

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

April 10, 2006

3:52 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

Representative Pete Kott
Representative Gabrielle LeDoux

COMMITTEE CALENDAR

HOUSE BILL NO. 494

"An Act relating to private professional conservators and private and public guardians."

- HEARD AND HELD

HOUSE BILL NO. 431

"An Act relating to sales of wine by a winery licensee."

- MOVED CSHB 431(L&C) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 494

SHORT TITLE: GUARDIANSHIP AND CONSERVATORS

SPONSOR(s): LABOR & COMMERCE

03/24/06	(H)	READ THE FIRST TIME - REFERRALS
03/24/06	(H)	L&C, JUD, FIN
04/03/06	(H)	L&C AT 3:15 PM CAPITOL 17
04/03/06	(H)	<Bill Hearing Postponed to 04/05/06>
04/05/06	(H)	L&C AT 3:15 PM CAPITOL 17
04/05/06	(H)	-- Meeting Canceled --
04/10/06	(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 431

SHORT TITLE: WINERY LICENSES

SPONSOR(s): REPRESENTATIVE(s) LEDOUX

02/06/06 (H) READ THE FIRST TIME - REFERRALS
02/06/06 (H) L&C, FIN
04/10/06 (H) L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

JOSH APPLEBEE, Staff
to Representative Anderson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 494 on behalf of the House
Labor and Commerce Standing Committee, sponsor, chaired by
Representative Anderson.

JIM PARKER, Supervising Attorney
Public Guardian Section
Office of Public Advocacy (OPA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Reviewed the changes encompassed in HB 494.

BETTY STANLEY
Alaska State Association for Guardianship and Advocacy
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 494.

JOSH FINK, Director
Office of Public Advocacy
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 494.

CHRISTINE MARASIGAN, Staff
to Representative LeDoux
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 431 on behalf of
Representative LeDoux, sponsor.

STEVEN (STEVE) THOMPSON, Owner
Alaskan Wilderness Wines
Kodiak, Alaska

POSITION STATEMENT: Encouraged support for HB 431.

DALE FOX, Executive Director

Alaska Cabaret, Hotel, Restaurant & Retailer's Association
Anchorage, Alaska

POSITION STATEMENT: Testified that Alaska CHARR supports the provisions in HB 431 for Alaska wineries to ship product to Alaskans.

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

POSITION STATEMENT: During hearing on HB 431, answered questions.

ACTION NARRATIVE

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at [3:52:21 PM](#). Representatives Anderson, Rokeberg, Crawford, and Guttenberg were present at the call to order. Representative Lynn arrived as the meeting was in progress.

HB 494-GUARDIANSHIP AND CONSERVATORS

[3:52:37 PM](#)

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 494, "An Act relating to private professional conservators and private and public guardians."

[3:52:56 PM](#)

JOSH APPLEBEE, Staff to Representative Anderson, Alaska State Legislature, speaking on behalf of the sponsor, the House Labor and Commerce Standing Committee, explained that HB 494 aims to correct some unintended consequences resulting from the passage of House Bill 427 in 2004. He reminded the committee that House Bill 427 responded to a need for oversight of private, professional guardians and conservators. The legislation gave responsibility for regulation of private professional guardians to the Division of Occupational Licensing, now know as the Division of Corporations, Business, & Professional Licensing. A new statutory section was created in AS 08.26, which established the process by which private guardians and conservators would obtain licensure and act as guardians or conservators for disabled Alaskans. He noted that House Bill 427 also made changes in the guardianship statutes contained in AS 13.26.

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MR. APPLEBEE highlighted that HB 494 only deals with AS 08.26. This legislation, HB 494, is supported by the Division of Corporations, Business, & Professional Licensing and the Alaska State Association for Guardianship and Advocacy, he related.

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REPRESENTATIVE ROKEBERG moved to adopt CSHB 494, Version 24-LS11763\F, Mischel, 4/4/06, as the working document. There being no objection, Version F was before the committee.

[3:55:15 PM](#)

JIM PARKER, Supervising Attorney, Public Guardian Section, Office of Public Advocacy (OPA), Department of Administration (DOA), explained that the intent behind House Bill 427 was for there to be a healthy, vibrant private sector to provide guardianship and conservatorship services to individuals in Alaska with disabilities. However, the legislation created some unintended barriers to the private sector with the organizational license requirement and the lack of clarity that those guardians providing conservatorship services don't need to obtain a separate license. Therefore, HB 494 eliminates the organizational license requirement and clarifies that those who obtain a guardian license are able to perform conservatorship services as well so long as they meet the conservatorship license requirements. The aforementioned, he opined, will provide incentives to the private sector.

