

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

February 17, 2009

3:33 p.m.

MEMBERS PRESENT

Senator Donald Olson, Chair
Senator Hollis French
Senator Albert Kookesh
Senator Linda Menard

MEMBERS ABSENT

Senator Joe Thomas, Vice Chair

COMMITTEE CALENDAR

SENATE BILL NO. 85

"An Act relating to limitations on possessing, sending, shipping, transporting, or bringing alcoholic beverages to a local option area and to penalties for violations of those limitations; relating to probation for minor consuming or in possession or control of alcoholic beverages; relating to civil fines for liquor licensees whose agents or employees furnish alcoholic beverages to a person under 21 years of age; and providing for an effective date."

MOVED CSSB 85(CRA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 85

SHORT TITLE: ALCOHOL: LOCAL OPTION/LICENSING/MINORS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/26/09	(S)	READ THE FIRST TIME - REFERRALS
01/26/09	(S)	CRA, JUD, FIN
02/03/09	(S)	CRA AT 3:30 PM BELTZ 211
02/03/09	(S)	Heard & Held
02/03/09	(S)	MINUTE(CRA)
02/17/09	(S)	CRA AT 3:30 PM BELTZ 211

WITNESS REGISTER

ANNE CARPENETI, Attorney
Criminal Division
Department of Law (DOL)

Juneau AK

POSITION STATEMENT: Presented SB 85, Version R.

THOR WILLIAMS

Bethel AK

POSITION STATEMENT: Spoke in opposition to SB 85.

DAVE TRANTHAM

Bethel, AK

POSITION STATEMENT: Spoke in opposition to SB 85.

DAN LEINBERGER, Vice Mayor

City of Bethel

Bethel AK

POSITION STATEMENT: Spoke in opposition to SB 85.

DALE FOX, President and CEO

Alaska Cabaret, Hotel, Restaurant, and Retailers Association

Anchorage AK

POSITION STATEMENT: Spoke in opposition to SB 85.

LARRY HACKENMILLER

Small business person

Fairbanks AK

POSITION STATEMENT: Spoke in opposition to SB 85.

JOSEPH MASTERS, Commissioner Designee

Department of Public Safety

Anchorage AK

POSITION STATEMENT: Spoke in support of SB 85.

ACTION NARRATIVE

[3:33:49 PM](#)

CHAIR DONALD OLSON called the Senate Community and Regional Affairs Committee meeting to order at 3:33 p.m. Senators Olson, French, and Menard were present at the call to order. Senator Kookesh arrived later.

SB 85-ALCOHOL: LOCAL OPTION/LICENSING/MINORS

CHAIR OLSON announced the consideration of SB 85.

ANNE CARPENETTI, Attorney, Criminal Division, Department of Law (DOL), said the original bill lowered the limits [of alcohol] that a person could possess without giving rise to the presumption - just a presumption - that the possession was for

purposes of sale. There were concerns, so she drew up a committee substitute (CS) that addresses the time frame that a package store can send alcohol to a local option community but does not reduce the amounts. Under current law, in response to a written order from a damp community, a package store can send 10.5 liters of distilled alcohol to every individual every month. The CS changes the time period, so the licensees can send the same amount but only one shipment in two calendar months. It would not change the amounts of alcohol that a person can possess without giving rise to the presumption, and it doesn't change the threshold amount for bootlegging between a misdemeanor and a felony.

SENATOR FRENCH asked if it does or doesn't affect the felony threshold.

MS. CARPENETI said it does not change it. The bill also adopts civil penalties on licensees whose employees or agents are convicted of furnishing alcohol to minors. The first would be a letter of warning from the ABC board, and the second and subsequent would be civil fines of \$1,000. The bill also addresses the errors in last year's bills for minor consuming and the problems with mandatory minimums. The mandatory minimums were supposed to be the same as those for drunken driving (DWI), and because the definition of "previously convicted" is different, the legislation did not do what it was supposed to do.

