

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

February 21, 2008
8:05 a.m.

MEMBERS PRESENT

Representative Anna Fairclough, Co-Chair
Representative Gabrielle LeDoux, Co-Chair
Representative Nancy Dahlstrom
Representative Kurt Olson
Representative Sharon Cissna
Representative Woodie Salmon

MEMBERS ABSENT

Representative Mark Neuman

COMMITTEE CALENDAR

HOUSE BILL NO. 327

"An Act relating to shipping, sending, transporting, or bringing alcohol to a local option area and providing alcohol to others in the local option area, including penalties for violations; relating to furnishing alcohol to a minor and to civil penalties for licensees whose agents or employees furnish alcohol to a minor; relating to manslaughter as a direct result of ingestion of alcoholic beverages brought in violation of a local option prohibition; relating to reports of the court concerning certain alcohol violations by minors; making conforming amendments; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 327

SHORT TITLE: ALCOHOL: LOCAL OPTION/LICENSING/MINORS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/17/08	(H)	READ THE FIRST TIME - REFERRALS
01/17/08	(H)	CRA, JUD, FIN
01/31/08	(H)	CRA AT 8:00 AM BARNES 124
01/31/08	(H)	<Bill Hearing Postponed to 02/05/08>
02/05/08	(H)	CRA AT 8:00 AM BARNES 124
02/05/08	(H)	Heard & Held
02/05/08	(H)	MINUTE(CRA)

02/21/08

(H)

CRA AT 8:00 AM BARNES 124

WITNESS REGISTER

GEORGE GATTER, Owner

Tony's Bar

Kodiak, Alaska

POSITION STATEMENT: During hearing of HB 327, suggested strengthening the Village Public Safety Officer (VPSO) and Alaska State Troopers' programs.

DALE FOX, President/CEO

Alaska Cabaret Hotel Restaurant & Retailer's Association (CHARR)

Anchorage, Alaska

POSITION STATEMENT: Expressed concerns with HB 327.

GARY SUPERMAN, President

Kenai Peninsula CHARR

Nikiski, Alaska

POSITION STATEMENT: Testified in opposition to HB 327.

DORAN POWELL, General Manger

Chilkoot Charlie's;

Anchorage CHARR

Anchorage, Alaska

POSITION STATEMENT: Characterized HB 327 as Draconian.

ANDY LUNDQUIST

Kodiak CHARR

Kodiak, Alaska

POSITION STATEMENT: Testified that HB 327 should be returned to the governor's office.

ANNE CARPENETI, Assistant Attorney General

Department of Law

Juneau, Alaska

POSITION STATEMENT: During hearing of HB 327, provided clarification.

ACTION NARRATIVE

CO-CHAIR GABRIELLE LEDOUX called the House Community and Regional Affairs Standing Committee meeting to order at [8:05:28 AM](#). Representatives Fairclough, LeDoux, Dahlstrom, and Salmon

were present at the call to order. Representatives Olson and Salmon arrived as the meeting was in progress.

HB 327-ALCOHOL: LOCAL OPTION/LICENSING/MINORS

8:05:52 AM

CO-CHAIR LEDOUX announced that the only order of business would be HOUSE BILL NO. 327, "An Act relating to shipping, sending, transporting, or bringing alcohol to a local option area and providing alcohol to others in the local option area, including penalties for violations; relating to furnishing alcohol to a minor and to civil penalties for licensees whose agents or employees furnish alcohol to a minor; relating to manslaughter as a direct result of ingestion of alcoholic beverages brought in violation of a local option prohibition; relating to reports of the court concerning certain alcohol violations by minors; making conforming amendments; and providing for an effective date."

8:05:59 AM

CO-CHAIR LEDOUX announced that public testimony would be reopened.