MR. PARKER then turned the committee's attention to the end of HB 494, which amends the public guardian statute. This amendment specifies that any employee of the Office of Public Advocacy acting as a public guardian and providing guardianship and conservatorship services would also have to meet the current requirement applicable to private guardians and conservators, including going through a criminal background check and being certified by a nationally recognized organization. Currently, the only nationally recognized organization is the National Guardianship Association. He then pointed out that under HB 494, AS 08.26.030 is amended to reflect the standard concerning criminal background checks and barrier crimes such that it reflects the standard of the National Guardianship Association. He noted that some changes were made because the Division of Corporations, Business, & Professional Licensing believed the provisions to be unnecessary.

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CHAIR ANDERSON announced that HB 494 will be held today.

REPRESENTATIVE GUTTENBERG commented that he wasn't aware that guardianship has actually become a business, and therefore he asked for the background on it.

MR. PARKER explained that in Alaska a conservator is appointed only to manage the financial affairs of a person with a disability or some sort of incapacity. However, a guardian has broader powers, including the ability to make decisions regarding a person's finances. Guardians also have the power and obligation to make decisions regarding medical care and placement. This legislation, he stated, doesn't change anything about the existing structure of guardianship, which is a process set out in statute that results in appointment through the court. For many years there have been private alternatives to the Office of Public Advocacy, which provides guardianship and conservatorship services as a last resort such as when there is no family member, friend, or private entity that can do so.

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REPRESENTATIVE ROKEBERG, referred to page 2, line 22, and inquired as to the definition of a partial guardian.

MR. PARKER answered that a partial guardian is someone who doesn't have all the duties set out in statute. That provision, he explained, recognizes the possibility that people may want to be licensed to act as a guardian, but don't want to assume financial responsibility. Mr. Parker opined that the aforementioned won't happen often, but the statutes need to allow for that possibility. In further response to Representative Rokeberg, Mr. Parker said that a partial guardian would be a private professional guardian or conservator. He noted that Title 13 includes definitions regarding limited and partial guardians.

4:04:40 PM

BETTY STANLEY, Alaska State Association for Guardianship and Advocacy (ASAGA), began by informing the committee that she worked with the sponsor on House Bill 427. She further informed the committee that she has been a court visitor for 17 years as she performs the court investigation prior to guardianship or conservatorships being appointed by the court. This legislation

and House Bill 427 were intended to license the private sector, which didn't exist at one time. Since working with the Division of Corporations, Business, & Professional Licensing, it became apparent that House Bill 427 slowed/impeded the process or made it very expensive because the language was interpreted to require three licenses, which was not the intent. This proposed legislation would clarify that multiple licenses aren't required. Furthermore, HB 494 makes it easier for those in the private sector to obtain a license as it makes it a bit less expensive. Therefore, ASAGA, she relayed, supports the changes and amendments that require certification and background checks.

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JOSH FINK, Director, Office of Public Advocacy, Department of Administration, thanked the sponsor because it's critical for there to be regulation of private guardians. He echoed the earlier testimony that the intention was never to require people to obtain three licenses. He expressed hope that HB 494 will allow more individuals to become private guardians. Mr. Fink opined that the department fully supports HB 494. He highlighted the fact that there are zero fiscal notes from the Office of Public Advocacy and the Division of Corporations, Business, & Professional Licensing. He mentioned that the Division of Corporations, Business, & Professional Licensing supports HB 494.

[4:07:37 PM](#)

CHAIR ANDERSON announced that HB 494 would be held over.

HB 431-WINERY LICENSES

[4:08:37 PM](#)

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 431, "An Act relating to sales of wine by a winery licensee."

[4:09:01 PM](#)

CHRISTINE MARASIGAN, Staff to Representative LeDoux, Alaska State Legislature, sponsor, noted a draft committee substitute (CS) included in members' packets.

REPRESENTATIVE ROKEBERG made a motion to adopt CSHB 431, Version 24-LS1578\G, Luckhaupt, 4/06/06, as the working document. There being no objection, Version G was before the committee.

MS. MARASIGAN explained that HB 431 makes it possible for in-state wineries to sell wine in-state. Currently, she said, it is possible to go online and purchase wine from out-of-state wineries; however, it is currently illegal to purchase from in-state wineries.

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STEVEN (STEVE) THOMPSON, Owner, Alaskan Wilderness Wines, said that HB 431 would give in-state wineries equal treatment with out-of-state wineries. He encouraged support of the bill.

