

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 23, 2009

1:33 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Kim Elton
Senator Gene Therriault

MEMBERS ABSENT

Senator Lesil McGuire

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."

HEARD AND HELD

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
02/17/09	(S)	Moved CSSB 85(CRA) Out of Committee
02/17/09	(S)	MINUTE(CRA)
02/19/09	(S)	CRA RPT CS 2DP 2NR NEW TITLE
02/19/09	(S)	DP: MENARD, KOOKESH
02/19/09	(S)	NR: OLSON, FRENCH
02/23/09	(S)	JUD AT 3:30 PM BELTZ 211

WITNESS REGISTER

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

POSITION STATEMENT: Presented SB 85.

MICHELLE DEWITT, Director
Tundra Women's Coalition
Bethel, AK

POSITION STATEMENT: Testified in support for SB 85.

JODY MALUF, representing herself
Bethel, AK

POSITION STATEMENT: Testified in opposition to SB 85.

DAVE TRANTHAM, representing himself
Bethel, AK

POSITION STATEMENT: Stated opposition to SB 85.

THOMAS HAWKINS, representing himself
Bethel, AK

POSITION STATEMENT: Testified in opposition to SB 85.

KEVIN CARTER, representing himself
Bethel, AK

POSITION STATEMENT: Testified in opposition to SB 85.

ERIC MIDDLEBROOK, representing himself
Bethel, AK

POSITION STATEMENT: Testified in opposition to SB 85.

GARY VANASSE, representing himself
Bethel, AK

POSITION STATEMENT: Testified in opposition to SB 85.

THOR WILLIAMS, representing himself
Bethel, AK

POSITION STATEMENT: Testified in opposition to SB 85.

OLIE OLSON, representing himself
Bethel, AK

POSITION STATEMENT: Testified in opposition to SB 85.

WILSON JUSTIN, Vice President of Health

Mount Sanford Tribal Consortium and
Alaska Rural Justice and
Law Enforcement Commission
Chistochina Village, AK

POSITION STATEMENT: Testified in support of SB 85.

CEZARY NACZYNSKI, representing herself
Bethel, AK

POSITION STATEMENT: Testified he strongly opposes SB 85.

LARRY HACKENMILLER, representing himself
Fairbanks, AK

POSITION STATEMENT: Testified in opposition to SB 85.

DARWIN BIWER, Chair
Statewide CHARR
Anchorage, AK

POSITION STATEMENT: Testified in opposition to SB 85.

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

POSITION STATEMENT: Testified that DHSS supports SB 85.

RODNEY DIAL, Lieutenant
Department of Public Safety (DPS)
Ketchikan, AK

POSITION STATEMENT: Testified that DPS supports SB 85.

ACTION NARRATIVE

[1:33:12 PM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Elton, Wielechowski, Therriault and French.

SB 85-ALCOHOL: LOCAL OPTION/LICENSING/MINORS

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CHAIR FRENCH announced the consideration of SB 85. [Before the committee was CSSB 85(CRA).]

ANNE CARPENETTI, Criminal Division, Department of Law (DOL), said the Governor introduced SB 85. Providing some history, she explained that the local option laws were adopted in the 1980s and at that time amounts were set for various purposes of the

local option law. One purpose was to establish that possession of a larger amount would be a presumption of possession for sale if a person were prosecuted for bootlegging.

CHAIR FRENCH asked if the state was essentially wet before the local option laws, meaning that just one set of alcohol laws applied statewide.

MS. CARPENETI replied she believes so, but she'll double check. The amounts have stayed essentially the same over the years. Under current law the amounts are set at 10.5 liters of hard alcohol, 24 liters of wine and 12 gallons of malt liquor. If a person is in possession of more than these amounts and there is other evidence, that would be an evidentiary presumption that the possession was for sale. It's rebuttable and doesn't mean that a person who possesses more is going to be prosecuted for bootlegging.

CHAIR FRENCH noted that discussion in the previous committee focused on those numbers as some sort of barrier.

