

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

January 27, 2010

3:22 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Mark Neuman, Vice Chair
Representative Bob Lynn
Representative Tammie Wilson
Representative Robert L. "Bob" Buch
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Mike Chenault

COMMITTEE CALENDAR

HOUSE BILL NO. 283

"An Act relating to the purchasing of and restrictions concerning alcoholic beverages."

- MOVED HB 283 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 283

SHORT TITLE: PURCHASE/CONSUMPTION OF ALCOHOL

SPONSOR(S): REPRESENTATIVE(S) CRAWFORD

01/15/10	(H)	PREFILE RELEASED 1/15/10
01/19/10	(H)	READ THE FIRST TIME - REFERRALS
01/19/10	(H)	L&C, JUD
01/27/10	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE HARRY CRAWFORD

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: As prime sponsor, presented HB 283.

SHIRLEY GIFFORD, Director

Alcoholic Beverage Control Board (ABC)

Department of Public Safety (DPS)
Juneau, Alaska.

POSITION STATEMENT: Testified and answered questions during the discussion of HB 283.

WHITNEY BREWSTER, Director
Division of Motor Vehicles (DMV)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 283.

BONNIE HAYS
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 283.

ACTION NARRATIVE

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CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:22 p.m. Representatives Buch, Holmes, T. Wilson, Lynn, Neuman, and Olson were present at the call to order.

HB 283-PURCHASE/CONSUMPTION OF ALCOHOL

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CHAIR OLSON announced that the only order of business would be HOUSE BILL NO. 283, "An Act relating to the purchasing of and restrictions concerning alcoholic beverages."

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REPRESENTATIVE HARRY CRAWFORD, Alaska State Legislature, began his testimony by identifying alcohol as a scourge in our society. It causes so much heartache in this state. Alaska is right at the top of the list of states with alcohol offenses. He started this bill process because his wife was hit by a convicted drunk driver. The drunk driver had been ordered by the court not to buy, consume, or enter the premise of an establishment where alcohol is sold for the purpose of buying or consuming alcohol. However, there was not any way to identify

the drunk driver. The convicted driver continued to buy and consume alcohol and endanger other Alaskans.

REPRESENTATIVE CRAWFORD related that this drunk driver hit his wife and also nearly hit his son. For several days, he did not know if his wife would live or die. At the time he was not concerned whether the driver was apprehended or punished, only with his wife's condition, hoping that she would survive. She is the center and core of his family, he stated.

REPRESENTATIVE CRAWFORD related that he wanted to prevent the drunk drivers from continuing to harm innocent people. This bill would amend the current law concerning people who are restricted from the purchase and consumption of alcoholic beverages. Last legislature, House Bill 90 imposed a requirement that a stripe be placed on the Alaska driver's license for those drivers with a felony convicted for driving under the influence (DUI), and also imposed a thousand dollar fine against the business that sold the alcohol since many businesses do not check licenses.

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REPRESENTATIVE CRAWFORD explained that the initial bill, House Bill 90 [25th Legislature] did not make the fine mandatory. This bill, HB 283, would double the fine to \$2,000, and a letter of intent is attached that would share \$1,000 to the clerk that confiscated the red-striped license at the time of the attempted purchase of alcohol. This would serve as an incentive for clerks to check drivers' licenses, especially for people who are known chronic offenders. Many people, especially in small communities, are aware of the offenders, he stated.

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REPRESENTATIVE CRAWFORD explained this bill has been expanded to affect third time offenders in cases where alcohol is used when committing a crime. He related that HB 283 is intended to target chronic inebriates. He pointed out he received two fiscal notes today, which he hopes the departments will be able explain. As a result of House Bill 90, the Division of Motor Vehicles (DMV) charges an additional \$50, which is paid by the offender. He did not anticipate this bill would cause an additional expense to the DMV, and thus, he did not understand the \$40,000 fiscal impact, in the DMV fiscal note.

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CHAIR OLSON noted Whitney Brewster is on line.

REPRESENTATIVE CRAWFORD related this is the initial hearing on this bill.

