

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

February 11, 2006  
10:10 a.m.

**MEMBERS PRESENT**

Representative Lesil McGuire, Chair  
Representative Tom Anderson  
Representative John Coghill  
Representative Pete Kott  
Representative Peggy Wilson  
Representative Les Gara (via teleconference)  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 373

"An Act relating to the manufacture and transportation of alcoholic beverages; relating to forfeitures of property for violations of alcoholic beverage laws; and relating to violations of alcoholic beverage laws."

- MOVED HB 373 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 373

SHORT TITLE: ALCOHOL:TRANSPORT MANUFACTURE; FORFEITURE

SPONSOR(S): REPRESENTATIVE(S) MEYER

01/17/06	(H)	READ THE FIRST TIME - REFERRALS
01/17/06	(H)	L&C, JUD
01/25/06	(H)	L&C AT 3:15 PM CAPITOL 17
01/25/06	(H)	Moved Out of Committee
01/25/06	(H)	MINUTE(L&C)
01/27/06	(H)	L&C RPT 4DP 3NR
01/27/06	(H)	DP: LYNN, KOTT, ROKEBERG, ANDERSON;
01/27/06	(H)	NR: CRAWFORD, LEDOUX, GUTTENBERG
02/06/06	(H)	JUD AT 1:00 PM CAPITOL 120
02/06/06	(H)	Scheduled But Not Heard
02/11/06	(H)	JUD AT 10:00 AM CAPITOL 120

## WITNESS REGISTER

REPRESENTATIVE KEVIN MEYER  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 373.

MICHAEL PAWLOWSKI, Staff  
to Representative Kevin Meyer  
House Finance Committee  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 373, answered questions.

ED HARRINGTON, Captain/Commander  
Alaska Bureau of Alcohol & Drug Enforcement  
N Detachment  
Division of Alaska State Troopers  
Department of Public Safety (DPS)  
Anchorage, Alaska

POSITION STATEMENT: During hearing of HB 373, answered questions.

DOUGLAS B. GRIFFIN, Director  
Alcoholic Beverage Control Board ("ABC Board")  
Department of Public Safety (DPS)  
Anchorage, Alaska

POSITION STATEMENT: During hearing of HB 373, answered questions.

ANNE CARPENETI, Assistant Attorney General  
Legal Services Section-Juneau  
Criminal Division  
Department of Law (DOL)  
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 373, answered questions.

## ACTION NARRATIVE

**CHAIR LESIL MCGUIRE** called the House Judiciary Standing Committee meeting to order at [10:10:37 AM](#). Representatives McGuire, Anderson, Coghill, Kott, Wilson, and Gara (via teleconference) were present at the call to order. Representative Gruenberg arrived as the meeting was in progress.

10:10:55 AM

CHAIR McGUIRE announced that the only order of business would be HOUSE BILL NO. 373, "An Act relating to the manufacture and transportation of alcoholic beverages; relating to forfeitures of property for violations of alcoholic beverage laws; and relating to violations of alcoholic beverage laws."

10:11:13 AM

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, sponsor of HB 373, offered his belief that everyone is aware of the problems that alcohol can and does cause in rural Alaska. Many communities have adopted local options to control or ban the importation of alcohol into the community. In 2004 Congress formed the Alaska Rural Justice and Law Enforcement Commission ("Commission") to study the challenges facing rural Alaska. This summer the Commission released a draft interim report, which included recommended statute changes. Therefore, HB 373 proposes changing the forfeiture statutes to allow the state to seize alcohol that was transported in violation of the local option; property purchased with the proceeds of alcohol sold in violation of the local option; and firearms that are carried, used, or visible during the furtherance of a violation. Furthermore, HB 373 establishes a procedure that addresses the seizure and appeal of property. The legislation also defines the "manufacture" of alcohol and makes the allowable quantities of alcohol consistent in statute such that it would be 10.5 liters in the presumption section. In conclusion, Representative Meyer opined that the changes encompassed in HB 373 will strengthen law enforcement in the fight against alcohol.

REPRESENTATIVE ANDERSON related that the Cabaret Hotel Restaurant & Retailer's Association (CHARR) had contacted him regarding whether lowering the limit in Section 1(c)(1) of the legislation places an unfair presumptive burden on individuals when 10.5 liters is the limit that can be legally shipped.

