

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

April 1, 2011

1:31 p.m.

**MEMBERS PRESENT**

Senator Hollis French, Chair  
Senator Bill Wielechowski, Vice Chair  
Senator Joe Paskvan  
Senator Lesil McGuire  
Senator John Coghill

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CONFIRMATION HEARING

Alaska Judicial Council  
Donald J. Haase

CONFIRMATION ADVANCED

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 82

"An Act relating to the procedures and jurisdiction of the Department of Health and Social Services for the care of children who are in state custody; relating to court jurisdiction and findings pertaining to children who are in state custody; and modifying the licensing requirements for foster care."

- MOVED CSSSSB 82(JUD) OUT OF COMMITTEE

SENATE BILL NO. 78

"An Act relating to liability of certain limited liability organizations holding liquor licenses."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

CONFIRMATION HEARING: See 03/23/11 meeting

BILL: SB 78

SHORT TITLE: LIQUOR LICENSE HOLDER LIABILITY  
SPONSOR(s): SENATOR(s) MCGUIRE BY REQUEST

02/04/11 (S) READ THE FIRST TIME - REFERRALS  
02/04/11 (S) L&C, JUD  
03/22/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)  
03/22/11 (S) Heard & Held  
03/22/11 (S) MINUTE(L&C)  
03/29/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)  
03/29/11 (S) Moved SB 78 Out of Committee  
03/29/11 (S) MINUTE(L&C)  
03/30/11 (S) L&C RPT 5DP  
03/30/11 (S) DP: EGAN, GIESSEL, DAVIS, PASKVAN,  
MENARD  
04/01/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 82

SHORT TITLE: FOSTER CARE LICENSING/STATE CUSTODY  
SPONSOR(s): SENATOR(s) DAVIS

02/04/11 (S) READ THE FIRST TIME - REFERRALS  
02/04/11 (S) HSS, JUD  
03/11/11 (S) SPONSOR SUBSTITUTE INTRODUCED-REFERRALS  
03/11/11 (S) HSS, JUD  
03/14/11 (S) HSS AT 1:30 PM BUTROVICH 205  
03/14/11 (S) Heard & Held  
03/14/11 (S) MINUTE(HSS)  
03/16/11 (S) HSS AT 1:30 PM BELTZ 105 (TSBldg)  
03/16/11 (S) Moved CSSSB 82(HSS) Out of Committee  
03/16/11 (S) MINUTE(HSS)  
03/18/11 (S) HSS RPT CS 5DP SAME TITLE  
03/18/11 (S) DP: DAVIS, MEYER, ELLIS, EGAN, DYSON  
03/30/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/30/11 (S) Heard & Held  
03/30/11 (S) MINUTE(JUD)

**WITNESS REGISTER**

CELESTE HODGE, Staff  
Senator Bettye Davis  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Responded to questions on CSSB 82, version X, on behalf of the sponsor.

ESTER TEMPEL, Staff  
Senator Lesil McGuire

Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Explained the intent of CSSB 78, version B.

DICK ROSSTON, Attorney  
Dorsey and Whitney LLP  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of LLC provisions of CSSB 78, version B.

RANDALL CALL, General Counsel  
Alyeska Resort and President  
Alyeska Resort Development Company  
Girdwood, AK

**POSITION STATEMENT:** Testified in support of LLC provisions of CSSB 78, version B.

BOB KLEIN, Chair  
Alcoholic Beverage Control (ABC) Board and board member  
Alaska CHARR and  
Director of Sales and Marketing  
Brown Jug  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of CSSB 78, version B.

DALE FOX, President  
Alaska CHARR  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of CSSB 78, version B.

#### **ACTION NARRATIVE**

[1:31:44 PM](#)

**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Senators Paskvan, McGuire, Wielechowski, Coghill, and Chair French were present at the call to order.