SENATOR FRENCH summarized that the bill cleans up minor consuming and changes the penalties to make them consistent with DWI, "and the only thing it really does, just to be blunt, is it goes from one month to two months on the amount of distilled liquor, wine, and alcohol you can have shipped to you."

[3:38:38 PM](#)

MS. CARPENETI said it does that and it adopts the civil penalties to licensees. Right now there is no penalty. If the ABC board sees a pattern of violation, it has the ability to do something. But she has represented the ABC board for several years, and it has never happened. This consequence is to encourage licensees to make sure their employees "card" [customers]. Most licensees are highly responsible, but there are some that don't take it seriously.

SENATOR MENARD asked if a person in rural areas can't get 24 bottles of wine for a party in two months.

[3:39:58 PM](#)

MS. CARPENETI said, "You can get it in a two-month period, but this is one individual every month." A couple can get twice that amount.

SENATOR MENARD said she has heard concerns about wanting alcohol for a party, which wouldn't mean the individual is consuming or bootlegging it. "So the ABC board would issue a letter of caution that this has been in violation and then it would be \$1,000?"

MS. CARPENETI said that is for a bar owner, for example, whose bartender was convicted of furnishing alcohol to a minor on that licensee's own premises.

[3:40:51 PM](#)

SENATOR KOOKESH joined the meeting.

SENATOR MENARD asked if that is in line with DWI laws.

MS. CARPENETI said that is separate. Drunk driving has mandatory minimum penalties in statute for people convicted of drunk driving, and there are mandatory minimum penalties for most people who commit bootlegging. Last year the legislature intended to adopt similar penalties for both, but it wasn't done correctly.

SENATOR FRENCH moved to adopt the committee substitute (CS) to SB 85, labeled 26-GS1009\R. Hearing no objections, Version R was before the committee.

[3:42:14 PM](#)

THOR WILLIAMS, Bethel, AK, said Version R will have negative consequences by "limiting the amount of alcohol one person can get from once a month to twice a month." He said there will be a backlash, and local option communities will opt out of being damp. "We're going to become wet communities so that we can govern ourselves concerning this alcohol issue." It is a major concern because local option has allowed some communities to avoid some of the problems. "But now that people want to tread on our rights concerning alcohol, this is leading our communities into getting away from this law and challenging ourselves to look at different options," like opening their own liquor stores and bars. He has asked the director of the ABC board to come to Bethel "to indicate to the city of Bethel what it means if our community becomes wet and gets out of local option, so that we are clear about how this is going to affect

our community." He said that the community of Bethel is very concerned and wants this bill to die in committee.

[3:44:20 PM](#)

DAVE TRANTHAM, Bethel, said he has lived in western Alaska a long time. Bethel voted to be a local option community. Title IV of the state statute became law. Some of the provisions in Title IV ban alcohol sales in Bethel, but it is legal to have or import alcohol. Over the years legislators have changed the local option law to make it more restrictive. It was amended in 2007 and 2008, and now this is another attempt. It is his sincere belief that if SB 85 passes, the citizens of Bethel will vote to opt out of local option. There are discussions about Bethel going wet and getting a city-owned and operated liquor store. The passage of the bill will also mean lost revenues to the state as well as to the city of Bethel through alcohol user fees of 6 percent for sales in Anchorage.

MR. TRANTHAM said this bill will increase the value of alcohol for bootleggers, and there will be more home brewing. There will be more consumption of other products that contain alcohol, like Lysol and Listerine. More people will turn to hard drugs. He does not support the part of SB 85 that reduces the amount of alcohol that can be imported or possessed. "I don't know what all the solutions are, but I feel like this is not the right direction." People are saying they are being treated like children and second-class citizens. He feels that the damp status is best for Bethel. When it was wet it was ugly, and when it was dry it was ugly. It is now damp and it is still ugly. "I don't know where this is headed." The governor is getting involved and has recommended these changes. There are good things in the bill, and "I don't know why they're all jumbled together, but I cannot support Senate Bill 85."