REPRESENTATIVE BUCH agreed to wait to hear from the department on the fiscal impact.

REPRESENTATIVE LYNN related that he would like to cosponsor the bill.

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REPRESENTATIVE T. WILSON asked for the impact HB 283 would have on drivers when the DUI occurred in another state.

REPRESENTATIVE CRAWFORD said he thought the offenses would begin to be counted in Alaska.

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REPRESENTATIVE NEUMAN empathized with Representative Crawford's family concerns. He expressed concern over government control in families' lives. This is currently a crime, and this bill creates a crime for committing a crime. He reviewed the penalties for DUI such that the offender must forfeit a motor vehicle, weapon, or other valuable. He related that the few ruin it for the many. Some people are inconsiderate or unfair, but all the laws in the world cannot stop the behavior.

REPRESENTATIVE NEUMAN also expressed concern with adding additional responsibility for store clerks. He highlighted his libertarian view with respect to adding another layer of law for the offense. He understood the department would need additional employees to oversee the provisions in the law. If a law does not stop a person from committing a crime, he asked whether another law would stop the activity.

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REPRESENTATIVE CRAWFORD responded that the law does not change the sentencing provisions. The idea of ordering a person to refrain from being on the premise where alcohol is served is not a new law. However, the system did not previously have a method of identifying the DUI offender. The prior bill identified the person, but HB 283 offers intent language to provide a portion

of the fine to the clerk as an incentive, since the clerk's normally will check licenses of anyone under the age of 30. He recalled that at Costco clerks automatically require identification at the time of sale, regardless of age. Had the clerk checked Laurie Phillip's driver's license or identification, she may have been prevented from purchasing alcohol that led to drunk driving. She later drove on the Seward Highway and during an alcohol -induced blackout was not even aware that she killed someone.

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REPRESENTATIVE CRAWFORD recalled a recent DUI death, in which the offender blacked out and did not recall the incident. In the instances in which alcohol is taken out of the equation, the offender might get his/her life straightened out and this bill might help provide a tool. He suggested that he does not want to intrude in people's lives, but at the same time would like to prevent unnecessary deaths.

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CHAIR OLSON related Shirley Gifford's law enforcement background.

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REPRESENTATIVE NEUMAN asked whether laws prevent chronic alcoholics from breaking the law.

SHIRLEY GIFFORD, Director, Alcoholic Beverage Control Board (ABC), Department of Public Safety (DPS), began by stating she has 28 years of law enforcement experience. Alcohol has caused a lot of heartache in the state. She characterized enforcement as a critically important part of the equation, as well as recognizing the important components of education and prevention. The ABC Board regulates the licensees. It is a huge problem, but agreed with the bill sponsor that it can be a scourge.

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REPRESENTATIVE NEUMAN did not disagree. He related that it is more of a philosophical issue for him with respect to creating an additional law.

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REPRESENTATIVE LYNN offered his belief that this bill is about keeping convicted drunk drivers off the street and is not about curing alcoholism. Medical intervention may help but this bill is designed to keep drunk drivers off the street.

WHITNEY BREWSTER, Director, Division of Motor Vehicles (DMV), Department of Administration (DOA), explained that currently the DMV identifies and restricts a person from purchasing alcohol, as a condition of sentencing for a DUI, by placing a bright red stripe across their Alaska driver's license. Estimates for the fiscal note were based on the Alaska Justice Statistical Analysis Center (AJSAC), but unfortunately it was difficult to determine the number of alcohol related incidents. The AJSAC has a relational data base that is comprised of merged data from the Alaska Court System, the DPS, and the Department of Corrections. In 2007, 104,256 instances were identified in which alcohol was suspected as a factor, not including bootlegging or selling substances, but someone was under the influence during the time the crime was committed. The DMV took approximately 40 percent of the incidents, which is represented in the fiscal note. The number could be higher or lower, but absent data this is a starting point.