#### **CONFIRMATION HEARING** **Alaska Judicial Council**

[1:32:22 PM](#)

**CHAIR FRENCH** announced the first order of business would be the continuation of the confirmation hearing of Donald Haase to the Alaska Judicial Council. He directed attention to a memo from legislative legal responding to his question about whether the committee could hold a governor's proposed appointment in

committee and thereby defeat the appointment. In brief, he said, the answer is no; all names that are nominated by the governor will appear in the joint Senate and House confirmation hearing. Therefore, Mr. Haase's name will appear regardless of the committee's interview and analysis.

CHAIR FRENCH said he continues to have concerns with the appointment for several reasons. Mr. Haase is not part of the Southeast region, which has historically had a public seat on the Alaska Judicial Council, and he didn't tell the committee about an important part of his resume and some of his personal views.

1:33:40 PM

SENATOR WIELECHOWSKI said this is an important council and an important appointment. This council is set out in the Alaska Constitution, which is somewhat unusual. One of the more important aspects of the Alaska Constitution is the way that judges are selected. Judges aren't elected in this state; they are qualified by a Judicial Council. Therefore, the people that are appointed and confirmed to serve on this council are critically important. They're almost as important as the judges because they are actually picking who is qualified to serve on the bench.

SENATOR WIELECHOWSKI said he had two problems with this nominee. The first relates to the regional balance issue. For the last 25 years a member of the judicial council has come from Southeast. Testimony from Ketchikan highlighted this concern. Qualified applicants from Southeast submitted applications to be on this council and unfortunately none were chosen. Regional balance is more than a fairness issue; the constitution directs that it be considered. The second issue relates to the statements that the nominee made and his qualifications. When you're picking someone to determine who is and is not qualified to sit as a judge, it is important to look at their qualifications, positions and statements. This nominee made statements that are not fitting for this position.

SENATOR WIELECHOWSKI moved that the committee report the name Donald Haase from committee to the full body for consideration, but recommend a "No" vote.

CHAIR FRENCH restated that there was a motion to forward the name with the recommendation from the committee for a "No" vote. He asked if there was objection.

[1:36:23 PM](#)

SENATOR COGHILL said he didn't object but he wanted to make a statement. He said he knows that the nominee's political views aren't enjoyed by all the members of the committee, but the regional representation issue is in the balance. One seat is occupied by someone from Juneau and the Chief Justice of the Supreme Court also resides in Juneau. Valdez, by comparison, has never had representation. If regional representation is really taken into consideration, that Southcentral, eastern part of Alaska is worthy of consideration. On that point he said he would approve the nomination. With respect to political affiliation, all the members of the Judicial Council have political affiliation and they certainly all have opinions. The cornerstone issue is the fact that the members take an oath. He said he knows this nominee and he has confidence that Mr. Haase will uphold that commitment. I wouldn't want to have that impugned and I will support the nomination, Senator Coghill stated.

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SENATOR PASKVAN said his thoughts on the nomination had nothing to do with Mr. Haase's political views and everything to do with his constitutional views. Section 1.22 of the Alaska Constitution has the most stellar Right of Privacy provision of any in the nation. It's important that this is preserved at every opportunity. Mr. Haase's views related to premarital and extramarital sex directly infringe and challenge whether there is a constitutional right of privacy in Alaska. He wants government to enter into and make criminal activities that the constitution expressly protects, Senator Paskvan stated.

Furthermore, when the Alaska Constitution was formed the Alaska Judicial Council was put in an express role that is fundamental to an independent judiciary. In responding to a survey Mr. Haase indicated that he would like to strip the constitution of that express role. It's very troubling that Mr. Haase wants to be a member of the Judicial Council yet he doesn't support the role of the Judicial Council as set forth in Alaska's constitution. My objection to Mr. Haase's appointment is based on the constitution, not politics, and I'm recommending a "No" vote, Senator Paskvan stated.

SENATOR WIELECHOWSKI clarified that his position on Mr. Haase's appointment had nothing to do with his political views. He often disagrees with the political views of people who come before the committee for confirmation. As Senator Paskvan said, this is

about the constitutional views that Mr. Haase holds and about regional balance.

