

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

April 12, 2007

8:03 a.m.

MEMBERS PRESENT

Representative Anna Fairclough, Co-Chair
Representative Gabrielle LeDoux, Co-Chair
Representative Mark Neuman
Representative Kurt Olson
Representative Sharon Cissna
Representative Woodie Salmon

MEMBERS ABSENT

Representative Nancy Dahlstrom

COMMITTEE CALENDAR

HOUSE BILL NO. 232

"An Act relating to the sale, distribution, and purchase of alcoholic beverages; relating to a state database for records of certain purchases of alcoholic beverages; relating to the relocation of a license to sell alcoholic beverages; relating to procedures for local option elections for control of alcoholic beverages; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 232

SHORT TITLE: ALCOHOL SALE/PURCHASE/DISTRIBUTION

SPONSOR(S): REPRESENTATIVE(S) MEYER

04/04/07	(H)	READ THE FIRST TIME - REFERRALS
04/04/07	(H)	CRA, JUD, FIN
04/12/07	(H)	CRA AT 8:00 AM BARNES 124

WITNESS REGISTER

REPRESENTATIVE KEVIN MEYER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 232.

TALIS COLBERG, Acting Attorney General
Department of Law
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 232, answered questions.

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

POSITION STATEMENT: During hearing of HB 232, answered questions.

DOUGLAS GRIFFIN, Director
Alcoholic Beverage Control Board
Department of Public Safety
Anchorage, Alaska

POSITION STATEMENT: During hearing of HB 232, answered questions.

RODNEY DIAL, Lieutenant, Deputy Commander
A Detachment
Division of Alaska State Troopers
Department of Public Safety (DPS)
Ketchikan, Alaska

POSITION STATEMENT: During hearing of HB 232, answered questions.

ACTION NARRATIVE

CO-CHAIR GABRIELLE LEDOUX called the House Community and Regional Affairs Standing Committee meeting to order at [8:03:48 AM](#). Representatives Neuman, Olson, Cissna, LeDoux, and Fairclough were present at the call to order. Representative Salmon arrived as the meeting was in progress.

HB 232-ALCOHOL SALE/PURCHASE/DISTRIBUTION

[8:04:09 AM](#)

CO-CHAIR LEDOUX announced that the only order of business would be HOUSE BILL NO. 232, "An Act relating to the sale, distribution, and purchase of alcoholic beverages; relating to a state database for records of certain purchases of alcoholic beverages; relating to the relocation of a license to sell alcoholic beverages; relating to procedures for local option

elections for control of alcoholic beverages; and providing for an effective date."

8:04:49 AM

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, sponsor, began by informing the committee that in 2004 the federal government established the Alaska Rural Justice & Law Enforcement Commission ("Commission") to study various aspects of rural justice services. The Commission recommended several changes to Alaska statutes governing the sale and possession of alcohol in Alaskan communities. Last year the legislature passed the first part of the recommendations and HB 232 embodies the second phase of the Commission's recommendations. The main focus of HB 232 is the creation of a database for package store licensees to track written orders to damp communities, the prohibition of purchasing alcohol from someone in a dry community, the extension of the period before a local election can be held to overturn a vote to become dry or damp, and the establishment of a pilot project for alcohol delivery sites in Kotzebue and Bethel. This legislation also contains cleanup language dealing with forfeiture laws, possession of ingredients for homebrew, and the transfer of liquor licensees from within large hub communities of an organized borough to within the city limits. Representative Meyer related that he introduced HB 232 at the request of the Department of Labor & Workforce Development (DLWD).

8:07:27 AM

REPRESENTATIVE NEUMAN, referring to the fiscal notes, highlighted that \$269,000 is being spent for the construction of a database. He surmised that the sponsor will try to ensure that the aforementioned expenditure will be spent in Alaska.

REPRESENTATIVE MEYER characterized the fiscal note as a start and opined that the fiscal note is so high because of the initial cost of the database. Once the database is in place, the costs should decrease. Representative Meyer said that the fiscal note will be scrutinized more closely as the legislation progresses. With regard to the expenditure being spent in Alaska, Representative Meyer said he didn't see any reason why it couldn't be.

8:08:37 AM

REPRESENTATIVE CISSNA asked what databases and information are currently available.

REPRESENTATIVE MEYER said that he hasn't done much research on the database and what's available. However, he related his understanding that the Department of Law (DOL) has.

