

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

March 4, 2008

8:04 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

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
02/21/08 (H) Heard & Held
02/21/08 (H) MINUTE(CRA)
03/04/08 (H) CRA AT 8:00 AM BARNES 124

WITNESS REGISTER

REPRESENTATIVE MARY NELSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided comments on HB 327.

JOHN GLICK, Major, Deputy Director
Division of Alaska State Troopers
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: During hearing of HB 327, answered questions.

REPRESENTATIVE JAY RAMRAS
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Expressed concerns with HB 327.

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

POSITION STATEMENT: During hearing of HB 327, provided information and answered questions.

GLENN BRADY, Chairman
Board of Directors
Cabaret Hotel Restaurant & Retailer's Association (CHARR);
Owner, Silver Gulch Brewing Company
Fairbanks, Alaska

POSITION STATEMENT: Expressed serious concerns about the intent of HB 327.

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

POSITION STATEMENT: During hearing of HB 327, answered questions.

DIANE CASTO, Section Manager
Prevention and Early Intervention Section
Division of Behavioral Health
Department of Health and Social Services
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 327, provided information and answered questions.

DALE FOX, President
Cabaret Hotel Restaurant & Retailer's Association (CHARR)
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns with HB 327.

ACTION NARRATIVE

CO-CHAIR GABRIELLE LEDOUX called the House Community and Regional Affairs Standing Committee meeting to order at [8:04:17 AM](#). Representatives LeDoux, Fairclough, Dahlstrom, and Neuman were present at the call to order. Representatives Olson, Cissna, and Salmon arrived as the meeting was in progress.

HB 327-ALCOHOL: LOCAL OPTION/LICENSING/MINORS

[8:04:43 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."

CO-CHAIR LEDOUX announced that HB 327 wouldn't be moved from committee today, but rather that today's meeting is to develop legislation that's satisfactory to the various involved entities.

[8:10:09 AM](#)

CO-CHAIR FAIRCLOUGH reviewed the issues raised at the prior hearing, including the abuse of alcohol by minors and bootlegging in rural communities. She noted she has a draft amendment that proposes using fines versus closures for violations. She then turned to the proposal in HB 327 to prohibit shipping alcohol in plastic bottles to a local option community. She recalled discussion that the use of glass bottles would cause additional costs in rural communities. She also recalled hearing about due process for the owner as well as a tracking system for minor consumption. She informed the committee that she has an amendment that would require an employee to have a techniques in alcohol management (TAM) card prior to starting work. Although the aforementioned should be functional for urban areas, it may be more difficult for rural areas to comply to such because of the lack of electronic TAM card processing.

[8:13:33 AM](#)

REPRESENTATIVE MARY NELSON, Alaska State Legislature, related that there is so much damage from alcoholism in the area she represents. She remarked that she appreciates the Alaska Rural Justice and Law Enforcement Commission's proposals and those on the ground [dealing with it] every day. Drawing on her time growing up in various villages and then moving to Bethel, she informed the committee of the difference in sentiment toward alcohol between the villages and areas such as Bethel. For instance, the alcohol database legislation of last year resulted in a large outcry from those in Bethel who held the opinion that the aforementioned infringed on their rights whereas those in the villages were supportive of it. The outcry from Bethel seemed to ignore that Alaska has had local option laws for over 20 years. Furthermore, in the U.S. there is no constitutional right to possess alcohol. When it comes to alcohol abuse and illegal importation, Representative Nelson characterized herself as a "hang'em high" type of person. Therefore, she said she doesn't have a problem with the punishment proposed in the legislation. However, Representative Nelson did take exception with the prohibition against the importation of alcohol in plastic bottles to damp communities, which would create an economic hardship on those in rural areas.

[8:18:36 AM](#)

CO-CHAIR LEDOUX surmised that the notion is that glass bottles being transported into a local option area would likely be heard.