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MS. BREWSTER explained the process the DMV uses to process license restrictions imposed by the court. The DMV receives a hard-copy paper judgment from the court with the alcohol restriction hand written on the document. The DMV and court records are not automatically linked. Thus, when someone is convicted of a crime and an alcohol restriction is imposed, the DMV receives the judgment, and must ascertain the restriction and manually enter the data into the record. Additional resources would be needed if the volume is high, at least until electronic data is available. She emphasized that absent electronic submission of the records, the courts do not have method to mesh with the DMV's data system, which is antiquated.

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REPRESENTATIVE LYNN understood that the law is already in place that requires the red stripe be applied to the driver's license, for conviction of a felony alcohol offense. This bill simply doubles the fine, but the person has already been identified in the system. The warning banner is already in place. Nothing in the bill requires the DMV to do anything additional, since the

bill creates an incentive for clerks to check the license and seize the license.

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MS. BREWSTER responded that the bill broadens the offenses to any third offense of alcohol-related crimes. Currently, the DMV only restricts DUI offenders, but under the bill any crime where alcohol is a contributing factor would require a restriction.

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REPRESENTATIVE HOLMES referred to page 3, lines 21-31 of HB 283, that broadens the offenders covered under this bill. It basically adds two situations. She pointed out that on page 3, line 25, that if a person is convicted of a felony, and the court finds by clear and convincing evidence that the defendant's conduct constituting the offense was substantially influenced by the consumption of alcoholic beverages; or in subsection (b), must be convicted of a misdemeanor, but must have two prior misdemeanors, and using the fairly high standard of clear and convincing evidence, that there is reason to believe that imposing the requirement that the defendant refrain from consuming alcoholic beverages is necessary to protect the public. She offered that as a pretty high burden. She understood the challenges of the DMV since the state does not know how many cases this would involve. However, she thought that a judge will not impose this restriction in all cases so it seems that a 40 percent rate is an overly generous prediction of the frequency.

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REPRESENTATIVE CRAWFORD understood that only about 100 to 200 of the frequent offenders take up a great percentage of police law enforcement efforts. Once the driver's license is issued it does not need to be reissued. He could not imagine 40,000 Alaskans have committed a felony or repeat misdemeanor each year or a high percentage of the population of 680,000 Alaskans would be involved. He offered his belief that the number is far less. He asked how many licenses have been issued to date, and whether there is a deficit for the DMV since it receives a \$50 fee.

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MS. BREWSTER offered that currently the DMV has 2,133 restricted Alaska Drivers' licenses on file.

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REPRESENTATIVE CRAWFORD, in response to Representative Neuman, related that once the DMV issues a license, the red stripe is there, and the license is not reissued.

REPRESENTATIVE NEUMAN expressed concern with \$2 million DMV fiscal note. It seemed to him that \$2 million would go a long way to help with prevention.

MS. GIFFORD responded that is a tough question. She stands on the belief that law enforcement, prevention, and programs are all necessary. We are always trying to find ways to make it easier to apprehend the few people who commit most of the crimes. She related that catching perpetrators is her job, so she has a bias towards implementing laws that assist law enforcement. This bill also provides an incentive for employees. She said she can say that since the restricted license law went into effect, anecdotally, other forms of identification are being presented such as passports and other forms of identification such as military identification. She speculated that given the 2,133 restricted licenses, there is a good chance that some users are attempting to use alternate identification. She thought HB 283 gives enforcement a little help.

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REPRESENTATIVE NEUMAN remarked that \$2 million in enforcement could also help.

REPRESENTATIVE CRAWFORD explained the fiscal note for the DMV. He related that the fiscal note is for \$140,000 in expenses, and \$2 million in revenue. He stressed that he could not imagine 40,000 restricted licenses would be issued, but the increased licenses would also be a positive revenue flow for the DMV.

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REPRESENTATIVE LYNN asked about out-of-state drivers. He asked whether people disclose DUIs from other states.

MS. BREWSTER answered no.

REPRESENTATIVE LYNN related perhaps that could be addressed in a future bill.

MS. BREWSTER remarked that would likely be helpful.

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REPRESENTATIVE T. WILSON asked whether the \$50 fee to cover the restricted driver's license is enough or if a higher fee should be considered.