SENATOR COGHILL stated he had no objection.

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CHAIR FRENCH announced that without objection the name Donald J. Haase will advance to a joint session for consideration with the recommendation from the Senate Judiciary Standing Committee that there be a "No" vote.

At ease from 1:40 p.m. to 1:42 p.m.

**SB 82-FOSTER CARE LICENSING/STATE CUSTODY**

[1:42:29 PM](#)

CHAIR FRENCH announced the consideration of SB 82 and asked for a motion to adopt the proposed committee substitute. He noted that it incorporates the amendment that was adopted at the previous hearing.

SENATOR WIELECHOWSKI moved to adopt the proposed work draft CS for SB 82, labeled 27-LS0500\X, as the working document.

CHAIR FRENCH objected for discussion purposes and asked Ms. Hodges if the CS accurately integrates the amendment that was passed with the bill.

[1:43:10 PM](#)

CELESTE HODGE, Staff to Senator Bettye Davis, sponsor of SB 82, said yes. She thanked the committee for the extensive discussion of the amendment at the previous hearing.

[1:44:12 PM](#)

SENATOR COGHILL said he appreciates the work that was done on the bill. It's a good piece of legislation.

CHAIR FRENCH found no further questions or comments and solicited a motion.

SENATOR WIELECHOWSKI moved to report CS for SSSB 82, version X, from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection, CSSSSB 82(JUD) moved from the Senate Judiciary Standing Committee.

[1:45:09 PM](#)

At ease from 1:45 p.m. to 1:47 p.m.

**SB 78-LIQUOR LICENSE HOLDER LIABILITY**

[1:47:00 PM](#)

CHAIR FRENCH announced the consideration of SB 78 and asked for a motion to adopt the proposed committee substitute (CS).

SENATOR WIELECHOWSKI moved to adopt the work draft CS for SB 78, labeled 17-LS0282\B, as the working document.

CHAIR FRENCH objected for discussion purposes.

ESTER TEMPEL, staff to Senator Lesil McGuire, sponsor of SB 78, said the intent of the version B is twofold. The first section of the bill seeks to provide equal treatment to limited liability companies and foreign limited liability companies in the liquor liability context as they are treated in the business world generally. Sections 2 and 3 of the bill seek to provide a limitation of liability for a taxicab or limousine driver who gets in an accident while driving another person's vehicle from a licensed premise.

Currently, persons engaged in businesses commonly use LLCs instead of corporations while leaving intact the limited liability of the LLC members for all other business purposes. As currently written, AS 04.21.035 is an exception to the protections against the individual liability offered to partners of properly registered and maintained LLPs and to members of properly registered and maintained LLCs. This means that partners of LLPs and members of LLCs are not relieved of the obligation or liability otherwise imposed on the holder of a liquor license.

[1:49:15 PM](#)

CHAIR FRENCH asked if that means that LLP partners and LLC members are personally liable for the liabilities that may be incurred by their business.

MS. TEMPEL replied that's her understanding and to avoid that liability the business or license holder would operate as a corporate entity rather than as an LLC. She continued that the first part of the CS amends the existing statute saying that the liability will be imposed only on partners of a limited liability partnership or a foreign limited liability partnership, but will no longer apply to a limited liability

company or a foreign limited liability company. The balance of the CS is a Good Samaritan bill for taxicab operators who drive an intoxicated person's motor vehicle home or another location as directed by the intoxicated person.

This Good Samaritan legislation was originally passed in 2004 with a 2007 sunset, which has been overlooked until recently. The bill has helped to create a deterrent for those who might otherwise drive impaired if unable to find an alternate method of transportation. It recognizes that while some people may have made arrangements to get home after drinking, the designated driver may not always be available or unimpaired. This service is free and confidential.

