

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 29, 2006

4:07 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Pete Kott
Representative Gabrielle LeDoux
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 273

"An Act relating to a motor vehicle dealer's selling or offering to sell motor vehicles as new or current models or as new or current model motor vehicles having manufacturer's warranties."

- HEARD AND HELD

HOUSE BILL NO. 240

"An Act relating to brewery and brew pub licensing."

- HEARD AND HELD

HOUSE BILL NO. 350

"An Act relating to enforcement of insurance unfair claim settlement practices by a person affected by a violation; permitting penalties for a single-act unfair claim settlement practice; and providing for an effective date."

- BILL HEARING POSTPONED

PREVIOUS COMMITTEE ACTION

BILL: SB 273

SHORT TITLE: MOTOR VEHICLE SALES

SPONSOR(S): SENATOR(S) COWDERY

02/08/06 (S) READ THE FIRST TIME - REFERRALS
02/08/06 (S) TRA, L&C
02/23/06 (H) TRA AT 1:30 PM CAPITOL 17
02/23/06 (H) -- Meeting Canceled --
03/02/06 (S) TRA AT 2:00 PM FAHRENKAMP 203
03/02/06 (S) Moved SB 273 Out of Committee
03/02/06 (S) MINUTE(TRA)
03/03/06 (S) TRA RPT 4DP
03/03/06 (S) DP: HUGGINS, THERRIAULT, COWDERY,
KOOKESH
03/16/06 (S) L&C AT 1:30 PM BELTZ 211
03/16/06 (S) Moved SB 273 Out of Committee
03/16/06 (S) MINUTE(L&C)
03/17/06 (S) L&C RPT 5DP
03/17/06 (S) DP: BUNDE, DAVIS, ELLIS, SEEKINS,
STEVENS B
03/20/06 (S) TRANSMITTED TO (H)
03/20/06 (S) VERSION: SB 273
03/22/06 (H) READ THE FIRST TIME - REFERRALS
03/22/06 (H) L&C, JUD
03/27/06 (H) L&C AT 3:15 PM CAPITOL 17
03/27/06 (H) Heard & Held
03/27/06 (H) MINUTE(L&C)
03/29/06 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 240

SHORT TITLE: BREWERY & BREWPUB LICENSES

SPONSOR(s): JUDICIARY

03/30/05 (H) READ THE FIRST TIME - REFERRALS
03/30/05 (H) L&C, JUD
04/06/05 (H) L&C AT 3:15 PM CAPITOL 17
04/06/05 (H) <Bill Hearing Postponed>
03/22/06 (H) L&C AT 3:15 PM CAPITOL 17
03/22/06 (H) <Bill Hearing Postponed>
03/29/06 (H) L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

CLYDE (ED) SNIFFEN, JR.

Assistant Attorney General

Commercial/Fair Business Section

Civil Division (Anchorage)

Department of Law

Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 273.

RYAN MAKINSTER, Staff
to Senator John Cowdery
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 273 on behalf of Senator Cowdery, sponsor.

CRAIG JOHNSON, Staff
to Representative Lesil McGuire
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 240 on behalf of Representative McGuire, sponsor.

ROBERT MCCORMICK, Glacier Brewhouse
Brewers Guild of Alaska (BGA)
Chugiak, Alaska

POSITION STATEMENT: Offered background information and answered questions during hearing on HB 240.

LINDA THOMAS, General Manager
Alaskan Brewing Company
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 240 and expressed support for Version P.

SILVIA VILLAMIDES, Director
Anchorage Cabaret, Hotel Restaurant & Retailers Association
(CHARR)
Anchorage, Alaska

POSITION STATEMENT: Suggested changes during the hearing on HB 240.

DOUGLAS B. GRIFFIN, Director
Alcoholic Beverage Control Board ("ABC Board")
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 240.

GLENN BRADY, President
Silver Gulch Brewing
Chairman
Alaska Cabaret, Hotel, Restaurant, and Retailers Association
(CHARR)
Fairbanks, Alaska

POSITION STATEMENT: Testified during the hearing on HB 240.

ACTION NARRATIVE

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at [4:07:38 PM](#). Representatives Guttenberg, Rokeberg, Kott, and Anderson were present at the call to order. Representatives Crawford, Lynn, and LeDoux arrived as the meeting was in progress.

SB 273-MOTOR VEHICLE SALES

CHAIR ANDERSON announced that the first order of business would be SENATE BILL NO. 273, "An Act relating to a motor vehicle dealer's selling or offering to sell motor vehicles as new or current models or as new or current model motor vehicles having manufacturer's warranties."

