

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 24, 2010

2:20 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Bob Herron
Representative Bob Lynn
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Nancy Dahlstrom, Vice Chair
Representative Carl Gatto

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 194(JUD)

"An Act relating to penalties and civil damages for certain alcohol violations."

- MOVED HCS CSSB 194(JUD) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 265(JUD)

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

- MOVED HCS CSSB 265(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 408

"An Act relating to misconduct involving weapons."

- BILL HEARING POSTPONED TO 3/25/10

PREVIOUS COMMITTEE ACTION

BILL: SB 194

SHORT TITLE: ALCOHOL VIOLATIONS: PENALTY/CIVIL DAMAGES

SPONSOR(S): SENATOR(S) MEYER

04/17/09	(S)	READ THE FIRST TIME - REFERRALS
04/17/09	(S)	STA, JUD
01/28/10	(S)	STA AT 9:00 AM BELTZ 105 (TSBldg)

01/28/10 (S) Moved CSSB 194(STA) Out of Committee
 01/28/10 (S) MINUTE(STA)
 01/29/10 (S) STA RPT CS 5DP NEW TITLE
 01/29/10 (S) DP: MENARD, FRENCH, MEYER, PASKVAN,
 KOOKESH
 02/10/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 02/10/10 (S) Heard & Held
 02/10/10 (S) MINUTE(JUD)
 02/15/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 02/15/10 (S) Heard & Held
 02/15/10 (S) MINUTE(JUD)
 02/17/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 02/17/10 (S) Moved CSSB 194(JUD) Out of Committee
 02/17/10 (S) MINUTE(JUD)
 02/18/10 (S) JUD RPT CS 3DP 1NR NEW TITLE
 02/18/10 (S) DP: FRENCH, WIELECHOWSKI, EGAN
 02/18/10 (S) NR: COGHILL
 02/22/10 (S) TRANSMITTED TO (H)
 02/22/10 (S) VERSION: CSSB 194(JUD)
 02/23/10 (H) READ THE FIRST TIME - REFERRALS
 02/23/10 (H) STA, JUD
 03/16/10 (H) STA AT 8:00 AM CAPITOL 106
 03/16/10 (H) Moved Out of Committee
 03/16/10 (H) MINUTE(STA)
 03/17/10 (H) STA RPT 4DP 1NR
 03/17/10 (H) DP: SEATON, GRUENBERG, P.WILSON, LYNN
 03/17/10 (H) NR: GATTO
 03/24/10 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 265

SHORT TITLE: 2010 REVISOR'S BILL

SPONSOR(s): RULES BY REQUEST OF LEGISLATIVE COUNCIL

02/08/10 (S) READ THE FIRST TIME - REFERRALS
 02/08/10 (S) STA, JUD
 02/16/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)
 02/16/10 (S) Moved SB 265 Out of Committee
 02/16/10 (S) MINUTE(STA)
 02/17/10 (S) STA RPT 2DP 1NR
 02/17/10 (S) DP: MENARD, MEYER
 02/17/10 (S) NR: FRENCH
 02/22/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 02/22/10 (S) -- MEETING CANCELED --
 02/24/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 02/24/10 (S) Moved CSSB 265(JUD) Out of Committee
 02/24/10 (S) MINUTE(JUD)
 02/26/10 (S) JUD RPT CS 3DP 1NR SAME TITLE

02/26/10 (S) DP: FRENCH, COGHILL, MCGUIRE
02/26/10 (S) NR: WIELECHOWSKI
03/10/10 (S) TRANSMITTED TO (H)
03/10/10 (S) VERSION: CSSB 265(JUD)
03/11/10 (H) READ THE FIRST TIME - REFERRALS
03/11/10 (H) JUD
03/24/10 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

SENATOR KEVIN MEYER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced SB 194 as the bill sponsor.

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

POSITION STATEMENT: Testified in support of SB 194.

CHRISTINE MARASIGAN, Staff
Senator Kevin Meyer
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions about SB 194 on behalf of the bill sponsor, Senator Meyer.

SHIRLEY GIFFORD, Director
Alcoholic Beverage Control Board (ABC)
Department of Public Safety
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions regarding SB 194.