MS. CARPENETI said it's not a barrier. These are amounts that they said in the 1980s could be used as an evidentiary presumption that the possession was for purposes of sale if somebody was being prosecuted for bootlegging.

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CHAIR FRENCH observed that a person who has a wine cellar with 200 bottles of wine probably doesn't have a bootlegging operation, but someone who has 15 cases of whiskey boxed up and ready to go somewhere is an entirely different matter.

MS. CARPENETI agreed. These amounts are also used for other things in statute. For example, if a person is convicted of bootlegging more than 10.5 liters of hard alcohol, that would be the threshold amount between a misdemeanor and a felony prosecution for bootlegging. She elaborated that selling 12 liters of hard liquor would be a felony bootlegging prosecution.

Over the years people have concluded that the amounts are too high. That was a consideration that the Rural Justice Commission had; the Representative from Bethel expressed the same concern in the House Finance Committee; last year's crime bill included several of the alcohol provisions; and the House Judiciary Committee had discussions about reducing the amounts. In response to those considerations, the Governor introduced SB 85 to reduce the amounts. That caused some people who live in rural

areas and like to shop in bulk some concern. Thus a committee substitute (CS) was drafted. It does not address the amounts that give rise to the presumption of sale or the threshold between felony and misdemeanor. It just addresses the time. Under the CS every two months a package store can send the following amounts to a person living in a damp local option community: 10.5 liters of hard liquor, 24 liters of wine and 12 gallons of malt liquor. Previously these amounts could be sent every month.

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Section 2 also adopts civil penalties for licensees whose employees or agents are convicted of furnishing alcohol to a minor while on the licensee's premises. Most of the licensees in the state are conscientious, but some are not as serious so this provides consequences. On the first conviction the Alcoholic Beverage Control Board (ABC) would send the licensee a letter of warning explaining the consequences for additional convictions. The second and subsequent convictions would bring a \$1,000 civil fine to the licensee whose employee was convicted of furnishing alcohol to a minor on the licensed premises.

Sections 3 and 4 correct minor drafting errors in the legislation that was adopted last year. She explained that the minor consuming law has a three-step process to accommodate first time, repeat and habitual offences. In 2001 the Legislature adopted a scheme that any minor convicted of minor consuming would be on probation until they were 21 years old. Last year they changed the probation period to one year, but the drafting caused some magistrates concern that the law wasn't sufficiently specific to allow movement from step one to step two to step three. SB 85 clarifies that "step one is the first, step two is the second and the consequences for repeat apply to anybody who has a conviction for their first offense, and the consequences for habitual apply to all minors who have had two incidents of minor consuming in their lives."

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CHAIR FRENCH noted that Section 3 is for the repeat offender and Section 4 is for the habitual offender.

MS. CARPENETI agreed. SB 85 also fixes an inconsistency that resulted when the Legislature adopted mandatory minimum sentences for people convicted of bootlegging. The intention was that those were to be the same as the mandatory minimum penalties for drunk drivers. However, there is a different definition for "previous conviction" in the drunk driving law

than in the bootlegging law. Section 5 of the bill corrects that inconsistency.

MS. CARPENETI characterized Sections 3, 4, and 5 as clean up provisions. She recapped that the first new provision relates to the amounts of alcohol that a licensee can send in response to a written order in a two month period, and the second relates to the civil penalties for licensees.

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SENATOR ELTON said he continues to struggle with the amounts. He questioned whether someone would be prohibited from ordering from more than one package store to get a second or third shipment.

MS. CARPENETI replied that wouldn't happen because of the law the Legislature passed several years ago. It requires licensees who send alcohol to local option communities in response to a written order to check a database to see whether the individual has made other orders.

SENATOR ELTON commented that squeezing a balloon in one spot causes a bulge in another. Four adults living in a household could order 42 liters of hard alcohol and he wonders if this solution may encourage other people to get in on illegal profits that accrue because of bootlegging.

