

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 14, 2008

1:44 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Lesil McGuire
Senator Bill Wielechowski
Senator Gene Therriault

MEMBERS ABSENT

Senator Charlie Huggins, Vice Chair

COMMITTEE CALENDAR

SENATE BILL NO. 273

"An Act relating to cruelty to animals and promoting an exhibition of fighting animals."

MOVED CSSB 273(JUD) OUT OF COMMITTEE

Confirmation: Kathleen A. Frederick, Public Offices Commission
SCHEDULED BUT NOT HEARD

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

PREVIOUS COMMITTEE ACTION

BILL: SB 273

SHORT TITLE: CRUELTY TO ANIMALS

SPONSOR(s): SENATOR(s) WIELECHOWSKI

02/15/08	(S)	READ THE FIRST TIME - REFERRALS
02/15/08	(S)	JUD

02/27/08 (S) JUD AT 1:30 PM BELTZ 211
02/27/08 (S) Scheduled But Not Heard
03/05/08 (S) JUD AT 1:30 PM BELTZ 211
03/05/08 (S) Heard & Held
03/05/08 (S) MINUTE(JUD)
03/10/08 (S) JUD AT 1:30 PM BELTZ 211
03/10/08 (S) Heard & Held
03/10/08 (S) MINUTE(JUD)

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
03/03/08 (S) Heard & Held
03/03/08 (S) MINUTE(JUD)
03/14/08 (S) JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

RICK SVOBODNY, Deputy Attorney General
Criminal Division
Department of Law

POSITION STATEMENT: Explained a proposed amendment to SB 235.

PAUL THOMAS, Owner
Alaska Cache Liquor, Inc.
Juneau, AK

POSITION STATEMENT: Spoke in opposition to the proposed amendment to SB 235.

GLENN BRADY, President
Silver Gulch Brewing
Fairbanks, AK

POSITION STATEMENT: Testified on SB 235 and opposed proposed Amendment 1.

BOB KLINE, Operations Manager
Brown Jug Inc.
Anchorage, AK

POSITION STATEMENT: Testified on SB 235 and opposed proposed Amendment 1.

ROBERT McCORMICK
Glacier Brewhouse/Orso
Chugiak, AK

POSITION STATEMENT: Spoke in opposition to the proposed amendment to SB 235.

DALE FOX, President and CEO
Cabaret Hotel Restaurant & Retailers Association (CHARR)
Anchorage, AK

POSITION STATEMENT: Testified that all provisions in SB 235 need work.

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

POSITION STATEMENT: Provided information related to SB 235.

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [1:44:20 PM](#). Present at the call to order were Senators French, McGuire, Wielechowski, and Therriault.

SB 273-CRUELTY TO ANIMALS

[1:44:41 PM](#)

CHAIR FRENCH announced the consideration of SB 273.

SENATOR WIELECHOWSKI moved to adopt committee substitute (CS) for SB 273, labeled 25-LS1127\E, Luckhaupt, as the working document.

CHAIR FRENCH objected for discussion purposes.

SENATOR WIELECHOWSKI explained that the CS incorporates only the amendment that was adopted during the previous meeting.

CHAIR FRENCH withdrew his objection, and finding no further objection announced that CS for SB 273, Version \E, is adopted.

[1:45:47 PM](#)

SENATOR THERRIAULT said he appreciates that the prime sponsor took time to visit his office to talk about his concerns. He relayed that his staff also contacted the Fairbanks Northstar Borough attorney's office; he understands that part of the problem is that a peace officer must serve the warrant, but the borough has no police powers. He suggested that the sponsor might want to think about a way to reduce a bottleneck that keeps a lot of cases from being brought. That being said, he feels comfortable moving the bill from committee today.

CHAIR FRENCH solicited a motion.

SENATOR WIELECHOWSKI motioned to report CSSB 273 from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection CSSB 273(JUD), 25-LS1127\E, is moved from the Senate Judiciary Committee.

At ease from [1:48:15 PM](#) to [1:51:55 PM](#).

CHAIR FRENCH advised that Kathleen Frederick couldn't be reached telephonically and the committee would take up her confirmation for the Public Offices Commission at a later time.

SB 235-ALCOHOL: LOCAL OPTION/LICENSING/MINORS

[1:52:03 PM](#)

CHAIR FRENCH announced the consideration of SB 235.