8:19:27 AM

JOHN GLICK, Major, Deputy Director, Division of Alaska State Troopers, Department of Public Safety (DPS), related his agreement. However, he pointed out that HB 327 addresses the vendor shipping the alcohol rather than an individual shipping it. If the vendor ships alcohol, he/she won't ship to a dry village but rather to a community that is damp, wet, or provides the importation or possession of alcohol. Therefore, from the shipper's perspective, whether the alcohol is glass or plastic isn't of concern. From an investigative aspect, people shipping to dry communities are personally purchasing the alcohol in a municipality and packaging it themselves. Often such an individual will change the vessel in which the alcohol is shipped in order to avoid detection. Moreover, even if a glass container is used and the postmaster hears clinking, that alone isn't enough information to obtain a search warrant. Therefore, Mr. Glick said he didn't believe the prohibition against glass containers had much impact on law enforcement's ability to curb alcohol in rural Alaska.

8:21:40 AM

REPRESENTATIVE SALMON opined that the prohibition against plastic containers is a moot issue because if someone wants to transport alcohol to a local option community, they'll devise a way to do so.

8:22:44 AM

REPRESENTATIVE DAHLSTROM commented that it appears that the legislation addressed the two separate issues of alcohol in rural Alaska and establishments in Alaska serving alcohol. She opined that it seems that there should be two pieces of legislation. She then inquired as to why couldn't an alcohol product be removed from an establishment that serves/sales more than just alcohol.

8:25:18 AM

REPRESENTATIVE JAY RAMRAS, Alaska State Legislature, related his support of Senator Olson's legislation last year. He then expressed concern with regard to the prohibition against shipping alcohol in plastic containers. He related his understanding that air carriers are frustrated with muling drugs and alcohol to rural Alaska because the oversight is inadequate.

Representative Ramras said that if this legislation moves on to the House Judiciary Standing Committee, he will defer to the thoughts of rural Alaska representatives and balance those against the Department of Law (DOL) and DPS.

REPRESENTATIVE RAMRAS related his belief that HB 327 is really two pieces of legislation: rural legislation and urban legislation. Representative Ramras then related the track record he has had with four liquor licenses, which is included in the committee packet, and asked the committee to ponder whether he is a good operator or not.

[8:29:54 AM](#)

REPRESENTATIVE NELSON said that she is sympathetic to the distributors, which she assumed experience high turnover of employees who are fairly young and making the minimum wage. She inquired as to why Representative Ramras's establishments failed the few times they did.

REPRESENTATIVE RAMRAS related the difficulty in determining the age of a patron in a darkened, loud establishment. He then highlighted the broad spectrum of the labor pool with regard to education. The penalties seem to be modeled after the Holiday case regarding tobacco, he remarked. He characterized the penalties proposed in HB 327 as Draconian and the proposed monetary penalties as a poor substitute. Representative Ramras informed the committee that in the summers he has 300 employees, all of which hold TAM cards. Every time those employees serve someone, they are at risk. He then related an instance last year in which two 23-year olds were carded and they didn't have adult driver's licenses. The two said they didn't have adult driver's licenses because the line is too long at the Division of Motor Vehicles (DMV). Representative Ramras related that the deputy commissioner of DPS shared the frustration with the time it takes at the DMV. Representative Ramras then emphasized that as an operator he doesn't make money by trying to serve minors. Therefore, he characterized [the violations] of a good operator, like himself and the vast amount of operators, as bycatch during the stings. Furthermore, monetary penalties will place employees at risk.

[8:33:35 AM](#)

CO-CHAIR LEDOUX inquired as to any suggestion for the penalties if the monetary penalties and closures are too Draconian.

REPRESENTATIVE RAMRAS opined that the Alcoholic Beverage Control Board ("ABC Board") already has enough latitude and authority to address this without [this legislation]. He reiterated that he doesn't make money, at any level, by intentionally serving alcohol to minors and yet he questioned where he would be if he were to receive a third violation at Pike's Landing.

[8:35:29 AM](#)

CO-CHAIR LEDOUX then inquired as to what the ABC Board should do.