8:06:23 AM

GEORGE GATTER, Owner, Tony's Bar, opined that rather than imposing stiffer fines and criminalizing those in the hospitality industry, more good could be achieved by strengthening rural law enforcement, such as with the Village Public Safety Officer (VPSO) program. He pointed out that the community he lives in hasn't had a VPSO for four months. Mr. Gatter further opined that the bootlegger problem could be solved by strengthening the VPSO and Alaska State Troopers' programs.

8:08:42 AM

DALE FOX, President/CEO, Alaska Cabaret Hotel Restaurant & Retailer's Association (CHARR), provided the following testimony:

On page 2 of the bill, the bill suggests that plastic containers can no longer be used to ship to rural Alaska. Bootleggers, who are already breaking the law, will not pay attention to this new rule. So, the

comments that this will stop bootlegging don't ring true. Law-abiding consumers in damp communities will have to pay more because glass is heavier. Therefore, this is just an additional tax on rural Alaskans who want to buy alcohol and have it shipped. The provisions of the bill get worse every couple of pages. On page 3 the bill suggests that if any member of an establishment's staff makes a mistake that the establishment must be closed. We believe this is unreasonable. Imagine if you owned a restaurant and bar with 50 employees. And if one person makes a mistake, everybody loses their job for 45 days. As an owner, your profits for the year are gone, your employees who don't have the cash to wait for the suspension have to find new jobs, and your customers leave. It's virtually the death penalty for the business. Let's look at page 5; it makes it a felony to make two mistakes within 10 years, shipping alcohol. This parallels an existing rule that makes it a felony for a bartender to make two mistakes reading IDs and serving minors, in their life. It doesn't seem reasonable to me to turn clerical errors into a felony.

Let's take an example. If you work at a liquor store and somebody orders six liters of spirit alcohol. If you do the process right, you check the state database and find out if he's ordered alcohol from another establishment. Assume for a moment he's ordered five liters from another establishment. If you make the mistake of sending him that six liter order, you're on your way to being a felon -- a clerical mistake. If that's your job and you process thousands of orders, making two mistakes in a ten-year period is possible. So, like the waiters and waitresses who are getting threatened with a [felony] for their second mistake, people are leaving the industry. No other profession is singled out for such harsh penalties. Recently at my office we learned of a 20-year old who got an ID from the [Division of Motor Vehicles] DMV using somebody else's passport that showed that they were 21. They actually came and took a [techniques in alcohol management] TAM class using that ... legitimate state ID. And the trooper called to let us know to erase that. You know we don't punish the state worker who works at the DMV and make them a felon and nor should we. And nor should we make

people felons for making clerical mistakes in the hospitality industry.

Turning to page 7 of the same bill, the authors want to charge the shipping clerk who makes the mistake of sending six liters of alcohol, in my example earlier, with manslaughter if a death results. Now, the authors will tell you this is a bootlegging bill, but ... if you read the ... section, it includes shipping. And so, the clerk that makes the mistake that I suggested of shipping six bottles when you should have shipped five could be charged with manslaughter. We understand that some of our opponents believe that any mistake should result in penalties where businesses close, employees are forced on welfare, profits are lost, and when all else fails our opponents would like to see people leave the industry. That's why we're hear to appeal to you, our citizen legislators, for reasonable rules. Imagine your adult child working as a waiter or waitress where they make a math error and serve an underage sting agent. Should there be penalties? Yes, there should. But should they be made a felon? Most parents would suggest to their adult child that they change careers if they made one mistake for fear of making a second mistake and being a felon. Imagine your constituent who has made an honest living by working very hard to provide good food and beverage. Do you really think that closing his business and taking away his profits for the year is the right thing to do for one of his staff making a mistake? Imagine your adult child, or nephew, or niece working in the shipping department of a liquor store going to jail for manslaughter because they made a clerical error.

This bill needs major revisions to meet the needs of all Alaskans, and we trust that your good judgment will be used to improve the bill. CHARR is willing to work with you and your staff as you develop a reasonable alternatives. We don't believe that this bill is reasonable, as written.