RICK SVOBODNY, Deputy Attorney General, Criminal Division, Department of Law said that the Senate Community and Regional Affairs Committee (CRA) deleted from the governor's bill, the civil provisions for sanctioning licensees whose employees distributed alcohol unlawfully.

[1:53:30 PM](#)

CHAIR FRENCH summarized that the issue is whether or not to reinsert the penalty provisions that were removed by the previous committee. He noted two proposed amendments for members

to review and consider. For recordkeeping purposes, he named himself as sponsor of the amendments.

SENATOR THERRIAULT asked if the amendments were drafted by legislative legal.

MR. SVOBODNY advised that they were drafted by Ms. Carpeneti from the Department of Law.

CHAIR FRENCH labeled the 2 page amendment, 25G-2, as Amendment 1.

SENATOR THERRIAULT moved Amendment 1 and Chair French objected for discussion purposes.

Amendment 1

OFFERED IN THE Senate JUDICIARY COMMITTEE BY Senator French
TO: CSSB 235(CRA)

Page 1, line 4, following "licenses;":

Insert "relating to furnishing alcohol to a minor and to civil penalties for licensees whose agents or employees furnish alcohol to a minor;"

Page 2, line 11, following "In":

Insert "(b) of"

Page 2, following line 19:

Insert new bill sections to read:

"*Sec.3.AS04.16.180(d) is amended to read:

(d) The provisions of (e) of this section do not affect the authority of the board to suspend or revoke a license under (b) of this section. This section does not affect the authority of the board to suspend or revoke a license when the board determines that continuance of activities under a license would not be in the best interests of the public.

"*Sec.4.AS04.16.180 is amended by adding new subsections to read:

(e) If an agent or employee of a licensee is convicted of a violation of AS04.16.051 occurring on the licensed premises of the licensee, the board shall

(1) impose a civil fine of \$2,500 on the licensee for a first conviction of an agent or employee;

(2) impose a civil fine of \$5,000 on the licensee if an agent or employee of the licensee has been previously convicted once;

(3) impose a civil fine of \$10,000 on the licensee if an agent or employee of the licensee has been previously convicted two or more times.

(f) In (e) of this section, a previous conviction of an agent or employee includes a conviction that occurs within five years of the date of the new offense. Previous convictions include the cumulative number of convictions of all agents or employees of a licensee that are committed on the premises of the licensee. A conviction occurs on the date that sentence is imposed for the offense. A hearing under AS44.62.330-44.62.630 to impose a civil fine under (e) of this section shall be limited to the following questions:

(1) was an agent or employee of the licensee convicted by plea or judicial finding of a violation of AS04.16.051;

(2) did the violation of AS04.16.051 by the agent or employee of the licensee occur on the licensed premises of the licensee;

(3) did the violation of AS04.16.051 occur within the time required for the applicable civil fine."

Renumber the following bill sections accordingly.

Page 5, line 24:

Delete "Sections 1, 5, and 6"

Insert "Sections 1, 7, and 8"

Page 5, line 28:

Delete "(d) Sections 3 and 4"

Insert "(c) Sections 3-6"

Page 6, line 31:

Delete "Sections 7 and 8"

Insert "Sections 9 and 10"

CHAIR FRENCH asked Mr. Svobodny for an explanation.

[1:55:34 PM](#)

MR. SVOBODNY explained that Amendment 1 adds civil monetary sanction for a licensee whose employee or agent illegally distributed alcohol. He added that the second amendment includes both monetary and suspension of license sanctions. He refreshed

the committee's recollection that for a first offense there would be a \$500 civil fine.

CHAIR FRENCH asked him to clarify that the offense is having served a minor on the licensee's premises, and Mr. Svobodny agreed. Noting that the bill is by and large about selling alcohol to the Bush, he asked if there are other things that would make this applicable.

MR. SVOBODNY agreed that it's about furnishing alcohol to a minor by a licensee.

CHAIR FRENCH asked if it could be either a bar or a liquor store.

MR. SVOBODNY said that's correct.

CHAIR FRENCH asked for clarification that it's not about shipping alcohol to a minor in the Bush.

MR. SVOBODNY suggested Mr. Griffin answer. The idea was to address the distribution of alcohol in a bar or package store to a minor.

CHAIR FRENCH asked Mr. Griffin if he concurs with Mr. Svobodny that the behavior that the amendment aims to penalize is selling alcohol to a minor in a bar or package store.