[3:49:26 PM](#)

SENATOR FRENCH asked if there should be any limits on the amount of alcohol an individual can buy in a damp community.

MR. TRANTHAM said, "I have no problem with that, the limits. I do not drink all that much, and I can live with the new limits, but it's the principal of the thing." He feels some limits are necessary because if some people order too much there will be too much abuse.

[3:50:36 PM](#)

CHAIR OLSON asked what amount that should be.

MR. TRANTHAM said it should remain the same because people have learned to live with it. Most people accept the limits, with a few exceptions. "We knew there would be limits to what we could order and possess when we voted for this local option. We didn't know it was going to be changed and changed and amended over the years." If it is reduced to 2.5 cases of beer per month, it will be way too small. Bethel has a lot of veterans coming home from overseas who fought for the right to have a beer. He is a veteran.

[3:52:02 PM](#)

DAN LEINBERGER, Vice Mayor, City of Bethel, said he is just speaking for himself. The intentions of SB 85 are good, but out of the four provisions, he only agrees with three. He has serious concerns with the limitations. It isn't the actual amount but it should be a local decision. The damp community needs to determine the appropriate amount. He understands the efforts to curtail bootlegging, especially in dry communities that are near Bethel, Barrow, and Kotzebue, but the impact will be on the damp communities. He knows of no local input from damp communities until today. There have not been local hearings or consultation with local governments. Barrow is a classical case for local preference for local option. It changed its status almost every year and then settled on a damp situation with a delivery site. Barrow also reduced the allowable amount of alcohol below the current state limits.

[3:55:16 PM](#)

MR. LEINBERGER said he heard the committee hearing two weeks ago when witnesses referred to the various social and physical ills of alcohol, and everything they said was absolutely correct. But the point is that it should be a local decision. Wet communities like Juneau and Anchorage have no restrictions, so a person could buy liquor by the pallet. That is the dichotomy. State officials say how bad alcohol is and damp communities have too much, but wet communities have no restrictions what-so-ever. If alcohol is so bad, why not limit wet communities? It feels as though the damp communities are being treated like children. "We can't make our own decisions for ourselves, we have to rely on somebody - a group of somebodies -- 800 miles away," without any input from Bethel. He said he applauds the efforts to diminish the effects of alcohol in rural Alaska, and he fully supports the provisions on minor consuming and the sales in the package stores. But without local input, he cannot support the provisions that impose any additional limitations to purchases of alcohol for damp communities.

[3:57:55 PM](#)

CHAIR OLSON asked how long he has lived in Bethel.

MR. LEINBERGER said he grew up in Barrow and has lived in Bethel for eight years.

CHAIR OLSON assumed he was well aware of the bootlegging problem in small communities. One of the reasons that wet communities have no restrictions is because there are services like jails, holding facilities, and hospitals. The thrust of this bill is to try and deal with the problems that are out in Savoonga, Shaktoolik, Golovan, Atqasuk, Napaskiak, and other places.

[3:58:57 PM](#)

MR. LEINBERGER agreed. That is a valid point. Those dry villages near Kotzebue, Barrow, and Bethel may not have the means to police themselves. The three communities are a funneling point, but this bill will not have the desired outcome. It will have the unintended consequence of Bethel opting out, and that would be utter chaos. It would take a vote of the people, "but I think that there are some serious consequences as to how far you push." It is more appropriate to locally set limitations.

[4:00:37 PM](#)

CHAIR OLSON said he agrees with him. He asked Ms. Carpeneti to respond to the comments from Mr. Leinberger, Mr. Williams, and Mr. Trantham regarding losing the local option and creating "utter chaos." He expressed his concern. His experience in Bethel when it was wet "was terrible."