In 2008, Anchorage had 2,777 DUI arrests of which 453 resulted in accidents and 16 fatalities of which 8 were alcohol related. In Alaska in general, 17 of 62 fatalities were alcohol related. In 2009, Anchorage had 2,604 DUI arrests of which 324 resulted in accidents. According to the Anchorage Police Department (APD), 7 of 17 fatal accidents were alcohol related.

Sixty three establishments participate in this program, primarily in Anchorage. Since the program began in 2005, over 821 individual rides have been given and over 2,379 vouchers have been sold.

[1:53:00 PM](#)

CHAIR FRENCH asked if the idea is to enhance and extend the limited liability provisions of an LLC to the owners and holders of liquor licenses.

MS. TEMPEL said yes.

SENATOR MCGUIRE explained that this provision was drafted before LLCs and LLPs were a matter of Alaska law so this is really cleanup language to allow business entities that have taken that form to function without artificial limitation.

CHAIR FRENCH summarized that this is structured so that LLPs and foreign LLPs remain on the hook for liability but LLCs and foreign LLCs are treated the way a corporation is treated.

SENATOR MCGUIRE agreed.

DICK ROSSTON, Attorney, Dorsey and Whitney LLP, stated that a number of his clients hold liquor licenses in Alaska in the corporate form, but would prefer to use the LLC form. He

informed the committee that LLCs are commonly used instead of corporations, and except in the liquor license context they provide the limited liability protection that the name implies. He offered the opinion that the lack of protection for liquor license holders probably came about because LLCs were not well understood when Sec. 04.21.035 was enacted. He noted that neither domestic nor foreign LLPs were included in this proposed fix.

MR. ROSSTON referenced a chart in the bill packet that shows the key points of corporations, general partnerships, limited liability companies, and limited liability partnerships. He offered to review the chart.

1:58:45 PM

CHAIR FRENCH said the members didn't need a detailed explanation.

MR. ROSSTON said the gist is that limited liability company means limited liability protection and that wasn't well understood when the legislation was enacted. There's no reason to treat the owners of LLCs differently than the owners of corporations, he said.

CHAIR FRENCH asked when Sec. 04.21.035 was enacted.

MR. ROSSTON replied it was originally drafted in 1999 and LLCs were brought into existence in Alaska in 1994. At that time there was a misunderstanding that LLCs were more like general partnerships, which have pass-through liability for all general partners, but they're actually treated more like corporations in the business world. He added that a distinction between an LLC and an LLP is that to become an LLP under Alaska statutes there must first be a partnership agreement. That agreement is then amended to form an LLP.

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RANDALL CALL, General Counsel, Alyeska Resort and President, Alyeska Resort Development Company, said when this legislation was introduced he did some research and found that California, Utah, Idaho, Nevada, Washington, and Oregon provide limited liability to members of LLCs. Alaska is out of sync which makes it less likely that investment will occur here. Most investors don't invest through publicly held corporations for developments purposes. When the new owners acquired Alyeska Resort, it was done through LLCs. The investors in those LLCs are investors in several states including several eastern states and they would

not invest if they didn't have limited liability for liquor issues. In order to preserve their limited liability, Alyeska Resort created a corporation to hold the liquor licenses. This legislation will make it easier for owners of liquor licenses to do business in Alaska, but it doesn't change the liability of the LLC. It simply gives limited liability to the members.

2:05:38 PM

SENATOR PASKVAN asked if LLCs and LLPs are treated the same as a corporation under Alaska law with respect to adequate capitalization.

MR. CALL replied LLCs are used far more frequently than LLPs. LLPs are typically used for medical practices, law firms, and other professional practices. They're generally a method whereby the state confines liability to the professional and that individual remains liable for his or her malpractice. The liability of his or her partners is limited. LLPs aren't generally used as mechanisms for investment, owning or holding real property, or making developments.

CHAIR FRENCH asked what sort of liability insurance one needs to operate a liquor license.

MR. CALL said he didn't know if there's a threshold requirement but the entity that holds the Alyeska Resort liquor license carries dram shop insurance. He added that this is probably common practice for owners of liquor licenses.