REPRESENTATIVE ROKEBERG asked what types of wine Alaskan Wilderness Wines produces.

MR. THOMPSON replied that his company currently produces a variety of berry wines, in addition to sparkling rhubarb, and mead. He said that production is around 150 cases per year.

[4:12:01 PM](#)

DALE FOX, Executive Director, Alaska Cabaret, Hotel, Restaurant & Retailer's Association (CHARR), related that Alaska CHARR supports the provisions for Alaska wineries to ship product to Alaskans. He related that most states allowed in-state wineries to ship but not the out-of-state wineries, which resulted in supreme court challenges. Alaska has a small industry, and all that can be done to support it should be done, he opined. Clearly, if out-of-state wines are allowed to be shipped to Alaska, those wineries in the state should also be allowed to ship to Alaskans. Mr. Fox highlighted that when a retail package store ships alcohol it must follow the specifications of 13 AAC 104.645, which basically establishes provisions to ensure that the purchaser is 21 years of age and the order is paid. If in-state wineries are allowed to ship, then they should be required to follow the same rules as package stores, he said.

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REPRESENTATIVE CRAWFORD recalled that similar legislation addressed this two to three years ago.

CHAIR ANDERSON reminded the committee that the legislation to which Representative Crawford spoke did not pass.

REPRESENTATIVE GUTTENBERG noted that there was a supreme court ruling that specified that there can't be two sets of rules, which this legislation corrects. He asked if there are any statements by the courts that need to be addressed.

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MS. MARASIGAN explained that in most other states wine can be shipped within the state, but those from out-of-state were prevented from shipping wine into the state. Therefore, the supreme court ruling stated that both must be treated equally. In Alaska, out-of-state wineries are allowed to ship into the state while in-state wineries aren't allowed to ship within the state.

REPRESENTATIVE GUTTENBERG asked if the parity of taxation was addressed in this ruling.

MS. MARASIGAN said she did not believe that it was. She related her belief that taxes were addressed such that an out-of-state winery couldn't be charged more to ship into another state than what those in the state were being charged.

REPRESENTATIVE GUTTENBERG questioned whether the ruling touched taxation as it applies to Internet sales.

[4:17:17 PM](#)

DOUGLAS (DOUG) B. GRIFFIN, Director, Alcoholic Beverage Control Board ("ABC Board"), in response to an earlier question, said that the ABC Board would not have a problem instructing the wineries to follow the same provisions, written order provisions, as for package stores. For equity, he agreed that a similar regulation to apply to direct shipment from wineries would be appropriate.

REPRESENTATIVE ROKEBERG surmised that an amendment is needed to create the duty unless that is already in place.

MR. GRIFFIN said that he would like to speak with his legal counsel on that matter.

CHAIR ANDERSON interjected that the next committee of referral for HB 431 is the House Finance Committee. He suggested that

the legislation could be reported from committee and the sponsor and staff could address that matter before the legislation arrives in the House Finance Committee.

REPRESENTATIVE ROKEBERG opined that the winery should abide by the law and it's merely a matter of whether it should be placed in statute or whether the current regulations are applicable.

REPRESENTATIVE GUTTENBERG asked if there is companion legislation in the Senate.

MS. MARASIGAN replied no.

REPRESENTATIVE ROKEBERG noted that this legislation only extends those privileges to in-state wineries. He related his understanding that Alaska's statutes regarding the importation of wine are out of compliance.

MR. GRIFFIN pointed out that in Alaska there was never a statutory or regulatory provision that addressed an Alaskan ordering wine from an out-of-state winery. In the absence of the statute, the ABC Board determined that it is permissible for Alaskans to order wine from [out-of-state] wineries for personal use. He related his understanding that the Supreme Court's ruling didn't take away the powers of taxation, but mainly attempted to treat all wineries equal.

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REPRESENTATIVE ROKEBERG related his understanding that a winery outside the state has to be licensed with the State of Alaska in order to export into the state.

MR. GRIFFIN replied no.

CHAIR ANDERSON, upon determining that no one else wished to testify, closed public testimony.

[4:23:06 PM](#)

REPRESENTATIVE ROKEBERG asked if there was a reason why the winery fee was deleted.

MS. MARASIGAN answered that Mr. Griffin didn't feel it was a good idea and thus the winery fee was deleted.

REPRESENTATIVE LYNN moved to report CSHB 431, Version 24-LS1578\G, Luckhaupt, 4/6/06, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 431(L&C) was reported from committee.

[4:24:03 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:24 p.m.