MS. CARPENETI said if that were a consequence of this bill, it would not be good. It was because of those concerns that the CS was drafted. It doesn't change the limits except that "it changes it in terms of how much a person can order in a two-month period rather than a one-month period." The governor did not suggest this bill in a vacuum. The original impetus came from the former representative from Bethel in a hearing in the House Finance Committee last session who suggested that the limits were too high. A lot of people at that hearing agreed with her. But the ABC board said people were calling in opposition, so the CS was suggested as a compromise. It is not nearly as big a change as the original bill. Mr. Trantham's comments were geared toward the original bill and not the CS.

[4:03:27 PM](#)

MS. CARPENETI noted that Mr. Leinberger agrees with the limitations, but has serious concerns about what will happen. "I

don't know that the limitations in the CS are as serious as to give rise to that possibility that a damp community would change their local option." It is important for people to go to Costco and get an order that will last for some time, so leaving the limits as they are would make this work. The current limits represent 12 shots of hard alcohol every day for every person - day in and day out. That is why the former representative from Bethel wanted to lower the limits.

CHAIR OLSON asked about decreased revenue for the state and an increase in home brewing.

MS. CARPENETI said that is a concern but the health benefits outweigh the alcohol tax. People from the villages asked the state to work on this. The CS is not that big of a change to increase the amount of homebrew. She thinks Mr. Trantham was responding to the original bill.

[4:05:56 PM](#)

CHAIR OLSON asked about the consumption of things like Lysol. "I find that very concerning."

MS. CARPENETI said with the less severe approach in the CS, "I don't know that somebody having the ability to have 10.5 liters every two months would..." She asked if Mr. Trantham has seen the CS.

[4:06:35 PM](#)

MR. TRANTHAM said he has not seen it until this moment.

CHAIR OLSON asked if the CS alleviates the concerns of increased homebrew and Lysol.

MR. TRANTHAM said, "I don't believe so at all." The stores in Bethel have to put Lysol, Listerine, cooking wine, and other products in a locked container. It is not sold to people who use the stuff for a fix when they can't find alcohol. "It's really, really bad here." He suggested that a committee member visit Bethel and he will give a tour to show what life is really like.

[4:08:53 PM](#)

CHAIR OLSON said he hopes to be able to take him up on that.

SENATOR KOOKESH asked if Bethel is wet or damp.

MS. CARPENETI said Bethel is damp and many nearby villages are dry.

SENATOR MENARD asked if there have been discussions about limiting alcohol in urban Alaska, like Anchorage. Why should someone in urban Alaska be able to buy any amount of alcohol?

[4:10:19 PM](#)

MS. CARPENETI said any community can decide on local options by a vote of the people who live there.

SENATOR KOOKESH asked if being "wet" is also a local option; "and isn't that what Juneau and Anchorage are?"

MS. CARPENETI said a community is wet unless it adopts a local option.

SENATOR KOOKESH said Juneau would have the same problem if it were damp. The argument that this bill will perpetuate alcohol [problems] doesn't work for him. He lives in a village and this is a step in the right direction. "We gotta do something."

[4:11:38 PM](#)

SENATOR FRENCH said Mr. Leinberger mentioned that Barrow had lowered its limits below state law. He asked how an ordinance that is different from the state statute is enforced.

MS. CARPENETI said several years ago when many communities wanted to adopt lower limits, "they made that one of the options that allows communities to do that." She believes Saint Mary's did it. It allows the troopers to help enforce lower limits because it is part of the state statute. She believes Barrow has limits that are half the amount of state law.

[4:12:56 PM](#)

SENATOR FRENCH said he agrees that something should be done, but he is sensitive to imposing it on them. Bethel has elected bodies that could impose the will of the community. On the other hand, this is a lot of liquor. He said he doesn't oppose the bill, and he suggested that Bethel take the reigns before the bill passes.