[4:08:31 PM](#)

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law, explained that one of his responsibilities is enforcing the Consumer Protection Act, which includes auto dealers. He noted that during the last hearing, there was concern about repealing [AS 08.66.015(b)], and the effect this would have on consumer protection. He said that he encourages this concern and said, "We'd like to give consumers as much protection against potential misrepresentation and fraud as we can." He stated that the intent of SB 273 is to remove the "current model" language in order to allow dealers to sell new or used vehicles. He said that this would "clean up" the language and enable the department to enforce the statute. In regard to requiring used car dealers to pay for the shipping of the vehicle with a current manufacturer's warranty to an authorized service center for repairs, he said that this language would be more appropriate in AS 45.25.400, which contains the auto dealer act.

[4:11:10 PM](#)

MR. SNIFFEN, drawing upon his experience, said that finding an authorized service center has not been an issue. He noted that in the larger cities, there are authorized repair facilities for many manufacturers. He opined that in more remote areas of the state, the used car dealer may not inform the consumer that although the vehicle has a warranty, they cannot have repairs done locally. He said that requiring used car dealers to

disclose the warranty requirements up front may be one way to deal with this issue.

[4:12:44 PM](#)

CHAIR ANDERSON asked if [the department] endorses the bill as it is currently written.

MR. SNIFFEN said:

We have been working with the industry over the last several years to try and find a fix for this particular problem. ... The way the bill sponsors have drafted this current bill ... solves our problem. Deleting the requirement that used car dealers offer [a] rebate to cover warranty services that can't be obtained within a reasonable place of ... business ... was ... a side-effect of this "current model" language that crept into the bill, when they tried to rope in ... current model vehicles as new vehicles.

MR. SNIFFEN went on to say that he would be in favor of requiring used car dealers to disclose the details of the manufacturer's warranty. He said, "As written, we certainly endorse the bill."

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REPRESENTATIVE GUTTENBERG opined that there have not been problems in the past because AS 08.66.015(b) is current law, and he asked for further explanation as to the reasons for removing this section.

[4:15:40 PM](#)

MR. SNIFFEN replied that if the language was left in statute, AS 08.66.015(b)(1) would need to be removed, as this is contained in SB 273. He explained that this section requires a current sales and service agreement with the manufacturer. He said that all [sales and service agreements] require that the dealer provide repair facilities. In regard to the remaining language, he said that franchise agreements currently contain this language. He agreed that consumers may not make complaints because they may not be aware that this law exists. He said that the bill is intended to separate used car dealers from new car dealers, and leaving this in would require "wordsmithing."

He reiterated that this language would be more appropriate in the Auto Dealer Act.

REPRESENTATIVE LEDOUX said that the franchise agreements may change in the future. She opined that it would offer more consumer protection to leave the language in, even if this requires "wordsmithing."

[4:19:53 PM](#)

RYAN MAKINSTER, Staff to Senator John Cowdery, Alaska State Legislature, on behalf of Senator Cowdery, sponsor, stated that leaving AS 08.66.015(b) in statute would require the used car dealer to honor a franchise agreement that is between the manufacturer and the car owner.

[4:21:44 PM](#)

REPRESENTATIVE GUTTENBERG asked if used car dealers can have an agreement with the manufacturer.

MR. MAKINSTER replied that the aforementioned statute does not require the dealership to have a current sales and service agreement, but allows the dealer to sell a current model used vehicle. He said that, for example, if the manufacturer did not reimburse for services, this section of statute would make the used car dealer responsible for the repairs.

REPRESENTATIVE GUTTENBERG said that he understands and asked who would be responsible for repairs to a vehicle that is under warranty but is not near a dealership.

MR. MAKINSTER replied that in addition to dealers, manufacturers will sometimes go to private auto shops to cover repairs. He noted that not all communities have an approved dealer or auto shop. He stated that this issue occurs everywhere, and said that it is something that needs to be taken into consideration when purchasing a car. He added that if a consumer is informed that the community has a dealer available for repairs and it does not, this would fall under the unfair trade practices.

REPRESENTATIVE LEDOUX said that it is not unreasonable to expect the dealer to sell a car that is "in working order."

MR. MAKINSTER reiterated that the manufacturer's warranty is a contract with the dealer.

[4:27:13 PM](#)

CHAIR ANDERSON informed the committee that the bill would be held until the next meeting to allow time for these concerns to be addressed.