[8:15:37 AM](#)

REPRESENTATIVE DAHLSTROM asked if he has had any conversations or working meetings with the administration.

MR. FOX related that CHARR has requested that those who sponsor legislation impacting the [hospitality] industry inform CHARR and obtain comment from it as a courtesy. He related his belief that no legislator or administration would develop a new electrical code, for instance, without speaking with an electrician. However, the first CHARR heard of HB 327 was when it was filed.

REPRESENTATIVE DAHLSTROM asked whether Mr. Fox has spoken with the Department of Public Safety (DPS) or is attempting to speak with the administration while CHARR is in town.

MR. FOX replied no.

[8:17:02 AM](#)

CO-CHAIR FAIRCLOUGH pointed out that she has provided the committee with an amendment that would delete the provision that would close an establishment [after a certain number of violations]. She related that after discussions with the administration she came to understand that the closure was proposed as a deterrent to underage drinking, which parallels provisions related to tobacco that were successful in deterring tobacco use among youth. However, with tobacco only an individual product was removed from the store versus closing the entire store. She noted that the administration wasn't agreeable to as harsh a penalty as she desired, and thus it resulted in the amendment in the committee packet. She emphasized that closure could severely harm and eliminate a business and it would be too difficult to eliminate a product. Therefore, the increased fines offer an alternative.

[8:20:31 AM](#)

MR. FOX remarked that the challenge, particularly in relation to underage individuals, is that about 95 percent of the enforcement effort is placed on 7 percent of the problem. Everyone knows that very little alcohol involved in minors consuming comes from retail establishments. In fact, national surveys show that 65 percent of alcohol consumed by minors comes from parents' own products, shoulder taps, and Internet sales. This national survey determined that about 7 percent of the alcohol sales to minors occur when the minor fools the bartender or the clerk. Therefore, the industry is frustrated with any increase in fines or penalties because they feel as if they are a minor part of the problem and they are working on solving the

problem. Furthermore, when all the focus is on retailers, inevitably a mistake will be made and caught.

8:22:33 AM

CO-CHAIR FAIRCLOUGH asked if Mr. Fox favors closure or fines.

MR. FOX stated his preference for fines.

CO-CHAIR FAIRCLOUGH related that she has other amendments, including one that would require that a server have a techniques in alcohol management (TAM) card prior to being able to serve. She then related her understanding that currently servers of alcohol are allowed to consume alcohol on premises when serving. Therefore, she noted that she has an amendment to prohibit the aforementioned.

8:24:00 AM

CO-CHAIR LEDOUX asked if that's correct that servers are allowed to consume alcohol on the premises while serving.

MR. FOX said that different organizations have different policies. He indicated agreement that there's no statute that prohibits such by nodding.

8:24:32 AM

GARY SUPERMAN, President, Kenai Peninsula CHARR, related that a 45-day closure would result in the closure of his business because the margins are slim. He further related that his margins have been about 7 percent of his gross. Even that 7 percent has decreased in the last year due to the rise in utilities, taxes, and insurance rates. He opined that even some of the fines would make it extremely difficult.

MR. SUPERMAN informed the committee that over the past 15 years, his establishment has received one citation for selling alcohol to a minor during a sting operation. The offender was a new bartender who had to pay the \$500 fine. Mr. Superman emphasized that everyone makes mistakes. The [proposed] punitive actions aimed at legitimate businesses are excessive punishment, he opined. This legislation, he further opined, is a reflection of the changed in philosophy that has occurred since the transfer of the Alcoholic Beverage Control Board ("ABC Board") to the Department of Public Safety (DPS). He characterized the philosophy now as very Draconian. He related that the frequency

of stings is "at times, unbelievable and the methodology of the stings is very untenable at times." Mr. Superman viewed the legislation as a move toward enforcement and seems to forward the notion that the [alcohol industry] is part of the criminal element. In conclusion, Mr. Superman related his adamant opposition to the movement of HB 327.