MR. GRIFFIN said it aims to penalize an employee or agent of the licensee, who sells alcohol to a minor in a bar or package store.

CHAIR FRENCH asked if the bill addresses the situation of an underage person who lives in the Bush and orders alcohol from a package store that does that sort of business.

MR. GRIFFIN replied that isn't the intent of this civil penalty.

CHAIR FRENCH asked Mr. Svobodny to continue to describe the civil penalties.

1:58:00 PM

MR. SVOBODNY, after some reminding, agreed with the Chair that for a first conviction the civil fine imposed on the licensee is \$2,500, for a second conviction it is \$5,000, and for a third conviction it is \$10,000. He recalled that it tracks what

happened in the House version of the bill; the penalties are increased.

CHAIR FRENCH added that the House removed the license revocation and increased the financial consequences.

MR. SVOBODNY noted that the chart in the packets is incorrect.

CHAIR FRENCH acknowledged the point. He asked if the look-back is five years.

MR. SVOBODNY said it's five years and that is the most limited look-back period there is for offenses.

CHAIR FRENCH asked him to explain page 2, lines 6-8, which says, "Previous convictions include the cumulative number of convictions of all agents or employees of a licensee that are committed on the premises of the licensee."

MR. SVOBODNY explained that if a licensee had three bartenders and each one sold to a minor, the licensee would be faced with a third offense.

CHAIR FRENCH observed that it would be a first offense for each bartender, but it would be a third strike for the licensee.

CHAIR FRENCH opened public testimony on proposed Amendment 1.

[2:01:18 PM](#)

PAUL THOMAS, Owner, Alaska Cache Liquor, Inc., relayed that his concern is that the regulations on the industry continue to get tighter. It's documented that just 7 percent of the alcohol that minors obtain comes from a licensed premises, but 100 percent of the enforcement is put on that 7 percent. Under this bill if he sells .5 liter too much into the Bush and someone gets injured or killed, his clerk could be charged with manslaughter. But the other 49 states can sell alcohol into the Bush over the Internet and it's totally unregulated. This hurts the little guy and isn't fighting the problem. Most independent operators go out of the way to train employees. The Techniques of Alcohol Management (TAM) that CHARR (Cabaret Hotel Restaurant & Retailers Association) developed are now part of the state program.

MR. THOMAS said sometimes he hires and trains 12 clerks in a year. The training includes TAM training, independent training, and independent sting operations. "We do everything we can but the penalties just keep stacking up on us," he said.

CHAIR FRENCH asked if he's running stings on his own business.

MR. THOMAS said basically, yes.

CHAIR FRENCH asked how many licensees are convicted each year of selling to a minor.

MR. THOMAS said he doesn't have hard facts, but a year ago he was caught in a sting. A new employee was interviewing someone who appeared to be on the line for intoxication and shouldn't be served. A well-dressed young male sting operative came in during that time, and the employee made a mistake. "That's the first one I've had in 15 years or more," he said.

CHAIR FRENCH commented that under this bill he would have been fined \$2,500.

MR. THOMAS said absolutely; the fines could put some people out of business.

SENATOR THERRIAULT asked if there's a report that talks about the 7 percent figure.

MR. THOMAS said that number came from some CHARR documentation; agreed to forward information on the source.

2:06:41 PM

GLENN BRADY, President, Silver Gulch Brewing and Chair, Alaska CHARR, urged the committee to set proposed Amendment 1 aside. His business hires about 75 employees and during each summer month he processes about 20,000 alcohol-related transactions. He takes exception to the idea that he could become a felon if his employees make a mistake on a small fraction of one percent of those sales. Internal stings are done and to date there have been no failures. He opined that the ABC Board has the tools in the current enforcement and penalty structure to address problem licensees. "We don't, as an industry, feel that the industry is a problem. So I feel that this bill and this amendment...is trying to solve a problem that really doesn't exist," he said.

2:09:11 PM

BOB KLINE, Operations Manager, Brown Jug Inc., said the business has 18 stores. Internal stings are conducted to determine how well the stores are performing; there have been no failures. "Like Mr. Thomas, we scratch our heads over why industry figures say that only 7 percent of the alcohol reaching minors is coming

from licensed premises, yet all the resources of the state are directed to that aspect." He agrees with Mr. Brady that the proposed fines aim to solve the wrong problem. A better way to solve the problem would be to put money into education and teach parents where the alcohol is coming from.