REPRESENTATIVE RAMRAS said he has a lot of confidence in Mr. Griffin, ABC Board. The ABC Board is doing its job very well. To address minors consuming, Representative Ramras suggested passing HB 75, which offers a proactive approach that doesn't decimate the hospitality industry. He related an incident in which he defended one of his bartenders who had been a professional for 20 years and [who received a violation]. That bartender needed glasses. The bartender's attorney advised the bartender to find another vocation because another charge would be a class C felony.

[8:37:05 AM](#)

REPRESENTATIVE NELSON commented that there's no link between Representative Ramras' establishment and rural Alaska.

REPRESENTATIVE RAMRAS echoed earlier comments that HB 327 should be two separate pieces of legislation.

[8:37:30 AM](#)

REPRESENTATIVE CISSNA characterized alcohol as legal poison because it's extraordinarily dangerous and can kill people. Furthermore, much of the negative behavior in Alaska is often related to alcohol and state government pays "astounding amounts related to alcohol." She then expressed the need to review good business practices and for those serving alcohol to see it as something that can really hurt individuals. Furthermore, the social perspective needs to be changed with regard to alcohol.

[8:40:27 AM](#)

DOUGLAS GRIFFIN, Director, Alcoholic Beverage Control Board ("ABC Board"), Department of Public Safety, informed the committee that he was part of a working group on alcohol issues

that assisted the Alaska Rural Justice and Law Enforcement Commission. The notion of the plastic bottles was that the alcohol would be in glass so that when it was repackaged and shipped it could be more easily detected through the noise, breakage, and inability to burp the bottle. He informed the committee that those who purchase alcohol in a wet community to package themselves would purchase plastic because it's more difficult to detect and because of the lighter shipping weight. He indicated his agreement with Mr. Glick that there isn't really concern with regard to the package stores that sell alcohol by written order. Mr. Griffin then told the committee that he was also part of the group that developed the draft plan to prevent and reduce underage youth. That group developed the notion of levying some penalty to those licenses that sell alcohol to underage individuals. He acknowledged that the degree to which a business owner is held responsible for the actions of its employees is a tough call. The notion of fines versus closures seems to be a step in the right direction, he remarked. From his personal perspective, Mr. Griffin suggested that it would be appropriate to impose a relatively small fine as a wake up call to the licensee that he/she needs to do a better job training or retraining or emphasizing certain practices. With regard to Representative Ramras's establishments, Mr. Griffin said he didn't believe that [the ABC Board] performed the number of compliance checks Representative Ramras related, although the number of failures is correct. Mr. Griffin pointed out that the ABC Board regulates small establishments that, on a good day, may have 50 customers up to the large establishments that serve 100s of customers in a given day. Therefore, the more transactions an establishment has, the more likely mistakes will be made. Mr. Griffin then related his own opinion that the penalties against the clerks and servers are a bit severe.

[8:46:29 AM](#)

CO-CHAIR LEDOUX inquired as to the tools the ABC Board already has to address this problem.

MR. GRIFFIN said that Title 4 includes provisions [that address the problem] while offering some protections to the licensee. For instance AS 04.16.150 specifies: "A licensee may neither knowingly allow agents or employees to violate this title" Furthermore, AS 04.21.030 specifies: "The licensee has a duty to exercise that degree of care that a reasonable person would observe to ensure that a business under the person's control is lawfully conducted." With the aforementioned provisions, the

ABC Board doesn't feel that it can take immediate action against a licensee that has had an employee fail because reasonable care is generally taken to mean the server is 21 years of age at the time of hire and has taken TAM training. However, the ABC Board does levy penalties when the licensee is convicted of an infraction of Title 4. Although the license of the licensee can be suspended for up to 45 days, such a penalty isn't generally exercised. Generally, the penalty is a seven-day closure per offense and perhaps a \$1,000 fine. Mr. Griffin explained that if the ABC Board sees a pattern of compliance checks, an accusation against the licensee can be written and brought to the ABC Board. Such an accusation can go all the way to the administrative hearing level.