MS. BREWSTER answered that the fee was established by the legislature and a typical fee to issue a driver's license is a fee, but the fees are deposited to the GF and not the DMV.

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BONNIE HAYS stated that she is an Anchorage resident and is a convicted drunk driver. She said she has an Alaska Driver's License with a red stripe across its face. First, this license does not stop her from buying alcohol as clerks will sell to her. When she first got her restricted license she showed the license to clerks at the stores she usually shopped at and they will no longer sell to her. She said when she relapsed she sought out other liquor stores and was not asked as she is 45 years old, looks like a professional and does not look like a drunk driver. She said, "This law is a good law." She is typical of most alcoholics that she slowly went from an abuser of alcohol to an alcoholic addict. She said that has been through treatment, attends Alcoholics Anonymous (AA) meeting, and has counselors. She has researched and found treatment works in four percent of the population. She is in school, is studying prevention and education of substance abuse. However, she is in and out of recovery and in and out of relapse. She said she has had many years of sobriety, but when she relapses, she drinks.

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MS. HAYS said:

I cannot handle my alcohol. I have one drink and it leads to another. The cravings sometimes are insatiable. I was in Wal-Mart just last week ... I saw the liquor store in Wal-Mart and something triggered and I actually went in there. They wouldn't sell to me because I would not show them my [Alaska] driver's license with the red stripe. And I walked out and I stayed sober. It's so easy to ask me, "Do

you have a driver's license; do you have ID?" because most of them do. And when they ask me that, I simply walk away and I don't drink. And I don't get behind the wheel of the car. But when I relapse, and it will happen; I can only guarantee that I'm sober right now and I'm sober today. I can't guarantee that I'm not going to drink next week. I can't guarantee that I'm not going to drink and get behind a wheel of my car and kill somebody. For those of you that have family here in Anchorage, you should be worried because I'm typical. I don't want to be an alcoholic. I don't want this. I struggle with it daily. And most of the time, I win; ... I go to my AA meetings or I go to treatment, or I go talk to my counselor and I'm okay. But sometimes this disease just kicks my butt and it just gets the better of me.

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MS. HAYS recalled hearing a comment that the few ruin it for the many. She then said:

We're not talking about riding a four-wheeler on someone's lawn. We're talking about getting behind the wheel of a car and killing someone like Laurie Phillips did. I'm ashamed to tell you this, but three days after Laurie Phillips did this - and this has nothing to do with Laurie Phillips - I drove drunk. I drove in a blackout. I had to be told the next day where I actually drove my car. And it's because I'm an alcoholic and I have a disease. And I was in relapse. And again, I'm very typical. They say, and this is a cliché, it takes a village to raise a child. Well, you know what: it takes a village and it takes a community to stop drunk drivers. If only 4 percent of people successfully complete a recovery treatment and stay sober, then maybe we should spend the other 96 percent and focus on prevention because prevention does work. If you can prevent me from drinking I'm not going to get drunk. I'm not going to get behind the wheel. I'm actually taking a class right now called substance abuse, prevention, and education. I showed them my license last week. We're having a discussion about this because prevention does work. There is a gal in my class and she lost her license and she'll be getting it back, here, next year. She didn't know about this red stripe and I showed it to

her and I told her. I said this stops me, most of the time, from buying alcohol and drinking. And her face lit up. She said: "I'm going to have that on my license, won't I?" And I said: "You will." And she was happy because of the same reason when I got my license I was so happy ... I showed it to everybody because I knew that this is just one more tool; this is one more thing that was going to keep me sober. And if I drink I'm going to die; alcoholics if we don't stop drinking, we die and sometimes we take other people along with us.

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CHAIR OLSON commented that she gave the most compelling testimony he has heard.

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REPRESENTATIVE LYNN agreed.

REPRESENTATIVE CRAWFORD thanked Ms. Hays.

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CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 283.

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REPRESENTATIVE LYNN moved to report HB 283, out of the House Labor and Commerce Standing Committee with individual recommendations and the accompanying fiscal notes.

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ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:12 p.m.