REPRESENTATIVE MEYER deferred to his staff.

10:14:57 AM

MICHAEL PAWLOWSKI, Staff to Representative Kevin Meyer, House Finance Committee, Alaska State Legislature, explained that

under current statutes a package store isn't allowed to send more than 10.5 liters per month to an individual. However, the [possession] limit in Section 1(c)(1) of HB 373 was lowered [to 10.5 liters]. The question, he explained, is whether an individual with a few liters left from a prior month's order would be placed in jeopardy for presumption [if that individual ordered 10.5 liters of alcohol]. Mr. Pawlowski pointed out that an individual can check his/her cupboard to determine that he/she is in possession of less than 10.5 liters [and shouldn't order a quantity that would, combined with what's in the cupboard, total more than 10.5 liters]. Furthermore, this is only of concern if an individual is charged and accused of selling the alcoholic beverages. "It's only when you get into the presumptive sentencing part, but it is ... a fair question about whether or not it's an unfair burden on people for possession," he said.

REPRESENTATIVE MEYER interjected that he is flexible on that issue because one who has three bottles in the cupboard and orders 10.5 liters more shouldn't be penalized. He echoed Mr. Pawlowski's testimony that this is only an issue if the individual is selling the alcohol. He then noted that the Department of Law (DOL) can also respond.

[10:16:50 AM](#)

ED HARRINGTON, Captain/Commander, Alaska Bureau of Alcohol & Drug Enforcement, N Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), stated that he was available for questions.

REPRESENTATIVE WILSON asked if Captain Harrington feels that HB 373 will make it easier for law enforcement and communities to fight the illegal importation of alcohol.

CAPTAIN HARRINGTON replied yes. He noted that he was a member of the subcommittee of the Commission, which recommended the statutory changes [encompassed in HB 373]. He highlighted the addition of the forfeiture laws, which he characterized as one of the greatest deterrents for those contemplating bootlegging.

REPRESENTATIVE COGHILL inquired as to how law enforcement would notice the difference between the 10.5 liters versus the current 12 liters.

CAPTAIN HARRINGTON explained that the concern is in regard to the confusion caused by the 10.5 liters versus the 12 liters.

This confusion arises for law enforcement, DOL, and the citizens at large. He relayed that the majority of the alcohol entering local option communities are 750 milliliter bottles. Therefore, the change from 12 liters to 10.5 liters will mean that [an individual could [import and possess] 14 750-milliliter bottles of distilled spirits versus the current allowance of 16 750-milliliter bottles. Generally, when alcohol is intercepted it's through the shipping points, whether in Anchorage or rural communities.

REPRESENTATIVE COGHILL asked, "Does that make a difference between a full case and a broken case?"

CAPTAIN HARRINGTON answered that he isn't sure about that, but he offered his recollection that a full case is 12 bottles.

REPRESENTATIVE COGHILL said he was trying to determine whether [this change] makes discovery easier or more difficult.

CAPTAIN HARRINGTON related that frequently alcohol shipments have been repackaged into another container rather than its original shipping cases.

REPRESENTATIVE WILSON asked if the change to 10.5 liters makes it easier for law enforcement.

CAPTAIN HARRINGTON replied yes, but clarified that this legislation changes the amount to 10.5 liters only for distilled spirits. He reminded the committee that the confusion under the current statute arises because the amount allowed for importation is 10.5 liters while for the presumptive amount is 12 liters.

[10:22:36 AM](#)

DOUGLAS B. GRIFFIN, Director, Alcoholic Beverage Control Board ("ABC Board"), Department of Public Safety (DPS), relayed that he is available for questions and concurred with Captain Harrington's comments.

REPRESENTATIVE COGHILL asked Captain Harrington whether he views forfeiture [as specified under the bill] as being more complex or clearer, and inquired as to the practical implications of storage.

CAPTAIN HARRINGTON responded that this legislation will make it a bit easier for law enforcement. Currently, property is seized

at the time of the contact or arrest and it's stored until the case is adjudicated through the court in the criminal case. The aforementioned takes six to nine months, and sometimes even a year to complete the case. For example, in the past year in Kotzebue one airplane and many outboard motors, snow machines, and vehicles have been seized and stored. In Kotzebue there is limited storage capacity and thus HB 373 will allow a case to be brought before the court in a civil action, which tends to be a much quicker procedure and thus the property wouldn't have to be stored as long.