MS. CARPENETI said there isn't a magic solution to bootlegging. Over the years there have been a number of solutions and the database was particularly helpful. Under current law, four adults in a family could order four times the amounts outlined above. This bill doesn't change that

SENATOR ELTON said he continues to struggle with the amounts and he isn't sure he'd want to be a neighbor of someone who consumes that much alcohol in two months. The only reason he could think of for ordering that much would be to sell it or give it away. "That's a lot of booze."

MS. CARPENETI pointed out that under current law every adult in a damp community can order that much every month. SB 85 changes that to every two months.

CHAIR FRENCH asked testifiers to limit their comments to three minutes.

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MICHELLE DEWITT, Director, Tundra Women's Coalition, Bethel, stated that she has reviewed the CRA committee substitute and she appreciates the state looking at ways to address the issue of alcohol abuse in rural Alaska. She serves victims of domestic violence and sexual assault and from her perspective alcohol abuse is a major factor in crime. She realizes that there are different perspectives on the bill, but she appreciates that the state is looking at efforts to make a difference in regard to domestic violence and sexual assault.

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SENATOR THERRIault noted that his staff provided a sheet indicating what the liter amounts break down to in terms of 8 ounce cup servings. From his perspective it's a staggering amount of alcohol on a daily basis. "So having it be every two months knocks it down to a little bit more reasonable level," he said.

CHAIR FRENCH thanked him for the work and said he may refine the measures further.

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JODY MALUF, representing herself from Bethel, said her husband is a long-time teacher at the high school and she is well aware of what alcohol can do to a family and a community. However, SB 85 treats everyone who resides in a local option community as a second-class citizen. It combines ridiculous limitations on liquor with punishments for furnishing alcohol to minors. She questioned why the drafters would include protections for minors, which everyone wants, with required punishments for "innocent law abiding citizens." It forces legislators to think that passing the bill equates to having family values. She questioned why their former Representative requested the legislation from the Governor and why it is being fast-tracked at the Governor's request. "There is an agenda here," she asserted.

CHAIR FRENCH assured her that the bill would be thoroughly considered as it goes through the system.

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DAVE TRANTHAM, representing himself and his family from Bethel, said SB 85 will not serve the intended purpose and has unintended consequences. Bootlegging will continue regardless of the limits that are set. The citizens of Bethel voted for local option because it was the best option, but since then it's been tweaked many times. The initial understanding was that the local

people had some say. That is no longer the case and local citizens have no control. "The Legislature is controlling everything." He believes that the community will petition and opt out of local option within a week of this bill passing. The community council meets tomorrow to consider a resolution opposing SB 85. Education is the answer. It's time to teach the people in Bethel how to drink and how to stop binge drinking. Liquor is one of the big economic drivers in Bethel and accounts for jobs in healthcare and government. SB 85 won't serve the people of Bethel.

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THOMAS HAWKINS, representing himself from Bethel, said the community voted for local option but they never voted for limits. The Legislature and Juneau is trying to override our local option, he said.

SENATOR ELTON pointed out that Juneau has nothing to do with any of the changes other than his single vote. The community is not doing this, it is a group of legislators who operate by majority vote.

MR. HAWKINS said he didn't intend to single out the community of Juneau. He did intend to single out the Legislature.

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KEVIN CARTER, representing himself from Bethel, said he wants to reiterate what Mr. Hawkins and Mr. Trantham said. "It's depressing to know that we're being told by people that don't live in the Bush and don't know how things work out here, what we can and can't do and how much of it we can do." This won't solve the problems here because bootleggers will find a way to continue. This will simply drive the prices of bootlegged alcohol even higher. The community swallowed the database, but we won't swallow this, he said.

CHAIR FRENCH said the comments today have prompted him to look into how close the recent votes have been in Bethel.

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ERIC MIDDLEBROOK, representing himself from Bethel, said the most recent vote was to pass a city ordinance allowing only the citizens of Bethel to vote on whether or not to allow a delivery site and to say that the city council did not have authority to establish a centralized delivery site for alcohol. The vote was 85 percent in favor of retaining voter control on that issue. Most local option votes asking about a change to either wet

status or dry status have been turned down 2:1. Bethel citizens are adamant about maintaining the status quo and this bill has been a wake-up call. The state has taken a number of steps to take control away from the residents. "We just feel that we've been backed into a corner and we have no other options here," he said.