[8:09:34 AM](#)

CO-CHAIR LEDOUX, referring to Section 10 and the possession of ingredients for homebrew, opined that the ingredients are fairly common items one might normally have in his/her pantry. Therefore, she questioned at what point one would determine there is intent to use those ingredients for homebrew.

REPRESENTATIVE MEYER deferred to DOL.

[8:10:56 AM](#)

TALIS COLBERG, Acting Attorney General, Department of Law (DOL), said that [the determination that the ingredients are intended to be used for homebrew] would depend upon the circumstances and amount in which the ingredients are discovered. Mr. Colberg pointed out that the attorney general is automatically placed on the Commission as one of its co-chairs. The other co-chair is Nelson Cohen, the U.S. Federal District Attorney in Anchorage. The Commission was basically created by U.S. Senator Ted Stevens to provide funding for the Department of Justice at the federal level. Basically, the U.S. Attorney General selects the members of the Commission. Four new members, including the attorney general, have been placed on the Commission in the last few months. Mr. Colberg highlighted that the Commission was created to address four specific issues, including addressing alcohol problems in rural Alaska. In attempting to address the aforementioned, the Commission established several committees that met throughout the state in order to develop suggestions. Several hundred suggestions were compiled to improve the interdiction of alcohol in damp and dry villages. Of all the suggestions put forward, the ones before the committee today are those that seem to be the most workable, reasonable, and most likely to have some significant impact. In fact, it's believed that the creation of the database will improve the statistics [related to alcohol problems]. Mr. Colberg asked that the committee move HB 232 forward.

[8:16:13 AM](#)

CO-CHAIR FAIRCLOUGH inquired as to how interstate distributors will be made aware of the database.

[8:16:56 AM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), said that although [the database] is problematic for out-of-state distributors, not that many do send alcohol in response to written orders. Still, distributors are required to know which communities are damp and which are dry. She surmised that as the database matures, there will likely be adjustments to address those distributors who do send alcohol from out-of-state. At this point, the legislation addresses a database for in-state distributors.

CO-CHAIR FAIRCLOUGH related her understanding that there is an existing database within the Department of Revenue (DOR) that she assumed is through an alcohol taxing function and thus those distributors, particularly in the Seattle region, are known. She highlighted the importance of notifying people up-front of laws that are changing.

[8:18:52 AM](#)

MS. CARPENETI said that's an excellent idea.

REPRESENTATIVE NEUMAN, referring to Section 8, related his understanding that it would take away a local option related to elections, and expressed concern with that. Representative Neuman related his support for local control. He then asked how long the original periods for an election to remove a local option or change to a less restrictive option were in place. He further asked if the changes to those dates were changed after consultation with the communities.

MR. COLBERG said he wouldn't characterize [Section 8] as taking away control, given that the original control of when the elections occur is mandated by the state. In further response to Representative Neuman, Mr. Colberg pointed out that the enactment [of those election dates] was in 1995, and thus it has been in place for 12 years.

[8:22:17 AM](#)

REPRESENTATIVE NEUMAN asked why the dates for elections have been extended. Again, he reiterated his belief that this takes away local control.

MS. CARPENETI surmised that the Commission received input from the local communities that suggested it would be appropriate to provide more time for these local options to be enforced before having another election. These time limits were set when the local option laws were adopted.

REPRESENTATIVE NEUMAN inquired as to DOL's opinion with regard to making the adoption of Section 8 an option for local communities.

MR. COLBERG said that if Representative Neuman is envisioning a situation in which communities across rural Alaska would have multiple opportunities to have different timeframes for their elections on a case-by-case basis that would seem to abdicate the state's power to control elections to the local level. The aforementioned may create a system that is harder to regulate. If the election timeframe was truly turned over to local choice, some parameters would need to be established, which would still take some control from the local communities. He opined that a limit will have to be set at some point. He related his guess that with a one-year timeframe, there's such a short time that those who are avoiding compliance can purchase a lot of alcohol. Furthermore, a two-year timeframe isn't inconsistent with a fairly standard election cycle across the state. Mr. Colberg said that the legislation isn't trying to take away local power to determine things because the local power is the voting itself.