REPRESENTATIVE GUTTENBERG expressed support for the bill. He stated that he is concerned with consumer protection. He said "We don't want to put the onus on the used dealer, but we want to figure out the wordsmithing."

MR. MAKINSTER concurred.

CHAIR ANDERSON recommended that Mr. Makinster speak with the Alaska Auto Dealers Association to facilitate the answers to the committee's questions.

[SB 273 was held over.]

[4:29:04 PM](#)

HB 240-BREWERY & BREWPUB LICENSES

[4:29:27 PM](#)

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 240, "An Act relating to brewery and brew pub licensing."

REPRESENTATIVE KOTT made a motion to adopt CSHB 240, Version 24-LS0734\P, Finley/Luckhaupt, 3/28/06, as the working document. There being no objection, Version P was before the committee.

[4:30:00 PM](#)

CRAIG JOHNSON, Staff to Representative Lesil McGuire, Alaska State Legislature, on behalf of Representative McGuire, sponsor, explained that HB 240 was introduced at the request of the Brewers Guild of Alaska (BGA). He explained that the BGA consists of six breweries and five brewpubs. This bill is an effort to foster a "level playing field" between breweries and brewpubs. He explained that currently, brewpubs are authorized to sell products to consumers for consumption on the premises, and to sell limited amounts for consumption off of the premises. In addition, brewpubs may sell to other licensees through a distributor. He went on to explain that breweries may currently sell products for off-sight consumption to consumers,

wholesalers, or licensees, in addition to offering free samples of products on the premises.

MR. JOHNSON went on to say that HB 240 increases the brewpub production cap from 150,000 gallons to 465,000 gallons. He noted that this cap is accepted throughout the country. In addition, the amount of product a brewpub may sell to a licensed wholesale distributor is increased from 15,000 gallons to 45,500 gallons. He pointed out that out-of-state brewpubs do not have restrictions on the amount of product sold within the state.

[4:32:12 PM](#)

MR. JOHNSON said that HB 240 would allow breweries [to charge for samples on the premises], which is common in tasting rooms in other states. He noted that while there have been concerns regarding breweries acting as taverns, this legislation includes restrictions such as limited on-site sales, restricted hours of operation, and a well-defined environment. In addition, only products of the brewery may be sold. Mr. Johnson related that HB 240 would allow brewpubs to self-distribute up to 200 barrels of product per year, and he added that there is a population limitation of 75,000 in place, which would prevent harm to smaller breweries. He said that under current law, brewpubs are required to use a wholesaler to distribute product off premises; however, this may not be profitable for the wholesaler, making it difficult to get the product on the market.

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CHAIR ANDERSON noted that there would be testimony both in favor of and in opposition to HB 240.

[4:35:57 PM](#)

ROBERT MCCORMICK, Glacier Brewhouse, Brewers Guild of Alaska (BGA), said that the BGA represents six breweries and five brewpubs throughout the state. He explained that this legislation has been developing for many years, adding that this is the first issue to unite the brewpubs and breweries in the BGA.

[4:38:17 PM](#)

CHAIR ANDERSON inquired as to the difference between a brewery and a brewpub.

MR. MCCORMICK replied that there are three tiers in the beverage industry: manufacturing, distributing, and retail. He explained that breweries are in the manufacturing tier, while brewpubs are in the retail tier. He said that the brewpubs manufacture beer for sale on the premises, and may sell a small amount through a wholesaler, while breweries manufacture beer that can be sold through a wholesaler or directly to a retailer. Brewpubs and breweries require different licenses to conduct business.

[4:39:48 PM](#)

REPRESENTATIVE ROKEBERG pointed out that brewpubs are required to have a beverage dispensary license.

[4:40:43 PM](#)

CHAIR ANDERSON stated that over the years, there have been several changes to the statutes [that govern breweries and brewpubs]. He asked for an explanation of the changes made by HB 240.

[4:41:19 PM](#)

MR. MCCORMICK explained that in the past, both breweries and brewpubs wanted the rights of the other, and HB 240 contains changes that both groups agree on. He stated that the [brewing industry] is fast-growing, noting that brewery and brewpub laws vary across the nation, with some states having higher [production and sales] caps than Alaska. He said that having a higher cap gives an unfair competitive advantage in-state, as there is no limit on how much beer an out-of-state brewery or brewpub can sell in Alaska.