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GARY VANASSE, representing himself from Bethel, stated opposition to SB 85. In the 24 years he has lived in Bethel, the residents have voted on local option status many times. "The result of that vote every single time has been to retain a damp status." He feels that the community should maintain its damp status, but this bill could result in the community having a local option election to create a wet status. Already there has been an increase in homebrew operations and drug use and he worries that will escalate. He believes that money should be spent on undercover investigations to round up illegal activities such as bootlegging and drug dealing. "We haven't seen that here in Bethel in quite some time," he said.

The alcohol limits that were set in the late 1980s haven't done much to solve alcohol-related problems in the Bethel region and he doesn't believe the new limits will have the desired effect either. "Let's treat the disease, not the symptom." Let the citizens of Bethel make their own decisions and don't get over focused on amounts, he said.

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THOR WILLIAMS, representing himself from Bethel, thanked the members for doing the business of the state. A point he would like to make is that there has been a rise in numbers of community members who are ordering alcohol now that there is an electronic delivery site within the community. That basically means that people are ordering alcohol when they never did before. He reminded members that Bethel residents pay freight on alcohol when it is shipped to Anchorage and again when it is shipped to Bethel. That is a large cost and the consumer saves money if they buy in bulk. Another thing to realize is that Bethel could potentially lose revenue because they gain fees on alcohol purchased in Anchorage. That money is used to provide services in the community so limiting the amount of alcohol that could be delivered would amount to a cut in revenue for the community. That could cause loss of employment for city employees. Opting out of local option is an up-coming issue and he has asked the ABC board to talk to the community council on March 10 about what that means. It could be that it would cause

more problems than it's worth. The community simply wants to be left alone.

MR. WILLIAMS asked if the communities of Anchorage, Fairbanks and Juneau would like to be told how much alcohol they should or should not drink in a month. Bethel has problems with drugs and alcohol, but these other communities do as well. This isn't the solution and he would like the committee to break up SB 85 to address the different issues in the bill individually.

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OLIE OLSON, representing himself, said he has lived in Bethel for 30 years and he agrees with the previous testimony. He wants to be treated like any other citizen of Alaska is treated. He doesn't think SB 85 will help with the bootlegging problem, but it will make it more expensive.

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WILSON JUSTIN, Vice President of Health, Mount Sanford Tribal Consortium, Chistochina Village, said he also serves on the Alaska Rural Justice and Law Enforcement Commission. His remarks primarily target Section 1 of SB 85 and he supports it unilaterally. Over many years he has dealt with alcohol and substance abuse issues in a number of forums including prisons, the legal arena, the courts and health. Health care is a billion dollar industry in Alaska and between two-thirds and three-fourths of the cost of delivering health care is related to alcohol and substance abuse. That's astonishing but it's a given in the health industry. He thanked the committee and restated his support for SB 85.

CHAIR FRENCH thanked him for his contributions to the state.

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CEZARY NACZYNSKI, representing herself from Bethel, said he strongly opposes SB 85. The bill isn't only about alcohol, it's about who can make decisions for a community. He supports strong punishment for bootlegging and he supports the freedom of choice. "Just let me decide what I'm going to eat today and what I'm going to drink and how much I'm going to drink." He came to this country to enjoy the freedoms and he would like the freedom to choose.

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LARRY HACKENMILLER, representing himself, Fairbanks, said he is here to testify against SB 85. In particular he opposes the \$1,000 penalty as a consequence for a licensee. Basically it

says that after all the training an employee receives, the owner will be fined \$1,000, without due process, for the second conviction of a bartender. "Even with the training that we have, they make a mistake and yet we are now held accountable," he said. The ABC board has the authority under Title IV to make decisions with regard to penalties so it's uncalled for to give him a \$1,000 fine as outlined in the bill.