[8:29:47 AM](#)

MR. SUPERMAN, in response to Representative Dahlstrom, stated that he and his wife own the Hunger Hut Bar, Motel, and Liquor Store. The bar seats 50 people.

[8:30:11 AM](#)

REPRESENTATIVE OLSON requested that Mr. Superman relate to the committee a few of the recent stings.

MR. SUPERMAN related that he has a walkup window at his establishment and the troopers send an underage individual to the walkup window. The bartenders have relayed that the sting usually occurs during a shift change, when quite a bit is occurring. The aforementioned was the case when the new bartender received a violation. He remarked that often the underage individual doesn't look like a kid. After the last violation, he said he established a policy in which the violator loses his/her job.

[8:32:00 AM](#)

DORAN POWELL, General Manger, Chilkoot Charlie's; Anchorage CHARR, said that the structured closures impact Chilkoot Charlie's the most. Chilkoot Charlie's runs a high volume operation. Last year, Chilkoot Charlie's arrested 98 minors and turned them over to the Anchorage Police Department. However, the establishment doesn't get credits for those arrests. Mr. Powell pointed out that he employs about 110 humans and performed about 1 million transactions last year. He related that Chilkoot Charlie's is serious about enforcement and will and has fired those who knew an underage individual was in the establishment. Furthermore, Chilkoot Charlie's bans patrons from the bar for a year when that patron, who has been in the bar prior, comes in to celebrate his/her 21st birthday. Still, sooner or later someone will fail and make a mistake. Mr. Powell said that if Chilkoot Charlie's received one to two of these citations and faced a two-week closure, the business would

be in financial distress to the point of jeopardizing the entire operation. He, too, characterized the legislation as Draconian.

8:35:05 AM

CO-CHAIR FAIRCLOUGH requested that Mr. Powell comment on the need to have TAM cards in place prior to an individual serving.

MR. POWELL related that the aforementioned is already practiced by Chilkoot Charlie's. He related his understanding that it's not part of the statewide policy because of the inability in rural Alaska to obtain a TAM card in an expedited manner. In further response to Co-Chair Fairclough, Mr. Powell specified that Chilkoot Charlie's doesn't allow its servers to drink [while working].

8:36:45 AM

ANDY LUNDQUIST, Kodiak CHARR, related his agreement with Mr. Fox's comments that HB 327 is Draconian and needlessly criminalizes employees. The penalties are excessive. He echoed Mr. Powell's point that many in the industry have proactively worked to stop underage drinking and the problem of bootleggers is a statewide problem that everyone wants to solve. He highlighted Mr. Gatter's earlier testimony that increased VPSO and state trooper presence would go farther than this legislation. Mr. Lundquist related his frustration that even if HB 327 is passed, underage drinking and bootlegging will continue. He expressed further frustration with placing all of the enforcement on 7 percent of the problem. Mr. Lundquist informed the committee that he recently sold his business because of legislation such as this. He opined that the atmosphere in the state should support small business.

MR. LUNDQUIST turned to Co-Chair Fairclough's amendment regarding TAM cards, and noted his agreement with Mr. Powell's understanding. He related that in Kodiak they have difficulty obtaining someone to teach the TAM class once a month. Furthermore, it's difficult to get good help, particularly in a short time and with a TAM card. With regard to drinking on the job, most businesses prohibit it for their bartenders and cocktail waitresses. However, he questioned whether the owner could have a drink in his/her own bar. Mr. Lundquist said he would like to see HB 327 returned to the governor's office and [the industry] would like to have input. If the desire is to stop bootlegging, then let's do that, he stressed.

8:43:09 AM

CO-CHAIR FAIRCLOUGH related her understanding that HB 327 is not moving today, and asked if it would be valuable to have a work session on this matter.

CO-CHAIR LEDOUX said it's a great idea and she would like to schedule such, if the committee agrees.

CO-CHAIR FAIRCLOUGH expressed interest in the availability/possibility of an online TAM course.