2:08:40 PM

BOB KLEIN, Chair, Alcoholic Beverage Control (ABC) Board; board member, Alaska Cabaret, Hotel, Restaurant & Retailer's Association (CHARR); and Director of Sales and Marketing, Brown Jug, stated that he was on the ABC Board in 1999 when Title 4 was amended to describe certain LLCs and he believes that Mr. Rosston's characterization of "not understanding" it is gentle. LLCs were relatively unknown at the time and the general thought was that the drafters had done the right thing. But as LLCs developed and as the use became apparent, it became increasingly clear that Title 4 should be brought in sync with what's happening in the business community.

CHAIR FRENCH asked if some liquor licenses holders might hold their licenses as an LLC without knowledge that there are issues with respect to liability because of the statute.

MR. KLEIN said the Brown Jug owner uses LLCs but chose the corporate format because of the language in Title 4. He surmised that anyone who is paying attention would avoid using LLCs for the reasons that Mr. Rosston outlined.

CHAIR FRENCH asked if the ABC board looks for an insurance policy or a certain level of assets when it awards a liquor license.

MR. KLEIN replied the Board look at the backgrounds of the people who will be listed on the license, not at fiscal liability.

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SENATOR WIELECHOWSKI asked about the potential to require liability insurance.

MR. KLEIN responded that it would be an administrative nightmare for the ABC Board to review and verify that every license holder had adequate insurance.

CHAIR FRENCH asked how many liquor licenses are active in the state.

MR. KLEIN estimated that it's close to 600.

[2:13:35 PM](#)

MR. CALL pointed out that corporations don't currently have that requirement in order to hold a liquor license. He added that it would be overwhelming to require this of both corporations and LLCs.

CHAIR FRENCH asked if the physical assets of a bar or liquor store are included when a corporation or LLC is formed around a liquor license.

MR. CALL responded that the assets of an LLC would be open to potential claims if it held a liquor license. Because of the legislation passed in 1999, corporations were created simply to hold liquor licenses and essentially no assets.

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SENATOR PASKVAN again asked if LLCs are subject to the same rules as corporations with respect to adequate capitalization. If there is an event, there is something more than the license itself to respond.

MR. CALL asked if he's speaking specifically of alter ego liability and undercapitalization legal theories.

SENATOR PASKVAN said yes.

MR. CALL responded that the answer to the question is yes.

SENATOR PASKVAN asked if he's saying that if a front corporation held just the license and no insurance, it would increase the probability that the liquor license holders would be subject to personal liability because of that stripped out corporate structure.

MR. CALL said yes; he believes LLCs have to meet requirements of alter ego and capitalization similar to corporations.

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DALE FOX, President, Alaska Cabaret, Hotel, Restaurant & Retailer's Association (CHARR), stated that the CHARR government affairs committee unanimously voted to support both sections of SB 78 - the extension of LLC rights as well as the taxicab/limousine liability. The taxicab program, which passed in 2004 with overwhelming support, provides a good service to patrons and makes the streets safer. The bill corrects the sunset provision that was overlooked until recently.

CHAIR FRENCH observed that Section 2 addresses a person who makes the responsible decision to take a taxicab home from a bar and wants their car to be driven home too. Taxicab companies will drive an individual's car home, but the company doesn't want to be on the hook if an accident takes place that's caused by negligence. He asked Ms. Tempel if that's her understanding as well.

MS. TEMPEL said yes.

[2:19:59 PM](#)

SENATOR MCGUIRE added that she doesn't recall why the sunset was inserted, but the bill was a creative approach to crack down on drunk driving. Testimony indicated that part of the reason that people drive drunk is that they don't want to wake up the next day and not have their car. Alaska CHARR sponsored the idea that taxicab companies would volunteer to drive the individual and their vehicle home. When the cab companies asked for liability relief in the event of an accident, the committee struck a balance and said if an accident was caused by gross negligence or reckless or intentional misconduct, the cab company isn't off

the hook. The bill also did not limit the ability of a person to recover damages under any applicable uninsured or underinsured motor vehicle insurance coverage. Finally, the bill did not limit the ability of a person to recover damages under any applicable liability insurance coverage purchased by or on behalf of the person being transported. The motor vehicle owner is considered to have given consent. Without these provisions, the taxicab companies won't participate, she stated.

