today. He reviewed that HB 152 is a stopgap measure to ensure the unencumbered operation of new highly successful industry in the State of Alaska.

It incorporates a band aid solution involving a one-year sunset clause that will enable brewpubs to continue their operation through a full year rather than shutting down due to the somewhat draconian production that are put in place currently in state statute.

He said the sunset is June 30, 2002 and it raises the production cap on brewpubs to 150,000 gallons total, of which no more than 75,000 gallons can be sold in-house and of which no more than 75,000 gallons can be sold wholesale.

MR. HAND said:

These businesses do employ hundreds of people in the Anchorage area, alone. They represent millions of dollars and, in fact, multi-millions of dollars in capital investments, which in Anchorage has taken previously abandoned decrepit buildings and revitalized them into a very popular spot right in the middle of Spenard and old Anchorage.

Brewpubs do represent a diversification of economies in Alaska encouraging increased employment outside of our historically limited industries, which have obviously been heavily dependent upon resource extraction. The sunset clause does allow an operational timetable for the brewpub operators to sit down with the industry associations to find a consensus, which can be a long-term solution.

I do concur as does Representative Halcro that this, in fact, is not a long-term fix. Hence the reason we are before you with a one-year band aid that will provide the time without putting encumbrances upon a successful operation here within the state that has enjoyed great success...

SENATOR TORGERSON said he was not going to support this legislation, because he thought it was:

...a travesty that the House sat on it for five months and couldn't get it worked out and I don't see really that it'll be worked out over the summer. At any degree, this is not the fix that should be before us. They should go to the heart of the thing and try to fix it instead of trying to put band aids on it and expect us to do it in a couple of days. I won't block the move, but I'll sign 'no recommendation.'

SENATOR DAVIS moved to pass SB 152 from committee with individual recommendations. There were no objections and it was so ordered.
#

#HB181

HB 181-COMMUNITY PROPERTY/OBLIGATIONS OF SPOUSES

CHAIRMAN PHILLIPS announced HB 181 to be up for consideration.

MS. AMY ERICKSON, Staff to Representative Murkowski, said:

In 1998, the legislature passed Alaska's Community Property Act, which allows married couples to characterize some or all of their assets as community property. Since enactment, those dealing in estate planning and trusts on a day-to-day basis have realized that the statutes need minor adjustment and that happens in four areas. The first provides that a creditor of a debtor spouse may only reach the separate property of that debtor spouse and the spouse's jointly held property. It also allows property such as life insurance and IRAs to be transferred to a community property trust by designating the trust as a beneficiary of the property. It also clarifies the sources of funds used to purchase life insurance and expands categories of family members to include ancestors or descendents of either spouse. So, it not only allows a surviving spouse to be a beneficiary, but also a grandchild.

Since current statute does not address division of property at death, HB 181 clarifies that on the death of a spouse, certain property items can be allocated to the spouse's heirs as long as each spouse's heirs receive half the total value of a community property.

MS. ERICKSON said there was a question in Judiciary about whether this impacts family law practice. She asked the Bar Association and they located all their family law members and there was no adverse reaction from them.

MR. DAVE SHAFTEL said he was one of a group of estate planning attorneys who has worked on Alaska's estate planning legislation over the past four years. The Community Property Act of 1998 is popular with his clients and others. However, they have found some gaps in the law that this legislation addresses. He said the Act was originally taken from the Uniform Marital Property Act, which was drafted in 1981 and was initially enacted in only one state, Wisconsin. He said Alaska is the tenth community property state.

This particular bill clarified four areas. It clarifies if you have an obligation incurred by one spouse, then that spouse's creditor can reach that spouse's separate property and that spouses one-half of the families' community property. Existing statute is ambiguous on this point. This clarifies that community property will be treated the same as other jointly held property. If you had jointly held property without community property held by both spouses, a creditor could only reach the separate property of the debtor spouse and that debtor spouse's half of jointly held property.

The next clarification deals with transfers of certain assets to a community property trust, like life insurance, IRAs, 401K plans and assets that have beneficiary designations. They can be transferred by designating the community property trust as the beneficiary of such property. This is important when you get to the fourth change.

The third change deals with life insurance. There can be complications when a person uses funds from a community property account, like a bank account to buy life insurance. There are both ownership and tax complications. If it's unclear that the spouse who is not making the contribution agreed to the contribution, this legislation creates some presumptions of agreement, as long as the policy is benefiting family members. It also clarifies an area in the estate gift tax law if community property funds are being used by one spouse to create a life insurance trust for the surviving spouse. It makes it clear that the presumption is the surviving spouse agreed that the funds used would be first the community property, which would be

changed to separate property, so that the insured spouse is contributing these funds to the trust. The end result of this is to make sure the life insurance proceeds are not included in the surviving spouse's estate and taxed at his or her death. The presumptions are safety nets when dealing with funds that are community property and are used to purchase life insurance.

The last clarification deals with the provision that talks about what happens at death to the community property. It clarifies that at death, one half of the community property belongs to the surviving spouse and the other one half belongs to the decedent's estate. It also adopts the "aggregate theory of division of community property assets," which allows for "non-prorata funding of trusts." Basically, this means that you don't have to divide every item of community property exactly in half and give half to the deceased spouse's estate and half to the surviving spouse. Rather, you just have to make sure that the deceased spouse's estate gets one half of the total aggregate value and the surviving spouse gets only one half of the total aggregate value. This is important, because they often find that the couple together may have had retirement assets, all of which should go to the surviving spouse. This is because there is a better income tax result if all the other assets go to the deceased spouse's estate, so they can fund a bypass trust. This kind of trust is for the benefit of the surviving spouse, but then it goes on to the children without any further transfer taxation.

MR. SHAFTEL said these changes would strengthen the act and make it a lot more useable. It will also make it available in the retirement plan the life insurance area for nonresidents of Alaska who have chosen to use Alaska's optional community property system. He hasn't run into any opposition to it.

Number 330

REPRESENTATIVE MURKOWSKI said that these changes seem to make sense.

CHAIRMAN PHILLIPS asked what triggered this legislation.

REPRESENTATIVE MURKOWSKI replied that she is not a trust attorney, which is a very select group of practitioners. Mr. Shaftel is her constituent, as well as a trust attorney.

SENATOR DAVIS said she had someone called her last week with the concerns that were addressed in this bill.

SENATOR LEMAN said he thought the change of not requiring each item to be divided in half was good, but asked if he ran into cases where an estate argued over pieces of property because someone values it as being important to them. "In those cases,

does this help bring resolution or not or does it make any change?...Are we neither harming or helping?"

MR. SHAFTEL replied that was right and he thought good drafting could solve that problem, but good administration would do it if good drafting didn't. This legislation does not affect that one way or the other.

SENATOR LEMAN moved to pass CSHB 181(KUD) from committee with individual recommendations and the \$0 fiscal note. There were no objections and it was so ordered.

#

CHAIRMAN PHILLIPS adjourned the meeting at 4:20 pm.