MR. HACKENMILLER said this is supposed to a standard for bootlegging; it isn't supposed to solve the social problems alcohol causes, but he keeps hearing people say it will help. Dry villages have zero limits for alcohol and they still have problems. Bethel is basically saying it wants to handle its own problems. He disagrees with DOL saying that that it's a rebuttable presumption because discovering over 10.5 liters of whiskey is at the bootlegging level. The reason the half liter is there is because someone might have alcohol left over when they ordered more. "You're going to make criminals out of people that are not involved in a criminal activity," he said.

MR. HACKENMILLER cautioned the committee to stay on point. This is a bootlegging bill and it isn't supposed to address social problems. Corrective language for underage consumption is covered in another bill so this bill needs go no further. The \$1,000 penalty for a licensee provides no due process. He is guilty until proven innocent and it's the same for bootleggers. "When you find 12 bottles of liters in my house, I have to prove my innocence. That's my rebuttal but I still have to do that. If it's a criminal crime it should be criminal, but a civil penalty of \$1,000 [is] way too out of line and I'm not given a chance to defend myself," he said.

CHAIR FRENCH observed that he would pity the trooper and the DA who tried to bring a slightly-over-the-limit bootlegging case against a Bethel resident because the citizens would look at that with a jaundiced eye.

MR. HACKENMILLER said we don't need the law.

CHAIR FRENCH said he used Senator Therriault's numbers and based on a two month total he calculated that someone could ship 6 ounces of whiskey per day to a citizen, 13 ounces of wine per day to a citizen and 25 ounces of beer per day to a citizen. Debate can take place on what the appropriate level should be but that's the math as far as the restrictions on shipment, he said.

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DARWIN BIWER, Chair, Statewide Cabaret Hotel Restaurant & Retailers Association (CHARR), said CHARR represents liquor licensees across the state and they oppose the provision in Section 2 that gives a \$1,000 civil fine to the licensee for an employee's action. This isn't right because legitimate licensees aren't trying to sell to minors. Anchorage CHARR has put together an in-house compliance check and has a pilot program in Kodiak as well. This is in addition to the state compliance checks by state troopers and is an effort to keep the numbers down and keep people informed. All servers and owners are required to take courses on the techniques of alcohol management (TAM) and renew them every three years. When mistakes happen—and they do—the perpetrator should be responsible, not the owner of the bar.

MR. BIWER said he knows that this legislation came from social service and welfare organizations. The liquor industry was not involved and was not consulted. "We're completely ignored yet it puts a penalty on our industry and on our people and that's just not right either," he said.

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MR. BIWER reported that national statistics show that underage drinkers get alcohol from their parents 65 percent of the time. The second most common way is through friends and relatives and the third way is the shoulder tap, which is where underage drinkers gets someone to buy alcohol for them. Another venue for getting alcohol is the afterhours clubs, which are illegal unlicensed operations. They sell liquor and other things to underage people and the onus comes down on legitimate licensees. In closing he said owners and licensees should not be penalized for something that somebody else does.

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SENATOR ELTON asked if this will create a situation where a bartender may lose his or her job if they make a mistake because the owner doesn't want to risk getting a \$1,000 penalty.

MR. BEELER said that could happen.

SENATOR THERRIault said he appreciates the industry trying to police itself to get rid of bad actors. He asked how a history of compliance mistakes comes into play when a liquor license is evaluated by local government and the ABC board.

MR. BEELER explained that the Anchorage Police Department (APD) tracks all visits to bars and the citations. In Anchorage all liquor licenses are approved by the municipal assembly and the ABC board is part of the system as well.

SENATOR THERRIAULT asked if the owner is at risk of losing their license if their business has proved to be a problem.

MR. BEELER said yes; the assembly makes a recommendation to the ABC board, which has the final say on the license.

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CHAIR FRENCH noted that Commissioner Masters and John Glick are online and available for questions.