[4:43:42 PM](#)

MR. MCCORMICK went on to say that during the past year, the BGA held meetings to re-work the legislation, to ensure that other members of the industry are not compromised. He stated that the Anchorage Cabaret, Hotel, Restaurant & Retailers Association (CHARR) requested the following changes: lower the amount of beer breweries can sell to 24 ounces; limit the hours of operation; no entertainment, food service, or fixed bars on the premises; no mention of "tasting rooms." He explained that the BGA agreed with some of these requests and made changes accordingly; however, 48 ounces of beer was changed to 36 ounces, and there was no restriction placed on food service. He

said that the BGA feels it has "substantially" met these requests; however, he is aware that Anchorage CHARR is not satisfied with these changes. The concern, he said, is that the law may be misinterpreted and breweries may turn into taverns; however, with the aforementioned restrictions in place, this will not happen.

[4:46:32 PM](#)

LINDA THOMAS, General Manager, Alaskan Brewing Company ("AK Brewing Co."), informed the committee that she is also representing the Brewers Guild of Alaska (BGA). She stated that the AK Brewing Co. is in support of the current committee substitute. She explained that the BGA has worked carefully to craft the intent of the bill over the past two years. Last year, she said, HB 240 was introduced with the intent of making [brewery and brewpub] licenses equal, which is common in other states. However, due to the competitive licensing environment, [the bill no longer attempts to do this]. The AK Brewing Co. is primarily concerned with protecting small breweries across the state. She said that the intent is to keep the "playing field" equal between brewpubs and breweries. She stated that when the brewery was founded 20 years ago, it was the 67th brewery to open in the nation. Currently, there are over 1,400 breweries and brewpubs in the United States.

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MS. THOMAS went on to say that the AK Brewing Co. would like to see the bill remain as it is currently written. She said a primary concern is that the small breweries are not put at a competitive disadvantage. She informed the committee that the AK Brewing Co. began with very little competition, however, small breweries are currently having a difficult time with outside competition.

[4:50:29 PM](#)

MS. THOMAS went on to say that if brewpubs increase the wholesale market without allowing breweries to become involved in the retail market, then that creates a disadvantage. In addition, the ability of the breweries to sell samples would help to defray some of the costs. She stated that if HB 240 does not remain as-is, the Alaskan Brewing Company would no longer support it.

[4:51:33 PM](#)

CHAIR ANDERSON asked if the sale of samples by a brewery would negatively affect other businesses. He opined that this may have a positive effect, as the samples are currently free.

[4:53:09 PM](#)

MS. THOMAS replied that the AK Brewing Co. has worked well with local retailers and has a significant amount of tourists each year, and offering free samples has not diminished business for other licensees. She said that promoting local breweries helps to build the craft brewing industry.

CHAIR ANDERSON remarked that letters of support from local licensees would be instructive for the committee.

[4:54:37 PM](#)

REPRESENTATIVE CRAWFORD asked if breweries, brewpubs, or out-of-state breweries enjoy the cost advantage.

[4:55:17 PM](#)

MS. THOMAS replied that breweries and brewpubs in the state are generally at a cost disadvantage, due to the extra cost of doing business in Alaska.

[4:56:14 PM](#)

REPRESENTATIVE CRAWFORD asked if Budweiser can be sold in Alaska for less than it costs to produce Alaskan Brewing Company beer.

MS. THOMAS replied that is correct.

CHAIR ANDERSON clarified that a six-pack of Budweiser can be sold for less than a six-pack of AK Brewing Co. beer, which is more expensive to brew.

[4:56:46 PM](#)

REPRESENTATIVE CRAWFORD stated that there is a premium for AK Brewing Co. products, as it is a "desirable" product. He asked if it costs less for Budweiser products to be shipped to the state and sold than for in-state breweries to brew and sell their product.

MS. THOMAS replied yes. For example, she said, the AK Brewing Co. has installed a grain dryer, as there is no place to dispose of the grains used, in addition to a carbon dioxide (C02) regeneration plant, due to an inability to ship C02 to Alaska. These are, she said, some of the issues that result in a higher production cost to do business in Alaska.

[4:58:29 PM](#)

REPRESENTATIVE ROKEBERG asked for confirmation that the AK Brewing Co. would not support the bill if [Section 2 was removed] and [Section 3 remained].

MS. THOMAS replied that is correct. In response to further questioning, she explained that the brewery can currently sell no more than two cases [or] five gallons of beer per day, per person, [according to current licensing restrictions].

[5:01:15 PM](#)

REPRESENTATIVE ROKEBERG expressed concern regarding the integrity of the three-tier system. He opined that allowing the sale of product would turn breweries into retail establishments.