MR. KLINE commented that he came prepared to comment on alcohol sales to the Bush and was somewhat surprised at the detour. At some point during this legislative session he'd like an opportunity to comment on that aspect of SB 235.

CHAIR FRENCH asked how many licenses Brown Jug owns.

MR. KLINE replied he owns and operates a separate license for each of the 18 stores.

CHAIR FRENCH said his understanding is that if the amendment were to pass, the ABC Board would keep a running tally of the infractions at each store. Penalties would be imposed on each store depending on the individual record. He asked Mr. Kline if he agreed.

MR. KLINE suggested he direct that question to the drafter of the amendment.

[2:13:14 PM](#)

ROBERT McCORMICK, representing Glacier Brewhouse and Orso said he is also a CHARR board member and he's concern with the fines listed in the proposed amendment. Glacier Brewhouse and Orso serve some 350,000 people each year, employ 225 at any one time, and issue more than 400 W-2s each year. The training is extensive. Each server has a TAM card and undergoes initial and ongoing quarterly training on alcohol service. Thus far every sting has been passed, but considering the volume of business it's difficult to believe that a perfect record can be maintained. "The standard is so high and to hit us with the fines like those listed in this amendment, should we finally make a mistake, seems unreasonable," he said.

CHAIR FRENCH asked if he understood him to say that neither the Glacier Brewhouse nor Orso has ever been tagged for a violation for serving an underage person.

MR. McCORMICK said not for serving underage persons. In 12 years Glacier Brewhouse has had one notice of violation. That involved an airline pilot who joined his friends and fell asleep at the table. He was deemed over-served.

CHAIR FRENCH commended him for an astonishingly good record at an incredibly busy business.

[2:15:25 PM](#)

DALE FOX, President and CEO, Alaska CHARR said he came prepared to testify on the entire bill rather than the proposed amendment so he would hold his comments.

CHAIR FRENCH asked Mr. Griffin his reaction to industry saying that it is being picked on because it is only 7 percent of the problem.

DOUG GRIFFIN, Director, Alcohol Beverage Control (ABC) Board, said, the 7 percent came from a survey that was done by the Century Council that is associated with the Distilled Spirits Council of the United States (DISCUS). That is disputed by other surveys. When the question is posed he says that the ABC Board doesn't regulate parents who may give their kids alcohol or make alcohol readily available to kids in their home. Things are being done to try to address strangers that buy alcohol for underage people, but his focus is on those that are licensed to sell this drug that's legal in the state that causes such great damage. The ABC Board is doing its job, he said.

MR. GRIFFIN explained that one state trooper assigned to do compliance checks throughout the state so there really is no huge law enforcement effort targeting this problem. That trooper a very hard-working individual, but the resources that are brought to bear are not as great as sometimes described.

MR. GRIFFIN said the continued 20 percent failure rate is frustrating; ideally that figure would be closer to 10 percent. States that have introduced some level of penalties against the licensee have had some success in terms of bring down the failure rate down. That's why we're looking at that, he said.

[2:19:41 PM](#)

SENATOR McGUIRE mentioned the program that provides a \$1,000 reward to employees who identify kids with fake IDs, and asked if any other efforts have been successful.

MR. GRIFFIN relayed that the \$1,000 civil penalty was designed to make it a civil issue between the licensee and the underage person. It takes the state out of the equation. He suggested that Mr. Kline may be able address that since Brown Jug is the preeminent licensee using that program. It's part of their

corporate culture to keep clerks vigilant in asking for IDs. Also, the legislature passed legislation making adults at a residence responsible for allowing underage people to consume alcohol on their premises. Those are examples of the multi-faceted approach that the legislature is trying to institute to address the problem of underage drinking, he said.

[2:22:09 PM](#)

CHAIR FRENCH asked what the current penalty is for a package store that sells to a minor.

MR. GRIFFIN explained that the ABC Board really doesn't go after the licensee, but if it were to see a pattern of say three compliance check failures within an 18 month period, an accusation would be brought against that licensee. As part of the procedure, the licensee would have full rights of an administrative hearing, if desired. Typically, the parties would try and settle things informally and a penalty in the form of a fine, suspension or both is brought against the licensee. That would be the recourse now assuming the licensee is exercising reasonable care and is training employees, he said.