[8:49:40 AM](#)

GLENN BRADY, Chairman, Board of Directors, Cabaret Hotel Restaurant & Retailer's Association (CHARR); Owner, Silver Gulch Brewing Company, said that he takes exception to Representative Cissna's comments that alcohol is poison as there are documented and proven health benefits of the use of alcohol in moderation. He said that he has serious concerns about the intent of HB 327. As an owner of a brewery and as the proprietor of a restaurant with a dispensary license, Mr. Brady informed the committee that approximately 65,000 patrons will come through his establishment this year. Currently, he employs 46, but that will increase to about 80 [in the summer]. Mr. Brady related his agreement with Mr. Griffin that the tools are in place to ensure due diligence. Furthermore, all licensees have an investment to protect.

MR. BRADY, referring to bootlegging, said it's a concern and noted his agreement that HB 327 is really two pieces of legislation. He then said that he has heard some great ideas that aren't reflected in the legislation, such as the creation of more local control to regulate the flow of alcohol into rural areas. Mr. Brady then recalled the information that 7 percent of the alcohol going into the hands of minors is from licensees, yet all the enforcement and regulatory effort is focused on that 7 percent. He offered that the other 93 percent is where the focus should be. He pointed out that there are direct shipping issues that aren't being addressed and the U.S. Supreme Court struck down a case in which Maine tried to force carriers to check identification (ID). "So, we've got some holes in ... the opportunities for underage folks to receive alcohol via direct shipment that ... are much more difficult to regulate and arguably a much more substantial part of the problem than the

licensed beverage industry that have investments to protect." he remarked.

[8:52:59 AM](#)

CO-CHAIR FAIRCLOUGH, drawing from testimony, related her understanding that there is a difference between small mom and pop establishments and small mom and pop establishments that perpetually serve alcohol to minors and large establishments that follow business practices. She acknowledged that one size doesn't fit all for any issue. Therefore, she inquired as to why the penalties are the same no matter the size of the establishment and the volume it serves. She asked if there has been any discussion with regard to tailoring the penalties based on the volume the establishment serves.

MR. GRIFFIN suggested that perhaps a range of penalties could be specified and allow the licensee to attend an ABC Board meeting to discuss the fact pattern of the violation. The aforementioned would place on the record issues of volume and additional steps the licensee might take. Mr. Griffin opined that some type of penalty against a licensee is good and perhaps it should be graduated and progressive. The statute, he opined, isn't set up to allow the board to exercise discretion and tailor the decisions, although he expressed the need not to appear arbitrary. He suggested that the ABC Board would like some parameters for failures, such that reductions could occur for certain behavior or penalties could be increased if there are aggravating factors.

[8:57:52 AM](#)

CO-CHAIR FAIRCLOUGH restated her earlier question. She then related the desire to impose meaningful fines because a \$500 fine to the owner of Chilkoote Charlie's doesn't mean anything whereas it would to the owner of a small mom and pop establishment.

[8:59:41 AM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law, pointed out that in sentencing the legislature has adopted ranges for imprisonment and fines. The person who imposes the imprisonment and fine is relied upon to use his/her discretion in each particular case. Ms. Carpeneti said that it's difficult to do more than set guidelines. Drawing from the several years she

has worked with the ABC Board, she opined that it does a good job with the discretion it has. It would be difficult to write into statute more than ranges and some direction regarding exercising that discretion. She suggested that there would have to be a range that would apply to everyone and the ABC Board could make the call considering volume. Ms. Carpeneti reiterated that the ABC Board does a good job in terms of applying the discretion it currently has.

[9:01:21 AM](#)

CO-CHAIR FAIRCLOUGH reiterated the issue of the varying volumes establishments have. If there is a violation of serving alcohol to an individual under the age of 21, Co-Chair Fairclough said she didn't believe the ABC Board has much discretion [no matter the volume of the establishment].

