

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 3, 2008

2:42 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Lesil McGuire
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Charlie Huggins, Vice Chair
Senator Gene Therriault

COMMITTEE CALENDAR

SENATE BILL NO. 235

"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

HOUSE BILL NO. 165

"An Act relating to providing field accommodations for big game hunters."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 235

SHORT TITLE: ALCOHOL: LOCAL OPTION/LICENSING/MINORS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/18/08	(S)	READ THE FIRST TIME - REFERRALS
01/18/08	(S)	CRA, JUD, FIN
01/31/08	(S)	CRA AT 3:30 PM BELTZ 211
01/31/08	(S)	-- MEETING CANCELED --
02/05/08	(S)	CRA AT 3:30 PM BELTZ 211

02/05/08	(S)	Scheduled But Not Heard
02/07/08	(S)	CRA AT 3:30 PM BELTZ 211
02/07/08	(S)	Heard & Held
02/07/08	(S)	MINUTE(CRA)
02/12/08	(S)	CRA AT 3:30 PM BELTZ 211
02/12/08	(S)	Moved CSSB 235(CRA) Out of Committee
02/12/08	(S)	MINUTE(CRA)
02/15/08	(S)	CRA RPT CS 2DP 1NR 2AM NEW TITLE
02/15/08	(S)	DP: THOMAS, KOOKESH
02/15/08	(S)	NR: STEVENS
02/15/08	(S)	AM: OLSON, WAGONER
03/03/08	(S)	JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

ANNE CARPENETI, Assistant Attorney General
 Criminal Division
 Department of Law
 Juneau, AK

POSITION STATEMENT: Introduced SB 235.

DOUG GRIFFIN, Director
 Alcoholic Beverage Control (ABC) Board
 Anchorage, AK

POSITION STATEMENT: Testified on SB 235 and asked the committee to consider reinserting a provision that a previous committee removed.

DIANE CASTO, Manager
 Prevention & Early Intervention Services
 Division of Behavioral Health
 Department of Health and Social Services (DHSS)
 Juneau, AK

POSITION STATEMENT: Testified on SB 235 and asked the committee to consider reinserting a provision that a previous committee removed.

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [2:42:22 PM](#). Present at the call to order were Senators French, McGuire, and Wielechowski.

SB 235-ALCOHOL: LOCAL OPTION/LICENSING/MINORS

CHAIR FRENCH announced the consideration of SB 235.

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ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law, said SB 235 comes from three sources: the Alaska Rural Justice and Law Enforcement Commission, a national task force on underage drinking, and rural prosecutors statewide. The provision to prohibit sending alcohol to local option communities in plastic bottles comes directly from a recommendation by the Alaska Rural Justice and Law Enforcement Commission. Diane Casto and Doug Griffin were on that the task force and would like the committee to consider reinserting provisions that were removed in the previous committee. Rural prosecutors have said it's difficult to get convictions in bootlegging cases and it's discouraging that the penalties imposed on convicted bootleggers are small.

MS. CARPENETI explained that SB 235 prohibits shipping alcohol to local option communities unless there's an alcohol delivery site in the community. Law enforcement and the Rural Justice Commission were persuaded that it's harder to catch bootleggers when alcohol is shipped in plastic bottles because the bottles don't clank and they can be burped so that the liquid doesn't slosh.

MS. CARPENETI explained that currently bootlegging less than 10 liters of hard liquor and various amounts of wine and beer is a class A misdemeanor and over that amount is a class C felony. This bill adopts a three strikes provision such that the penalty for a third bootlegging offense within 10 years is a class C felony.

CHAIR FRENCH asked if people are racking up multiple bootlegging convictions and if so, the volume of cases that might be expected.

MS. CARPENETI replied the numbers are less than the drunk driving cases, but that is the case. It's an economic decision and a way of life for some people. She didn't have the exact numbers, but she'd supply them later.

MS. CARPENETI explained that the bill adopts mandatory minimum penalties for bootlegging that are the same as the mandatory minimum sentences for drunk driving. The only difference is that under SB 235 the look back for the third offense is 10 years while the look back for drunk driving is 15 years.

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SENATOR WIELECHOWSKI referred to page 1, line 10, and questioned making a felon of a package store clerk who fills an order for alcohol in plastic containers.