[4:14:03 PM](#)

DALE FOX, President and CEO, Alaska CHARR [Alaska Cabaret, Hotel, Restaurant, and Retailers Association], Anchorage, said one of CHARR's top priorities is reducing underage drinking. He supports the technical fix to the minor consuming portion of SB 85. But CHARR questions the need to further limit the amount of alcohol that can be shipped or possessed in rural Alaska.

Communities have the power to establish lower limits, and many do. A new state law is not needed. There are several programs in place to limit the availability of alcohol to bootleggers, including the ABC board database that tracks sales of alcohol. The new limits will not stop bootleggers; it may even promote bootlegging because people who want more than the allowable limit will turn to the illegal market. The only thing this provision does is hurt businesses that legally retail alcohol, and it promotes criminal behavior by those who otherwise are law-abiding citizens. CHARR also objects to fining owners of establishments who have employees who make a mistake. There are already significant penalties for making the mistake of selling alcohol to minors, including a notice of violation. Ms. Carpeneti has said that the ABC board has never had enough repeat problems to actually act on those. There are fines, jail time, and closures. Selling to minors is not taken lightly, and responsible owners do the best they can to compel their staff to be vigilant, but fining the owner who has a large staff is punitive and it doesn't put responsibility where it ought to be.

[4:16:51 PM](#)

SENATOR KOOKESH said his focus as a rural legislator is to find out how to control bootlegging in rural Alaska. If this is not the solution, what does he suggest?

MR. FOX said he doesn't have the solution. Prohibition wasn't a solution. There are a million ways for people to get around alcohol restrictions. That has been proven throughout history.

[4:17:57 PM](#)

LARRY HACKENMILLER, Small business person, Fairbanks, said he was told that package stores can ship only 4.5 liters to Barrow. Barrow is exercising its authority under local option to limit their own alcohol to meet their specific needs. A community can decide to be wet, dry, or damp; it is their decision. The bill isn't necessary. It is just lowering the bar to create more bootleggers - to make criminals out of more people. This is a possession limit as well, so if "I have a bottle of rum sitting there and I want to get my 10 bottles, I have to drink half of that before I can actually have ten. That's going a little too far in regards to what a bootlegger can do. You're making a lot of people criminals." Bethel polices itself, and that is "one of the keys to it." There is no solution to the alcohol problem that he is aware of. Policing dry communities would help, but it doesn't work that way in a small village where everyone knows each other. The bootlegging penalties by the ABC board are sufficient. He agrees with Mr. Fox on the rest of the bill.

There is no due process for the \$1,000 fine, and it is for an employee who served a minor. "Trust me, they don't do it intentionally. I used to be in the business." An employee serving a minor is usually caught during a sting operation. "The odds are if you go to a place ten times you're probably going to get them once or twice. You're going to catch them at a moment where because of business or something else." If serving minors was really a problem, then the local police would have a history of that. But sting operations are covert operations. "Just keep trying and sooner or later you're gonna get them." Then the licensee is made responsible for a \$1,000 fine without a hearing. The ABC board has the authority to take that action now. If it were a serious problem that action would be taken. But Bethel nailed it on the head by saying it is a local option and they have the authority to exercise that option. Changing the limits doesn't make any difference for those communities that are dry. If it is dropped to 10 [liters] in two months, "that means if they have booze sitting there and the third month shows up and they want to order 10 more, they can't." It would make them bootleggers.

4:22:08 PM

JOSEPH MASTERS, Commissioner Designee, Department of Public Safety, Anchorage, said the law doesn't make bootleggers out of people who possess more than the allowed limit. If they are caught selling alcohol, the amounts would have an affect on whether they committed a felony or a misdemeanor. He has seen that the more alcohol that flows into a community, the more crimes there are. The state's solution is local option, but it is not perfect. Since becoming commissioner he has been asked over and over again what he will do about alcohol-related crimes in rural Alaska and what he will do to stem the flow of alcohol into the communities that are having such problems. A previous testifier noted that the statutes are often changed, and that is not necessarily a bad thing. When a statute is not working correctly, you make adjustments. Senator Kookesh said something needs to be done and that is an absolute truism. Communities are asking for help in stemming the flow of alcohol. This bill does that. It limits volumes and frequency, and it addresses concerns that were raised about not limiting the specific amount.