[8:27:41 AM](#)

DOUGLAS GRIFFIN, Director, Alcoholic Beverage Control Board ("ABC Board"), Department of Public Safety (DPS), informed the committee that he also served on the Alcohol Control Working Group, which made recommendations to the Commission. The concept behind [Section 8] is that there might be a very vocal minority that constantly wants to bring the issue of a community's status forward for placement on the ballot. He opined that sometimes more time is needed to let these things work out and become part of the local community's law enforcement plan. The idea, he explained, was to extend the time between those types of elections in which people are trying to push a community to a less restrictive option in order to provide time for the dry or damp status to work. Mr. Griffin

highlighted that statistics show that alcohol is a huge problem in rural Alaska. Communities that have chosen to go dry are generally healthier and safer than locations where it's legal to possess alcohol based on the various standards that are used to measure such things. Therefore, he related that it was thought that lengthening the time during which communities could be dry between elections would result in safer communities.

REPRESENTATIVE NEUMAN reiterated that his concern revolves around allowing communities to maintain local control.

8:31:04 AM

REPRESENTATIVE CISSNA related her agreement with Representative Neuman that the power does belong with those in communities. She then recalled her experience in the publication business during which she [observed] steady large amounts of money that is often spent attempting to open up dry/damp communities to alcohol. Alcohol abuse is costing the state so much, she emphasized. Representative Cissna opined that this legislation begins to return power to communities that "have had it bought away." She then asked if HB 232 addresses the situation in which there are forms to order alcohol at counters of the local airports. She asked whether HB 232 addresses that.

MS. CARPENETI said HB 232 doesn't address that issue.

MR. GRIFFIN said he's unable to comment specifically about the forms to which Representative Cissna spoke. However, he related that most alcohol that's shipped to damp communities in rural Alaska, such as Bethel and Kotzebue, is done through a process specified in statute and the regulations of the ABC Board. The aforementioned is commonly referred to as shipment by written order. He acknowledged that it's a fairly bureaucratic process because there are many safeguards, but it's the process by which those who live in an area with no liquor licensed outlets, package stores, or bars can legally purchase alcoholic beverages in a limited amount. The amount is limited on a monthly basis. The database is designed to address that whole process. He noted that there are prohibitions against advertising, and thus the situation to which Representative Cissna mentioned would seem to run afoul of that prohibition. He mentioned that Bethel is the largest community that has residents who purchase much of their alcohol by written order primarily from Anchorage.

8:37:08 AM

MS. CARPENETI pointed out that HB 232 does try to regulate and limit violations of the laws related to ordering by written order from damp communities. In further response to Representative Cissna, Ms. Carpeneti related her understanding that regulations and statutes would prohibit such a written order form being available on state counters. She did offer to double-check with Mr. Griffin on this matter.

[8:38:53 AM](#)

CO-CHAIR FAIRCLOUGH related her understanding of Section 8, which refers to subsections (b) and (c) of [AS 04.11.507], that the only local communities that would be affected are those that have already voted to go dry or damp. Therefore, the local option and the change to the local option are limited to very few communities in the state.

MR. COLBERG pointed out that this would impact any community that has already chosen the local option of damp or dry or do so later.

CO-CHAIR FAIRCLOUGH commented, "Those communities would already have an existing law, so it wouldn't change them. They'd know what they were voting into in that manner." She then pointed out that the committee packet does include a letter by the Tanana Chiefs Conference relating its support of that particular change. The committee packet also includes a letter from Kawerak.

[8:41:05 AM](#)

MR. COLBERG highlighted that several hundred people from rural Alaska were involved in the work groups that resulted [in this legislation].

REPRESENTATIVE SALMON pointed out that although local option laws sound good, without enforcement resources they are rendered somewhat moot. The State Troopers in the rural areas are busy with more serious crimes. For example, in Fort Yukon there have been bootleggers in operation for 30 years and no one has done anything about it. Representative Salmon then expressed his concern with Section 10, because it's not uncommon for residents of rural villages to have 100 pounds of flour, sugar, or yeast as those are common baking ingredients. He indicated that he was troubled by the language as it seems to leave interpretation to the officer.

MR. COLBERG said that one of the other reasons the Commission was established was to address the issue of Village Public Safety Officers and Tribal Police Officers in order to create uniformity of standards. There was also discussion of the understood absence of enforcement at the local level in [rural Alaska]. He acknowledged that it is related to funding and noted his agreement with Representative Salmon that absent an enforcement presence, the laws don't mean much. The Commission is also trying to address the aforementioned, and therefore the Commission may ultimately make recommendations in that regard. With regard to Section 10, he reiterated that the mere possession of the ingredients isn't sufficient to trigger the law but rather there must also be intent. Mr. Colberg opined that he presumes that law enforcement officers would have some sense of what's actionable, triggers intent, and what's likely to be a successful prosecution. Therefore, it's unlikely that intent would be triggered merely by having the ingredients in a kitchen without other circumstances present.