[2:24:04 PM](#)

SENATOR PASKVAN asked why the taxicab companies' liability insurance wouldn't cover their professional drivers in the event they did something wrong.

SENATOR MCGUIRE compared the taxicab companies' concern to that of a physician who renders assistance in an emergency. The physician is accommodated under the Good Samaritan Law and the taxicab companies want an accommodation that is similar in nature, she said. The taxicab companies' professional liability insurance doesn't come into play; this is a voluntary program and the professional company isn't getting a fee.

SENATOR PASKVAN pointed out that if a taxicab company's professional driver drives an individual's vehicle that has no coverage, an accident victim would have no opportunity to recover from the professional driver whose bad conduct hurt or killed them.

SENATOR MCGUIRE said the coverage that runs with the vehicle would be granted to an accident victim. The bill clarifies that uninsured and under insured motor vehicle coverage will be there, but the section doesn't apply if the accident is the result of gross negligence or reckless or intentional misconduct.

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CHAIR FRENCH said he wants to make sure he understands when and to whom subsection (c)(2) would apply.

SENATOR MCGUIRE said it's basically when someone is driving another person's vehicle.

CHAIR FRENCH asked if it would be the accident victim's uninsured or underinsured motor vehicle policy that would provide coverage under Senator Paskvan's hypothetical.

SENATOR MCGUIRE said yes.

SENATOR PASKVAN said his point is that this insulates the at-fault driver who is a professional.

CHAIR FRENCH asked if that's negligence or gross negligence.

SENATOR PASKVAN said the point is that subsection (c)(2) is meaningless coverage because the UM or UIM coverage under a motor vehicle liability policy is contractual between the vehicle owner and the insurer and that can't be taken away. The person whose bad conduct resulted in death or injury avoids all consequences for that conduct.

CHAIR FRENCH speculated that is why the sunset was inserted. He asked if there has been a problem in any of the 821 rides that have been given.

SENATOR MCGUIRE reiterated that the committee was looking for creative alternatives to get more people to stop driving drunk and decided that this was worth trying. Due to a combination of things, drunk driving rates have decreased in Alaska in general and in Anchorage in particular, she said.

[2:33:40 PM](#)

CHAIR FRENCH asked if it's reasonable to assume that a taxicab driver would check a vehicle's liability insurance before driving it home for the owner.

MR. FOX said the participating bars check the insurance policy before calling the taxicab company.

CHAIR FRENCH said that's smart.

SENATOR PASKVAN said he understands the policy call not to go after a taxicab company's assets beyond its liability coverage. However, these companies have purchased coverage for the potential bad conduct of their professional drivers and that coverage should be available to victims of a professional's bad conduct.

[2:35:49 PM](#)

CHAIR FRENCH questioned why a taxicab company would risk increasing its insurance costs by even a cent when it is just trying to help.

SENATOR WIELECHOWSKI said he'd like to know if there have been any accidents in the 821 rides that have been given.

MR. FOX said he hasn't heard of any accidents, but he would inquire.

SENATOR PASKVAN said he suspects that the accident rates for these professional drivers would be so low that any increase in insurance would be de minimis. He added that he's thinking of the victim who through no fault of his or her own is hurt by a professional driver and potentially gets nothing from the vehicle owner or the professional driver.

[2:37:52 PM](#)

At ease from 2:37 p.m. to 2:38 p.m.

[2:38:50 PM](#)

CHAIR FRENCH reconvened the meeting and announced he would hold SB 78 in committee.

[2:39:08 PM](#)

There being no further business to come before the committee, Chair French adjourned the meeting at 2:39 p.m.