[5:01:55 PM](#)

MS. THOMAS explained that while the intent [of the AK Brewing Co.] is not to hurt brewpubs, the brewpubs would be entering the wholesale market. She said that this would hurt the small breweries, unless they have some way of reaching the consumers directly.

REPRESENTATIVE ROKEBERG noted that there is a provision in the bill which provides for 465,000 gallons to be sold wholesale, and 6,200 gallons to be sold on a retail basis.

MS. THOMAS, speaking about brewpubs, replied that 1,500 barrels would be for wholesale with 15,000 barrels as the total production cap to be brewed or sold on the premises. She said that 15,000 barrels is the definition of "micro-brewery."

[5:06:00 PM](#)

REPRESENTATIVE KOTT asked what the brewery licensing fee is.

REPRESENTATIVE ROKEBERG said that it is \$1000 per year.

5:06:50 PM

MS. THOMAS, in response to a question, said that the language in HB 240 makes it clear that breweries may continue to offer as many free samples as they desire. It is, she said, only if the brewery chooses to sell samples that it would be subject to the restrictions stated in the bill. In response to a question regarding alcohol safety, she said that the AK Brewing Co. is "very careful" concerning persons who visit the brewery to sample beer, and while she cannot speak for other breweries, she is "fairly certain" that they are careful, as well. She said that breweries have the same requirements as other providers of alcohol.

5:08:59 PM

SILVIA VILLAMIDES, Director, Anchorage Cabaret, Hotel Restaurant & Retailers Association (CHARR), said that Anchorage CHARR would be in support of HB 240 with the following changes: 36 ounces of beer to 24 ounces, no prepared food on the premises, all references to "the room" replaced with "licensed premises," and a change in the hours of operation to 9:00 a.m.-10:00 p.m. She said that Anchorage CHARR is working on an addendum to allow sampling of beer.

5:11:11 PM

REPRESENTATIVE ROKEBERG, in regard to the activities allowed by HB 240, remarked that listing each activity may not include all possible activities and may become a problem in the future. He also noted that currently, live music is restricted to 3:00 p.m.-11:00 p.m. at food establishments.

5:12:58 PM

DOUGLAS B. GRIFFIN, Director, Alcoholic Beverage Control Board ("ABC Board"), stated that he has not had a chance to speak with any members of the board regarding HB 240. He said that the increased sale of beer at breweries is a "slippery slope." Referring to Section 3 of the bill, which allows for limited self-distribution by the brewpubs, he said that the breweries are currently allowed to distribute. He opined that this is the one competitive advantage of the breweries, among many disadvantages; however, this advantage is being "chipped away" by [allowing brewpubs to do this]. He commented that the increase in gallons for sale is significant, and he remarked that a micro-brewery is not the same as a brewpub. He noted

that the Alaskan Brewing Company is, by definition, a micro-brewery. He opined that in the future, new breweries would have a difficult time entering into the marketplace if the brewpubs have such a significant advantage; however, if the small breweries in the state feel they can make this work, he would be interested in hearing this testimony.

[5:17:09 PM](#)

MR. GRIFFIN remarked that HB 240 does "tear away" at the three tier system, which he would like to preserve. However, he acknowledged that there is money to be made, and the businesses involved are "good licensees."

[5:18:04 PM](#)

GLENN BRADY, President, Silver Gulch Brewing, Fairbanks, Alaska, informed the committee that while he is also the Chairman of Alaska Cabaret, Hotel, Restaurant, and Retailers Association (CHARR), he is not speaking on their behalf, as Alaska CHARR does not have a position at this time. In regard to Anchorage CHARR, he stated that Anchorage has many brewpubs and one brewery. He said that Anchorage CHARR should not be concerned about breweries in other areas of the state. He stated that if HB 240 passes, the breweries would not be "much of a tavern," due to the restrictions in the bill. He said that the valuation of a beverage dispensary license is "near and dear to a licensee's heart," and HB 240 would not compromise this value. On the contrary, he opined, this would ultimately work for the betterment of the industry. He said "I see this as a good thing," adding that fear of change and compromise is key.

[5:22:31 PM](#)

CHAIR ANDERSON noted that there are many concerns that need to be addressed and recommended that any issues be discussed before the next committee hearing.

REPRESENTATIVE ROKEBERG asked Mr. Brady whether he would continue to support HB 240 if Section 2, which applies to breweries, was removed.

MR. BRADY said that he would withdraw his support.

[HB 240 was held over.]

[5:25:16 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at [5:25:28 PM](#).