DIANE CASTO, Manager, Prevention and Early Intervention Services, Division of Behavioral Health (DBH), Department of Health and Social Services (DHSS), said she is testifying on behalf of DHSS in support of SB 85 She has listened to the testimony today and during previous hearings and believes that there's truth to everything that's been said. Alcohol is a huge problem in this state. In the last several years DHSS received a contract from the federal government that made it possible to put together a state epidemiological profile on substance use and abuse and dependency within Alaska. Not surprisingly, they found that the drug of choice in Alaska is alcohol. People in this state drink a lot of alcohol and that causes an enormous number of problems. The reality is that SB 85 absolutely will not solve all the problems, because solving substance abuse requires a multi-strategy approach. "It's a big issue, it's a big problem and it needs to be looked at from a very comprehensive approach."

MS. CASTO cited statistics from the federal division of public health violent death and unintentional death reporting system. Between 2001 and 2004 the leading causes of premature death in Alaska include chronic liver disease, cirrhosis, homicide, suicide and unintentional injury. The majority are associated with alcohol use.

Alaskans consume all alcoholic beverages at a higher rate than the national average and hard liquor consumption is 1.5 times higher than the national average. The federal 50-state annual household survey indicated that 50 percent of adults in Alaska report current alcohol use. The prevalence of binge drinking in this state is the highest in the nation, particularly for those between the ages of 18 and 34. Approximately 16 percent of

hospitalized injuries are associated with alcohol use, 32 percent of motor vehicle crashes involved alcohol use and 31 percent of motorcycle crashes involved alcohol.

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MS. CASTO explained that a standard drink is 12 ounces of beer, 8 ounces of malt liquor, 5 ounces of wine and 1.5 ounces of 80 proof alcohol. According to the federal Dietary Guideline for Americans: moderate drinking is defined as no more than 1 drink per day for women and 2 drinks for men; heavy is defined as an average of more than 2 drinks per day for women or men; and binge drinking is an average of 4 or more drinks per occasion for women and 5 or more drinks per occasion for men.

The Division of Behavioral Health does a lot of work with underage drinking and it's clearly another problem area. According to the 2007 Youth Risk Behavior Survey, 73.6 percent of students reported having had at least one alcoholic drink on one or more days during their lifetime and 20.4 percent of those students reported having their first drink of alcohol before they were 13 years of age. She noted that research shows that drinking before the age of 15 markedly increases the likelihood of having lifelong trouble with alcohol. Also 39.7 percent of students reported having had one or more alcoholic drinks in the last 30 days. The good news is that consumption of alcohol among young people is starting to go down.

MS. CASTO said the message from DHSS is that it supports a multi-strategy approach and SB 85 is one piece of the strategy. With respect to Section 2, which pertains to licensees, she said she would agree with a previous testifier that just a small percentage of alcohol is purchased by youth in package stores or bars. However, it's important to look at the many ways that youths get alcohol and retailers certainly are a piece of the picture. DHSS believes the laws for alcohol should be similar to the laws for tobacco. There is a fine for the clerk who sells tobacco to a minor and it has a penalty for the licensee. That reinforces that the issue is serious and everyone needs to pay attention to it. There is due process related to compliance to tobacco laws and she assumes that would be the case for alcohol as well. Before the very strict laws and penalties for selling tobacco to minors there was a 40 percent sell rate, and this year it had dropped to about 12 percent. It's important to have a strong statement and penalties to reinforce that keeping these dangerous substances out of the hands of youth is taken seriously.

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CHAIR FRENCH asked who tracks the number of incidents of bars having sold alcohol to minors in any given year.

MS. CASTO surmised that it's the ABC board. The Division of Juvenile Justice receives federal funding to enforce underage drinking laws and they monitor compliance checks. She said it provides perspective to understand that in Alaska just one person does compliance checks for alcohol and three do compliance checks for tobacco. Clearly, just a small percentage of sales are monitored.

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SENATOR THERRIAULT observed that alcohol licensees come up for comment and recommendation by local government and noncompliance could potentially jeopardize the continuation of the license, but there isn't a similar mechanism for tobacco.

MS. CATO clarified that it's actually tougher for the tobacco industry. Selling to a minor the first time results in a fine to the clerk, a fine to the owner and a 20-day suspension of the tobacco endorsement, which is required in order to sell tobacco. Suspension of the tobacco endorsement increases with each subsequent offense and for some businesses that amounts to a significant loss of revenue.