KATHRYN KURTZ, Assistant Revisor
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Explained the amendment to CSSB 265(JUD).

ACTION NARRATIVE

[2:20:59 PM](#)

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 2:20 p.m. Representatives Ramras, Herron, Lynn, and Gruenberg were present at the call to order. Representative Holmes arrived as the meeting was in progress.

SB 194 - ALCOHOL VIOLATIONS: PENALTY/CIVIL DAMAGES

[2:22:07 PM](#)

CHAIR RAMRAS announced that the first order of business would be CS FOR SENATE BILL NO. 194(JUD), "An Act relating to penalties and civil damages for certain alcohol violations." [Included in members packets was a House committee substitute (HCS) for CSSB 194(JUD), Version 26-LS0895\C, Luckhaupt, 3/23/10; and a proposed House Concurrent Resolution, labeled 26-LS1624\A, Luckhaupt, 3/22/10.]

[2:22:46 PM](#)

CHAIR RAMRAS moved to adopt House Concurrent Resolution, labeled 26-LS1624\A, Luckhaupt, 3/22/10. There being no objection, it was so ordered.

[2:22:57 PM](#)

REPRESENTATIVE HERRON moved to adopt the House committee substitute (HCS) for CSSB 194(JUD), Version 26-LS0895\C, Luckhaupt, 3/23/10, as the working document. There being no objection, Version C was before the committee.

[2:23:13 PM](#)

SENATOR KEVIN MEYER, Alaska State Legislature, explained that SB 194 would increase the civil damages, which are already part of existing law, from \$1,000 to \$1,500. He pointed out that SB 194 would bring civil damages to both an underage alcohol purchaser, and a person purchasing for an underage person. Upon conviction for this offense, the person would also be required to attend a juvenile alcohol safety action program. He stated that underage drinking in Alaska is a problem and that this would send a message that it would not be tolerated. He reminded that there is a tough penalty for the adults involved, but not much is done to the underage youth.

CHAIR RAMRAS, testifying as a licensee, concurred that law enforcement has been reluctant to police underage youth.

SENATOR MEYER noted that the licensee is at risk, and that the increase in the civil damages was written at the request of the Alaska Cabaret, Hotel, Restaurant & Retailers Association (CHARR). He pointed to the support of licensees as they have a lot to lose, and are willing to help support and enforce the law.

[2:27:21 PM](#)

CHAIR RAMRAS remarked on an inconsistency with the ABC Board. He reflected that when the IDs of underage consumers were impounded by the establishment, law enforcement would not follow up, much less collect the IDs. He compared this to a "sting" operation, when the trooper involved collected the impounded fake ID from the establishment, so that the "sting" could continue at another establishment. He reflected that this was not teaching a good lesson to the servers at the establishment.

[2:29:58 PM](#)

SENATOR MEYER replied that one of the reasons the industry supports the bill is because they are trying to abide by the law.

CHAIR RAMRAS reflected on the industry's effort to be self-policing and he depicted the minors as the predators in this case.

[2:31:46 PM](#)

REPRESENTATIVE GRUENBERG expressed his support for SB 194. He asked about the differences between the House and Senate versions.

SENATOR MEYER replied that both versions were the same.

The committee took an at-ease from 2:34 p.m. to 2:35 p.m.

[2:35:26 PM](#)

REPRESENTATIVE GRUENBERG repeated his question, and pointed to Version P, which included an amendment to AS 04.16.047 (b), lines 3-8, which were deleted in Version C.

CHAIR RAMRAS replied that he had spoken with the sponsor and asked that it be deleted. He explained that he had a concern for assessing greater monetary penalties on adults with

substance abuse addiction. He emphasized that he was not interested in targeting adults, but wanted to focus the issue of minors acquiring and consuming. He shared that this was the reason for the title change.

[2:38:39 PM](#)

REPRESENTATIVE GRUENBERG offered his opinion that this was a disease for a minor as well and it did not make sense to not increase the fine for both adults and minors. He asked whether Chair Ramras would oppose the bill if that section were reinserted.

CHAIR RAMRAS replied that this was precisely why he spoke to the sponsor and is offering a committee substitute.