MS. CARPENETI reminded the committee that the legislature provides prosecutors much discretion with regard to choosing the charge. She opined that laws have to be drafted with ranges that consider the character of the activity that is trying to be prevented and provide the enforcers the discretion to make choices. "I know that the ABC Board can do that. In terms of criminal law, I know our prosecutors do that all the time," she related.

[9:04:06 AM](#)

REPRESENTATIVE CISSNA clarified that she isn't a prohibitionist, but rather she focuses on health and the outcomes [of alcohol use]. She indicated that she doesn't have any problems with responsible proprietors who are doing what they can, but she recalled that there was testimony that indicated otherwise.

[9:05:12 AM](#)

MR. BRADY related that [CHARR] has always been in favor of regulation. In fact, almost a year ago he addressed the ABC Board to forward the partnership concept in which the [hospitality] industry wants to work with the ABC Board to address these substantial and significant issues. He related that [CHARR] is strongly in favor of the control of abuse, the prevention of drunk driving, and penalizing those behaviors in a uniform and reasonable manner. However, since the ABC Board has moved to DPS there has been a mentality change such that it's no longer a partnership between the regulators and the industry to improve the state. He opined that under this legislation

there's a direct comparison between a package store owner and a drug dealer. Mr. Brady related his agreement that there are substantial costs to the abuse of alcohol and [the hospitality industry] wants to be a part of the solution. He then related agreement with earlier testimony that the ABC Board does have the latitude to weed out the very small percentage of operators who aren't responsible. He further related that [CHARR] would like the ABC Board to be returned to a more like-minded department such as the Department of Revenue or the Department of Commerce, Community, & Economic Development because it's regulation of a business enterprise.

9:08:50 AM

DIANE CASTO, Section Manager, Prevention and Early Intervention Section, Division of Behavioral Health, Department of Health and Social Services, clarified that nationwide somewhere between 7-30 percent of youth obtain alcohol through retailers. She noted her agreement that [retailers] are only one piece of the puzzle and thus the state has utilized other strategies in various pieces of legislation. Ms. Casto opined that it's necessary to view this problem in a broad, multi-branch program as HB 327 alone won't solve the underage drinking problem. Ms. Casto then turned to the number of transactions that are part of a sting operation. The ABC Board, DPS, only has one investigator to perform alcohol stings for the entire state whereas for tobacco there are three investigators. She estimated that the three investigators for tobacco perform a sting on .001 percent of all tobacco sale transactions. Therefore, the [department] doesn't know whether the majority of transactions are good or problematic. Furthermore, the system only catches a small percentage of the transactions.

MS. CASTO then addressed the best strategies to prevent youth access to alcohol as related in the "Regulatory Strategies Preventing Youth Access to Alcohol: Best Practices," which was prepared for the Office of Juvenile Justice and Delinquency Prevention by the Pacific Institute for Research and Evaluation. As a grantee of public funds, all community agencies are being asked to institute best practice programs. If that's being requested of those to whom the state gives funds, it's only fair for the state to also consider best practices, she opined. The aforementioned article relates two best practice strategies related to this issue. One such best practice strategy specified in the aforementioned document is as follows:

Institute comprehensive compliance check programs that are ongoing and communitywide; include a media advocacy component, and follow strict guidelines to ensure fairness.

MS. CASTO explained that the media advocacy component of the compliance check program ensures that the norm that alcohol doesn't mix with other activities is being established. The other best practice discussed in the aforementioned document specifies the following:

Impose strict administrative penalties on retail licensees for violations of sales-to-minors laws, which increase with severity for repeated offenses. Complement administrative penalties in serious cases by permitting civil liability lawsuits against licensees based on common law negligence principles and by imposing criminal sanctions.