[2:23:51 PM](#)

CHAIR FRENCH asked if he's saying that it may be a crime for the person at the cash register to sell alcohol to an underage person, but there's no penalty against the licensee.

MR. GRIFFIN said that's correct; they're charged under statute the same as the furnishing-to-an-underage-person statute. Under that statute a first offense is a class A misdemeanor, a second offense within five years is a class C felony. The action against the clerk is fairly strong; it's not nearly so strong against the licensee. "What we're really looking at is trying to do some rebalancing," he said. Introducing penalties on the licensee is the first step.

CHAIR FRENCH asked how many package store clerks or bartenders were prosecuted last year for furnishing alcohol to an underage person.

MR. GRIFFIN estimated that 100 were prosecuted last year.

CHAIR FRENCH asked how many licensure actions were pursued against a licensee for repeat violations.

MR. GRIFFIN said that accusations against two licensees are currently being finalizing.

CHAIR FRENCH asked the number of licensees statewide.

MR. GRIFFIN estimated there are about 1,200 licensees.

[2:26:16 PM](#)

SENATOR THERRIAULT asked if any consideration is or should be given with respect to penalties to differentiate between a business that serves a million people in five years and one that serves 500 people in the same timeframe.

MR. GRIFFIN said it's difficult to reconcile, but as Senator French noted, the Glacier Brewhouse and Orso are exemplary licensees. They appear to have a winning formula to be able to do a brisk business and still comply with the law.

CHAIR FRENCH asked if anyone met with the industry to discuss this proposal before the hearing today.

MR. GRIFFIN said he talked to the Anchorage CHARR and the Alaska CHARR and it was fairly clear that there wouldn't be any agreement on the issue. Reasonable people can disagree, he said.

[2:30:04 PM](#)

CHAIR FRENCH said his sense is that this isn't the center of the problem of underage people obtaining alcohol. For that reason he has qualms about the strength of the suggested penalties. What's your sense, he asked.

MR. GRIFFIN stated the view that it is important to concentrate on the licensees being exemplary, but a lot of things should be done to better educate kids and parents about the consequences of underage drinking. The Department of Law is suggesting these penalties, but the legislature could consider less severe penalties and a shorter look-back. However, there does need to be something that gets the attention of licensees when they have failures. As long as the employee takes the brunt of the prosecution for failed compliance checks, the failure rate will probably stay at about 20 percent. To get it closer to 10 percent, it's necessary to impose some type of fine on the licensee, he said.

[2:33:55 PM](#)

CHAIR FRENCH asked Mr. Fox what CHARR would agree to in terms of a reasonable fine for a licensee whose agent or employee sells alcohol to underage persons.

MR. FOX explained that CHARR has a number of boards and committees that need to meet and talk about reasonable fines before any sort of recommendation could be made. He added that the sting operations are fairly aggressive, and he contends that the failures would be significantly lower if there wasn't such zeal to bust people. The licensees are doing a good job and the evidence of that is the number of minors that have been found on premises that weren't sting agents, he said.

[2:36:35 PM](#)

CHAIR FRENCH withdrew his objection and withdrew Amendment 1. He opened public testimony on the full bill.

BOB KLINE, Operations Manager, Brown Jug Inc., said he doesn't understand not allowing alcohol to be shipped in plastic bottles. In a previous hearing a trooper stated that the clinking of glass bottles is not probable cause so he isn't sure what the provision seeks to accomplish. An unintended consequence is that people will pay more to ship alcohol into rural areas since glass weighs more than plastic. Plastic is the package of choice simply because of the difference in weight, he said. Another problem is that some of the penalties are draconian. The clerks are working hard to make sure that every order complies with respect to the geography to which it's going, the quantities to which customers are limited, and the validity of the person who is placing the order. The clerks operate under a great number of checks and balances, yet inadvertent errors will turn these clerks into felons. Under one of the provisions, a mistake can bring a charge of manslaughter, which goes way too far.

[2:39:52 PM](#)

DALE FOX, President and CEO, Alaska CHARR, pointed out that bootleggers won't pay attention to the prohibition against shipping alcohol in plastic containers, but law-abiding citizens will pay more for every shipment because of the weight differential. Also, the provisions that would make a shipping clerk a felon or cause them to be charged with manslaughter are overkill. It seems as though industry opponents are doing everything possible to make it more difficult for the law-abiding people in the industry, but it's not more difficult for bootleggers to operate. "This bill needs major revisions and...we're here today to appeal to our citizen legislators to come up with reasonable rules," he said. This is overboard; almost every provision needs a hard look.