SENATOR MEYER explained that the bill was specifically to increase the fine for minors, and those purchasing for minors, as both of these groups impact the licensee. It was then amended to include those with restricted licenses, but that was not the sponsor's original intent. He reflected that this amendment was different than the original intent, and he expressed support for Chair Ramras.

REPRESENTATIVE GRUENBERG asked to clarify that this was now the original bill version.

SENATOR MEYER verified that it is.

CHAIR RAMRAS opined that there is a difference between minors forming their habits and adults fighting alcoholism.

REPRESENTATIVE GRUENBERG asked if the Senate would accept this version.

SENATOR MEYER replied, yes.

[2:41:53 PM](#)

DALE FOX, President & CEO, Alaska Cabaret, Hotel, Restaurant & Retailers Association (CHARR), stated that it was the minors entering the premises that were making the choice to break the law, yet it was the licensees who suffered the greatest risk. He offered his belief that this bill will provide a deterrent. He said that many of the smaller establishments could not afford to execute these claims without some outside help, hence the increase in the claims.

[2:44:10 PM](#)

CHAIR RAMRAS asked whether the Anchorage CHARR was collecting on behalf of the licensees.

MR. FOX replied that CHARR was helping with the claims forms and paperwork to file.

CHAIR RAMRAS asked Senator Meyer for an explanation to the civil penalty which could be applied to the alcohol safety program.

[2:44:51 PM](#)

CHRISTINE MARASIGAN, Staff, Senator Kevin Meyer, Alaska State Legislature, replied that part of the civil damages could be used toward the alcohol safety program, or a similar program. She shared that Anchorage CHARR had negotiated about 42 cases with 15 more court cases pending.

[2:45:32 PM](#)

SENATOR MEYER added that it was his understanding that with a civil penalty, the alcohol safety program could not be required.

REPRESENTATIVE GRUENBERG offered his belief that, as the current Version C was now the same as the original SB 194, it was no longer necessary for the title amendment offered in the House Concurrent Resolution.

[CHAIR RAMRAS indicated to Representative Gruenberg to withhold his request.]

[2:47:20 PM](#)

SHIRLEY GIFFORD, Director, Alcoholic Beverage Control Board (ABC), Department of Public Safety, in response to the earlier question regarding compliance checks, agreed that the program is not supported by all licensees. She relayed that in 2008, the Board conducted more than 500 compliance checks, and in 2009, this was increased by 42 percent. She reported that during this time the success rate increased from 83 percent to 87 percent. She praised the licensees, and shared that the ABC goal was for 95 percent success. She referred to studies which showed that compliance checks increased compliance. She defended the program. She pointed to AS 04.16.09 (f), which stated that a person under 21 years of age does not violate the section. She

emphasized that the compliance program was working and she voiced her pride for it. She stated that it protects the licensees, in the long term.

[2:52:11 PM](#)

CHAIR RAMRAS expressed his appreciation for the zeal of the ABC board, and directed attention to HB 75, which required minors to surrender their driver's license upon turning 21 years of age. He pointed out that this would remove vertical license use, but he reported little assistance from law enforcement agencies. He reported that his businesses would not accept a minor's driver's license as identification. He expressed dissatisfaction with the lack of interest from local law enforcement for enforcement of HB 75. He questioned the aggressiveness of the ABC agents involved in the sting operations, and opined that a better sensitivity training for treatment of people is warranted.

[2:59:18 PM](#)

MS. GIFFORD indicated that she would strive to make improvements in the training of the agents. She indicated that she has made some procedural changes that she hopes will soon be seen by licensees. She stated that she would be in contact with Mr. Fox to work toward improvement.

CHAIR RAMRAS expressed concern for the behavior of law enforcement officers toward those that pass the sting operation, and asked for a written statement from ABC outlining the improvements to the procedures.

MS. GIFFORD agreed to do so.

[3:05:32 PM](#)

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on SB 194.

[3:05:40 PM](#)

REPRESENTATIVE GRUENBERG moved to report CSSB 194(JUD), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS for CSSB 194(JUD) was reported from the House Judiciary Standing Committee.