MS. CASTO related that the document titled "Regulatory Strategies Preventing Youth Access to Alcohol: Best Practices" discusses the need to ensure consistent and swift penalties along with some level of a mandatory penalty. With tobacco the following two issues were successful: consistent and mandatory penalties, ceiling and floor that can be used per the situation. Therefore, although there will always be some level of fine, there can be aggravating factors that increase the fine and mitigating factors that decrease the fine. Having some level of fine illustrates the seriousness of the matter. For tobacco, another important factor is that both the clerk and the licensee receive some level of fine. The notion behind the aforementioned is that if the business is held liable, it's setting the standard and taking responsibility for its employees. Ms. Casto then pointed out that the Best Practices document specifies that while penalties should be significant, they shouldn't be too severe, especially for a first offense because law enforcement officials tend not to impose penalties if the punishment is perceived to be too severe and disproportionate to the seriousness of the offense. Therefore, a middle ground needs to be found so that everyone is responsible and that a high standard is set such that there's no tolerance for underage drinking nor an attitude that retailers and servers can serve to minors without consequence.

[9:17:36 AM](#)

DALE FOX, President, Cabaret Hotel Restaurant & Retailer's Association (CHARR), expressed concern that this legislation makes waitresses and shippers felons after two offenses. He questioned whether an employee with no mistakes for 20 years should have to change jobs because he/she would be a felon if he/she makes another mistake. To equate those generally doing a good job who make a mistake with bootleggers and others who deliberately furnish alcohol to minors isn't appropriate. He opined that for those instances in which someone deliberately furnishes alcohol to a minor, there probably should be high penalties. He noted his agreement that there should be penalties because this is a serious matter. However, if major closures or fines are implemented it will cause businesses to close and people to lose their jobs. He, too, characterized [the penalties in HB 327] as Draconian. He then characterized the rules regarding shipping to rural Alaska as paper Tigers, and opined that they do nothing to stop the importation of alcohol into damp communities because everyone has a relative to whom the alcohol over the limit could be shipped. With regard to stings, Mr. Fox said they are important and there should be more because compliance checks do keep people alert. However, the penalty needs to be rational and not make people a felon.

[9:23:45 AM](#)

CO-CHAIR LEDOUX asked if those who receive more alcohol than allowed are [charged with a felony] as are those who ship more than the allowed amount of alcohol.

[9:24:18 AM](#)

MS. CARPENETI responded that it depends upon the facts. Ms. Carpeneti then asked to provide remarks on some of the comments made today. She said that many of the comments today have been complaints about the current law. With regard to the concerns about the manslaughter provision, Ms. Carpeneti explained that the legislation does adopt a manslaughter provision, but it doesn't make a clerk subject to manslaughter.

MR. FOX interjected that the manslaughter provision refers to the shipper.

MS. CARPENETI pointed out that the provision addresses a person who sells without a license, a person who is bootlegging not a clerk who is selling under a liquor license. She highlighted the language on page 7, line 13, refers to an individual who violates AS 04.11.010, which is selling without a license.

Therefore, the provision doesn't place clerks in the same position as drug dealers. Current law makes the second time alcohol is furnished to a minor a class C felony, she pointed out. Furthermore, under current law bootlegging is already a class C felony if one bootlegs over specified amounts in current law. Current law also specifies that bootlegging of smaller amounts is a class A misdemeanor. This legislation specifies that it's a class C felony only if one is convicted of bootlegging a third time in a period of 10 years. The aforementioned is similar to the [penalties] for other offenses such as drunk driving. With regard to the characterization that shipping alcohol to rural Alaska is a paper Tiger, Ms. Carpeneti pointed out that the [shipping amounts] are specified in current law. In regard to stings, [DPS] doesn't have enough people to perform stings. Ms. Carpeneti said that moving the ABC Board to DPS has been a factor in causing the implementation of stings.

[9:27:11 AM](#)

CO-CHAIR LEDOUX surmised then that the portion of HB 327 related to importation/exportation of alcohol to rural Alaska doesn't effect the shipping clerks at all.

MS. CARPENETI responded that the provision speaks to bootlegging alcohol in violation of local option laws. "Manslaughter does not apply to clerks because if you're a clerk in ... a liquor store, you are operating under a license," she emphasized.