REPRESENTATIVE DAHLSTROM informed the committee that she has had ongoing conversations with the ABC Board, DPS, and bar owners regarding concerns with electronic TAM testing.

8:49:07 AM

REPRESENTATIVE SALMON remarked that the committee of next referral [will fully vet the issue] as the chair is in the business. He suggested that the industry's concerns will be reviewed and the legislation may be returned to the administration.

8:49:42 AM

REPRESENTATIVE OLSON requested that Representative Joule be invited to the work session.

8:50:00 AM

CO-CHAIR LEDOUX announced that the meeting would be held on March 4, 2008.

8:50:56 AM

ANNE CARPENETI, Assistant Attorney General, Department of Law, began by stating that she and the administration are open to comments. She related that she also represents the ABC Board. Ms. Carpeneti emphasized that those who sell alcohol are licensed by the state to sell and make a profit from a potentially lethal substance. Due to the problems the state has with alcoholism, it makes sense for the state to address it in every way it can. The survey quoted earlier was performed by the industry and she said she wasn't sure that it's accurate. However, she noted her agreement that there are other places from which youth obtain alcohol and those must also be

addressed. Still, it makes sense to address it through bars and other areas through which minors obtain alcohol. Ms. Carpeneti said that the reason consequences are placed on the owner of the bar is because he/she sets the tone regarding how his/her employees and agents will deal with selling alcohol. The tobacco enforcement experience clearly illustrates that when there are consequences to the owner of the establishment, violations "go way down." Therefore, she suggested that the agents and employees are paying more attention to whom they are selling tobacco. The aforementioned is the reason the Department of Health and Social Services' study group suggested that similar sanctions/consequences to the owner of the bar selling [to underage minors] be implemented.

MS. CARPENETI clarified that HB 327 doesn't adopt felonies for the hospitality industry, unless a bootlegger is considered to be part of the hospitality industry. The legislation adopts a felony for a third time conviction for a bootlegger. With regard to the prohibition of sending alcohol in plastic to local option communities, law enforcement has said that will help them enforce bootlegging laws. In terms of the manslaughter provision in HB 327, Ms. Carpeneti clarified that it doesn't subject a clerk who makes a mistake subject to prosecution by manslaughter. The provision refers to selling without a license in a local option area and the alcohol must be the direct cause of the death of another person. She then suggested that the committee may want to hear from those who perform the stings. She related her understanding that stings aren't performed during shift changes and juveniles who look like juveniles are used. The photographs of the juveniles bear that out, she said. The intent isn't to fool people, she remarked.

[8:55:22 AM](#)

CO-CHAIR LEDOUX asked if the ABC Board keeps photos of those involved in sting operations.

MS. CARPENETI responded that photos of those involved in the sting operations are part of the investigative folder that goes to the court. She pointed out that these juveniles use their own driver's license. In further response to Co-Chair LeDoux, suggested that at least the trooper in charge of the stings could come and describe his efforts to determine whether people are following the law. Law enforcement finds out whether people are enforcing the law by performing enforcement, which is what occurred when the ABC Board moved to DPS. Ms. Carpeneti reiterated that HB 327 "does not make it a felony for a clerk in

Anchorage to send alcohol in response to a written order, ... it adopts a felony for a third time within a 10-year period, bootlegger, to do so. She pointed out that it's already a felony to bootleg certain amounts of alcohol into a local option area.

The committee took a brief at-ease at 8:57 a.m.

[8:57:55 AM](#)

CO-CHAIR LEDOUX, upon determining no one else wished to testify, closed public testimony. She announced that HB 327 wouldn't be moved from committee today and that the committee would hold a work session March 4th.

[8:58:30 AM](#)

CO-CHAIR FAIRCLOUGH announced that she wouldn't offer her amendments due to comments today and the possibility of massaging the amendments to better meet the industry needs while holding people accountable.

[HB 327 was held over.]

[8:59:25 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at [8:59:30 AM](#).