[3:06:24 PM](#)

REPRESENTATIVE GRUENBERG moved to report House Concurrent Resolution, labeled 26-LS1624\A, Luckhaupt, 3/22/10 out of committee. There being no objection, it was so ordered.

SB 265 - 2010 REVISOR'S BILL

[3:07:26 PM](#)

CHAIR RAMRAS announced that the final order of business would be CS FOR SENATE BILL NO. 265(JUD), "An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

[3:07:50 PM](#)

KATHRYN KURTZ, Assistant Revisor, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, explained that the purpose of SB 265 is to "correct deficiencies, errors, and obsolete provisions." She pointed out that this is done annually. She explained that SB 265 had 31 Sections and 10 of these dealt with short titles. She added that the bill makes conforming changes, and in six cases it was "curing anguished English." She clarified that the bill does not make substantive changes to the law.

MS. KURTZ explained that the proposed amendment, labeled 26-LS1220\P.1, Kurtz, 3/16/10 would return a reference to "newsboys", which had been changed the prior year in an attempt to make it gender neutral, to its original wording. She explained that the change had resulted in a tax consequence.

[3:09:28 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt [Amendment 1], labeled 26-LS1220\P.1, Kurtz, 3/16/10, which read:

Page 9, following line 13:

Insert a new bill section to read:

*** Sec. 15.** AS 23.20.526(a) is amended to read:

(a) In this chapter, unless the context otherwise requires, "employment" does not include

(1) domestic service in a private home, except as provided in AS 23.20.525(a)(13);

(2) **newsboys' services** [SERVICE PERFORMED BY AN INDIVIDUAL UNDER 18 YEARS OF AGE] in selling or

distributing newspapers on the street or from house to house;

(3) service not in the course of the employing unit's trade or business performed in a calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employing unit to perform the service; an individual is here considered to be regularly employed to perform service not in the course of an employing unit's trade or business during a calendar quarter only if the individual performs the service for some portion of the day on each of 24 days during the quarter or during the preceding calendar quarter;

(4) service performed by an individual in the employ of the individual's

(A) son, daughter, or spouse;

(B) parent or legal guardian if the individual was under the age of 21 years and a full-time student during eight of the last 12 months and intends to resume full-time student status within the next four months; and

(C) mother or father if the service is performed by a child under the age of 18;

(5) service with respect to which unemployment insurance is payable under an unemployment insurance program established by an Act of Congress;

(6) service performed in the employ of a foreign government including service as a consular or other officer or employee or a nondiplomatic representative;

(7) service performed in the employ of an instrumentality wholly owned by a foreign government if

(A) the service is of a character similar to that performed in foreign countries by employees of the United States government or its instrumentalities; and

(B) the department finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the

foreign country by employees of the United States government and its instrumentalities;

(8) service performed by an insurance agent, insurance solicitor, real estate broker, real estate salesperson, or securities salesperson to the extent the person is compensated by commission, unless the service is required to be covered under the Federal Unemployment Tax Act, as amended;

(9) notwithstanding AS 23.20.525(a)(9), service performed by an officer or member of the crew of an American vessel on or in connection with the vessel, if the operating office, from which the operations of the vessel operating on navigable waters inside or inside and outside the United States are ordinarily and regularly supervised, managed, directed, and controlled, is outside this state;

(10) service performed on or in connection with a vessel not an American vessel by an individual if the individual performed service on and in connection with the vessel when outside the United States;

(11) service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter, except that to the extent that the Congress of the United States permits states to require an instrumentality of the United States to make payments into an unemployment fund under a state employment security law, all of the provisions of this chapter apply to the instrumentalities, and to service performed for the instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and service; however, if this state is not certified for any year by the United States Secretary of Labor under 26 U.S.C. 3304(c) (Federal Unemployment Tax Act, Internal Revenue Code), the payments required of the instrumentalities with respect to the year shall be refunded by the department from the fund in the same manner and within the same period as is provided in AS 23.20.225 with respect to contributions erroneously collected;

(12) service performed in the employ of another state, or political subdivision of another state, or an instrumentality of another state or political subdivision that is wholly owned by another

state or its political subdivision, or a service performed in the employ of an instrumentality of another state or its political subdivisions to the extent that the instrumentality is, with respect to the service, exempt under the Constitution of the United States from the tax imposed by 26 U.S.C. 3301 (Federal Unemployment Tax Act, Internal Revenue Code);