MR. GRIFFIN reminded the committee that the alcohol database will go into effect July 1st. He acknowledged that although the database won't solve the problem of bootlegging in rural Alaska, it will do a better job in preventing honest mistakes. The database will work such that a written order sale will be denied if the purchaser has reached the specified legal limit. Currently, there's no violation when a shipper sells alcohol in an amount over the legal limit to an individual because there's no knowledge that an individual will exceed the monthly limit for written orders. Furthermore, there will be a way to regulate the written order process in a fashion that isn't too Draconian. The database also allows the collection of data in a more progressive manner for use by law enforcement.

[9:30:22 AM](#)

REPRESENTATIVE NELSON related she is a bit offended at the assumption that these [laws] are paper Tigers. She pointed out that having statutory limits on the amount of alcohol one could

order by written order was a paper Tiger because one could have the legal limit of alcohol shipped on five different carriers and there was no way to track that prior to the database. Moreover, the limit [of alcohol for shipment by written order] is very high for hard liquor while the limit for wine is small. Hard liquor is where the majority of the problem lies, she said.

[9:33:53 AM](#)

MR. FOX said that he doesn't mean to offend anyone, but anyone who wants to get around the current law can. He said he disagreed with Ms. Carpeneti regarding the provision [page 7, lines 13-16] in HB 327 that he believes makes a clerk a felon. He directed attention to AS 04.11.010 and said that's specifically where the limits are listed. Therefore, a clerk who sends the wrong amount to a local option area becomes a felon and faces a possible manslaughter charge under the proposed provision in HB 327. With regard to the department working with the [hospitality] industry, Mr. Fox informed the committee that although the department offered to lessen the penalties on clerks and waitresses to misdemeanors, that's not what's included in the legislation.

[9:35:48 AM](#)

MR. BRADY suggested that perhaps shipment could be required to go through a central receiving point for pickup, which he characterized as a more rational approach. He then expressed concern with the erosion of personal responsibility, but noted that recent addition of civil penalties for licensees against underage people trying to purchase is a great step. He indicated the need to place more of the burden of the offense on the individual who is actually trying to perpetrate it as opposed to the "sometimes innocent, hard working person" who makes a mistake. He said he would be very willing to help craft and work through the aforementioned possibilities. The industry wants to be a partner and doesn't want there to be a problem in the state due to the presence of their businesses. He expressed the need to develop [provisions] that don't place the criminal and administrative burden on the clerk.

[9:38:05 AM](#)

CO-CHAIR LEDOUX asked if the Alaska Rural Justice and Law Enforcement Commission gave any consideration to making it a felony for those who have ordered too much alcohol.

MR. GRIFFIN responded that he didn't believe the commission addressed that but rather focused on the database and the shipping side. Mr. Griffin suggested that a more preventative approach is being taken to ensure that the written order process isn't being abused. Again, the desire was to ensure that the written order process and the shipment of alcohol to rural Alaska wasn't abused or being used to facilitate bootlegging.

[9:40:01 AM](#)

MS. CARPENETI recalled that SB 128 adopted a class A misdemeanor when one purchases alcohol knowing it was illegally brought into a community.

[9:40:30 AM](#)

MS. NELSON commented that she doesn't feel that rural Alaskans and the industry are natural adversaries. She then related her understanding that the committee intends to separate the two issues in HB 327. She noted agreement with Mr. Brady that there should be more culpability to the bootlegger making the order than to the, perhaps, innocent shipper who may not know better.

[9:41:25 AM](#)

REPRESENTATIVE DAHLSTROM informed the committee that her office is in the process of ordering a legal opinion regarding whether the clerk is made a felon under this proposed legislation.

[9:41:59 AM](#)

CO-CHAIR LEDOUX welcomed any legal opinions on the matter from the various interested parties. She then informed the committee that she intended to have a committee substitute prepared such that the rural issues would be considered separately from the other issues.

[HB 327 was held over.]

[9:42:51 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at [9:42:58 AM](#).