MS. CARPENETI said that would be a mistake rather than bootlegging, but it would be a class A misdemeanor offense. Continuing with the overview, she explained that the bill provides that the people who are subject to these mandatory terms are eligible for referral to therapeutic courts when it's appropriate. Also, the bill provides that a person who sells alcohol in a local option area could be prosecuted for manslaughter if the alcohol is the direct cause of another person's death. The language in that provision is similar to a new law regarding delivery of methamphetamine.

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MS. CARPENETI highlighted that the Senate Community and Regional Affairs (CRA) Committee removed a provision that provides civil penalties for licensees whose agents or employees are convicted of furnishing alcohol to minors. That committee believes that the licensee should not be responsible for the actions of his or her agent. The Department of Law disagrees and would like this committee to consider that question also, she said.

SENATOR FRENCH referred to page 5, lines 27-30, and said he'd like to see any paradigmatic cases from the last several years so that he can get an idea about the fact patterns the DOL has in mind. Methamphetamine is one thing but alcohol is another. "The array of fact patterns that this could be used under strikes me as being very wide," he said.

MS. CARPENETI replied she finds that interesting because she sees that the array of fact patterns is narrower than with methamphetamine. She agreed to provide examples.

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DOUG GRIFFIN, Director, Alcoholic Beverage Control (ABC) Board, said he wants to talk about the provision that was removed by the Senate CRA Committee. That provision set up specific penalties for licensees selling alcohol to underage persons. The recommendation came from a national working group he was a member to that was tasked with addressing the issue of underage drinking. Because this is a particular problem in Alaska, there's interest in more aggressive approaches including compliance checks or "stings." Working with a state trooper the ABC Board sends underage people into licensed premises to try and buy alcohol. With enforcement the failure rate has gone from

50 percent to 20 percent and in jurisdictions such as Anchorage, the failure rate is lower yet. This is still behind the tobacco sting program, which does assess a penalty against the licensee for noncompliance.

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MR. GRIFFIN said he believes there should be some sort of penalty to provide a wakeup call to the licensee, but that the initial fine doesn't need to be extraordinarily high. The idea is to get licensees to do a better job of screening and training their employees. He understands the philosophical debate about liquor licensees not being held responsible for employee mistakes, but the ABC Board does need the ability to conduct follow-up checks to ensure that licensees are not continuing to sell alcohol to underage people.

CHAIR FRENCH reviewed the original bill and said it looks as though Section 5 was deleted by the Senate CRA Committee.

Mr. Griffin agreed.

[2:56:59 PM](#)

DIANE CASTO, Manager, Prevention & Early Intervention Services, Division of Behavioral Health, Department of Health and Social Services (DHSS), said that one of the issues her section deals with is underage drinking, which is why she wants to address the section of the bill that was removed. Information in the packets about regulatory strategies for preventing youth access to alcohol talks about best practices and why it's important to consider penalties against retailers as part of a multi-strategy approach to reducing underage drinking.

CHAIR FRENCH said the committee will consider the testimony as a proposed conceptual amendment.

MS. CASTO explained that in 2002 the National Research Council (NRC) and the Institute of Medicine (IOM) developed a national strategy to reduce underage drinking and establish best practices to accomplish this goal. In 2004 Congress directed the federal Department of Health and Human Services Committee to establish an interagency coordinating committee on the prevention of underage drinking (ICCPUD). All 50 states met and looked at the interagency concept for the purpose of developing a similar program within each state. The Alaska Interagency Coordinating Committee on the Prevention of Underage Drinking (ACCPUD) was formed and developed a draft plan that is available for public comment. It is broken down into statewide and

community recommendations. Some of the statewide recommendations were included in the first draft of SB 235. One was to provide more stringent penalties for alcohol retailers that are more in line with the tobacco penalties.

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MS. CASTO said the bill also addresses the issue of developing a better tracking system for minor consuming. Currently minor consuming citations provide limited ways for a judge to know if this is or is not a first-time offense. The idea is to develop a statewide tracking system through DMV and attach the information to a current or future driver's license. This will allow earlier and more appropriate interventions, she said.