(13) service performed in the employ of an international organization;

(14) service covered by an election approved by the agency charged with the administration of any other state or federal employment security law, in accordance with an arrangement under AS 23.20.090(a) during the effective period of the election;

(15) service performed by an individual in agricultural labor, except as provided in AS 23.20.525(a)(14); the term "agricultural labor" means remunerated service

(A) on a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(B) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of the service is performed on a farm;

(C) in connection with the production or harvesting of any commodity defined as an agricultural commodity in 12 U.S.C. 1141j (Sec. 15(g), Agricultural Marketing Act), as amended, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(D) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only

if the operator produced more than one-half of the commodity with respect to which the service is performed except as stated in (b) of this section;

(E) in the employ of a group of operators of farms, or a cooperative organization of which the operators are members, in the performance of service described in (D) of this paragraph, but only if the operators produced more than one-half of the commodity with respect to which the service is performed;

(F) on a farm operated for profit if the service is not in the course of the employer's trade or business;

(16) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved in accordance with the laws of this state, and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved in accordance with the laws of this state, unless the service is required to be covered under the Federal Unemployment Tax Act;

(17) service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of that boat under which

(A) that individual does not receive any cash remuneration except as provided in (B) of this paragraph;

(B) that individual receives a share of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of that catch; and

(C) the amount of that individual's share depends on the amount of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life; but only if the operating crew of that boat, or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat, is normally made up of fewer than 10 individuals;

(18) service performed as a prospective or impaneled juror in a court;

(19) service performed for a corporation by an employee of the corporation if

(A) the corporation is incorporated under AS 10.06;

(B) the corporation is not a government corporation; and

(C) the employee is an executive officer of the corporation;

(20) service performed by an individual who drives a taxicab whose compensation and written contractual arrangements are as described in AS 23.10.055(a)(13);

(21) service of an individual who

(A) directly sells or solicits the sale of consumer products, for resale or otherwise, personally to a prospective consumer in the home or otherwise than in a permanent retail establishment; a sale or solicitation by telephone, mail, other telecommunications method, or other nonpersonal method does not satisfy the requirement of this subparagraph;

(B) is compensated solely by

(i) commissions on sales or other remuneration directly related to sales or sales performance; or

(ii) a profit represented by the difference between the wholesale cost of the product to the seller and the final sale price to the consumer; and

(C) performs under a written contract with the person for whom the service is performed that provides, notwithstanding AS 23.20.395(a), that the individual is not an employee for purposes of this chapter or for federal or state tax purposes;

(22) temporary services related to emergency oil spill training and response activities by an individual described in (17) of this subsection; in this paragraph, "temporary" means a period of less than seven continuous days."

Renumber the following bill sections accordingly.

Page 15, lines 1 - 2:

Delete "sec. 25"

Insert "sec. 26"

Page 15, line 16:

Insert a new bill section to read:

"* **Sec. 30.** The uncodified law of the State of Alaska is amended by adding a new section to read:
RETROACTIVITY. Section 15 of this Act is retroactive to June 21, 2009."

Renumber the following bill sections accordingly.

Page 15, line 19:
Delete "Section 21"
Insert "Section 22"

Page 15, line 22:
Delete "sec. 21"
Insert "sec. 22"

Page 15, line 24:
Delete "sec. 30"
Insert "sec. 32"

REPRESENTATIVE HOLMES objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG asked if there was any other gender neutral descriptor.

MS. KURTZ explained that the gender neutral language had been taken from federal statute, and given the tax issue, she would prefer to return to the original wording.

[3:10:58 PM](#)

CHAIR RAMRAS, after ascertaining that there was no more testimony, closed public testimony.

REPRESENTATIVE HOLMES removed her objection.

There being no further objection, Amendment 1 was adopted.

[3:11:31 PM](#)

REPRESENTATIVE HERRON moved to report CSSB 265 (JUD), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 265(JUD) was reported from the House Judiciary Standing Committee.

[3:11:47 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:11 p.m.