[8:46:21 AM](#)

CO-CHAIR LEDOUX, referring to Section 3, inquired as to the rationale for prohibiting a purchaser from having alcohol shipped to another address than that specified in the database.

MR. COLBERG said that it's an attempt to avoid someone in a damp community from doing serial purchasing via friends and acquaintances in order to circumvent the intent of the law.

MS. CARPENETI explained that Section 3 provides another way to try to limit bootlegging via written order.

CO-CHAIR LEDOUX posed a situation in which a resident of a [dry] village couldn't order alcohol to be shipped to a damp/wet community where that resident may want to have a party when visiting relatives there.

MS. CARPENETI said that in such a situation, the individual could purchase the alcohol once in the damp/wet community or have a resident of the damp/wet community order the alcohol. The purpose of HB 232 is to prohibit residents of dry villages from getting residents of damp villages to order alcohol for them to be brought into the dry village. In further response to Co-Chair LeDoux, Ms. Carpeneti confirmed that HB 232 prohibits someone from ordering alcohol for someone else in violation of a local option law since that's a way around the local option laws. Currently, there's no way for one liquor store to know if

another liquor store has already sent the amount presumed to be under the amount that can be possessed with the intent not to sell.

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CO-CHAIR LEDOUX related her understanding then that the government, under HB 232, will now keep a list of how much alcohol those in villages order. She asked if the government is going to keep a database on the drinking habits of individuals.

MS. CARPENETI clarified that the database isn't being kept to keep records on an individual's drinking habits. The database, she explained, allows the tracking of bootleggers who order from several different alcohol distributors to ensure that folks aren't going over the legal monthly amount for written orders of alcohol. The intent isn't to allow the state to monitor an individual's drinking habits, she said.

CO-CHAIR LEDOUX acknowledged that the aforementioned is the purpose, but pointed out that it does generate a record of individuals' drinking habits.

MS. CARPENETI said that she's open to suggestions and pointed out that the legislation specifies that this information can only be used to ensure that the purchases aren't in excess of the monthly amount allowed by law. Furthermore, the information is confidential and not discoverable by anyone. Ms. Carpeneti acknowledged Co-Chair LeDoux's concern with regard to privacy, but reiterated that [the database] provides a good tool by which to limit bootlegging.

8:52:43 AM

REPRESENTATIVE OLSON informed the committee that those who purchase alcohol at Safeway and Fred Meyer and use their reward card are already tracked. He then inquired as to what HB 232 does to address the "poison of choice in Kotzebue currently for the kids", which is cheap perfume, gasoline, and spray paint.

MR. COLBERG answered that HB 232 focuses on alcohol. He acknowledged that the items to which Representative Olson referred are serious issues and he indicated that an argument could be made that if alcohol is made less available [the abuse of other items] might actually increase.

REPRESENTATIVE OLSON related his understanding from the individual who runs the recreation center in Kotzebue that the greatest crisis in Kotzebue is the abuse of inhalants, such as from cheap perfume. Representative Olson suggested that HB 232 should be held over and input obtained from other Bush legislators.

MR. COLBERG reminded the committee that HB 232 is dealing with what is generally presumed to be a legal substance that's regulated.

REPRESENTATIVE OLSON pointed out that all the items he mentioned are legal and available to underage individuals.

[8:55:35 AM](#)

REPRESENTATIVE CISSNA requested a copy of the recommendations made by the Commission as it would be very instructive.

MR. COLBERG offered to provide a copy.

REPRESENTATIVE CISSNA inquired as to what records are kept for illegal substances such as cocaine and heroin.

[8:57:22 AM](#)

MS. CARPENETI pointed out that cocaine and heroin are illegal substances that aren't regulated and thus she said she wasn't aware of any type of data collection on cocaine. However, law enforcement does have records in terms of prosecutions and investigations. She noted that some data is probably being generated due to the legislation adopted last year related to precursors for methamphetamines. She offered to research that issue further.

MR. COLBERG mentioned that the data would relate to indicted or confiscated items, which wouldn't necessarily be an accurate illustration of what's out there.