REPRESENTATIVE COGHILL asked whether the notification requirements make any changes practically.

CAPTAIN HARRINGTON surmised that it will probably be a bit burdensome for DOL in regard to the forfeiture of the property civilly versus through a criminal trial. In further response to Representative Coghill, Captain Harrington opined that allowing forfeiture through a civil proceeding will result in the matter being before the court quicker. He pointed out that practically the same language exists in the drug statutes upon which the language in HB 373 is modeled. Although the civil forfeiture in relation to drugs hasn't been used that often, when it has been used it has been successful.

[10:28:50 AM](#)

MR. GRIFFIN, in response to the question as to what occurs currently with regard to licensee complaints, reiterated that currently a package store can ship up to 10.5 liters [to an individual] located in a community with a local option. Therefore, [HB 373] doesn't change anything for the package stores. He opined that there aren't big problems with the package stores, although ordering from more than one package store in a month creates a problem. If it was found that the package stores weren't following the requirements, he suggested that they could be prohibited from being able to participate in that lucrative business. The largest shipper is Brown Jug, which he characterized as a good corporate citizen.

REPRESENTATIVE COGHILL surmised then that there haven't been any complaints to the ABC Board. He then surmised that the question is how many streams [of shipments of alcohol] can come into a village and whether this legislation will make some headway.

REPRESENTATIVE ANDERSON referred to the Alaska State Troopers Alaska Bureau of Alcohol and Drug Enforcement "2004 Annual Drug

Report", which is included in the committee packet. Page 7 of that report outlines the problems related to alcohol, especially as seen in rural Alaska. Page 8 of the report relates the high cost of alcohol in rural Alaska versus urban Alaska, particularly in relation to bootlegging operations. Representative Anderson opined that perhaps HB 373 is a small step in reducing bootlegging. He suggested that one might find more violations from the State Troopers than the ABC Board.

CHAIR McGUIRE recalled an incident in which an individual in a rural area created home brew, which she indicated suggested that the more the state cracks down on bootlegging, the more creative people get in evading the law.

CAPTAIN HARRINGTON stated that the [Alaska State Troopers] are very aggressive about any alcohol in local option communities. The troopers in the western part of Alaska are constantly addressing the home brew issue, which sometimes does seem to be a larger problem when there is success in eradicating the importation of alcohol and thus there's an increase in the manufacturing of home brew alcohol. Moreover, successes in the eradication of alcohol also result in increases in the price of alcohol. Captain Harrington related that the troopers actively pursue homebrewed alcohol and analyze samples to show that it does contain alcohol.

[10:36:46 AM](#)

REPRESENTATIVE GARA related his understanding that all of the locals in dry and damp communities know who bootlegs. Therefore, he questioned whether HB 373 will really help or whether there is a larger problem that keeps law enforcement from prosecuting in damp and dry communities.

CAPTAIN HARRINGTON agreed with Representative Gara that most residents of a community know who is dealing in drugs and alcohol. However, there are many issues surrounding the concept of citizens coming forward to relate such information to the troopers. Currently, there is some award money available through a federal grant for information to help intercept the drugs and alcohol entering these communities. Still, Captain Harrington opined that HB 373 will help law enforcement in its effort to reduce the flow of alcohol into western Alaska. Although HB 373 isn't the magic bullet, it will help, he opined.

REPRESENTATIVE GARA related his assumption that if residents of a community know who the bootleggers are, then so too would

local law enforcement. Therefore, he inquired as to what makes it difficult to close a bootleg operation.

CAPTAIN HARRINGTON offered an example in which a bootlegger in Nome bootlegs via snow machine or boat. However, that bootlegger only sells to a select clientele in the area and law enforcement hasn't been successful in getting a resident of the area to cooperate in an undercover capacity. The situation isn't like a traditional drug or alcohol investigation in which a confidential informant can be placed in the community because generally a stranger in a small village would stand out.

REPRESENTATIVE COGHILL referred to the forfeiture provision of HB 373 on page 3 where the language "or items of value purchased from the proceeds" is inserted. He inquired as to how difficult it will be to determine what items of value were purchased from the proceeds of [illegal alcohol sales].