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RODNEY DIAL, Lieutenant, Department of Public Safety (DPS), told the committee that he has lived, gone to school and worked in Bethel. He said DPS supports SB 85 and doesn't believe it will hinder the average Alaskan importing alcohol into their local option community for their own legal use. But DPS believes it will impact the illegal distribution of alcohol into restrictive communities, which will reduce violent crime. He noted that it's not a finding of guilt if someone is in possession of more alcohol than the specified amount. It's only a presumption that the person possesses the alcoholic beverage for purpose of sale. Law enforcement in the community and the DA's office both look at those cases carefully for the intent.

CHAIR FRENCH said it agrees that the bill doesn't set a personal limit for possession. However, the language on page 2, lines 8, 9 and 10 restricts the amount that can be shipped to an individual and that essentially puts a de facto limit on them. An individual may have a legitimate explanation for having 10 cases of beer in their possession and law enforcement may decide not to charge the person with bootlegging. But the fact is that

individuals will have a hard time assembling over the allowed amount unless they are able to convince people that don't drink to ship alcohol, which isn't a good policy.

CHAIR FRENCH observed that the bill seems to be designed to help law enforcement make cases that are in the gray area. A person who has 12 liters of distilled spirits, for example. Under the old standard that might be too close to the line to bother with, but lowering the standard would make it more likely that the prosecution would be successful. If someone literally had a boat full of alcohol there would be no question, but other cases would be less clear. He asked how many cases would fall in that gray zone.

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LIEUTENANT DIAL said they see both. Some cases are obvious because they're extremely over the limit, but there are also cases where the amount is just under the legal limit and it's just one type and brand of alcohol and it's packaged so it's hidden from view. Those are the types of cases that SB 85 would allow law enforcement to address. "We suspect we know what the intent is and where that alcohol is going to wind up and that it's not going to be for a good use."

CHAIR FRENCH asked if he has worked these cases.

LIEUTENANT DIAL said yes. Currently he supervises patrol functions in Southeast, which includes the local option community of Angoon.

SENATOR THERRIault referenced Senator French's example of someone who has a wine cellar and asked how DPS handles issues of a person who is accumulating for a Christmas party, and over time they exceed the allowed amounts. He asked how easy it would be for a person under that circumstance to exercise the rebuttable presumption.

LIEUTENANT DIAL said part of the investigation would be to talk to the person to figure out their intent. If there were mitigating factors, officers wouldn't necessarily make an arrest that day. They would refer it to the district attorney's office for review. In his 19 years as a state trooper he can't remember a case where they charged someone who was bringing in wine to stock their private cellar. He doesn't remember anyone ever saying they were stocking up for a holiday event either.

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SENATOR ELTON said it would be helpful to understand why this doesn't apply to him because he lives in an urban center, but it does apply to someone who lives in a damp community. Also, he questions what happens if new standards are applied retroactively because there are policy implications if this causes some communities to return to a wet designation from a current damp designation. "I'm sure there's a legal answer that says ... you can apply a different standard to me than to somebody in Bethel. I just need to know what it is."

CHAIR FRENCH speculated that the community voted itself damp at a particular level or amount of allowable alcohol and he believes the Legislature is able to change those limits for the future. That being said, he agrees that there is an issue about whether those voters now are getting what they thought they voted on to get a damp designation.

He told DOL he'd be interested in knowing how many cases of bootlegging were referred for prosecution last year and what the outcomes were. He then asked the ABC board to report how many bars were cited for selling to underage minors last year. Finally there's a policy question for Ms. Carpeneti; Barrow voted to lower its alcohol limits below what the state allows and he wonders why Bethel shouldn't be allowed to set the limits for the rebuttable presumption and shipment amounts if that's their choice.

CHAIR FRENCH held SB 85 in committee.

[3:01:39 PM](#)

CHAIR FRENCH adjourned the Senate Judiciary Standing Committee at 3:03 pm.