[8:59:01 AM](#)

REPRESENTATIVE CISSNA asked whether the Department of Public Safety collects data that would pinpoint illegal substances.

[9:00:14 AM](#)

RODNEY DIAL, Lieutenant, Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), said that there's an [intelligence] unit that tracks information on groups and specific individuals.

CO-CHAIR LEDOUX, upon determining no one else wished to testify, closed public testimony.

[9:01:36 AM](#)

REPRESENTATIVE SALMON opined that Section 10 needs more work because the ingredients are common household products, and therefore the intent could be mischaracterized depending on the individual law enforcement officer's view.

CO-CHAIR LEDOUX concurred.

REPRESENTATIVE NEUMAN pointed out that the intent is part of the discovery process by the individual law enforcement officer, which is a lot of authority. He questioned whether there should be a court order or discovery process that's decided by a public official. He mentioned his concern with regard to the possibility of instances of harassment. Representative Neuman said that although he likes the intent of the bill, he isn't comfortable with the tracking of alcoholic purchases even though he acknowledged the bootlegging argument.

[9:04:26 AM](#)

REPRESENTATIVE CISSNA said she could envision the possibility of harassment. She suggested that perhaps Section 10 ought to be rewritten to ensure that records will be kept only in the case of prosecution rather than having the information available in such a way [that harassment could occur].

MS. CARPENETI offered her belief that this will be very difficult to prosecute because it will have to be shown, beyond a reasonable doubt, that a person possessing the ingredients did so with the specific intent of making homebrew. Specific intent is difficult to prove. Therefore, Ms. Carpeneti suspected that beyond the possession of ingredients, machinery or equipment would have to be possessed; even still it would be difficult to prove because of the need to prove beyond a reasonable doubt the intent to make homebrew. She pointed out that there are similar statutes in the state's drug laws. For example, it's a class B felony to possess precursors of methamphetamine, which are also common ingredients, with the specific intent of manufacturing

methamphetamine or some iteration of it. Although such isn't prosecuted often, it's a good tool to have when the evidence is available and it can be proven that the individuals possess the ingredients and equipment with the intent to make homebrew.

CO-CHAIR LEDOUX clarified that her concern is that since it's "on the books," it opens up the possibility of harassment. Even if the district attorney says there isn't [enough evidence to prove intent to make homebrew], the individual has still undergone an arrest and attorney's fees.

[9:08:54 AM](#)

REPRESENTATIVE CISSNA again suggested altering Section 10 such that [information obtained through the database] can only be used as evidence when proving someone's guilt in a court.

CO-CHAIR LEDOUX pointed out that all of the state's laws are on the books for prosecution purposes and no other law specifies that [any information garnered] isn't supposed to be used to harass others. Clearly, the information isn't supposed to be used to harass people, but it is in some cases.

REPRESENTATIVE CISSNA agreed, but opined that law enforcement could misread this language and harass someone in remote areas of the state. Representative Cissna explained that she merely wants to [avoid harassment] while allowing the information to be used when investigations are made.

[9:11:51 AM](#)

MS. CARPENETI commented that any criminal law could be used to harass someone. As a prosecutor, Ms. Carpeneti opined that law enforcement does a great job and it would be an unusual case when they would be overdoing it. She offered to work with the committee to address [the concerns].

[9:12:46 AM](#)

REPRESENTATIVE OLSON reiterated his belief that the committee should solicit input from Bush members.

CO-CHAIR LEDOUX concurred and suggested holding HB 232 over for the purpose of gathering input from the Bush caucus.

REPRESENTATIVE NEUMAN concurred and then suggested that perhaps language describing the term "intent" in Section 10 could be included.

[9:14:36 AM](#)

CO-CHAIR FAIRCLOUGH reviewed the issues for which there are concerns, including the concern pertaining to privacy issues related to the database. She then turned to the concern regarding precursors for which she had a conceptual amendment. The conceptual amendment would on page 5, line 29, change the language such that it would read: "may not possess quantities of sugar, artificial sugar, malt, yeast that exceed personal use in excess of one year with the specific intent to use the material or equipment to create an alcoholic beverage provided beyond a reasonable doubt." Co-Chair Fairclough opined that it's valid to request a copy of the study because those who have met for the last two years to discuss this issue did provide comments supporting the extended election period.

[Following was a brief discussion regarding when the committee would meet next to hear HB 232; HB 232 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 9:18 a.m.