CAPTAIN HARRINGTON acknowledged that it can be a difficult issue, although frequently there is enough evidence gathered from statements of those involved to determine what property was purchased with the proceeds. He specified that often there is a statement from the suspect or a family member that the item was purchased with the proceeds from the alcohol sales.

[10:41:59 AM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), related that the DOL supports HB 373. She echoed earlier sentiment that although HB 373 won't solve all the problems, every little bit helps.

REPRESENTATIVE WILSON referred to page 3, line 23, which read: "If a claim and answer is not filed within the time specified, the property described in the state's allegation must be ordered forfeited to the state without further proceedings or showings." She inquired as to what happens if the individual charged with the violation is found not guilty.

MS. CARPENETI specified that the language on page 3, line 23, is describing civil forfeiture. She explained that there are a couple of ways in statute to forfeit property used in furtherance of a crime, such as in connection with a criminal prosecution in which the individual is convicted, or [the state] can proceed against the item itself in a civil proceeding. The burden of proof is different for each. Most often a criminal

proceeding is utilized. She pointed out that even in a situation wherein an individual is not convicted but is connected with the property, the state still has the burden of proving the behavior by a preponderance of evidence.

CAPTAIN HARRINGTON, in response to Chair McGuire, confirmed that the alcohol seized is destroyed.

[10:45:06 AM](#)

REPRESENTATIVE GRUENBERG surmised that this legislation links [possession of alcohol] to the illegal transportation [of alcohol] under AS 04.16.125. However, the forfeiture statute, except as its being amended in Section 2(1)(a), doesn't seem to be tied to the transportation statute. The only reference to the illegal transportation [of alcohol] is on page 2, line 13, which only allows the forfeiture of the alcoholic beverages. Therefore, he questioned why AS 04.16.125 (1)-(6) isn't referenced in paragraph (6), which refers to the monies, securities, et cetera that are used in financial transactions.

MS. CARPENETI relayed that AS 04.16.125 (1)-(6) is just a list of all the things that can be forfeited.

REPRESENTATIVE GRUENBERG pointed out that paragraph (6) only references the activities prohibited under AS 04.11.010 or in violation of a local option adopted under AS 04.11.491. Therefore, he inquired as to why paragraph (c) doesn't also include violation of AS 04.16.125, which refers to the illegal transportation [of alcoholic beverages].

MS. CARPENETI suggested that one would have to review AS 04.16.220(d) that cross references items shipped in violation of the local options. She pointed out that it's added to HB 373 on page 4, line 2.

REPRESENTATIVE GRUENBERG noted that the language [on page 4, line 2 comes into play] only upon conviction. He inquired as to what would occur with a separate civil action for forfeiture of a sum of money when illegal transportation is involved as well.

MS. CARPENETI explained that the language in Section 4(d)(1) is amended to reference "AS 04.16.125", which refers to illegal sending. The next provision, Section 4(d)(2), refers to an in rem proceeding and all property subject to forfeiture under (a) of AS 04.16.220. Therefore, it refers back to AS 04.16.220(a)(6), which is money. Ms. Carpeneti surmised that

Representative Gruenberg is questioning why the language doesn't simply specify [that property forfeiture] can occur for any violation of this chapter and paragraph (c).

REPRESENTATIVE GRUENBERG concurred, adding that otherwise the court has to move through a labyrinth.

MS. CARPENETI said that she didn't see a problem with the language saying "any violation of this chapter," although she indicated that it's probably covered under AS 04.11.010 and AS 04.11.491.

[10:51:01 AM](#)

REPRESENTATIVE GRUENBERG referred to the language "items of value purchased from the proceeds" on page 3, line 3, whereas the language on page 3, line 2, refers to "things of value". He opined that the language seems to imply tangible property. He then asked if intangible property, such as a copyright, would be considered a thing or an item.

MS. CARPENETI reminded the committee that the language is taken directly from the drug forfeiture statute, which has seemed to have been successful in its use. She opined that a copyright would seem as though it would be an item of value.

REPRESENTATIVE GRUENBERG referred to page 3, line 4, and the existing language "derived from". He opined that the aforementioned language may be fairly narrow because there could be a financial transaction that could be associated but not derived from [prohibited activities]. He asked if the language should be broadened so as not to enter into a semantic game regarding whether a financial transaction is associated with or derived from [prohibited activities].