4:25:56 PM

COMMISSIONER MASTERS asked if by reducing the amount from the state limit to their own limit, did Barrow see an increase in the abuse of other items, an increase in home brewing, or an increase in bootleggers. If they did not, then it could be argued that Bethel wouldn't either. Everyone is conjecturing

what may happen. DPS has a firm commitment to help communities that choose to help themselves through local option.

4:27:27 PM

SENATOR MENARD referred to the example by Mr. Hackenmiller that he would be in violation if his order of alcohol came when he had half of a bottle in his home.

MS. CARPENETI said that is not correct. The 10.5 liters is a presumption, and troopers don't go after people under those circumstances. The limits are the amount a person can bring in and possess without giving rise to a presumption, but people have weddings and parties with more than that limit. Often they call the police to say they are bringing in more alcohol for a party, and they aren't bootlegging because they have more than that amount.

SENATOR KOOKESH asked what does happen if a person has leftover liquor and the second shipment comes in.

MS. CARPENETI said the presumption is that you possess it for sale, which would be bootlegging, but it can be rebutted. She was told by a trooper that they don't pursue cases of normal citizens who have leftovers from the last shipment.

4:30:15 PM

SENATOR FRENCH said it is more about how much can be shipped than can be possessed. It is aimed more at the liquor stores in Anchorage that ship to the Bush rather than the recipient. The presumption is in AS 04.110.10 C, and he doesn't see that provision in the CS.

MS. CARPENETI said the CS doesn't address that presumption.

SENATOR FRENCH said the presumption is left where it is.

MS. CARPENETI said yes.

CHAIR OLSON asked how the police know if a person is planning on selling it or not. "Isn't that kind of like "thought police"?"

4:31:38 PM

MS. CARPENETI said no, the police find people when they are selling alcohol illegally.

COMMISSIONER MASTERS said Ms. Carpeneti is correct.

[4:32:21 PM](#)

CHAIR OLSON closed public testimony.

SENATOR KOOKESH said he hears the argument that if alcohol is limited in rural Alaska, it makes alcohol more expensive and the use of alternative substances will increase. The opposite argument is that bootlegging is controlled by making alcohol plentiful and cheap. That kind of logic doesn't work. He comes from rural Alaska and not one constituent has called him in opposition. He hears people ask him to do something about alcohol. "This is the only train at the station right now: to limit the amount that you can send into rural Alaska." Businesses may suffer, but his job is to worry about the lives of his constituents. The next step may be asking for and paying for better enforcement. This is one step of the journey. "We need to pass this bill ... because we need to do something." Even if it is just a message to the people, that is something.

[4:34:19 PM](#)

SENATOR FRENCH said the bill is ready to go, but it makes him pause to limit beer for folks who have served the country. The bill is aimed mostly at shipping alcohol, but three beers per day is not that much and this bill may limit that. Maybe the next committee will tweak the numbers. If a person combines all the allowable limits, it is way too much. But most people don't do that. A person may be just a wine drinker and the amount of wine is not extraordinary.

SENATOR KOOKESH said, "Why do you call a quart a fifth in a village? Because there are only five drinks in it. I've seen that bottle go around a group of people and maybe five people will drink it and maybe that's the only thing they've got, and they'll drink it fast because it may not come around again."

[4:36:49 PM](#)

SENATOR FRENCH moved to report the CS to SB 85, labeled 26-GS1009\R, from committee with individual recommendations and attached fiscal note(s). There being no objection, CSSB 85(STA) moved out of committee.

There being no further business to come before the committee, the meeting was adjourned at 4:37 p.m.

[4:37:24 PM](#)