MS. CASTO referred to several reports and calls to action to reduce alcohol access to youth by having stricter penalties and enforcement at the retail/server level. That is one of the recommendations in the state plan, she said. The Youth Risk Behavior Survey (YRBS), which is done jointly by the Department of Education and Early Development (DEED) and DHSS, indicates that in 2007 73.6 percent of students reported having had at least one alcoholic drink on one or more days in their lifetime compared to 75.1 percent in 2003. In 2007 20.4 percent of students reported having had their first alcoholic drink before the age of 13 compared to 23.2 percent in 2003. The rates of lifetime dependence on alcohol decline from more than 40 percent for those who start drinking at 14 years of age or younger to about 10 percent for those who start drinking at 20 years of age or older. So the longer kids wait to start drinking the better chance they will have of not developing a long-term dependence.

[3:04:34 PM](#)

SENATOR WIELECHOWSKI asked what's going on that kids start drinking so early.

MS. CASTO replied there are a number of reasons. Alcohol is legal, it's fairly easy to access, and it's a way to self-medicate. In Alaska alcohol is the drug of choice for youth and there's a public norm that it isn't as bad as other drugs. Oftentimes when she talks about underage drinking she's told that it's a right of passage, that all kids will do it, and that it's okay. That is in spite of the knowledge that alcohol damages brain development and that the teen years are a critical time for brain development, she said.

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SENATOR WIELECHOWSKI asked if this is a problem in other countries where the legal drinking age is lower.

MS. CASTO opined that the whole culture of eating and alcohol consumption is viewed differently in other countries. "When it's part of the culture it's not something that you sneak off to get and use for the purposes of getting drunk," she said.

SENATOR WIELECHOWSKI questioned whether this approach gets to the root of the problem.

3:10:44 PM

MS. CASTO said other countries do have problems with alcohol abuse it's just not as prevalent as in this country. She stressed that the two issues that are addressed in the bill represent a starting point. Changing attitudes about alcohol will be a multi-strategy approach involving communities, families, youths, and appropriate laws. Part of the plan is to look from a broad perspective to start changing some of the public norms and access. "These solutions are just a tiny piece of the overall picture," she said.

MS. CASTO said that alcohol is a factor in many things that are happening with youths: 20 percent or more of youths in the juvenile justice system have chronic alcohol use, the highest rate of suicide in Alaska is between 14 and 24 years of age, alcohol and drugs are a factor in 43.7 percent of all suicides, and about 11 percent of treatment admissions for alcohol abuse are for youths between 12 and 20 years of age.

MS. CASTO highlighted the relationship to tobacco enforcement. When the tobacco sting program started there was a 35 percent sell rate and by 2007 that had dropped to 9 percent. DHSS believes that a lot of the reason for the improvement is that both the business and the clerks are held responsible. That's why a similar provision with respect to alcohol needs to be a part of this legislation. "If the business owner...is not being held responsible, then they don't have the obligation to set the stage to make it important for their employees to not sell," she said.

CHAIR FRENCH said that in a future hearing he wants to know whether other states suspend licenses of businesses caught selling alcohol to minors.

SENATOR WIELECHOWSKI asked if the rate of youth smoking has gone down in that timeframe.

MS. CASTO replied it has, but she doesn't have the numbers today. According to the youth survey (YRBS) 27 percent bought their own tobacco products in 1995 and in 2007 only 3 percent bought their own. Because of the multi-strategy approach, this country and this state have made great strides with respect to reducing tobacco use by youths. That approach been employed nearly as effectively for regulating alcohol, she said.

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MS. CASTO said that the tobacco penalties work because they are consistent and mandatory and both the clerk and the business are penalized. She added that there is a floor and a ceiling for mitigating and aggravating factors. She noted that the alcohol compliance program Mr. Griffin talked about has just one investigator for the entire state and because of the tobacco settlement money the tobacco program has three investigators. Sometimes the tobacco investigators and the participating youths work cooperatively with the alcohol program. She relayed that a youth who was turned away when trying to buy cigarettes used the same ID the next day and was successful buying alcohol on the package liquor side of the store. "We truly believe that it's because of the difference in the penalties," she said.

CHAIR FRENCH stated that SB 235 is an important bill and he will bring it back for further consideration in the near future.

There being no further business to come before the committee, Chair French adjourned the meeting at [3:17:02 PM](#).