[10:54:40 AM](#)

CHAIR McGUIRE asked whether there has been an issue in which law enforcement has faced a difficult threshold in obtaining the things of value derived from the [prohibited] activity.

REPRESENTATIVE GRUENBERG interjected that he was interested if such has occurred in another state or jurisdiction.

CAPTAIN HARRINGTON said that he couldn't recall any specific issues relating to Representative Gruenberg's concern.

REPRESENTATIVE GRUENBERG requested that DOL and DPS give consideration as to whether the language ought to be broadened.

MS. CARPENETI agreed to do so, but highlighted that the term "derived from" is a term that works. She also highlighted that the language must remain constitutional.

[10:57:06 AM](#)

REPRESENTATIVE GRUENBERG referred to the language, "**firearm that is visible or carried during or used in furtherance of a violation of this title**" [located on page 3, line 6], and said that he didn't want a firearm that is merely visible to be seized in [the raid] of a large premise when it didn't have anything to do with the activity.

MS. CARPENETI informed the committee that this language is also from the drug forfeiture provisions. The state, she opined, would definitely have to show a nexus.

REPRESENTATIVE WILSON inquired as to what constitutes being "**visible**".

CHAIR McGUIRE noted that the bill also refers to the firearm being carried during or used in the furtherance of a violation of this title. She speculated that use of the term "**visible**" is probably trying to address those situations in which proof is involved. Therefore, if the firearm is visible, then it wouldn't necessarily have to be proven that the firearm was carried in furtherance of the crime.

REPRESENTATIVE GRUENBERG pointed out that this would come up in litigation through a civil forfeiture question. He requested that this language be researched further.

MS. CARPENETI noted that when firearms are visible during the furtherance of a crime, situations become more dangerous.

REPRESENTATIVE GRUENBERG agreed, and clarified that the question is whether [the language] is underinclusive. He asked if the desire is to [seize firearms] when they aren't visible.

MS. CARPENETI opined that the aforementioned could occur under the "**carried**" and "**used**" language.

[11:01:43 AM](#)

REPRESENTATIVE GRUENBERG referred to page 3, line 24, and suggested that the term "must" ought to be "may" because it's left to the court to decide whether to order the property to be forfeited.

MS. CARPENETI suggested that the rationale is that if no one answers the complaint, then there's no entry.

REPRESENTATIVE GRUENBERG opined that even in a default situation the court has the discretion to enter a judgment; for example, if the court feels that there hasn't been a prima facie case. Representative Gruenberg clarified that this is a question of the order, whether there's a forfeiture or not. He asked whether it's envisioned that there will be a hearing or the clerk allowed to enter a default judgment.

MS. CARPENETI related her understanding that if no one claims the property, there would be a summary forfeiture, while if someone does claim the property, there would be a hearing.

REPRESENTATIVE GRUENBERG suggested then that Civil Rule 55(b)(1) would need to be amended. He explained that Civil Rule 55 only allows a default judgment by the clerk if it's a money judgment.

MS. CARPENETI agreed to look at that as well.

REPRESENTATIVE GRUENBERG then referred to page 3, lines 25-28, which he opined seems to place the matter back into the court's purview rather than the clerk's purview.

MS. CARPENETI interjected that the [language on page 3, lines 25-28] speaks to the situation in which someone answers the notice.

REPRESENTATIVE GRUENBERG drew the committee's attention to the definition of "manufacture" located on page 4 of HB 373. He asked if there are ways to manufacture alcohol without sugar.

CAPTAIN HARRINGTON related that the definition was added at the request of the alcohol prosecutor for DOL because she was having difficulty giving jury instructions for the manufacture of alcohol. He further related that to his knowledge there is no other way to manufacture home brew without sugar.

[11:07:03 AM](#)

REPRESENTATIVE GRUENBERG suggested a conceptual amendment to page 3, line 4, such that the language "AS 04.11.010 or in violation of a local option adopted under AS 04.11.491" would be replaced with "this title".

MS. CARPENETI said that she would like to contemplate that because there are many things that don't relate to the sale of alcohol.

CHAIR MCGUIRE, upon determining there were no further questions or witnesses, [closed public testimony].

[11:08:39 AM](#)

REPRESENTATIVE ANDERSON moved to report HB 373 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 373 was reported from the House Judiciary Standing Committee.

#### **ADJOURNMENT**

[11:09:05 AM](#)

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 11:09 a.m.