[2:45:23 PM](#)

GLENN BRADY, President, Silver Gulch Brewing, Chair, Alaska CHARR, stated opposition to the legislation because it targets licensees who make clerical errors rather than the intended bootleggers. "As Mr. Fox mentioned, we want to work with...our citizen lawmakers to address the actual and real problems, not the perceived problems." The proposed language has gone awry in terms of the problem definition, he said.

[2:47:05 PM](#)

MR. SVOBODNY emphasized that the legislation is not directed at responsible business people. It's directed at abuse of alcohol—whether it's bootlegging, putting alcohol into a local option area, or providing alcohol to a child. Using a visual aid he showed what happened when the legislature made tobacco licensees responsible for cigarette sales by their employees. The year was 2003 and there was a dramatic, 200 percent, decrease in the amount of tobacco that was sold by employees of tobacco licensees. It could be the same thing for alcohol. They're both dangerous substances.

MR. SVOBODNY said these are responsible businessmen, but they ought to be held to at least the standard that you'd hold your mechanic to. If you take your car to a gas station to get the oil filter changed and the person makes a mistake and doesn't change the filter, you'll complain to the mechanic and probably the owner of the station as well. You expect it to be done properly. A number of people today have talked about clerical mistakes, but driver's licenses for underage individuals are vertical rather than horizontal, so it's not simply misreading the license. Granted, some people don't change their license immediately when they turn 21, but if someone says they're of age and they're carrying a vertical license, then the clerk ought to be extra careful in counting up those dates.

The people who've testified today show that it can be done, but it's the people who are selling alcohol to one out of the five kids who go into a liquor store that some of the provisions in this bill are designed to deal with. The other provisions deal with sending alcohol into communities where people have come together and said this is such a problem that we want to prohibit importing or distributing of alcohol into this community.

[2:53:37 PM](#)

CHAIR FRENCH noted that Section 5 provides a manslaughter charge for a person who violates AS04.11.010 and a person dies as a direct result of ingesting the alcohol that was brought in in

violation of the local option. With that provision in statute, he asked if there wouldn't be a manslaughter charge against the seller of alcohol in every single alcohol-related death in local option areas.

MR. SVOBODNY said no, because the language tracks the methamphetamine law that changed the standard for manslaughter for those offenses from proximate cause to direct cause. Furnishing alcohol to someone who then drives and kills him or herself because of diminished ability, is an act that is a proximate cause of the person's death. Under this language, the alcohol would need to be a direct cause of the death. Basically, the person would need to die from alcohol poisoning.

CHAIR FRENCH asked if instances where an intoxicated person falls out of a boat, or crashes a snow machine would be excluded.

MR. SVOBODNY said those would be excluded. Citing a recent case, he explained that a young girl brought alcohol into a village and gave it to her boyfriend. After drinking the alcohol he decided to swim the river, despite the fact that it was winter, and he died. Her conduct was the proximate cause of his death; it was not the direct cause.

CHAIR FRENCH said he takes comfort in the definition Mr. Svobodny gave, but he wonders whether the language shouldn't be tightened to make certain that it's interpreted the same way in places like Barrow, Nome, and Kotzebue.

MR. SVOBODNY said, "We would be saying to people, just as we said with methamphetamine, this is not a proximate cause issue; this is a direct cause. The other part is where the court's going to come down." Some defense lawyer is going to play this recording to show the legislative history for direct result, he said.

[2:56:55 PM](#)

MR. FOX pointed out that legislative legal services issued an opposite opinion. It said that if one section of this law is broken and there's a death, manslaughter charges could follow. It's just like an attorney to say you could defend yourself because there has to be intent, but the reality is that most bartenders and liquor store clerks don't have the money to hire an attorney. "Obviously, if they get charged with manslaughter they've got to. They've got to wipe out their life savings to

defend themselves." That happens now under the current law that makes felons of wait-staff who misread an ID, he said.

At ease from [2:59:00 PM](#) to [2:59:44 PM](#).

CHAIR FRENCH announced he would hold SB 235 in committee.

There being no further business to come before the committee, Chair French adjourned the meeting at [2:59:53 PM](#).